(2017) 11 SHI CK 0008

In the High Court Of Himachal Pradesh

Case No : 513 of 2009

Kundan Lal Sharma APPELLANT

Vs

Union of India, & Ors. RESPONDENT

Date of Decision : 20-11-2017

Acts Referred:

Citation : (2017) 11 SHI CK 0008

Hon'ble Judges : Sanjay Karol, Ajay Mohan Goel

Bench : Single Bench

Advocate : M.L. Sharma, Ashok Sharma

Final Decision : Dismissed

Judgement

1. Brief facts necessary for the adjudication of the present petition are as under: Petitioner before this Court initially joined the respondent-Institute as a Peon w.e.f. 30.04.1966. He was thereafter promoted to the post of Clerk on 27.02.1968 and Upper Division Clerk w.e.f. 15.01.1975. As per the petitioner, respondent-Institute invited applications vide Annexure A/1 appended with the Original Application for various posts including the post of Auditor. Petitioner applied for the said post and was appointed against the same by way of direct recruitment on the basis of recommendations of the Selection Committee vide order, dated 01.09.1986 in the pay scale of Rs.425-800/- (revised to Rs.5000-8000/-). On the recommendations of 5th Central Pay Commission, which were accepted by the respondent-Institute, petitioner was granted first up-gradation under the Assured Career Progression Scheme after completion of 12 years of service in the pay scale of Rs.6500-10500/- vide office order, dated 25th October, 2001 w.e.f. 19.10.2000. However, on audit objection, said up-gradation was withdrawn vide office order, dated 28th December, 2006.

2. Feeling aggrieved, the petitioner assailed the order, dated 28th December, 2006, vide which the up-gradation was withdrawn by way of filing an Original Application No. 33/HP/2007 before the learned Central Administrative Tribunal,

Chandigarh Bench (Circuit At Shimla). According to the petitioner, as he stood appointed against the post of Auditor by way of direct recruitment, therefore, he was rightly conferred benefits under the Assured Career Progression Scheme on completion of 12 years of service and the same were wrongly withdrawn vide impugned order, dated 28th December, 2006.

3. Respondents while contesting the claim of the petitioner, took the stand before the learned Tribunal that before the applicant therein was selected against the post of Auditor, he had earned two separate benefits, i.e., firstly he was granted the benefit of age relaxation for appointment to the post of Auditor and thereafter he was conferred the benefit under than FR (c) (now renamed as FR 22(I)(a)(1) for fixation of his pay from his earlier position of UDC, which was done when the petitioner was promoted as Section Officer. Thus, as per the respondents, the petitioner had to be construed to have been promoted to the post of Auditor instead of having been appointed to the said post at the entry level. It was further the stand of the respondent-State that the post of Auditor, against which the petitioner was appointed, was re-designated as Assistant in the same pay scale only after six years after the petitioner had joined as Auditor and thereafter when the post of Section Officer in the pay scale of Rs.6500-10,500/- became available, he was promoted against the said post w.e.f. 25th June, 2002. It was also the stand of the said respondents that the applicant was not even in the feeder cadre of Assistant and he could not have been promoted to the post of Section Officer and this clearly demonstrated that the applicant had drawn two separate benefits while reaching the post of Section Officer, i.e., firstly the benefit of pay fixation under FR 22 (c), which he gained while being posted as Auditor and second on having returned to the normal channel of promotion from UDC to Assistant and to Section Officer by virtue of the fact that the post of Auditor, which would otherwise have been an isolated post, was re-designated as Assistant.

4. Respondent No. 3 filed a separate reply and the said respondent also denied the claim of the petitioner.

5. Learned Tribunal vide order, dated 24.10.2008, dismissed the Original Application so filed by the petitioner. While dismissing the Original Application, it was held by the learned Tribunal that Para 5.1 of the conditions for grant of benefits under the ACP Scheme provided that in the entire Government service career of an employee, two financial upgradations shall be counted against regular promotions and the same shall be available if no regular promotions during the prescribed period of 12-24 years had been gained by an employee. If employee gets one regular promotion, then he shall qualify for the second financial upgradations only after completion of 24 years of service under the ACP Scheme and no benefit shall accrue under the said Scheme in case employee gains two promotions. Learned Tribunal further held that the petitioner, who had initially joined the Institute as Peon, was promoted thereafter as a Clerk and then as UDC and thereafter promoted/redesignated as Accountant to suit his

convenience and ensure upgradations/ promotion to him. Learned Tribunal further held that as the applicant had already earned two promotions, he could not be granted financial up-gradation under the ACP Scheme. Learned Tribunal further ordered the Ministry of H.R.D. to constitute a high level committee to scrutinize the matters like that of the petitioner, who as per the learned Tribunal were conferred undue benefits in his service career, with further direction that if any deviation from the established procedure is noticed, then such appointments may be reviewed and appropriate action shall be taken against the respondents. Said order passed by the learned Tribunal stands assailed by way of this writ petition.

6. We have heard the learned counsel for the petitioner as well as learned Assistant Solicitor General of India and have also gone through the records of the case.

7. Office order, dated 1st September, 1986 (Annexure A/3) demonstrates that on the recommendations of the Selection Committee and in relaxation of age limit laid down in the Recruitment Rules, the petitioner was approved for officiating appointment as Auditor in the pay scale of Rs.425-800/-. Vide office order, dated 25th October, 2001, benefit under the Assured Career Progression Scheme was conferred upon the petitioner w.e.f. 19th October, 2000. This benefit was conferred upon the petitioner by construing his appointment as Auditor w.e.f. 01.09.1986 and as not having gained any promotion from the said post for a period of 12 years. An audit objection was raised qua the benefits so conferred upon the petitioner, which reads as under:

"Para 25A Irregular grant of ACP Rs. 0.16 lakh.

As per provision for Assured Career Progression Scheme two financial up-gradation in the entire career are admissible to a direct.

It was noticed that Sh. Kundan Lal, Section Officer, who joined the Institute on 30/4/66 as Peon was promoted as Clerk on 27/2/68 and subsequent promoted as UDC on 15/1/75 in the scale of Rs.330- 560. The official was further appointed as auditor on 1/9/86 in the scale of Rs.425-800. The official has got more than two financial up gradation in his career and was thus not entitled for any financial up gradation under the ACP Scheme. The official was granted financial up gradation in the scale of Rs.6500-10500 w.e.f. 1/1/2001. Irregular grant of ACP resulted in overpayment of Rs.16490/- as per details given in Annexure D to this para.

In reply to audit memo No. 32 dated 13/9/2004 it was stated by the Institute that the official was appointed to the post of auditor as a direct recruit 1/9/86 and first financial up gradation was granted after a period of twelve years from 1/9/86. The reply is not tenable because on appointment as Auditor his pay was fixed under FR 22 giving the benefit of post service and post. The pay fixation of the official may be re-examined and got confirmed from the ministry."

8. Response was sought by the Institute from the petitioner qua the said objection and the response submitted by him is reproduced hereinbelow:

"With reference to the Office Memorandum No. Admn.F.1 (Audit) No. 1570 dated 29th August 2006, in connection with the Audit objection, I beg to bring to your kind notice the following for your kind perusal and sympathetic consideration:

1. On 10th March, 2005, I submitted a representation to the Director of the Institute mentioning the facts of the case and requesting the authorities of the Institute to take a decision in the matter on the basis of the records available in the office. I enclose a copy of the representation for ready reference (Annexure - I).

2. In the Audit Para, the Audit has mentioned that I was not entitled to any financial upgradation under the ACP Scheme because of the fact that according to the Audit I already got financial benefits.

The observation of the Audit seems to be incorrect because of the reasons mentioned below:

(a) In terms of the provisions contained in the Office Memorandum No. 35034/1/97-Estt.(D) dated 9th August 1999 issued by the Ministry of Personnel, Public Grievances and Pensions, "residency periods (regular service) for grant of benefits under the ACP Scheme shall be counted from the grade in which an employee was appointed as a direct recruit" (relevant GOI document is enclosed as Annexure-II).

(b) In the year 1996, I was appointed (not promoted) as Auditor under the category of "direct recruitment" as per provisions contained in the Recruitment Rules of the Institute. The vacancy was duly advertised in the national dailies. I applied for the post with reference to the advertisement/I was called for a written test followed by interview. Then, on the recommendations of the duly constituted Selection Committee, I was offered the post of Auditor in the payscale of Rs.425-800 (Revised: Rs.1400-2600) and I was put on probation for two years. Therefore, for all intents and purposes, my appointment to this post ought to be treated as "direct recruit".

(c) The post of Auditor was later re-designated as Assistant with the same pay-scale of Rs. 425-800 (Revised: Rs. 1400-2600).

(d) In the existing Recruitment Rules of the Institute, the posts of Assistants in the pay-scale of Rs.1400/-2600/- have been included in the feeder cadre for promotion to the post of Section Officer in the pay-scale of Rs.6,500/-Rs.10,500/-

(e) In terms for the provisions of the ACP Scheme, one becomes eligible for first upgradation after completion of 12 years of continuous service.

(f) The ACP Scheme was introduced at the Institute in October 2000. By that time I already completed more than 12 years of continuous service. Therefore, the DPC rightly recommended the pay-scale of Rs.6,500/- 10,500/- in my case as first financial upgradation under the ACP Scheme.

In view of the above, I request you kindly place this before the Audit so that the Audit Para could be settled."

9. After perusal of the said reply, office order, dated 28th December, 2006 was passed by the respondent-Institute, vide which the benefits so conferred upon the petitioner were withdrawn. It is not in dispute that as per Para 5.1 of the conditions for grant of benefits under ACP Scheme, an employee is entitled for the said benefit upon completion of 12-24 years of service provided employee has not gained any promotion from the initial post of his appointment for the said period. If an employee gains promotion within 12 years, then he becomes entitled for only second up-gradation, which is available after 24 years. If an employee gains second promotion, then he is not eligible for the said benefits. Para 5.1 of the Conditions for grant of benefits under the ACP Scheme is reproduced hereinbelow:

"Two financial upgradations under the ACP Scheme in the entire Government Service career of an employee shall be counted against regular promotions (including in-situ promotion and fast track promotion availed through limited departmental competitive examination) availed from the grade in which an employee was appointed as a direct recruit. This shall mean that two financial upgradations under the ACP Scheme shall be available only if no regular promotions during the prescribed periods (12-24 years) have been availed by an employee. If an employee has already got one regular promotion, he shall qualify for the second financial upgradations only on completion of 24 years of regular service under the ACP Scheme. In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him."

10. Now coming to the facts of the present case, it is a matter of record that the appointment of the petitioner was approved as Auditor, which was officiating appointment, on the recommendations of Selection Committee in relaxation of age limit laid down in the Recruitment Rules vide office order, dated 1st September, 1986.

11. Be that as it may, it was the specific stand of the respondents in the reply, which has gone un-rebutted by the petitioner that the post of Auditor was subsequently re-designated as Auditor in the same pay scale only after six years of incumbent having joined as Auditor and thereafter he continued to serve as such and was promoted against the post of Section Officer when the said promotional post became available w.e.f. 25.06.2002. Further stand of the respondents that had the petitioner not been re-designated as Assistant, he could not have been promoted to the post of Section Officer, has also gone un-rebutted by the petitioner. Para 5.1 of the ACP Scheme (supra) confers benefit of ACP after completion of 12 and 24 years of service on a particular post in case an employee is not able to gain any promotion in the interregnum and after 24

years in case employee gains one promotion in the interregnum. Though the petitioner was appointed on officiating basis against the post of Auditor in the year 1986, however, he did not complete 12 years of service against this particular post. After six years of service, he was re-designated as Assistant. It is not the case of the petitioner that from the date of his redesignation as Assistant, no promotion stood conferred upon him within 12 years of service. The factum of the petitioner having been conferred the benefits under FR 22(I) (a)(1) at the time of his officiating appointment as an Auditor in the year 1986 is also not in dispute. Further more, there is a definite finding returned by the learned Tribunal about the mode and manner in which the petitioner gained promotions/ officiating appointment/re-designation in the respondent-Institute. We are also surprised by the mode and manner in which the petitioner gained such promotions/officiating appointment/re-designation. According to the petitioner, he was appointed against the post of Auditor by way of direct recruitment. As per the records, his appointment to the said post was an "officiating appointment". We fail to understand as to how there can be any "officiating appointment" of an incumbent by way of direct recruitment. Service jurisprudence envisages that when a person is appointed by way of direct recruitment, his initial appointment may be temporary, permanent or on contract basis. Besides this, an employee recruited on regular basis is initially kept on probation and his services are regularized on completion of successful completion of probation, though from the date of his initial appointment. According to us, there is no concept of "officiating appointment" by way of direct recruitment. This lends credence to the doubts which have been mentioned by the learned Tribunal in its order about the mode and manner in which the petitioner gained promotion/officiating appointment/re-designation. According to us, learned Tribunal has rightly called upon the Ministry of H.R.D. to constitute a high level committee to scrutinize the matters like that of the petitioner and find out whether the appointments made in the Institute were as per procedure and Rules of the Government or not. When we take all these facts together, then according to us, there is no infirmity with the order passed by the learned Tribunal. In fact, learned Tribunal by way of a well reasoned order has dismissed the Original Application filed by the present petitioner and the reasonings given by the learned Tribunal are duly borne out from the records of the case and the same are as such not perverse.

12. Besides this, taking into consideration the factual matrix involved in the case qua which learned Tribunal has directed the concerned Ministry to hold an inquiry, we otherwise also feel that no interference is warranted with the order, dated 24.10.2008, passed by the learned Tribunal.

13. In view of above discussion, as there is no merit in the present petition, the same is accordingly dismissed. Miscellaneous application(s), if any, also stand disposed of. No order as to costs.

