
(2003) 03 DEL CK 0037
In the Delhi High Court
Case No : CWP No. 586 of 2001

Ms. Bindu Sehgal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-03-2003

Acts Referred:

Citation : (2003) 2 AD 537 : (2003) 103 DLT 504 : (2003) 67 DRJ 550 : (2003) 3 SLJ 400

Hon'ble Judges : Jiwan Dass Kapoor, J;B.A. Khan, J

Bench : Division Bench

Advocate : Viraj Dattar, for the Appellant; Rajinder Nischal, for the Respondent

Final Decision : Dismissed

Judgement

J.D. Kapoor, J.—Respondents promulgated Scheme of Assured Career Progression (in short ACP Scheme) by office memorandum dated 9.8.1999 to alleviate the problem of genuine stagnation and hardship faced by the Central Government Civilian Employees in all Ministries/Departments due to lack of adequate promotional avenues and decided to grant two financial upgradation as recommended by 5th Pay Commission to Group `B", `C" and `D" employees on completion of 12 years and 24 years of regular service.

2. During its implementation various departments were confronted with the situation as to how upgradation was to be made in respect of different categories of posts namely isolated posts, cadre posts and non cadre posts etc. On 10th February, 2000, the clarificatory memorandum under the said Scheme was issued by the Ministry of Personnel, Public Grievances and Pensions, (Department of Personnel and Training). Relevant clauses for the purpose of instant case are clause 10 and clause 32. Clause 10 relates to the applicability of this scheme with regard to isolated post and the criteria to be adopted was advised as under:-

"for isolated posts, the scales of pay for ACPs shall be the same as those

applicable to similar posts in the same Ministry/Department/Cadre except where the Pay Commission has recommended specific pay scales for mobility under ACPs. Such specific cases may be examined by respective Ministries/Departments in consultation with the Department of Personnel and Training. In the case of remaining isolated posts, the pay scales contained in Annexure-II of the Office Memorandum dated August 9, 1999 (ACPs) shall apply."

3. Clause No. 31 defined the "isolated post" as a stand alone post having neither feeder grade nor promotional grade. A post having no promotional grade but having a feeder grade and vice versa did not come within the definition of isolated post.

4. Clause 32 was applicable where cadre or hierarchy limited to two grades existed. It provided as under:-

"If such cadre/hierarchy exists in the Ministry/Department concerned, the second up gradation may be allowed in keeping with the pay scale of an analogous grade of a cadre/post in the same Ministry/Department. However, if no such grade exists in the Ministry/Department concerned, comparison may be made with an analogous grade available in other Ministries/Departments."

5. Where no such cadre or hierarchy existed, the following formula was applicable:-

"In the case of attached/subordinate offices, the second upgradation under ACPs may be given in keeping with the pay scale of an analogous grade of a cadre/post of the concerned office. However, if no such cadre/post exists in the concerned office, comparison may be made with an analogous grade available in other attached/subordinate offices of the Ministry/Department."

6. Petitioner was appointed to the post of Hindi Officer in the Border Roads Organization, a Department of the Ministry of defense in the pay scale of Rs.6500-10500 as a direct recruit on 9.9.1986 though she was initially a L.D.C in the same department. During the span of 14 years she got two promotions i.e. from L.D.C to Hindi Translator and from Hindi Translator to Senior Hindi Translator.

7. The post of Hindi Officer was created on the implementation of the official language policy of the Government. The committee of Parliament on Official Language in its report recommended for formation of separate cadres of Hindi staff working in different subordinate offices of ministries. The recommendation was accepted with the modification that wherever it is possible to form a cadre, it should be formed and wherever it is not found feasible, other arrangements may be made to increase promotional avenues for the staff manning Hindi posts.

8. On the notification of ACP Scheme, the petitioner made representation though she had been making such representations earlier also seeking financial upgradation in the scale of Rs.10000-15200 which according to her was next higher scale in every hierarchy in various Ministries and Departments. Her own

department turned down the representation on the ground that the petitioner had already availed the benefit of past service by getting two promotions ignoring the fact that she was appointed directly to the post of Hindi Officer having no further promotional avenues. However, the Ministry of Surface Transport of which the Department of the petitioner is the part considered the representation of the petitioner and allowed as a first financial upgradation to the scale of Rs.8000-275-13500, a scale attached to an analogous post in the same Department on the premise that she was appointed on direct recruitment basis and not by way of promotion from Senior Hindi Translator. She was still dissatisfied and made representation to the effect that she was entitled to the upgradation in the pay scale of Rs.10000-15200 which was the next pay scale in the hierarchy in various other Departments and Ministries. This representation of her was turned down and gave rise to the instant petition.

9. As is apparent respondents' case is that since she did not belong to any cadre or hierarchy nor any further promotional avenues were available to her, respondents were required to consider her case for first financial upgradation applicable to an analogous post in the concerned Department in terms of Clause 32 of Clarifications Office Memorandum dated February 10, 2000 by deeming her appointment to Hindi Officer as a direct recruit and not by way of promotion from Senior Hindi Translator though she had joined the Department as an L.D.C and had earned two promotions during 14 years.

10. On the contrary, petitioner placed reliance on defense Ministry's order dated 8.3.2000 granting financial upgradation from Rs.6500-10500 to Rs.10000-15200 on completion of 24 years of service to some Translation Officer. She claims that she deserved to be granted financial upgradation of Rs.10000-15200 on this analogy. She also backs her case upon office order No. 40 dated 18.1.2001 whereby financial upgradation of Rs.10000-15200 was granted to one Hindi Officer under the ACP Scheme in the office of Controller General of defense Accounts. She also supports her case upon office order passed in favor of one more direct recruit Hindi Officer in the office of CDA (BR).

11. All that remains to be seen is whether petitioner's reliance on some orders passed in different departments in the defense Ministry will support her claim and whether she could draw assistance by reference to any analogous post in the Ministry in the face of respondents' stand that they had determined her case on the basis of analogous pay scale attached to the post existing in the same Department and not the payscale for similar posts in other Ministries or Departments.

12. The view taken by the respondent is difficult to reject as the petitioner was selected as a direct recruit on the post of Hindi Officer through Union Public Services Commission on 9.9.1986 though she was initially appointed as L.D.C. in the same Department on 26.5.1972 and she got as many as two promotions during the period of 14 years and as such she was entitled to first financial upgradation after 12 years in the pay scale of an analogous grade of a post in

the same Department. It is only if no such grade existed in the Ministry or the Department concerned comparison could be made to a scale of next higher post available in other Ministries and Departments.

13. Thus the petitioner was rightly upgraded to the next higher scale of analogous post existing in the same Department. Petitioner cannot be allowed to have the benefit of next higher post in other Departments or Ministries. She is concerned with the analogous post existing in her own Department. No two Departments of the Government of India or even the same Ministry have similar hierarchy or set-up or strength. If the upgradation as claimed by the petitioner is granted it will disturb the hierarchy within the Department and create disturbing condition. To ask for the scale of Senior Hindi Officer of a particular Ministry or Department is not permissible nor is this the intent and object of ACP. She cannot be allowed to steal march over the persons of analogous pay scale existing in the Department nor can she have claim to next senior scale existing in Ministries or other Departments.

14. The inescapable conclusion is that the upgradation granted to her is justified. Her own Department resisted even this upgradation vehemently not only before the higher authority but here in the Court also as according to them she has already earned two promotions in 24 years and Therefore is not entitled to any upgradation. However, under ACP this perception of the Department was found misconceived as she was appointed as a direct recruit as Hindi Officer and not by way of promotion under the ACP. She was entitled to first upgradation after 12 years which was granted to her. She can't ask for more beyond the terms of the Scheme and without satisfying its requirements.

15. For the foregoing reasons, we decline to interfere and dismiss the petition.