

(2016) 01 DEL CK 0107

In the Delhi High Court

Case No : W.P. (C) 388, 394, 972, 3734, 4808 and 5605/2015

Om Prakash and Others

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 29-01-2016

Acts Referred:

Citation : (2016) 01 DEL CK 0107

Hon'ble Judges : Pradeep Nandrajog and Pratibha Rani, JJ.

Bench : Division Bench

Advocate : Ankur Chhibber, Advocate, for the Appellant; Rakesh Kumar, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—CM No. 2520/2016 in W.P.(C) No. 388/2015

CM No. 2524/2016 in W.P.(C) No. 394/2015

CM No. 2610/2016 in W.P.(C) No. 972/2015

CM No. 2531/2016 in W.P.(C) No. 3734/2015

CM No. 2416/2016 in W.P.(C) No. 4808/2015

CM No. 2526/2016 in W.P.(C) No. 5605/2015

Allowed subject to just exceptions.

CM No. 2519/2016 in W.P.(C) No. 388/2015

CM No. 2523/2016 in W.P.(C) No. 394/2015

CM No. 2609/2016 in W.P.(C) No. 972/2015

CM No. 2530/2016 in W.P.(C) No. 3734/2015

CM No. 2415/2016 in W.P.(C) No. 4808/2015

CM No. 2525/2016 in W.P.(C) No. 5605/2015

For the reasons stated in the applications delay in filing the review petition is condoned.

The applications are disposed of.

R.P. No.31/2016 in W.P.(C) No. 388/2015

R.P. No.33/2016 in W.P.(C) No. 394/2015

R.P. No.36/2016 in W.P.(C) No. 972/2015

R.P. No.35/2016 in W.P.(C) No. 3734/2015

R.P. No.28/2016 in W.P.(C) No. 4808/2015

R.P. No.34/2016 in W.P.(C) No. 5605/2015

1. Whereas R.P. No.31/2016, R.P. No.33/2016 and R.P. No.36/2016 have been filed seeking a review of the judgment dated March 05, 2015 disposing of WP(C) No. 388/2015, W.P.(C) No. 394/2015 and W.P.(C) No. 972/2015; limited to petitioner No. 1 of W.P.(C) No. 388/2015, petitioner No. 2 of W.P.(C) No. 394/2015 and petitioner No. 1 of W.P.(C) No. 972/2015. R.P. No.35/2016 has been filed seeking review of the judgment dated April 17, 2015 disposing of W.P.(C) No. 3734/2015, but limited to petitioner No. 1. R.P. No.28/2016 has been filed seeking review of the judgment dated May 15, 2015 disposing of W.P.(C) No. 4808/2015 in which there was a sole petitioner. R.P. No.34/2016 has been filed seeking review of the judgment dated May 28, 2015 disposing of W.P.(C) No. 5605/2015 in which there was a sole petitioner.

2. It is not in dispute today that the main judgment which was followed in subsequent three judgments is the one dated March 05, 2015 and thus effectively we would be called upon to consider the review petitions with reference to the reasoning in the decision dated March 05, 2015.

3. It is not in dispute that the issue raised in all the writ petitions concern implementation of the Assured Career Progression Scheme (ACP), as per which those who had rendered 12 years" service and had earned no promotion were, subject to fitness, entitled to the first financial upgradation and subject to fitness if no second promotion was earned upon completion of 24 years" service, to a second financial upgradation. The ACP Scheme was introduced in the year 1999 to avoid stagnation. Concededly, the scheme envisaged placement of the incumbent in the next higher grade; akin to an in-situ promotion.

4. Two issues arose for consideration. The first was whether those who had been denied opportunity to join a pre-promotional course could be deprived the benefit of the ACP Scheme by treating them ineligible on account of not having cleared the pre-promotional course. The second issue concern the effect of re-mustering petitioner No. 1 of W.P.(C) No. 388/2015, petitioner No. 2 of W.P.(C) No. 394/2015, petitioner No. 1 of W.P.(C) No. 972/2015, petitioner No. 1 of W.P.(C)

No. 3734/2015 and the sole writ petitioners of W.P.(C) No. 4808/2015 and W.P.(C) No. 5605/2015.

5. The issue of law concerning re-mustering centred on whether re- mustering amounted to a fresh appointment, thereby reckoning 12 and 24 years" service from said date or not. The issue was answered in favour of the writ petitioners who were re-mustered and the reasoning would be in paragraphs 14 to 16 of the decision dated March 05, 2015, which read as under:-

"14. The only issue which now arises is what is the effect of some of the writ petitioners, such as Om Prakash, the writ petitioner of W.P.(C) No. 388/2015, being re-mustered to the rank of Naik or in the cadre of driver trade or in the cadre of radio operator. As per learned counsel for the respondents the 24 year period of service has to be reckoned from the date they were re-mustered and not from the date they joined service initially.

15. Hitherto fore, between the rank of a Constable and a Head Constable there were two posts of Lance Naik and Naik, which posts were subsequently abolished and merged with that of a Head Constable.

16. Now, the department itself is not considering, the appointment given to Constables on re-mustering as Naik or a Lance Naik as a case of promotion, and thus we see no logic to reckon 24 years" service from the dates noted hereinabove when some of the petitioners and the late husbands of the writ petitioners of W.P.(C) No. 1717/2015 were re-mustered."

6. It is urged today that there is an error apparent in our decision and for which argument the learned counsel for the review petitioners have informed us that when the petitioners in respect of whom review is prayed for were appointed as Constable (GD) they were appointed in the Pay Scale Rs. 75-1-85 pursuant to the recommendations of the Third Central Pay Commission and Rs. 825-15-900-EB-20-1200 pursuant to the recommendations of the Fourth Central Pay Commission. But, upon they being re-mustered as Naik RO they were brought in the pay scale Rs. 85-2-95-3-110 with reference to the Third Pay Commission and Rs. 950-20-1150-EB-25-1400 with reference to the Fourth Pay Commission. It is the submission of the learned counsel for the review petitioners that the two posts, having different pay scales, could not be treated as one and hence the 12 and 24 years ought to be reckoned from the date said petitioners were re-mustered as Naik RO.

7. To support the contention learned counsels have relied upon Office Memorandum dated February 10, 2000 issued by the DOPT clarifying certain doubts regarding the grant of ACP Scheme. Learned counsels rely upon clarification No. 4, 5 and 6; wherein the following clarifications have been sought :-

"4. In a case where a person is appointed to a post on transfer (absorption) basis from another post, whether 12 years and 24 years of service for the purpose of

ACPs will count from the initial appointment or otherwise.

5. Whether a Government servant, who is direct recruit in one grade and subsequently joins another post again as direct recruit, is eligible for first financial upgradation under ACPS after completion of 12 years of service counted from the first appointment or from the subsequent second appointment as direct recruit?

6. An employee appointed initially on deputation to a post gets absorbed subsequently, whether absorption may be termed as promotion or direct recruitment. What will be the case if an employee on deputation holds a post in the same pay scale as that of the post held by him in the present cadre? Also, what will be the situation if he was holding a post in the parent cadre carrying a lower pay scale."

8. In reply to the clarifications sought the DOPT has clarified as follows:-

"The benefits under ACPS are limited to higher pay scale and do not confer designation, duties and responsibilities of the higher post. Hence, the basic criterion to allow the higher pay scale under ACPS should be whether a person is working in the same pay scale for the prescribed period of 12/24 years. Consequently, so long as a person is in the same pay scale during the period in question, it is immaterial whether he has been holding different posts in the same pay scale. As such, if a Government servant has been appointed to another post in the same pay scale either as a direct recruit or on absorption (transfer) basis or first on deputation basis and later on absorbed (on transfer basis), it should not make any difference for the purpose of ACPS so long as he is in the same pay scale. In other words, past promotion as well as past regular service in the same pay scale, even if it was on different posts for which appointment was made by the different method like direct recruitment, absorption (transfer) / deputation, or at different places should be taken into account for computing the prescribed period of service for the purpose of ACPS. Also, in case of absorption (transfer) /deputation in the aforesaid situation, promotions earned in the previous/present organization, together with the past regular service shall also count for the purpose of ACPS. However, if the appointment is made to higher pay scale either as on direct recruitment or on absorption (transfer) basis or first on deputation basis and later on absorbed (on transfer basis), such appointment shall be treated as direct recruitment and past service/promotion shall not count for benefits under ACPS.

Needless to say, in cases of transfer on administrative ground, involving only."

9. Thus, it is the contention of the learned counsel for the review petitioners that such petitioners who were appointed to the higher pay scale i.e. Naik RO would be treated as a case of direct recruitment and therefore the past service in the rank of Constable cannot be counted for the benefits under the ACP Scheme and 12 years 24 years ought to be reckoned from the date the respective petitioner was re-mustered to the rank of Naik RO.

10. To support the contention the learned counsel for the review petitioners have relied upon the judgment of the Supreme Court reported as , AIR 1984 SCC 1352 Karnail Singh Vs. Union of India & Anr. as well as a judgment dated December 04, 2008 delivered by the Kerala High Court in WP(C) No. 32624/2008 Union of India & Ors. Vs. Sentimon Mathew.

11. On the other hand, the learned counsel for the petitioners disputes the contentions urged by the learned counsel for the review petitioners on the ground that in the present case clarification No. 4,5 & 6 vide OM dated February 10, 2000 are not applicable. It is his submission that clarification No. 1 applies for the reason the petitioners were appointed as Constable (GD) in the CRPF and were thereafter re-mustered as Naik RO. In the year 1997 the post of Naik RO was merged with the post of Head Constable (RO), and as per clarification No. 1 of DOPT's OM dated February 10, 2000 it has been clearly spelt out "since the benefit of upgradation under the ACP Scheme are to be allowed in the existing hierarchy, the mobility under the ACP Scheme shall be in the hierarchy existing after merger of pay scales by ignoring the promotion. An employee who got promoted from lower pay scale to higher pay scale as a result of promotion before merger of pay scale shall be entitled for upgradation under the ACP Scheme ignoring the said promotion as otherwise he would be placed in a disadvantageous position vis-a vis the fresh entrant in the merged grade." Therefore, it is asserted that a bare perusal of the above clarification would demonstrate that upgradation under the ACP Scheme are to be allowed in the existing hierarchy. After 1997, the hierarchy prevalent in CRPF is that of Constable (RO) and then Head Constable (RO). As of today, there is no post of Naik RO. Not only this, the clarification would further reveal that an employee who got promoted from a lower pay scale to a higher pay scale as a result of promotion before merger of pay scales shall be entitled for upgradation under the ACP Scheme ignoring the said promotion. Meaning thereby, that in the present case, the petitioners were appointed as Constable (GD) and were thereafter re-mustered as Naik RO in a higher pay scale but however, in the year 1997 since the post of Naik RO was merged with that of Head Constable (RO); and as per the clarification the re-mustering to the rank of Naik RO is required to be ignored for grant of ACP.

12. It is further submitted by the learned counsel for the petitioners that the judgments on which the respondents place reliance are not applicable in the present case for the reason in Karnail Singh's case (supra) the issue before the court was regarding seniority and promotion and it had nothing to do with the ACP Scheme. As far as the judgment of the Kerala High Court in WP(C) No. 32624/2008 is concerned, the same is also distinguishable on the ground that the said case did not deal with the merger of two different posts whereas in the present case there has been merger of the post of Naik RO with that of Head Constable (RO).

13. We have considered the rival contentions of the parties and on going through

the documents and OM relied upon by the parties, it is clear that clarification No. 4,5 and 6 relied upon by the respondents are not applicable in the present case whereas clarification No. 1 squarely covers the case of the petitioners for the reason the petitioners were appointed as Constable (GD) in the CRPF and were thereafter remustered as Naik RO. However, in the year 1997 the post of Naik RO was merged in the rank of Head Constable (RO) and as per clarification No. 1 of DOPT's OM dated 10.02.2000 it has been clearly spelt out "since the benefit of upgradation under the ACP Scheme are to be allowed in the existing hierarchy, the mobility under the ACP Scheme shall be in the hierarchy existing after merger of pay scales by ignoring the promotion. An employee who got promoted from lower pay scale to higher pay scale as a result of promotion before merger of pay scale shall be entitled for upgradation under the ACP Scheme ignoring the said promotion as otherwise he would be placed in a disadvantageous position vis-a vis the fresh entrant in the merged grade." Thus a bare perusal of the above clarification clearly shows that upgradation under the ACP Scheme are to be allowed in the existing hierarchy. After 1997 the hierarchy prevalent in CRPF is that of Constable (RO) and then Head Constable (RO). As of today there is no post of Naik RO. Not only this, the clarification further clarifies that an employee who got promoted from a lower pay scale to a higher pay scale as a result of promotion before merger of pay scales shall be entitled for upgradation under the ACP Scheme ignoring the said promotion. Meaning thereby that in the present case the petitioner was appointed as Constable (GD) and was thereafter re- mustered as Naik RO in a higher pay scale but however, in year 1997 the post of Naik RO was merged with that of Head Constable (RO). Therefore, as per the clarification the re-mustering to the rank of Naik RO is required to be ignored for grant of ACP. As far as the judgments relied upon by the respondents is concerned the same do not deal with the issue in hand and therefore are of no consequence to the present case.

14. Accordingly, in light of the observations above the present Review Petitions are without any merit and are accordingly dismissed.