
(2010) 10 DEL CK 0007

In the Delhi High Court

Case No : Writ Petition (C) No. 1169 of 2008

Ram Niwas

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-10-2010

Acts Referred:

Citation : (2010) 10 DEL CK 0007

Hon'ble Judges : Siddharth Mridul, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : M.K. Bhardwaj, for the Appellant; Geetanjali Mohan and A.S. Dateer, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Petitioner's challenge before the Central Administrative Tribunal by and under OA No. 2094/2004 was not successful inasmuch as vide impugned order dated 18.1.2006, OA No. 2094/2004 has been dismissed.

2. It was the case of the petitioner that benefit of second upgradation under the ACP scheme was being denied to him and additionally he was being discriminated inasmuch as persons junior to him were granted second upgradation under the ACP scheme.

3. The Tribunal has found that the petitioner got two upgradations i.e. firstly, when his salary was upgraded in the scale Rs. 3050-4590 and when it was further upgraded to Rs. 4000-6000.

4. Claim of the petitioner that he was discriminated against has been negated.

5. Relevant facts to be noted are that the petitioner was appointed as a Constable/Rakshak under the Indian Railways on 22.10.1977 and was given pay in the scale Rs. 825-1200. There is no dispute that the scale in which petitioner was placed was the correct pay scale.

6. Being declared medically unfit on 25.3.1994, the petitioner was offered the

post of a Luggage Porter which he declined inasmuch as the post of Luggage Porter was in a lower scale and additionally was much lower in status vis-rvis the post of a Constable.

7. Petitioner filed OA No. 1692/1995 praying that directions be issued to the Railways to offer him an alternative employment to a post for which he was fit to work; but in the pay scale equivalent to the pay scale in which the petitioner was working when he was declared medically unfit.

8. OA No. 1692/1995 was allowed vide order dated 2.9.1999. Directions were issued that petitioner be appointed to a post which was in the same pay scale in which the petitioner was placed at the time of his being declared medically unfit i.e. Rs. 825-1200.

9. By the time OA No. 1692/1995 was decided on 2.9.1999, recommendations of the 5th Central Pay Commission had been implemented and the replacement scale to the scale Rs. 825-1200 was Rs. 2750-4400.

10. Petitioner was found suitable to work as a Return Courier, which post was in the pay scale Rs. 825-1200, revised to `2750-4400, and accordingly he was appointed as a Return Courier. He was placed in the pay scale Rs. 2750-4400. Thereafter, the petitioner was granted two upgradations i.e. in the scale of Rs. 3050-4590 and thereafter in the scale Rs. 4000-6000. Benefit of service rendered as a Constable was granted. The two upgradations were after completion of 12 and 24 years" service.

11. After the recommendations of the 5th Central Pay Commission were implemented, Railways took a decision that the salary of Constables/Rakshaks should be brought at par with the salary of clerks; hitherto before clerks were in a higher scale of pay vis-rvis Constables. The General Manager Railways directed that salary of Rakshaks would be in the scale Rs. 3050-4590 i.e. the same scale as that of clerks. This was seized upon by the petitioner to urge that the socalled first upgradation i.e. his placement in the scale Rs. 3050-4590 was not a case of financial upgradation but was a case of placing him in the appropriate pay scale. Thus, he urged that when he was placed in the scale Rs. 4000-6000 it was the first upgradation. He demanded to be placed in the next higher scale of Rs. 4500-7000.

12. Though in the Original Application he claimed that respondents 4 to 8 were granted such benefit, impugned order shows that the petitioner predicated his case with respect to claiming parity with one Virender Kumar Gupta whose allegedly similar claim was allowed by the Tribunal when OA No. 1692/1995 filed by him was allowed by the Tribunal vide order dated 2.9.1999.

13. The Tribunal has distinguished its decision dated 2.9.1999 allowing OA No. 1692/1995 filed by Virender Kumar Gupta as under:

We find that in terms of Tribunal"s orders dated 2.9.1999 in OA No. 1692/1995, respondents considered applicant"s claim and on holding a suitability test, he

was provided the alternative job in grade Rs. 825-1200, which was a Constable's grade. The case of Virender Kumar Gupta (supra) is certainly distinguishable. In that case, applicant on medical decategorisation was offered the alternative post of Daftry carrying lower pay scale of Rs. 775-1025. He was assured that as and when a suitable vacancy arises in the higher post, he would be adjusted in that in preference to his juniors. When the applicant came to know that one of his juniors, Narender Singh, was absorbed in the post of Clerk, i.e., a post equivalent to a constable's post, he made representations and filed the said OA. Directions were issued to offer higher grade to applicant in preference to a junior medically decategorised employee, having been discriminated against. Such is not the case here. Applicant was not adjusted on a post lower than that of Constable. He was found suitable for an equivalent post in scale Rs. 825-1200/Rs.2750-4400. He has been accorded two financial upgradations in his own hierarchy after taking into consideration his past service as Constable and the scale of Rs. 825-1200/Rs.2750-4400. In the OA, applicant has certainly concealed the fact of having been granted two financial upgradations and working on being accorded two financial upgradations in scale Rs. 3050-4590 and Rs. 4000-6000. There is no justification for comparing applicant with other medically decategorised personnel who were, on being subjected to a suitability test, offered the post of Clerk. We are of the firm view that respondents had adjusted applicant in terms of Tribunal's earlier orders dated 2.9.1999 in OA No. 1692/1995; he has also been accorded two financial upgradations in his own hierarchy; and there is no scope for his comparison with other medically WP(C) No. 1169/2008 Page 4 of 7 decategorised personnel who were adjusted in the cadre of Clerks. We do not find any infirmity in respondents' action in granting higher financial upgradations to such personnel who were adjusted in the post of Clerks.

14. It is not in dispute that the Railways have introduced an Assured Career Progression Scheme (ACP) as per which two financial upgradations have to be granted to such employees who do not earn promotions. First upgradation is after having served for 12 years and the second after having served for 24 years. It is also not in dispute that the upgradation is to the scale immediately above the one in which the Railway employee was working.

15. The petitioner was employed as a Constable and was in the pay scale Rs. 825-1200 when he was declared medically unfit. His claim for being appointed to a post for which he was fit to work entitled him to a post in the same pay scale i.e. Rs. 825-1200. This benefit was granted to him when OA No. 1692/1995 was allowed and pursuant to the directions issued petitioner was appointed as a Return Courier in the pay scale Rs. 825-1200 revised to Rs. 2750-4400.

16. Having been appointed as a Return Courier the petitioner had nothing to do with the post of Constable and thus when the General Manager Railways took the decision to place Constable/Rakshaks in the same pay scale as that of Clerks, petitioner could not claim any benefit as he was no longer working as a Constable/Rakshak.

17. Having been appointed as a Return Courier and given salary in the scale Rs. 2750-4400, which as noted above, is the replacement scale to the scale Rs. 825-1200, petitioner has certainly been granted two financial upgradations, firstly when his salary was upgraded in the scale Rs. 3050-4590 and thereafter in the scale Rs. 4000-6000.

18. As regards the claim of discrimination vis-r-vis Virender Kumar Gupta, suffice would it be to state that the Tribunal has given good and sound reasons as to why Virender Kumar Gupta stood on a different footing.

19. It is apparent that Virender Kumar Gupta who was, upon medical decategorisation placed in a lower pay scale of Rs. 750-1250 inasmuch as there was no vacancy in the equivalent post, was assured that if there was a vacancy arising in the higher post he i.e. Virender Kumar Gupta would be so absorbed. At that point of time, the next higher post was that of clerk and accordingly Virender Kumar Gupta was absorbed as a Clerk when vacancy arose. Needless to state pay scale of a clerk was Rs. 3050-4590 and for said reason Virender Kumar Gupta got second financial upgradation in the scale Rs. 4500-7000.

20. We may crystallize the position by stating that being appointed as a Constable in the pay scale Rs. 825-1200, replacement scale whereof was Rs. 2750-4400, upon medical decategorisation the petitioner was entitled to be offered appointment in a post carrying equivalent pay scale i.e. `2750-4400. Appointed as a Return Courier he was placed in the said pay scale. Next higher pay scale was Rs. 3050-4590, benefit whereof was granted to the petitioner. The next pay scale was Rs. 4000-6000 benefit whereof was granted to the petitioner. That salary of Rakshaks which hitherto fore was in the pay scale Rs. 2750-4400 was brought at par with that of Clerks i.e. in the scale Rs. 3050-4590, would not enure to the benefit of the petitioner who was no longer a Rakshak.

21. Reliance by learned Counsel for the petitioner upon the decision dated 8.9.2010 disposing of WP(C) No. 10729/2009 Rajender Singh Rana v. UOI is misplaced for the reason what was held in the said decision was that upon medical decategorisation an employee cannot be placed in a scale lower than the one in which the employee was working at the time of medical decategorisation. It was noted by this Court that Rajender Singh Rana was in the pay scale Rs. 950-1400 and upon medical decategorisation was placed in the pay scale Rs. 8501100 to a post on which he was found suitable to work. This downgrading was held not to be valid.

22. Concurring with the final view taken by the Tribunal we dismiss the writ petition but refrain from imposing any costs.