
(2013) 02 DEL CK 0319

In the Delhi High Court

Case No : Writ Petition (C) 1217 of 2003

R.C.P. Singh and Others

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 18-02-2013

Acts Referred:

Citation : (2013) 02 DEL CK 0319

Hon'ble Judges : Pradeep Nandrajog, J;A.K. Pathak, J

Bench : Division Bench

Advocate : E.J. Varghese, for the Appellant; Jatan Singh, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—12 Senior Auditors, marching under the banner of Girish Chandra filed OA No. 2196/2000, stating before the Central Administrative Tribunal that working as Senior Auditors in the Defence Account Department they had become entitled to be granted ACP benefits after rendering 12 years and 24 years service. Similar was the claim of 10 other Senior Auditors who marched under the banner of Senior Auditor R.C.P. Singh when they filed OA No. 2684/2000. OA No. 2196/2000 was dismissed by the Central Administrative Tribunal on July 03, 2001 which is a reasoned decision and OA No. 2684/2000 was dismissed by the Tribunal vide order dated August 01, 2001 by simply noting that the issue had already been decided by the Tribunal as per its decision dated July 03, 2001 dismissing OA No. 2196/2000.

2. The instant writ petition challenges afore-noted two orders passed by the Central Administrative Tribunal as also another order dated September 30, 2002 when OA No. 336/2002 filed by R.C.P. Singh and nine others was dismissed following the earlier view taken.

3. Ignoring the procedural lapse of different applicants before the Tribunal joining in a common action under one writ petition and challenging three different orders passed, albeit on the same subject by the Tribunal, we had heard submissions

made by learned counsel for the parties.

4. We commence our journey by highlighting that all the claimants before the Tribunal were seeking second upgradation under the ACP Scheme having rendered 24 years service, for the reason the ACP Scheme envisages first financial upgradation after rendering 12 years service provided promotion is not granted in the meanwhile and the second financial upgradation after rendering 24 years service. Needless to state, if within the span of 24 years service a promotion is earned within the first 12 years of service, first financial upgradation is not to be granted and only the second has to be granted.

5. It is not in dispute that all claimants before the Tribunal had earned a promotion within the first 12 years of their service but could not earn a second promotion after initial joining.

6. The ACP Scheme was notified under OM dated August 09, 1999 and was obviously designed to mitigate hardships in cases of either stagnation or a post being an isolation post. The idea was to grant two in situ upgradations, by paying the incumbent salary in the next above scale after 12 years and 24 years service rendered.

7. A condition stands inserted in OM dated August 09, 1999, being condition No. 6, which reads as under:-

6. Fulfillment of normal promotion norms (bench-mark, departmental examination, seniority-cum-fitness in the case of Group "D" employees, etc.) for grant of financial upgradations, performance of such duties as are entrusted to the employees together with retention of old designations, financial upgradations as personal to be incumbent for the stated purposes and restriction of the ACP Scheme for financial and certain other benefits (House Building Advance, allotment of Government accommodation, advances, etc) only without conferring any privileges related to higher status (e.g. invitation to ceremonial functions, deputation to higher posts, etc.) shall be ensured for grant of benefits under the ACP Scheme.

(Emphasis supplied)

8. From a perusal of Condition No. 6 of the ACP Scheme, it is apparent that the financial upgradation has not to be allowed by a mechanical application of 12 years and 24 years norm. The candidates have to fulfill the eligibility of achieving either the benchmark or fitness as per the promotion norms, meaning thereby, a Screening Committee has to be constituted to scrutinize individual cases with reference to their service record.

9. Whether or not the requirement of clearing a Departmental Qualifying Exam for vacancy based promotion would be applicable to the ACP Scheme, was a doubt raised by some Ministries or the Departments under some Ministries, and being referred to DOP&T a clarificatory Office Memorandum was issued on February 10, 2000, clarifying as under:-

As per the scheme (Condition No. 6), all promotion norms have to be fulfilled for upgradation under the Scheme. As such, no upgradation shall be allowed if an employee fails to qualify departmental/skill test prescribed for the purpose of regular promotion.

10. Pertaining to Senior Auditors, the next level post is that of Section Officer/ Supervisor and for which the SAS-I/II Exam has to be cleared by the Senior Auditors.

11. Neither claimant before the Tribunal had cleared the said SAS-I/II Exam. For said reason the Department had denied the second financial upgradation and the Tribunal has concurred.

12. The only issue which we are required to decide is: Whether the writ petitioners are entitled to the second financial upgradation after rendering 24 years service notwithstanding none having cleared the SAS-I/II Exam.

13. It is urged by learned counsel for the writ petitioners that the clearance of the examination in question is a sine qua non for promotion as per the applicable Recruitment Rules and not for purposes of in situ promotion under the ACP Scheme.

14. The argument overlooks the fact that the ACP Scheme has a Condition No. 6 which we have quoted above in paragraph 8 which mandates that fulfillment of normal promotional norms shall be ensured for grant of benefits under the ACP Scheme. What more clarity of language could be used by the Executive? We think none.

15. The vires of the policy has not been challenged before us. Even if it was, we do not find it to be an unreasonable condition that if a person stagnates due to paucity of promotional posts and he is to be granted an in situ promotion, the same should be subject to the person otherwise being found fit for promotion. The object of the ACP Scheme is to mitigate the hardship due to stagnation and not to confer a financial benefit to the lazy and the laggards or the inefficient, who do not qualify for promotion as per the applicable promotion norms. We see no ambiguity in Condition No. 6 of the Policy and thus the clarification issued on February 10, 2000 to the applicability of Condition No. 6, which we have noted in paragraph 9 above, is really surplus. But we need not quibble with said aspect for the reason it seeks to clarify what even otherwise is clearly stated in the original policy.

16. We concur with the view taken by the Tribunal on the interpretation of Condition No. 6 of the ACP Scheme and additionally on account of the clarification issued on February 10, 2000.

17. Learned counsel for the writ petitioners had relied upon another clarification issued on February 24, 2004, which is subsequent to when the parties litigated before the Tribunal and rather than permit writ petitioners to once again start flogging a dead horse we had taken judicial notice of the same. The clarification

issued reads as under:-

Subject: ACP Scheme for Central Govt. Employees

The question as to whether the requirement of passing departmental examination/skill tests prescribed in the relevant recruitment rules for vacancy-based promotion is to be insisted upon or not for granting upgradation under the ACP Scheme was referred to the DOP&T for clarification. It has since been clarified by the DOP&T that if in accordance with the applicable recruitment rules, one has to qualify in a departmental examination as a prerequisite for promotion to the next higher grade, the same will also have to be followed for grant of ACPs. Condition No. 6 of ACPs read with the clarification issued under DOP&T's orders dated 10.02.2000 (Sl. No. 16) is also relevant.

2. All affected cases may please be regulated accordingly.

18. Now, the so-called clarification states the same thing which was already stated in Condition No. 6 of the ACP Scheme. But the petitioners would urge that the same restricts the requirement of clearing Departmental Examinations to only where it is so provided in the relevant Recruitment Rule.

19. We fail to understand the logic of the argument for the reason it is the case of the writ petitioners themselves that the Recruitment Rules in question for the post of Section Officer/Supervisor require SAS-I/II Exam to be cleared, and for which we can do no more other than to note the pleadings made by the writ petitioner in paragraph 22 of the writ petition which reads as under:-

22. That from the above it is apparent that the Supervisory [A]/SAS Part I/Part II Examinations are Competitive Examinations and meant entirely for a promotion and hence serves a different purpose and it cannot be linked with the ACP Scheme. ACP Scheme is introduced to remove the problem of acute/genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. It does not give any title or promotion to an employee, it is simply an upgradation of scale, while the employee retains his old designation. It has to be viewed as a Safety Net in this direction.

We accordingly dismiss the writ petition but without any order as to costs.