
(2013) 04 DEL CK 0226

In the Delhi High Court

Case No : Writ Petition (C) 5795 of 2012

Sanjeev Prabhakar and Others

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 02-04-2013

Acts Referred:

Citation : (2013) 200 DLT 292

Hon'ble Judges : Pratibha Rani, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : S.K. Gupta and Mr. Vikram Singh, for the Appellant; Anil Gautam, for the Respondent

Final Decision : Disposed Off

Judgement

Pradeep Nandrajog, J.—Heard learned Counsel for the parties. Issue pertaining to the scale in which Junior Hindi Translators were to be placed upon first financial upgradation came to be decided by the Central Administrative Tribunal on April 20, 2004 when O.A. No. 2380/2003 was disposed of. The Tribunal noted that the ACP Scheme was introduced pursuant to the recommendations of the 5th Central Pay Commission. The object of the Scheme was to overcome the problem of stagnation. Those who did not earn a promotion within 12 years of joining service became entitled to a financial upgradation. The Tribunal noted that if there existed a hierarchy of posts, the financial upgradation had to be in the pay scale of the next above post, failing which, the pay scale next above in the various pay scales recommended by the Pay Commission. As regards the Junior Hindi Translators, the Tribunal held that they were entitled to be placed in the pay scale Rs. 6500-10500 inasmuch as there exists a hierarchical cadre structure in the organization.

2. The said decision of the Tribunal was upheld by this Court when WP(C) 297/2005 was dismissed in limine on January 11, 2005.

3. Union of India challenged the decision of this Court as also the decision of the

Tribunal by seeking Special Leave to Appeal before the Supreme Court. Granting leave, contempt proceedings initiated by the original applicants before the Tribunal were stayed as per order dated October 3, 2005. Meaning thereby, for all practical purposes, the original applicants before the Tribunal could not take the benefit of the favourable order which they had obtained from the Tribunal.

4. Civil Appeal No. 6122/2005 which laid a challenge to the decision of this Court as also the order of the Tribunal was dismissed by the Supreme Court on October 20, 2009.

5. Pursuant thereto, vide Office Order No. 33/2010, dated March 16, 2010, the department implemented the benefit of the ACP Scheme by placing the Junior Hindi Translators in the pay scale Rs. 6500-10500, but restricted benefit thereof to the applicants before the Tribunal.

6. Respondents thereupon filed O.A. No. 3009/2010 praying that once the policy issue was decided i.e. whether ACP benefit had to be granted in the next scale of pay above as per the various pay scales recommended by the Pay Commission or in the pay scale of the next hierarchical post, there was no reason to restrict benefit of the decision of the Tribunal, which had been upheld right up to the Supreme Court, only qua the claimants before the Tribunal.

7. Vide impugned decision dated November 19, 2011, the Tribunal has found favour with the claim made by the applicants but has restricted the ACP benefit to a period of one year preceding when Original Application was filed.

8. It is this part of the impugned order, which restricts the benefit with reference to the date whereof the ACP benefit has to be granted, which is under challenge before us.

9. Suffice would it be to state that where an issue of policy is raised before Judicial For as, upon verdict being rendered, the same has to be treated in rem and not in personam. Law draws a distinction between claims which are based on facts personal to the claimants vis-a-vis claims which relate to the interpretation of the law. Whereas the former would be in personam, the latter would be in rem.

10. Accordingly, we dispose, of the writ petition modifying the direction issued by the Tribunal as per its order dated December 19, 2011. We direct that all respondents would be entitled to the ACP benefit of being placed in the pay scale of Rs. 6500-10500 from the date they became entitled to the ACP benefit.

11. Arrears be paid within 12 weeks from today. No costs.