(2010) 12 DEL CK 0314

In the Delhi High Court

Case No : Writ Petition (C) 18774 of 2004

The Controller General of Defence Accounts — APPELLANT

Vs

K.S. Balyan — RESPONDENT

Date of Decision : 20-12-2010

Acts Referred:

Citation : (2010) 12 DEL CK 0314

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

Bench : Division Bench

Advocate : A.K. Bhardwaj, for the Appellant; Party-in-Person, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—Reason why OA filed by the Respondent has been allowed is to be found in para 5 and 6 of the impugned order dated 3.6.2004, which reads as under:

5. On careful consideration of the rival contentions we find that the ACP Scheme in Clause-6 prescribes qualifying the trade test meant for promotion including any departmental examination in order to entitle a government servant to be accorded financial upgradation. Clause-16 of the clarification ibid does not lay down any condition as to the first or the second attempt for qualification of the examination before grant of Scheme. DOP and T clarification of qualifying the trade test in first attempt for allowing the benefit of ACP 9.8.1999 and in case of passing the test subsequently from that date is in conflict with the provisions of the Scheme.

6. Moreover, SAS examination Part-I was not an examination subsequent to promulgation of ACP Scheme on 9.8.1999. The benefit of ACP was denied to the applicant from 9.8.1999 on the ground that in first attempt the applicant has failed to qualify the examination is not justifiable. Assuming the clarification of the DOP and T is correct the first attempt would be counted after 9.8.1999. If an examination has been notified earlier to the promulgation of the Scheme would

not count as first available examination after promulgation of the Scheme. Accordingly, undisputedly the next SAS examination was held in 2002 which the applicant had qualified on 29.4.2002 as such would count first attempt and the benefit of the ACP would relate to 9.8.1999.

(Underline Emphasized)

2. As a result it has been held that the Respondent would be entitled to ACP benefit with effect from 9.8.1999.

3. Relevant would it be to note that the Respondent had qualified at the SAS examination on 29.4.2002 and thus with effect from said date was granted the benefit of the ACP scheme. His claim that benefit should be granted to him with retrospective effect i.e. 9.8.1999 was denied by the Department and has been allowed by the Tribunal vide order dated 3.6.2004.

4. Petitioner''s attempt to have the order reviewed vide RA No. 235/2004 met with a rejection when RA No. 235/2004 was dismissed vide order dated 26.8.2004.

5. Relevant facts are that on 9.8.1999 an Assured Career Progression Scheme, ACP Scheme was introduced as per which persons facing stagnation were entitled to be promoted (in situ) to the next higher post and in case of no promotional post being available, were entitled to be placed in the next above grade.

6. Respondent was working as a Senior Auditor and the next promotional post available was that of Supervisor Accounts, Recruitment Rules whereof provided that Senior Auditors with 5 years regular service in the grade were eligible to be considered for promotion to the post of Supervisor Accounts provided they had cleared a departmental examination for Supervisor Accounts.

7. The ACP Promotion Scheme, vide condition No. 6 stipulated 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 the incumbent for the states 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.

8. Since ACP Scheme was introduced on 9.8.1999, with reference to those who would be entitled to the benefit thereof upon clearing a qualifying exam, the Government issued a clarification which reads as under:

Sub: Clarification regarding grant of ACP after passing the Trade Test.

A reference was sent to DPO and T for one time relaxation from passing of Trade Test for granting ACP from 9.8.1999 i.e. date of implementation of ACP Scheme if the employees are otherwise eligible.

2. DOP and T has clarified that as a special case the employees who qualify the trade test in first attempt after 9.8.1999 may be allowed benefit of ACP from 9.8.1999 only and not from the date of passing of trade test. However, employees who qualify in the trade test in subsequent attempt will be allowed financial upgradation only from the date of passing of trade test. In no case, the benefit could be given to an individual wef 9.8.1999, who had earlier appeared in the Trade Test before 9.8.1999 but failed or has not appeared in trade test at all or has not otherwise passed the trade test.

3. In future, the required trade test should be held well in time as per planned calendar so that it is held before an employee complete 12/24 years of service for grant of financial upgradation under ACPS.

(Based on DOP and T ID No. 3683/Estt.(D)/01 dated 6.12.2001).

9. Relevant would it be to state that as per para 2 of the clarification, those who cleared/qualified the test in the first attempt after 9.8.1999 were entitled to the benefit of the ACP scheme with effect from 9.8.1999 and not from the date of passing the test. The reason is obvious. If the department delayed holding the departmental test, it was not the fault of the employee concerned and thus the employee would obviously be entitled to the benefit with effect from 9.8.1999.

10. Undisputably the requisite exam to be cleared i.e. the SAS departmental exam was held by the Department in November 1999, September 2000, September 2001 and thereafter in April 2002. Admittedly, the Respondent never took the examination held in November 1999, September 2000 and September 2001.

11. It is apparent that in para 6 of the impugned order dated 3.6.2004 the Tribunal has wrongly held that after 9.8.1999, undisputedly the next SAS examination was held in the year 2002. Thus, the Tribunal has concluded that the first attempt available and taken by the Respondent to clear the SAS examination was in April 2002 and for said reason, as clarified vide para 2 of the clarificatory memorandum noted in para 8 above, Respondent was entitled to the benefit with effect from 9.8.1999.

12. Since the fact on which the Tribunal has adjudicated the issue has been wrongly noted by the Tribunal the inevitable conclusion has to be the setting aside of the impugned order dated 3.6.2004.

13. We note that a feeble attempt has been made by the Respondent to urge that the examination held in April 2002 was not a SAS examination. We do not propose to deal with the submissions urged whereunder Respondent sought to justify his aforenoted stand for the simple reason the case of the Respondent before the Tribunal was that since after 9.8.1999 the first SAS exam conducted

was in April 2002 and he was entitled to the benefit of para 2 of the office order, contents noted in para 8 above.

14. The writ petition is allowed. Impugned order dated 3.6.2004 as also the order dated 26.8.2004 are set aside. OA No. 3109/2003 filed by the Respondent is dismissed.

15. No costs.