

(2009) 12 DEL CK 0071

In the Delhi High Court

Case No : Writ Petition (C) No. 5867 of 2003

T.S. Dagar and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-12-2009

Acts Referred:

Citation : (2009) 12 DEL CK 0071

Hon'ble Judges : Suresh Kait, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Jyoti Singh, for the Appellant; Jitendra Kumar Singh, for the Respondent

Judgement

Pradeep Nandrajog, J.—The problem at hand has been very best summarized in a letter dated 3.6.2002 addressed by the Chief Security Commissioner, Railway Protection Force to his Director General. The same reads as under:

The Director General/RPF

Railway Board, Rail Bhawan,

New Delhi.

Sub: Financial up gradation under ACP scheme to those who jumped intermediary grade as a result of competitive examination.

Ref: Dy. Director/Security/Rly. Board's letter No. 99/Sec(E) PM-1/2 Dated 23.7.2001.

1. Vide Boards letter under reference, advice of the Pay Commission Directorate was conveyed which postulated that those staff who jumped on intermediary grade due to passing of Limited Departmental Competitive Exam., the post they have actually worked, can duly be taken into account for the purpose of ACP scheme. This advice was given on a reference from Security Directorate that whether such constables who have become ASI (U/R-72) without working as

Head Constable can be allowed financial up gradation in the pay scale of Sub Inspectors without taking into consideration the post of Head Constable which they jumped due to Competitive Examination.

2. In the light of the said decision of Railway Board, such staff are being given financial up gradation under ACP Scheme in the pay scale of Sub Inspector over this Railway.

3. However some of the staff who were first promoted from constable to erstwhile rank of Naik and later on promoted directly as ASI(U/R 72) [without actually being promoted and working as Head Constable] have requested to consider them for the benefit under the ACP scheme, as they too have got only one promotion in the rank of Naik now re- designated as Head Constable w.e.f. 4.12.97.

4. Another anomaly has cropped up in view of the implementation of letter under reference. As per RPF rules, 1987, there was a post of Naik/RPF which has been abolished after 4.12.97. Those Constables/Naiks having 10 years service or more service used to compete in the selection for the post of both Head Constables as well as ASI U/R 72 of the RPF Rules. Some of the Constables who failed in the earlier selection for the post of Head Constable competed in the subsequent selection for the post of ASI and succeeded. They have now become eligible for ACP for the grade of SI/RPF. Whereas those Constables, who succeeded in both the competitive examinations from Constable to Head Constable and then Head Constable to ASI are not eligible for the financial up- gradation to the grade of SI/RPF under ACP scheme as per the letter under reference. This has created an anomaly which requires clarification.

5. It is therefore, requested to clarify (i) whether such staff who were promoted as ASI (U/R 72) from the post of Naik are also entitled to benefit under ACP scheme in the pay scale of Sub Inspectors (5500- 9000) on completion of 24 years of service or otherwise, (ii) whether such staff who qualified in the competition from Constable to Head Constable and then selected as ASI in the subsequent competitive exam are also eligible for ACP as they are placed at disadvantageous position when compared with those who failed in the selection for promotion to Head Constable but qualified as ASI and now getting ACP for the grade of SI/RPF.

6. An early clarification on the above subject is solicited please.

2. With respect to the facts, the problem can be best understood by comparing the case of petitioner No. 1 Shri T.S. Dagar with that of one Ram Chander.

3. T.S. Dagar was born on 26.9.1954 and was appointed as a Rakshak (Constable) under the Railway Protection Force on 23.9.1976. Ram Chander was born on 10.6.1955 and was appointed as a Rakshak (Constable) under the Railway Protection Force on 19.5.1977.

4. It is apparent that Shri T.S. Dagar was inducted in service 8 months prior to

Ram Chander.

5. As per the Service Rules applicable Rakshaks could compete at a limited departmental examination for promotion to the post of Head Constable. Whereas Ram Chander could not successfully clear the limited departmental examination, T.S. Dagar successfully cleared the limited departmental promotion examination and in September 1989 was promoted as a Head Constable. Ram Chander continued to work as a Constable.

6. The post above that of a Head Constable is that of an Assistant Sub-Inspector. As per Rule 70, 60% posts of Assistant Sub Inspectors are filled up through Head Constables as per 3X formula and under Rule 72, Constable/Head Constables with 10 years" service fill up the remaining 40% posts on clearing a limited departmental examination.

7. In the year 1992, T.S. Dagar and Ram Chander cleared the limited departmental examination and on 28.9.1992 were promoted as Assistant Sub Inspectors. Both earned further promotion to the post of Sub Inspector on 2.6.2002. But, with an anomaly. Pay of T.S. Dagar was fixed at Rs. 5500/- and that of Ram Chander was fixed at Rs. 6025/-.

8. We have extracted herein above the service route travelled by T.S. Dagar and Ram Chander to highlight the anomaly which has resulted. In para 3 and para 7 of the writ petition, the petitioners have, in a tabular form set out the service profile of the nine writ petitioners and have compared the same with the service profile of seven other colleagues who joined later in point of time vis-?-vis petitioners No. 1 to 9 and notwithstanding their induction in the cadre on a date later than petitioner No. 1 to 9, are drawing a higher salary notwithstanding the same post held by all of them.

9. The anomaly has resulted on account of the Assured Career Progression Scheme notified on 9.8.1999 making eligible employees who have not earned a promotion for 12 years to the place in the next higher grade i.e. the grade of the post just above the one held by them and to earn a similar higher scale after 24 years service.

10. The justification by the respondent for its action is as pleaded in paras 1 to 4 of the preliminary submissions in the counter affidavit, which reads as under:

1. That the Fifth Central Pay Commission in its report had made certain recommendations relating to the Assured Career Progression Scheme (hereinafter called ACP Scheme) for the Central Government Civilian Employees in all Ministries/Departments. The scheme has been viewed as a safety net for those having the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. Accordingly, the Railway Ministry decided to grant financial up-gradations (as recommended by the Vth Central Pay Commission and also in accordance with the agreed settlement dated 11th September, 1997 entered into with the staff side of the

National Council (JCM) under the ACP Scheme to Group-B, C & D employees on completion of 12 & 24 years of regular service respectively. The scheme was introduced by the Government of India vide Ministry of Railway Board letter No. PC-V/99/1/1/1 dated 1.10.99. Copy of the said letter is annexed as Annexure R-1.

2. That according to Condition No. 5.1, two financial upgradation under ACP Scheme in the entire Railway service career of an employee shall be counted against regular promotion (including in-situ promotion and or any other promotion including fast track promotion availed through limited departmental competitive examination) availed from the grade in which an employee was appointed as a direct recruit. This shall mean that two financial up-gradation under the ACP scheme shall be available only if no regular, promotions during the prescribed period (12 to 24 years) have been availed by an employee. If an employee has already got one regular promotion, he shall qualify for the second financial up-gradation only on completion of 24 years of regular service under the ACP scheme. In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP scheme shall accrue to him.

3. That according to Condition No. 8 the financial up- gradation under ACP Scheme shall be purely personal to the employee and shall have no relevance to his/her seniority position. As such there shall be no additional financial upgradation for the senior employee on the ground that the junior employee in the grade has got higher pay scale under the ACP scheme.

4. That vide Government of India, Ministry of Railways, Railway Board's letter No. 99/SEC (E)/PM-1/2 dated 23.7.2001, it was clarified that in case of those who have jumped intermediate grade due to passing of Limited Departmental Competitive Examination, the post they have actually worked, can only be taken into account for the purpose of ACP Scheme. Copy of the letter dated 23.7.2001 is annexed as Annexure R-2.

11. One need not pen down much, for the reason, an anomaly, recognized by the respondents as per its letter dated 3.6.2002 has certainly arisen. The said anomaly has been pithily brought out in para 4 of the said letter. We need not reiterate the anomaly save and except to record that the anomaly brought out in para 4 of the letter dated 3.6.2004 has been correctly illustrated.

12. If this be so, one need hardly give reasons for the sequitur to follow. Remedial action has to be taken at the administrative level. Suffice it would be to state that it would indeed be arbitrary that persons who join the cadre earlier and are senior should be given less salary vis-?-vis their juniors on account of the seniors having passed a limited departmental examination within the first 12 years of their service and earned a promotion. Their juniors could not clear the examination resulting in the juniors being placed in the step up scale after 12 years. Further, while earning further promotions, the second promotion earned

by the seniors being treated as disbarring them from being placed in the step up scale but the juniors who had earned only one promotion being granted the ACP benefit. The problem has arisen on account of the fact that the writ petitioners firstly on promotion to the post of Head Constable and thereafter to the post of Assistant Sub Inspector. Their counterpart juniors failed in the examination to fill up the post of Head Constable but cleared the examination for the post of Assistant Sub Inspector, in which examination their senior counterparts were also successful. The result is that seniors are getting a lesser pay whereas juniors are drawing a higher pay. It is apparent that the result is an absurdity entitling itself to be classified as discriminatory.

13. We are pained to note that inspite of recognizing an anomaly as having come into existence in the year 2002 itself, evidenced by the letter dated 3.6.2002 noted herein above, till date, no remedial action has been taken by the respondents.

14. We accordingly dispose of the writ petition issuing a mandamus to the respondents to upgrade the pay of the petitioners from the date persons junior to them were given a higher pay. This would mean that the petitioners would be placed in the same grade in which the person immediate junior to the petitioner was placed. Needful would be done within 12 weeks from today and arrears which have accrued be paid within further 4 weeks thereafter, failing which the arrears shall be paid with simple interest @8% per annum reckoned with effect from 16 weeks after the date of the present order.

15. Petitioners are held entitled to costs in sum of Rs. 5,500/- from the respondents.