

(2012) 02 DEL CK 0508

In the Delhi High Court

Case No : Writ Petition (C) 662 of 2012

Union of India and Others

APPELLANT

Vs

Dhum Singh and Others

RESPONDENT

Date of Decision : 03-02-2012

Acts Referred:

Citation : (2012) 2 ILR Delhi 778

Hon'ble Judges : G.P. Mittal, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Sonia Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed

CM 1432/2012(exemption)

Allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) 662/2012 & CM 1431/2012(stay)

1. This writ petition is directed against the order dated 07.09.2011 passed in OA No. 1620/2011 by the Central Administrative Tribunal, Principal Bench, New Delhi, whereby the said Original Application of the respondent No. 1 was partly allowed by directing that the condition of below benchmark ACRs ought not to be considered and that he be granted the Assured Career Progression (ACP) benefits from 09.08.1999 along with arrears and re-fixation of the retiral dues. The Tribunal, however, did not grant the respondent interest, award of damages and costs as the same were found to be unacceptable in the given circumstances. The respondent No. 1 had initially been appointed through the UPSC in 1973 as an Assistant Research Officer under the respondent No. 3. That post was a Group "B" post. In 1999, he was promoted as Dairy and Agriculture Chemist which post

was in the grade of Rs 10,000-325-15200. The respondent No. 1 took voluntary retirement on 31.7.2000. Pursuant to the Fifth CPC recommendations, the ACP Scheme was introduced with effect from 09.08.1999. The respondent No. 1 claimed that he was entitled for the second financial upgradation in the grade of Rs.12000-375-16500 on completion of 24 years of service. The respondent No. 1 had been agitating the said claims and had filed Original Applications and representations. The representations of the respondent No. 1 were rejected from time to time because the benefits under the ACP Scheme were restricted to Group "B" employees only and had not been extended to Group "A" employees. Since the respondent No. 1 had already been promoted to a Group "A" post, the benefits were not extended to him. However, in the light of his repeated requests, the claim of the respondent No. 1 had been forwarded to the Ministry of Defence and in consultation with the DoPT, a view had been taken to consider his case for grant of ACP on a special basis. This was because the said post was an isolated one and there were no further promotional avenues for the officers of Group "A".

2. Accordingly, the matter had been considered by the Screening Committee but the petitioners' case was not accepted inasmuch as the requisite benchmark grading for the said scale being five overall gradings of "Very Good" had not been attained by the respondent No. 1.

3. The only point of contention before the Tribunal and before us is whether the non-attainment of the benchmark could be held against the respondent No. 1 in view of the fact that the relevant ACRs had not been communicated to him. Even before the Tribunal, the respondent No. 1 had contended that the said remarks in the ACRs have never been communicated to him. It is noted in the impugned order that though the learned counsel for the petitioners herein made an oral submission to the contrary, there was no supporting averment in the counter-affidavit or any documentary proof of the ACRs having been communicated to the respondent No. 1 prior to his retirement. It is in the absence of communication of the said ACRs that the Tribunal came to the conclusion that the same could not be relied upon to deny the benefits of the ACP Scheme to the respondent No. 1. The exact words used by the Tribunal are as under:?

"9. As per the settled proposition of law, denial of a service benefit otherwise due to an employee, on the basis of un-communicated ACR, would be violative of the principles of natural justice.

Ordinarily, in such a situation, as per the law laid down by the Apex Court in Dev Dutt's case, the natural course for us would have been to issue directions to the respondents to communicate to the officer the below benchmark uncommunicated ACRs on account of which he had not been found fit for the ACP benefits. In the given circumstances, such an exercise would tantamount to be a futile one. This is because the rationale behind communication of the ACRs in question is to give a meaningful opportunity to the employee to be able to represent against them and to the employer to consider them taking into account

the comments of the assessing authorities. However, given the fact that these ACRs would now pertain to a period more than 10-15 years back, no useful purpose would, therefore, be served. We also note that as per the Screening Committee Minutes, there is no other bar against the applicant. The fact of the present OA being the third round of litigation, the applicant being a senior citizen and the denial of ACP affecting the pensionary dues also weigh with us.

In the totality of the circumstances, the impugned orders are set aside. We find the present one a fit case to give the respondents directions to ignore the below benchmark ACRs and grant him the ACP benefit from 9.8.1999 along with arrears and re-fixation of the retiral dues. However, the prayers for the interest, award of damages and costs are not found to be acceptable in the given circumstances.

Thus, the OA is partly allowed in terms of our aforesaid directions which are to be complied with by the respondents within a period of three months from the date of receipt of a copy of this order. No order as to costs."

4. For the first time, the ACRs were sought to be communicated on 25.04.2011. However, the respondent No. 1, who is present in person, states that the ACRs were never communicated and it is only through the order dated 06.04.2011 that he was informed that his ACRs were below the benchmark. It is in this backdrop that the Tribunal has concluded that the ACRs cannot be looked at for denying the ACP benefits to the respondent No. 1.

5. Consequently, the Tribunal, after setting aside the order impugned before it, directed that the present case was a fit one in which the respondents ought to be directed not to take the below benchmark ACRs into consideration inasmuch as the same had not been communicated to the respondent No. 1. Resultantly, the Tribunal directed that the ACP benefits should be given to the respondent No. 1 from 01.08.2011 along with the arrears and re-fixation of the retiral dues. We see no reason to interfere with the impugned order as we find no illegality in the same. The writ petition is dismissed. There shall be no order as to costs.