

**(2015) 03 DEL CK 0190**

**In the Delhi High Court**

**Case No : Writ Petition (C) No. 1371/2007**

Union of India and Others

APPELLANT

Vs

K.T. Akhtar and Others

RESPONDENT

**Date of Decision : 03-03-2015**

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2015) LabIC 2502 : (2015) 3 SLJ 162

**Hon'ble Judges :** I.S. Mehta, J.;Kailash Gambhir, J.

**Bench :** Division Bench

**Advocate :** R.V. Sinha, R.N. Singh and Amit Sinha, for the Appellant; J.P. Sengh, Sr. Adv., Yunus Malik, Sumit Batra and Shashank Singh, Advocates for the Respondent

**Final Decision :** Dismissed

## Judgement

I.S. Mehta, J.—The present writ petition preferred by Union of India is arising out of O.A. No. 532/2005, M.A. No. 497/2005 wherein the Ld. Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as "Ld. CAT") vide order dated 22.05.2006 allowed the O.A. and consequently Union of India was given direction to implement the same. Aggrieved from the above mentioned order, the petitioners preferred the present writ petition under Article 226 of the Constitution of India.

2. The brief facts of the case are that the respondents were appointed as Assistant Grade- III in the pay scale of Rs. 800-1150 in the years 1987-1989 and were subsequently promoted to the next higher grade of Assistant Grade - II carrying the pay scale of Rs. 950-1500 during the years 1992-1996. During the aforesaid period, there was a dispute pertaining to the pay scales of the respondents and consequently Central Government Industrial Tribunal (CGIT) vide order dated 16.03.1998 fixed the respondents' pay scale at Rs. 950-1400/-. Subsequently, the pay scales of Rs. 950-1400, 950-1500, 1150-1500/- were merged in the pay scale of 3050-4590 by virtue of the Fifth Central Pay

Commission which was to be given effect from 1.1.1996. Thereafter, the respondents issued a legal notice dated 17.09.2004 claiming that they be given benefit of the Assured Career Progression Scheme (hereinafter referred to as "ACP Scheme") entitling them to next promotional scale of Rs. 4000-6000/-, as the respondent's earlier pay scale has already been merged into the pay scale of Rs. 3050-4590/-. The respondents thereafter filed an O.A. before the learned Central Administrative Tribunal, Principal Bench, New Delhi and the same was allowed.

3. During the course of arguments, the learned counsel for the petitioners brought to our notice the judgment passed by the Division Bench of this Court in the case of Ramashish Prasad and others vs CAT (PB) New Delhi and others, WP (C) No. 7150/2006 and pointed out that the Ld. CAT (PB) wrongly granted the benefit of the ACP scheme in favour of the respondents. It is further argued that the respondents should not have been given the benefits under the ACP Scheme as the respondents were initially recruited as Assistant Grade - III in the pay scale of Rs. 800-1150 and subsequently promoted to Assistant Grade - II in the pay scale of 950-1500. These posts carry two distinct levels in the hierarchy and the respondents have already secured promotion from Assistant Grade - III to Assistant Grade - II as per the then existing hierarchy prior to the merger of the pay scales.

4. On the other hand, the learned counsel of the respondents while not agreeing with the contentions raised by the counsel for the petitioners, brought to our notice that pre-revised pay scale of Rs. 950-1400, Rs. 950- 1500 and Rs. 1150-1500 were merged into one single pay scale of Rs. 3050-4590 w.e.f. 01-01-1996, consequently entitling the respondents to the benefits of the ACP scheme in terms of the clarification issued vide Government of India, Department of Personnel and Training (hereinafter referred to as "DOPandT") OM dated 10.02.2000.

We have heard the learned counsel for the parties.

5. The present dispute is pertaining to the applicability of the ACP Scheme. The ACP Scheme was introduced by the DOPandT vide O.M. No. 35034/1/97 - Estt (D) dated 9.08.1999 to facilitate the civilian employees of the Central Government who are facing genuine problems of stagnation and hardship due to lack of adequate promotional avenues. This scheme is a "safety Net" to deal with the situation where the hardship is faced by the employees due to non-availability of promotional avenues. The Central Government introduced the ACP Scheme recommended by the Fifth Central Pay Commission with certain modification to infuse zeal and interest in the employees, to have more congenial atmosphere, higher productivity and efficiency, and provide an incentive for personnel development to achieve progress of any institution/organisation.

Under the scheme, the persons who do not get promotion due to non-availability of vacancies in the next promotional post(s) are allowed financial upgradations in

the pay scales of such next promotional posts after the completion of 12 years and 24 years of service subject to fulfilling other eligibility norms. The scheme is introduced for the civilian employees of the Central Government who otherwise do not enjoy any promotional avenues.

6. The Annexure - I of the ACP Scheme is as under:

#### ANNEXURE - I CONDITIONS FOR GRANT OF BENEFITS UNDER THE ACP SCHEME

"1. The ACP Scheme envisages merely placement in the higher pay scale/grant of financial benefits (through financial up-gradation) only to the Government servant concerned on personal basis and shall, therefore, neither amount to functional/regular promotion nor would require creation of new posts for the purpose;

2. The highest pay-scale upto which the financial up- gradation under the Scheme shall be available will be Rs. 14,300-18,300. Beyond this level, there shall be no financial up-gradation and higher posts shall be filled strictly on vacancy based promotions;

3. The financial benefits under the ACP Scheme shall be granted from the date of completion of the eligibility period prescribed under the ACP Scheme or from the date of issue of these instructions whichever is later;

4. The first financial up-gradation under the ACP Scheme shall be allowed after 12 years of regular service and the second up-gradation after 12 years of regular service from the date of the first financial up-gradation subject to fulfillment of prescribed conditions. In other words, if the first up- gradation gets postponed on account of the employee not found fit or due to departmental proceedings, etc this would have consequential effect on the second up- gradation which would also get deferred accordingly:

5.1 Two financial up-gradation under the ACP Scheme in the entire Government service career of an employee shall be counted against regular promotions (including in-situ promotion and fast-track promotion 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 periods (12 and 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;

5.2 Residency periods (regular service) for grant of benefits under the ACP Scheme shall be counted from the grade in which an employee was appointed as a direct recruit."

7. It is clear that the ACP Scheme was introduced for the benefit of the Civilian Employees of the Central Government to provide for financial upgradations. As was pointed out in the case of *Hukam Chand Gupta Vs. Director General, I.C.A.R. and Others*, , the scheme is in consonance with the observations made by the Apex Court in the case of *Council of Scientific and Industrial Research and Another Vs. K.G.S. Bhatt and Another*, wherein the Apex Court made the following observations:

"It is often said and indeed, adroitly, an organisation public or private does not "hire a hand" but engages or employees a whole man. The person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well. (See : *Principles of Personnel Management* by Flipo Edwin B. 4th Ed. p. 246). Every management must provide realistic opportunities for promising employees to move upward. "The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both no managerial employees and their supervisors". (See : *Personnel Management* by Dr. Udai Pareek p. 277). There cannot be any modern management much less any career planning, man-power development, management development etc. which is not related to a system of promotions. (See : *Management of Personnel in Indian Enterprises* by Prof. N.N. Chatterjee, Chap. 12 p. 128)." 8. In the present case, the petitioner has taken the plea that the respondents have already enjoyed the benefits and have already been given promotion, therefore they are not entitled to the ACP scheme benefits. In support of his contention, he placed reliance upon the judgment passed by the Division Bench of this Court in case of *Ramashish Prasad and others vs. CAT (PB) New Delhi and other*, WP (C) No. 7150/2006.

9. The question arises as to whether the respondents are entitled to the ACP Scheme in the aforementioned circumstances of the present case? The answer is yes.

The ACP Scheme was introduced on 09.08.1999 and the Fifth Pay Commission of the Central Government was given effect from 1.1.1996. As per the Fifth Pay Commission, the basic pay scale of the respondents came to be Rs. 3050-4590 as on 1.1.1996. The pay scales of Rs. 950-1400 and Rs. 950-1500 were abolished and what remains is the pay scale of Rs. 3050-4590. However, there is no averment that the promotion was given to the respondents after availing the pay scale recommended by the Fifth Pay Commission i.e. pay scale of Rs. 3050-4590 which was to be given effect from 1.1.1996. In any event, there is no plea on behalf of Union of India that payment so made to the respondents is in excess of the pay scale recommended by the Fifth Pay Commission i.e. pay scale of Rs. 3050-4590 which is stated to be the merged pay scale. The contention of

the petitioners that the Assistant Grade - III and Assistant Grade - II carry two distinct levels in the hierarchy cannot be accepted in the light of the merger of pay scales. Therefore, the plea of the petitioners that Assistant Grade - III and Assistant Grade - II carry two distinct levels in the hierarchy and that the respondents are not entitled for higher pay scale loses its significance. Annexure - 1, accompanied by rejoinder affidavit filed on behalf of the petitioners is reproduced as under:

Annexure - 1

#### APPOINTMENT AND PROMOTION CHART OF RESPONDENTS

10. The respondents, as shown in Annexure - 1 above are having one single pay scale i.e. Rs. 3050-4590 w.e.f. 1.1.1996. There is no plea that the respondent availed the benefit of promotion under the ACP Scheme after availing the Fifth Pay Commission. It is apparent that the ACP scheme was introduced after Fifth Pay Commission to mitigate the hardships faced by the employees due to lack of adequate promotional avenues and to provide an incentive for personnel development and to achieve progress of the organisation/institution. Later, the DOPandT vide OM dated 10.02.2000 issued a clarification for implementation of the ACP Scheme in its right perspective to achieve the intended goals. The point of doubt under serial No. 1 and its clarification in the said OM is reproduced hereinunder:

"Point of Doubt - Two posts carrying different pay scales constituting two rungs in a hierarchy have now been placed in the same pay-scale as a result of rationalisation of pay-scales. This has resulted into change in the hierarchy in as much as two posts which constituted feeder and promotion grades in the pre-merged scenario have become one grade. The position may be clarified further by way of the following illustration: prior to the implementation of the Fifth Central Pay Commission recommendation, two categories of posts were in the pay-scales of Rs. 1200-1800 and Rs.1320-2040 respectively; the latter being promotion post for the former. Both the posts have now been placed in the pay-scale of Rs.4000-6000. How the benefits of the ACP Scheme is to be allowed in such cases?

Clarification - Since the benefits of upgradation under ACP Scheme (ACPS) are to be allowed in the existing hierarchy, the mobility under ACPS shall be in the hierarchy existing after merger of pay-scales by ignoring the promotion. An employee who got promoted from lower pay-scale to higher pay-scale as a result of promotion before merger of pay-scales shall be entitled for upgradation under ACPS ignoring the said promotion as otherwise he would be placed in a disadvantageous position vis-A-vis the fresh entrant in the merged grade."

(emphasis supplied)

11. The aforesaid clarification made in O.M. dated 10.02.2000 (Supra) makes it crystal clear that the respondents' case is squarely covered by the ACP Scheme

and the judgment of this Court in the case of Ramashish Prasad and others vs. CAT (PB) New Delhi and other, WP (C) No. 7150/2006 is distinguishable from the facts of the present case. The aforesaid judgment is not applicable in the present facts and circumstances. The basis of the claim of the respondents in the present petition is the merger of two pay scales i.e. pay scale of Assistant Grade - III and Assistant Grade - II, whereas Ramashish Prasad's case (Supra) pertained to two different posts i.e. Assistant Grade - I and Junior Technician.

12. The respondents are claiming their entitlement of the first financial upgradation under the ACP Scheme after the merger of the two pay scales i.e. pay scales of Assistant Grade - III and Assistant Grade - II.

13. Our attention is drawn towards the First Schedule, Part - A of the Central Civil Services (Revised Pay) Rules, 1997. The relevant portion is reproduced hereinunder:

14. The schedule (supra) indicates that the pay scales of Rs. 950-1400, Rs. 950-1500, Rs. 1150-1500 were merged into one single pay scale of Rs. 3050-4590 which is to be given effect from 01.01.1996. The merger of pay scales of Assistant Grade - III and Assistant Grade - II is taken note of from Para - 8 of the Counter Affidavit filed by Sh. H.K. Srivastava, Financial Advisor, India Government Mint, on behalf of Union of India before the Ld. Tribunal in O.A. No. 532/2004. The aforesaid Para 8 is reproduced hereinunder:

"8. That the v. CPC recommended common revised pay scale of Rs. 3050-4590 for the erstwhile pre-revised pay scales of Rs. 950-1400 and Rs. 950-1500." This clearly shows that the two pay scales of 950-1400 and 950-1500 were merged into one single pay-scale of Rs. 3050-4590. What the respondent are claiming now is the next higher pay scale.

Note - 4 of Rule 7 (Fixation of initial pay in the revised scale) of the Central Civil Services (Revised Pay) Rules, 1997 also supports the claim of the respondents which is reproduced as under:

"Note-4. - Where the Government servant is holding permanent post and is officiating in a higher post on a regular basis and the scales applicable to these two posts are merged into one scale, the pay scale shall be fixed under this sub-rule with reference to the officiating post only, and the pay so fixed shall be treated as substantive pay.

The provisions of this Note shall apply, mutatis mutandis, to Government servants holding in an officiating capacity posts on different existing scales which have been replaced by a single revised scale."

15. The claim of the respondents for the next higher pay scale is further clarified by DOPandT's clarification appearing under Serial No. 1 in OM dated 10.02.2000 which shows that - "An employee who got promoted from lower pay-scale to higher pay-scale as a result of promotion before merger of pay-scales shall be entitled for upgradation under ACPS ignoring the said promotion" Under the

terms of the above-mentioned DOPandT's OM, the first promotion of the respondents from Assistant Grade - III to Assistant Grade - II has to be ignored, consequently entitling the respondents to the next higher pay scale of Rs. 4000-6000.

16. As discussed above, we therefore are completely in agreement with the findings given by the Ld. CAT vide order dated. 22.05.2005 in O.A. No. 532/2005 and the same is upheld. The present writ-petition filed on behalf of Union of India is dismissed.

There shall be no order as to costs.