

(2008) 01 JH CK 0043
In the Jharkhand High Court
Case No : Writ Petition (S) No. 1461 of 2005

Union of India

APPELLANT

Vs

Ramdhani

RESPONDENT

Date of Decision : 23-01-2008

Acts Referred:

Citation : (2008) 56 BLJR 1477 : (2008) 2 JCR 113

Hon'ble Judges : M. Karapaga Vinayagam, C.J.; D.G.R. Patnaik, J

Bench : Division Bench

Advocate : Pradip Modi and Vivek Agrawal, for the Appellant; M.M. Pal, Amicus Curiae, for the Respondent

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—The short question which calls for determination in this writ application is, whether placement of the respondent in the post of Khalashi Helper from the post of Trolley Shed Khalashi in the same group-D constitutes promotion in terms of the Railway Board's Assured Career Progression Scheme for the Railway Servant?

2. The respondent / applicant who is a Railway servant had moved the Central Administrative Tribunal for issuance of a direction to the petitioner, S.E. Railway, to consider his case for financial upgradation under the ACP Scheme and for a direction to extend the benefit of two financial upgradations with retrospective effect, as also to consider his claim for regular promotion to the post of Fitter Grade-III on the ground that he had put in more than 9 years of service in that post.

3. The grounds on the basis of which the respondent / applicant had moved the Tribunal are,

He is a Khalashi Helper working at Hatia Railway Station. He was originally recruited as casual labour in the year 1970 and was regularized as Khalashi on 14.9.1982. Thereafter, he was given ad-hoc promotion of Fitter Grade-III where

he worked for 9 years, but despite such long period of service, he was reverted to the post of Khalashi Helper on 17.6.2002.

Thus, three fold claim of the respondent as placed before the Tribunal was that (I) his employer should grant him regular promotion to the post of Fitter Grade-III considering the regular 9 years of service to the said post; (ii) that his employer should determine his seniority on and from 24.10.1970, which according to the respondent, was the date of his initial appointment; and (iii) to give him promotion / upgradation under the ACP Scheme on that post with all consequential benefits thereon,

The basis of his claim for financial upgradation is the Railway Board Circular vide RBE No, 233/99 dated 1.10.1999 and its corresponding notification dated 21.1.2000, a copy of which has been annexed by the petitioner in the present petition as Annexure-1.

4. The petitioner had contested the prayer of the respondent Railway servant before the Tribunal contesting that the applicant was not entitled to relief(s) claimed on the ground that the applicant became a regular Railway employee on 15.9.1982 on which date when he was absorbed as Trolley Shed Khalashi and the services put by him prior to 15.9.1982 as a casual labour, cannot be considered for any financial upgradation benefit. It was further contended by the petitioner that the applicant was granted first promotion as Khalashi Helper with effect from 6.04.1989 i.e. within 12 years of his absorption in the regular cadre and, therefore, he could be entitled to a second financial upgradation only after completing a total period of 24 years of service. As regards the third claim, the contention of the petitioner was that the applicant was only deputed / appointed to officiate as mechanic Fitter Grade-III purely on ad-hoc basis and was transferred to Railway Electrification Department, Ranchi without conferring any upgradation right to claim for promotion on seniority in the open line and on completion of the work in the Electrification Department, he was reverted to his substantive post of the parent department at Adra Division and as such, he does not have any right to claim promotion to Fitter Grade-III in the open line since such promotion was subject to passing of the trade test.

5. After considering the rival submissions and basing its finding on the Railway Board Circular (Referred to above), the Tribunal held that the period of service rendered by the employee as casual labour, cannot be considered for financial upgradation under the ACP Scheme and, therefore, the employee is not entitled to claim continuous length of service by including the period he served as a casual employee. On the other Issue, the Tribunal held that the employees' promotion to the post of Khalashi Helper from Trolley Shed Khalashi being in the same grade i.e. in Grade-D, It cannot be considered as promotion for the purpose of extending the benefit of ACP Scheme and, therefore, the employee was entitled to claim first financial upgradation in the ACM Scheme on completion of 12 years of service as a regular Railway servant, though his service had not ripened for entitlement to the second financial up-gradation.

6. The petitioner has challenged the above finding of the Tribunal and the corresponding directions issued thereby, on the ground that the finding is perverse and not in consonance with the terms of circular issued by the Railway Board under the Assured Career Progression Scheme for the Railway Servants.

Shri P.K. Modi, learned Counsel while arguing for the petitioner, invites attention to the Railway Board Circular (Annexure-1) and in particular to the condition for grant of benefit under the Scheme. His contention is that the ACP scheme envisages merely placement in the higher pay scale (through financial upgradation) only to the Railway servant concerned on personal basis and shall, therefore, neither amount to functional / regular promotion, nor would require creation of new post for the purpose. The highest pay scale to which financial upgradation under the scheme shall be available to those falling in the entitled categories has also been fixed. Furthermore, two financial upgradations under the ACP scheme shall be available only if no regular promotion during the prescribed periods (12 and 24 years) have been availed by an employee and if an employee has already got one regular promotion, he shall qualify for the second financial upgradation only on completion of 24 years of regular service under the ACP Scheme. Learned Counsel further explains that in consonance with the terms and conditions of the scheme, the respondent while he was appointed as Trolley Shed Khalashi, was given the pay scale corresponding to the subsequent revised pay scale of S-1 category, which has the pay scale of Rs. 2550-3200. On his promotion to Khalashi Helper, his pay scale was increased from S-1 to S-3 thereby giving him the benefit of financial upgradation to the scale of Rs. 2650-4000. This, according to the learned Counsel for the petitioner, is essentially a promotion under the A.C.P Scheme which was availed of by the respondent within 7 years of his service after his absorption in the regular cadre and, therefore, the respondent / applicant could be entitled to second financial upgradation only if he completes 24 years of continuous service.

7. Mrs. M.M. Pal, representing the respondent as Amicus Curiae, would find fault in the arguments of the learned Counsel for the petitioner as being misconceived. Her contention is that even though the respondent was granted higher pay scale after his appointment as Khalashi Helper, but that by itself, could not constitute his promotion since his placement as Khalashi Helper is within the same category-D, whereas his promotion in the ACP Scheme ought to have been given to the next grade i.e. under group-C and such promotion having not been given even after the respondent having completed more than 12 years of continued service since the date of his absorption in regular cadre in 1982, the respondent was certainly entitled to first promotion which would be to grade-III post and the finding of the Tribunal which support such stand is, therefore, correct.

8. The issue as stated above which needs to be decided in this writ application is, whether placement of the respondent in the post of Khalashi Helper from the post of Trolley Shed Khalashi in the same group-D constitutes promotion in the

terms with the Railway Board Assured Career Progression Scheme for the Railway servant?

9. Undisputedly, as per the Railway Board Circular (Annexure-1), it is the right of the Railway servant to claim benefit under the Assured Career Progression Scheme, though subject to certain conditions as laid down therein. The scheme was introduced by the Ministry of Railways in terms of the recommendation of the 5th Central Pay Commission. For better appreciation, reference to the Circular whereby the Assured Career Progression Scheme was introduced would be relevant.

Clause 3 of the Circular refers to group-B, C and D services / posts and to isolated posts in group- A, B, C and D categories.

Clause-3.1 declares that "while in respect of these categories also, all promotions shall continue to be duly earned, it is proposed to adopt also the ACP Scheme in a modified form to mitigate hardship in cases of acute stagnation either in a cadre or in an isolated post. Keeping in view all the relevant factors, it has, therefore been decided to grant two financial upgradations under the ACP Scheme to group-B, C and D employees on completion of 12 years and 24 years of regular service respectively (subject to condition No. 4 in Annexure-1)". Isolated posts in group-A, B, C and D categories, which have no promotional avenue, shall also qualify for similar benefits on the pattern indicated above. Certain categories of employees such as casual employees (including those in functional with temporary status) substitutes, ad-hoc and contract employees shall not qualify for benefits under the aforesaid scheme. Grant of financial upgradation under the ACP Scheme shall, however, be subject to the condition mentioned in Annexure-1. Clause-4 of the Scheme declares that the introduction of ACP Scheme shall, however, in no case affect the normal (regular promotional avenue having available on the basis of vacancies).

Clause-5 declares that "vacancy based regular promotions, as distinct from financial upgradation under the ACP Scheme, shall continue to be granted after following the procedure prescribed in such cases, as per relevant rules / guidelines. The relevant rules / guidelines in this regard includes the fulfillment of normal promotion's norms prescribed, such as bench mark, trade test, departmental examination, seniority cum fitness, etc".

Clause-3 of the conditions states that "the financial benefits under the ACP Scheme shall be granted from the date of completion of the eligibility period prescribed under the ACP Schema or from the date of issue of these instructions (vide circular) whichever is later".

10. It would be manifest from the above that while reserving the right of Railway servant in the various categories including group-D category for promotion which may be duly earned, the ACP Scheme offers an additional benefit of two financial upgradations, first on completion of 12 years of continued regular service and the second after completion of 24 years of regular service, subject to certain

conditions laid down in the scheme as declared in Annexure-1 thereof. It defines the implication of the scheme stating that the scheme envisages merely placement in the higher pay scale/grant of financial benefits through financial upgradation. The term "higher pay scale" denotes pay scale for the higher grade in the hierarchy of groups.

11. The demand of the respondent Railway servant in the instant case is for grant of first financial upgradation by way of promotion to the next grade on his completing 12 years of service from the date of his absorption which according to him, is from the date when he was first inducted in the service in the year 1970.

12. As rightly observed by the Tribunal in its impugned order, Clause-3.1 of the Circular excludes the period served by the employee as a casual worker for computation of his total length of service. The fact, which is admitted by the respondent, is that he was absorbed in the regular cadre of service on his absorption as a Trolley Shed Khalashi on 14.9.1982. This is the date of reckoning for computing the period of his regular service. It was further admitted by the respondent that after having been absorbed in the regular cadre on 15.9.1982, he was "promoted" as Khalashi Helper with effect from 6.4.1989 with the benefit of higher pay scale corresponding to S-3 scale under the revised pay scales. Apparently, on his placement as Khalashi Helper with effect from 6.4.1989, the respondent did benefit by upgradation of his scale from S-1 scale to S-3 scale, though in the same group-D.

13. The question is whether the placement of the respondent in S-3 scale would in itself be deemed to be a promotion as contemplated under the ACP Scheme? This question needs to be considered in the light of the fact that there exists hierarchy of posts categorized as A, B, C and D categories and the employees in the lower category are eligible for promotion to the higher category which they may earn during tenure of their services after qualifying for the higher posts. Category-D is the lowest in the hierarchy and a person employed in this category can duly earn his promotion to the higher category i.e. to the category-C. It is also to be noted by reference to Annexure-2 to the scheme which lays down standard / common revised pay scales with effect from 8.10.1997 that pay scales in group-D category begin with S-1 scale of Rs. 2550 and it graduates from S-1 to S-2 and from S-2 to S-3 scale in the scale of Rs. 2650-4000. The upgradation in the scale is on the basis of seniority in the same category. The minimum scale of pay prescribed in group-C category is Rs. 3050-4590. This is evident from the admitted fact that on the respondent's promotion to the post of Fitter Grade-III, albeit on ad-hoc basis, which is in group-C, the scale of pay granted to him was Rs. 3050-4590. Evidently, higher pay scales are reserved to the seniors in the same category according to the seniority list and the placement of the employee in the higher scale, though in the same category, is apparently on the basis of seniority cum merit. Such placement is guided by the administrative rules of the Railways. Placement in the seniority list on the basis of length of service would only enable the employee for his eligibility to promotion to higher grade which he

may earn by virtue of his length of service and also by fulfilling the normal promotion norms including trade test, departmental examination, seniority cum fitness, etc. Undisputedly, the post of Trolley Shed Khalashi is an unskilled post and that of Khalashi is a semi-skilled post which is considered to be a feeder grade post for the promotion to the higher category.

14. Promotional post is generally a higher post with higher pay than the feeder post i.e. the post from which promotion takes place. Sanction to the higher scale of pay in the same category by itself, therefore, would not constitute promotion to the higher grade.

In the cast of Lalit Mohan Deb and Others Vs. Union of India (UOI) and Others, , the Supreme Court has observed:

It is well recognized that a promotion post is a higher post with a higher pay. A selection grade has higher pay, but in the same post. A selection grade is intended to ensure that capable employees who may not get a chance of promotion on account of limited outlets of promotions should at least be placed in the selection grade to prevent stagnation on the maximum of the scale.

In the case of Tarsem Singh and Another Vs. State of Punjab and Others, , at para-9 the Supreme Court has observed,

Promotion as understood under the service law jurisprudence means advancement in rank, grade or both. Promotion is always a step towards advancement to a higher post, grade or honour.

15. Thus, the concept of promotion not only covers advancement to a higher post or rank, but also implies advancement to a higher grade.

In the case of N.G. Prabhu and Anr. v. Chief Justice (Kerala) reported in 1973 (2) S.L.R. the full bench of the Kerala High Court has observed that,

Promotion is, of course, appointment, to a different post carrying a higher scale of pay in the service. If, to better the conditions of service of the incumbents in posts in the same category the scale of pay of all the posts in the category is raised, the incumbents would naturally get the higher scale of pay. But in such a case it may not be proper to characterize the event as promotion to higher posts though a benefit of a higher scale of pay is obtained by all concerned.

16. It would be manifest from the above that mere placement of the respondent in the scale of S-3 from S-1 being in the same category-D, cannot be characterized as a promotion to the higher category.

17. The question, which now needs to be addressed, is whether the respondent is entitled to promotion to the higher grade under the ACP Scheme?

Clause-7 of the Scheme (Annexure-A) lays down that "the financial upgradation under the scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre / category of posts without creating new posts for

the purpose".

18. As earlier observed, the ACP Scheme is intended to mitigate hardship to employees in case of acute stagnation either in a cadre or in isolated posts.

19. In the clarification on the points of doubt mentioned in the conditions for grant of benefit under the ACP Scheme, it has been clarified that if any selection grade promotion has been allowed to employees which is not a part of the hierarchy, it shall not be counted for promotion for the purpose of ACP. Furthermore, the benefits under the ACP are limited to higher pay scale and do not confer designation, duty and responsibility of the higher post. The basic criteria for allowing higher pay scale under the ACP Scheme is that the person is working in the same pay scale for the prescribed period of 12 / 24 years. The eligibility period for the first financial upgradation as prescribed under the ACP Scheme is 12 years and unless the employee completes the period of 12 years, he cannot be eligible for any benefit under the ACP Scheme. In the instant case, the contention of the petitioner that the first financial upgradation was given to the respondent under the ACP Scheme within a period of 7 years of his absorption in the regular service, even without his completing the prescribed eligibility period of 12 years of continued service, is not correct since the respondent was not eligible even for the first financial upgradation without completing 12 years of regular service. As indicated above, placement of the respondent in the seniority scale of pay in the same group cannot be deemed to be granting him the benefits of first financial upgradation under the ACP Scheme, nor can it be deemed to be a promotion to the higher grade as contemplated under the Scheme. Under such circumstance, the respondent is certainly entitled to promotion to the higher grade under the ACP Scheme.

20. Though not elaborately discussed, the conclusion arrived at by the Tribunal that the alleged promotion of the applicant to the post of Khalashi Helper (S-3) (which is a semi-skilled post) from the post of Trolley Shed Khalashi (S-1) in the same group i.e. group-D, cannot be considered to be a promotion for the purpose of extending the benefits of ACP Scheme, in our view, is correct. Therefore, we find that there is no error or infirmity in the impugned order of the Tribunal.

21. There being no merit in this application, the same is accordingly dismissed. However, there is no order as to costs.