

(2013) 05 DEL CK 0271

In the Delhi High Court

Case No : Writ Petition (C) 12674 of 2009

Union of India

APPELLANT

Vs

Sh. Raghubir Singh

RESPONDENT

Date of Decision : 06-05-2013

Acts Referred:

Citation : (2013) 05 DEL CK 0271

Hon'ble Judges : V. Kameswar Rao, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : R.V. Sinha, for the Appellant; Meenu Maini, for the Respondent

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J.—The challenge in the Writ Petition is to the order dated 30.07.2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No. 536/2009, whereby the O.A. filed by the respondent herein was allowed. The challenge in the O.A. was to the communication dated 04.07.2008 issued by the petitioner rejecting the request of the respondent for grant of benefits under the ACPS. The brief facts are that the respondent was appointed as a Rakshak in Railway Protection Force (RPF) on 30.03.1968 in the grade of Rs. 70-85. He was medically de-categorized. Pursuant thereto, he was appointed as Khallasi on 20.04.1979 in the grade of Rs. 196-232. On 04.09.1986, he was promoted as Recorded Sorter in the grade of Rs. 210-270. He was further promoted as Record Lifter in the grade of Rs. 225-308 with effect from 08.02.1987 and finally as Senior Record Lifter in June, 1996, in the grade of Rs. 950-1400, which was revised by the 5th Pay Commission to Rs. 3050-4590. It may be relevant to note here that the pay of Rakshak was revised by the 5th Pay Commission to Rs. 3050-4590.

2. The petitioner has since superannuated on 31.01.2004.

3. Pursuant to the recommendation of the 5th Pay Commission, the Government had issued instructions for grant of financial upgradation under the Assured

Carrier Progression Scheme. An order dated 19.01.2007 was passed by the petitioner whereunder the request of the respondent for grant of financial upgradation was turned down on the ground that the circular issued by the DoP & T in 2001 has no applicability. The respondent challenged that order in O.A. No. 950/2007. The O.A. was allowed and the petitioners were directed to pass a fresh order dealing with all the contentions of the respondent. This direction of the Tribunal resulted in a communication dated 04.07.2008, addressed to the respondent from the office of the Divisional Railway Manager being passed, whereby the request of the respondent for grant of benefits under the ACPS was again rejected. It is the case of the respondent that he is entitled to the first financial upgradation in the grade of Rs. 4500-7000 and second financial upgradations in the grade of Rs. 5000-8000 after 12 and 24 years of service respectively.

4. The petitioners, while rejecting the claim of the respondent, vide their communication dated 04.07.2008, in so far as the applicability of circular 2001 (PS No. 11466 PCV 107) and the respondent's stand stated that since the respondent was not selected/promoted as Clerk before 21.12.1997 and was absorbed as Khallasi and further he got promotions, therefore the claim of the respondent is not tenable.

5. We have seen the clarification issued in this regard, which is annexed at page 33/33A of the paper book.

6. The clarification, inter-alia, stipulates that since the pay of Rakshak and clerk is the same i.e. Rs. 3050-4590, and Rakshaks who on being medically de-categorized and absorbed against alternative post and subsequently promoted to the post of Clerk may be granted financial upgradation in the present post under the ACPS duly counting their past service in the grade of Rakshak subject to fulfilment of other prescribed conditions. The purport/spirit underlying the clarification is that those Rakshaks, who have been medically de-categorized and absorbed against the alternative post and subsequently promoted to the same scale of Rakshak i.e. Rs. 3050-4590, would be eligible for financial upgradation in the present post under ACP scheme.

7. In the present case, it is seen that even though the respondent had got three promotions and the last one to the post of Sr. Record Lifter in the revised pay scale of Rs. 3050-4590, the same being the scale of Rakshak from which the respondent was medically de-categorized, he did not get promotion to a grade which is over and above the grade of Rakshak i.e. Rs. 3050-4590. The clarification stipulates that a clerk who is in the grade of Rs. 3050-4590 is entitled to be granted financial upgradation under the ACPS scheme. We don't see any difference between a person being a clerk or a Khallasi as long as the person was medically de-categorized and is in the grade of Rs. 3050-4590 to be entitled to the benefit of clarification. The Tribunal while allowing the O.A. has in para 4 & 5 of the impugned order has held as under:

In our considered view, a clarification issued under the scheme would relate back to the date when the original claim is formulated and if it is not inconsistent, the same would be treated as a part of it. On literal construction, which is a beneficial one in the present case as Rakshak, who had been in a higher pay scale equivalent to that of Clerk, on being medically de-categorized when adjusted on a post, which carries much lower pay scale than what he earned as a promotion and reached to the stage, as such, the promotion has put him to pay scale, which he enjoyed earlier had there not been any medical de-categorization. Accordingly, keeping in view the stagnation, as these three promotions earned would not be treated as removing the stagnation but to achieve to the pay scale he has lost by way of medical de-categorization, the ACP has been allowed to him.

In the above view of the matter, applicant, who by way of a promotion, has reached the pay scale of Rs. 3050-4590 of a Clerk, which he enjoyed as a Rakshak, is clearly covered by the clarification, which is a rejection of his request by the respondents, is neither reasonable nor justifiable and against the very circular, which had been adopted by the respondents and applied in so many cases. The very act of the respondents is also against the spirit of ACP scheme.

8. Apart from what has been stated by us in Para Nos. 7 & 8 above, we also agree with the conclusion of the Tribunal that on being medically de-categorized the respondent was adjusted to a post which carries much lower pay scale than what he earned as a promotion. The three promotions earned by the respondent would not be treated as removing the stagnation but to achieve to the pay scale he has lost by way of medical de-categorization, ACP has to be allowed to him. We don't find any infirmity in the ultimate conclusion of the Tribunal whereby the Tribunal direct the petitioners to grant both the benefits of ACP with arrears. We dismiss the present Writ Petition. No costs.