

(2011) 09 DEL CK 0530

In the Delhi High Court

Case No : Writ Petition (C) No. 657 of 2007

Union of India (UOI) and Another

APPELLANT

Vs

R.C. Bajpayee and Others

RESPONDENT

Date of Decision : 28-09-2011

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2011) 8 AD 544

Hon'ble Judges : Sudershan Kumar Misra, J;Anil Kumar, J

Bench : Division Bench

Advocate : R.V. Sinha and A.S. Singh, for the Appellant; V.S.R. Krishna and G.P. Srivastava for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

Anil Kumar, J.—The Petitioner, Union of India through the Secretary, Ministry of Agriculture and Anr., have challenged the order dated 19th July, 2006 passed by the Central Administrative Tribunal, Principal bench in O.A No. 30/2005 titled as "Sh. R.C. Bajpayee and Sh. Hari Singh v. The Secretary Ministry of Agriculture and Ors." allowing the original application of the Respondent Nos. 1 & 2 and directing the Petitioners to grant the second financial upgradation to them, in the pay scale of Rs. 10,000-15,200/- with all consequential benefits with effect from 9th August, 1999. The Tribunal held that in the existing hierarchy of Dairy Supervisor (Rs. 5,000-8,000/-), Section Manager (Rs. 6,500-10,500/-) and Shift Manager (Rs. 10,000-15,200/-) even though the essential eligibility condition for promotion from Section Manager to Shift Manager was to have a degree in Dairying/Dairy Science/Dairy Technology from a recognized University/ Institute or equivalent and the Respondent Nos. 1 & 2 had only a degree of B. Sc. (Agriculture), however, since the Petitioners had granted the second financial upgradation in the pay scale of Rs. 7,450-11,500/- which amounts to an implicit admission on the part of the Petitioners that the Respondent Nos. 1 & 2 fulfilled the eligibility criterion under the ACP Scheme, therefore, the financial

upgradation had to be granted to the Respondent Nos. 1 & 2 in the pay scale of Rs. 10,000-15,200/-, which is the pay scale of the Shift Manager.

2. The questions for adjudication in the present writ petition are whether or not B.Sc. (Agriculture) is equivalent to the degree in Dairying/Dairy Science/Dairy Technology so as to entitle the Respondent Nos. 1 & 2 for promotion to the post of Shift Manager under the amended Recruitment Rules of 1991, and if in case B. Sc (Agriculture) is not the essential qualification as required under the 1991 Rules for the post of Shift Manager, then whether or not the financial upgradation under the ACP Scheme can be granted to Respondent Nos. 1 & 2, in the pay scale of Rs. 10,000-15,200, since the Petitioners had granted the second financial upgradation, however, in the pay scale of Rs. 7,450-11,500/- in terms of condition No. 7 of the ACP Scheme to the next higher grade in accordance with the existing hierarchy in the cadre.

3. Some relevant facts to comprehend the disputes between the parties are that Respondent Nos. 1 & 2 joined the services of Petitioner No. 2 on 23rd April, 1965 and 9th October, 1974 respectively. Both the Respondent Nos. 1 & 2 have the qualifications of B. Sc (Agriculture) which was the essential eligibility qualification for being appointed as Dairy Supervisor under the relevant Recruitment Rules at the time.

4. The Respondent Nos. 1 & 2 were promoted to the post of Section Manager in the pay scale of Rs. 6,500-10,500/- on 18th March, 1997. This is also not disputed that prior to notification dated 27th September, 1991 amending the Recruitment Rules, the promotion from the post of Dairy Supervisor was to the post of Section Manager and there was no promotional post from Section Manager. Under the Recruitment Rules prior to 1991, the post of Shift Manager was not a promotional post from Section Manager and the post of Shift Manager was to be filled 100% by direct recruitment. Under the old rules, however, 100% posts of Section Manager were filled by promotion from Dairy Supervisors.

5. After the amendment to the Recruitment Rules by notification dated 27th September, 1991 the post of Shift Manager is to be filled by promotion, failing which by transfer on deputation (including short term contract) and on failing both, that is, promotion and transfer on deputation, then by direct recruitment. The essential eligibility qualification for the post of Shift Manager is degree or diploma in Dairying/Dairy Science/Dairy Technology from a recognized University/ Institute or equivalent with three years or five years experience of running a dairy plant in a Supervisory capacity respectively. The essential qualifications are relaxable at the discretion of Union Public Service Commission in the case of candidates who are otherwise well qualified. Even the qualifications regarding the minimum experience for degree holders and diploma holders is relaxable at the discretion of the Union Public Service Commission in the case of candidates belonging to the Schedule Caste or Schedule Tribes, if at any stage of selection, the UPSC is of the opinion that sufficient number of candidates from these communities possessing the requisite experience are not likely to be

available to fill up the vacancy reserved for them.

6. An Assured Career Progression Scheme (hereinafter referred to as ACP) was issued by Petitioner No. 2 in the light of the recommendation of the 5th Central Pay Commission by O.M dated 9th August, 1999. As per the ACP Scheme, the benefit of two financial upgradations is to be given to the employees who had not got any promotion in the same hierarchy throughout their employment. The object of the ACP Scheme is to give benefits of financial upgradation for want of promotional avenues. The first financial upgradation is to be given after 12 years. If no further promotion is again available, then after 12 years an employee is entitled for the 2nd financial upgradation. Ultimately, an employee is to put in at least 24 years of service in order to claim the benefits of two financial upgradation under the ACP Scheme. Under the ACP Scheme, the Petitioner No. 2 by an order dated 17th February, 2001 granted 2nd financial up-gradation to Respondent Nos. 1 & 2 in the pay scale of Rs. 7,450-11,500/- with effect from 9th August, 1999. The up-gradation in the pay scale of Rs. 7,450-11,500/- was given on the premise that there was no definite hierarchy under the ACP Scheme. The office order dated 17th February, 2001 granting second financial upgradation in the pay scale of Rs. 7450-11500/- to the Respondent Nos. 1 & 2 is as under:

12-14/2000-Estt(Spl.)

Government of India

Delhi Milk Scheme

West Patel Nagar,

New Delhi-110096

Dated 17.02.2001

OFFICE ORDER

In accordance with the instructions contained in the Ministry of Personnel, Public Grievances and Pensions (Deptt. of Personnel and Training) OM No. 15034/1/97 Rett.(D) dated 09.08.99 and on the recommendation of the departmental promotion committee (Group "B"), the following Section Managers in the pay scale of Rs. 6500-10,500/- is granted 2nd Financial Upgradation in the pay scale of Rs. 7450-225-11,500/- in the absence of defined hierarchy under the A.C.P. Scheme with effect from 09.08.99 as they have already got one promotion.

1.

Sh.R.C.Bajpai

Section Manager

2.

Sh.Hari Singh

-do-

The above officers are allowed to exercise their option for fixation of pay as per rules within a period of 30 days from the date of issue of the orders. Hindi version will follow.

Sd/-

(R.M. Mishra)

General Manager

7. As by the amendment in the Recruitment Rules by notification dated 27th September, 1991 the post of Shift Manager was made a promotional post, the order dated 17th February, 2001 was challenged by Respondent Nos. 1 & 2 by filing the O.A No. 923/2001 on the ground that there exists a hierarchy which is Dairy Supervisor?Section Manager?Shift Manager, therefore, they are entitled for 2nd financial up-gradation in the pay scale of Rs. 10,000-15,200/- which is the pay scale of Shift Manager and not the financial up-gradation in the pay scale of Rs. 7,450-11,500/-. The Respondent Nos. 1 & 2 claimed 2nd financial up-gradation in the pay scale of Rs. 10,000-15,200/- on the ground that the said pay scale was also given to their other counterparts by order dated 16th February, 2001. The Respondent Nos. 1 & 2 categorically relied on the case of junior employees namely M.S. Tripathi, and Sh.Y.R. Singh (respondent No. 3) who were given the benefits of the 2nd financial up-gradation under the ACP Scheme in the scale of Rs. 10,000-15,200/- from the scale of Rs. 6,500-10,500/-.

8. Respondent No. 1, Sh.R.C. Bajpayee, in the meantime took voluntary retirement with effect from 1st April, 2001 and Sh.Hari Singh, Respondent No. 2, retired on 30th September, 2001 on attaining the age of superannuation.

9. The pleas of Respondent Nos. 1 & 2 in O.A No. 923/2001 were contested by the Petitioners on the ground that Respondent Nos. 1 & 2 did not possess the requisite qualifications for promotion to the post of Shift Manager as they only have the degree of B. Sc. (Agriculture) which is not equivalent to a degree or diploma in Dairying/Dairy Science/Dairy Technology and, therefore, they are not eligible for the post of Shift Manager and consequently they are not entitled to the 2nd financial up-gradation in the scale of Rs. 10,000-15,200/- in view of condition No. 6 of the ACP Scheme which contemplates that in order to get the benefit of the scheme, an employee is required to fulfill the normal promotion norms.

10. The original application, being O.A No. 923/2003, was disposed of by the Central Administrative Tribunal by order dated 23rd April, 2002 with the directions to the Petitioners to examine the claims of Respondent Nos. 1 & 2 for their fitment in the scale of Rs. 10,000-15,200/- admissible to the post of Shift Manager under the second financial upgradation with effect from 9th August,

1999 in pursuance of the promotion to the said post of Shift Manager being granted to Sh.M.S. Tripathi who, like Respondent Nos. 1 & 2, also held only a degree of B. Sc. (Agriculture).

11. Pursuant to the directions given by the Tribunal in O.A No. 923/2001 to examine and consider the claim of the Respondent Nos. 1 & 2 in the background of the promotion granted to Sh.M.S. Tripathi who also had only the degree of B. Sc. (Agriculture), the Petitioner No. 2 by Memorandum No. 15-2/2001-Estt.(Spl.) (DMS) dated 12th June, 2002 rejected the claim of the Respondent Nos. 1 & 2 after consideration and distinguished the case of Sh.M.S. Tripathi on the ground that he was promoted to the post of Shift Manager in consultation with the concerned Ministry and the UPSC. It was contended that the case of Respondent Nos. 1 & 2 is neither identical nor parallel to that of Sh.M.S. Tripathi.

12. The Respondent Nos. 1 & 2 thereafter filed another original application before the Tribunal, being O.A No. 2587/2002, contending that the second financial upgradation under the ACP Scheme had been granted to some other persons similarly situated as Respondent Nos. 1 & 2 who also possessed only the degree in B. Sc. (Agriculture), namely, Sh. G.P. Sharma, Sh.D.V.S. Yadav, Sh.A.P. Singh and Sh.Nooruddin Ashraf. In O.A No. 2587/2002 the Tribunal held that since Respondent Nos. 1 & 2 had the same qualification as other individuals named by them, therefore, there was no logical reason to deprive Respondent Nos. 1 & 2 of the same benefits as was granted to others. The Tribunal, therefore, directed the Petitioners to consider the claim of Respondent Nos. 1 & 2 in the light of its findings. The order of the Tribunal in O.A No. 2587/2002 was, however, not implemented entailing filing of the contempt petition No. 352/2003. The Petitioners also filed a Review Application being R.A No. 26/2004 contending, inter-alia, that the individuals named by Respondent Nos. 1 & 2 in O.A No. 2587/2002 on the basis of whom the similar benefit of second financial upgradation was claimed, in fact, were not drawing the pay scale of Rs. 10000-15200/-. The review application was, therefore, disposed of by the Tribunal to consider the claim of Respondent Nos. 1 & 2 in light of the findings arrived at by the Tribunal and since the Petitioners had not filed any order, therefore, there was no question of review of order passed in O.A No. 2587/2002. The notice issued in the contempt petition filed by Respondent Nos. 1 & 2 was also discharged in CP No. 352/2003.

13. Thereafter, the Petitioners passed the order dated 27th August, 2004 holding, inter-alia, that the ACP Scheme stipulates that the financial upgradation shall be a personal position and that 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. It was further held that since the officials junior to Respondent Nos. 1 & 2 fulfilled the recruitment rules for the hierarchal post of Shift Manager and completed 24 years of regular service, therefore, they were considered and granted pay scale of Rs. 10,000-15,200/-. As the Respondent Nos. 1 & 2 did not fulfill the recruitment rules for hierarchal

post of Shift Manager, therefore, they have been granted the common/standard pay scale that is Rs. 7,450-11,500/- instead of Rs. 10,000-15,200/-. The claim of the Respondent Nos. 1 & 2 was held to be not sustainable. The said order dated 27th August, 2004 was challenged by Respondent Nos. 1 & 2 by filing the original application being O.A No. 30/2005 titled as "Sh.R.C. Bajpayee and Sh.Hari Singh v. Union of India through the Secretary, Ministry of Agriculture & Ors." on the ground that when hierarchal scale is available in the institute of Petitioner No. 2, then Respondent Nos. 1 & 2 should have been given the next higher scale of Rs. 10,000-15,200/- and not the scale of Rs. 7,450-11,500/-. It was further urged that the common/standard scale prescribed under the ACP Scheme would, therefore, not be applicable to the Respondent Nos. 1 & 2. It was asserted that only when there is no existing hierarchy, the common/standard pay scale is adopted and not otherwise. The Respondent Nos. 1 & 2 also claimed discrimination viz a viz Sh.Y.R. Singh, Respondent No. 3, and Sh. M.S. Tripathi who, though having the qualification of only B. Sc. (Agriculture), as did the Respondent Nos. 1 & 2, but still they were given promotion to the post of Shift Manager, which was unfairly denied to respondent Nos. 1 & 2. The Respondent Nos. 1 & 2 contended that the petitioners cannot be allowed to adopt different yardsticks for similarly situated employees. It was also pleaded by Respondent Nos. 1 & 2 that the amendments in the recruitment rules of 1991, which was primarily meant for the direct recruits, could have only prospective effect and the qualification prescribed for promotional post at the time of entry into employment could not be modified so as to create a bar for promotion to the existing employees to the next hierarchical post. The Respondent Nos. 1 & 2 also contended that Dairy Supervisors, including Respondent Nos. 1 & 2 who had got promotion as Section Manager, were eligible for second financial upgradation under the ACP Scheme in the pay scale of Rs. 10,000-15,200/-.

14. The Petitioners contested the pleas and contentions of Respondent Nos. 1 & 2 before the Tribunal contending, inter-alia, that initially their stand was that in absence of a definite hierarchy under the ACP Scheme, the Respondent Nos. 1 & 2 were only eligible to get the second financial upgradation in the pay scale of Rs. 7,450-11,500/-, being the next higher pay scale in the standard/common pay scale as provided in Annexure II of the ACP Scheme. The Petitioners also contended that since the Respondent Nos. 1 & 2 did not fulfill the condition No. 6 of the ACP Scheme, that is the fulfillment of the eligibility condition for promotion, therefore, they are not entitled for grant of financial upgradation to the scale of Rs. 10,000-15,200/-. The plea of the Petitioners was that the essential qualification for the post of Shift Manager is a degree or a diploma in Dairying/Dairy Science/Dairy Technology with three or five years experience respectively, whereas, Respondent Nos. 1 & 2 only possessed a degree of B. Sc. (Agriculture) and, therefore, they were not entitled to get the scale in the next higher grade in the existing hierarchy. The case of Sh.M.S. Tripathi was distinguished on the ground that the promotion for qualification in his case was relaxed and he was promoted in consultation with DOPT and UPSC and that he

was not granted any benefit under the ACP Scheme. Regarding Sh.Y.R. Singh, Respondent No. 3, it was asserted that he possessed the degree of M. Sc. (Agriculture) Animal Husbandry and Dairying, which is equivalent to the qualification prescribed in the revised recruitment rules of 1991. Regarding Sh.A.P. Singh, it was asserted that though he did not have the qualification as per the amended Recruitment Rules, 1991, however, he was placed in the pay scale of Rs. 10,000-15,200/- on account of the order of the Central Administrative Tribunal passed in O.A No. 493/2004 dated 22nd December, 2004 which was not interfered in a writ petition filed before the High Court. The High Court in W.P(C) No. 4437 and 4438/2006 and CM No. 3660/2006 had recorded by order dated 23rd March, 2006 that the order of the Tribunal dated 22nd December, 2004 shall not be treated as a precedent. Consequently, Sh.A.P. Singh was promoted by office order dated 29th April, 2006 and the Respondent Nos. 1 & 2 cannot claim discrimination viz a viz Sh.A.P. Singh.

15. The Tribunal, after hearing the contentions of the parties, by order dated 19th July, 2006 which is impugned in this writ petition held that the amendment to the recruitment rules for promotion can have only prospective effect and would not create a bar for the existing employees as the rules prior to 1991 conferred a vested right on Respondent Nos. 1 & 2 which could not be taken away by retrospective effect, as it would amount to alteration of conditions of service of Respondent Nos. 1 & 2 which would be to their disadvantage and relied on the judgment of the Supreme Court in 1999 (1) L&J 1215. The Tribunal also observed that the post of Section Manager and Shift Manager have to be filled 100% on promotion basis. However, as per notified Recruitment Rules for the post of Shift Manager, educational qualifications prescribed for direct recruits do not apply in case of promotees of the said post but for the post of Shift Manager the educational qualifications prescribed for the direct recruits apply in case of promotees also. In para 11 of the impugned order the Tribunal held as under:

11. From the perusal of the material on record we find that the posts of Section Manager and Shift Manager have to be filled up 100% on promotion basis. However, as per the notified Recruitment Rules for the post of Section Manager, educational qualifications prescribed for direct recruits do not apply in the case of promotees but for the post of Shift Manager the educational qualifications prescribed for direct recruits apply in the case of promotees also. This indeed is a somewhat strange dispensation.

16. The Tribunal also held that the financial upgradation under the ACP Scheme is to be given in the next higher scale in accordance with the existing hierarchy in the cadre as mandated in condition No. 7 of the ACP Scheme and any clarification issued by the Government, including Clarification No. 56, being contrary to the conditions of ACP Scheme, is ultra vires. In para 14 of the impugned judgment the Tribunal held as under:

14. In view of these decisions, we come to the inevitable conclusion that there is

no half way house in the ACP Scheme. If an individual is eligible, he shall be given financial upgradation to the next higher grade in accordance with the existing hierarchy in the cadre. The Scheme does not envisage grant of financial upgradation in the next higher grade in the Standard/Common Pay Scales if the employee is ineligible for any reason, including absence of prescribed qualifications. The fact that the applicants have been granted the second financial upgradation (albeit in the pay scale of Rs. 7450-11500) amounts to implicit admission on the part of the Respondents that the applicants fulfill the eligibility criteria under the ACP Scheme and if that is so, the financial upgradation has to be granted in keeping with the mandatory provision contained in Condition No. 7 of the ACP Scheme, viz. next higher grade in accordance with the existing hierarchy in the cadre.

17. The order of the Tribunal directing the Petitioners to grant the second financial upgradation to Respondent Nos. 1 and 2 in the pay scale of Rs. 10,000-15,200/- is impugned by the Petitioners, inter-alia, on the grounds that the impugned order lead to an anomalous situation and that pursuant to the directions of the Tribunal the Petitioners are in a situation where they would be bestowing the financial benefits upon Respondent Nos. 1 and 2 in contravention of relevant rules, instructions and provisions of the ACP Scheme; the case of Respondent No. 3 and other persons relied on by Respondent Nos. 1 and 2 are distinguishable and there have been no discrimination between Respondent Nos. 1 and 2 and other employees who had been granted second financial upgradation in the pay scale of Rs. 10,000-15,200/-; Respondent Nos. 1 and 2 do not have requisite educational qualification to be eligible for promotion to the post of Shift Manager; in any case even if the second financial upgradation and pay scale of Rs. 10,000-15,200/- has been granted to some other employees wrongly, that could not be a ground to confer the same benefit on Respondent Nos. 1 and 2; granting second financial upgradation in the pay scale of Rs. 7,450-11,500/- does not amount to implicit or otherwise admission on the part of the Petitioners that Respondent Nos. 1 and 2 fulfilled the eligibility criteria under the ACP Scheme for grant of second financial upgradation in the pay scale of Rs. 10,000-15,200/-; amendment to the Recruitment Rules in 1991, whereby the post of the Shift Manager was amended to be filled by promotion from Section Manager, does not confer a vested right in respondent Nos. 1 and 2 and that they are governed by the Recruitment Rules prior to 1991. Since prior to 1991 the post of the Shift Manager was not a promotional post from the post of Section Manager and it became a promotional post only after 1991, therefore, amendment to the Recruitment Rules, 1991 did not amount to alteration of the conditions of the service of Respondent Nos. 1 and 2 to their disadvantage.

18. Learned Counsel for the Petitioners also very emphatically contended that on the basis of the decision in the case of W.P.(C) No. 4437-38/2006, titled as "Union of India and Ors. v. Nooruddin Ashraf and Ors.", Respondent Nos. 1 and 2 are not entitled for the relief claimed, as the High Court had categorically held that the observations made by the Central Administrative Tribunal in its order

dated 22nd December, 2004 granting the second financial upgradation to the employees, though they did not fulfill the eligibility condition, yet since the order of the Tribunal had been implemented in their case, the same shall not be treated as a precedent. It was contended that Respondent Nos. 1 and 2 are also not entitled to claim similar treatment as that of Mr. A.P. Singh who was also not eligible for the second financial upgradation under the ACP Scheme, however, since he had already retired, the High Court had not interfered with the order of the Central Administrative Tribunal. The Learned Counsel for the Petitioners has relied on Life Insurance Corporation of India Vs. R. Dhandapani, ; Col. (Retd.) B.J. Akkara Vs. The Govt. of India and Others, and State of Bihar Vs. Upendra Narayan Singh and Others,

19. The writ petition is contested by Respondent Nos. 1 and 2 contending, inter-alia, that Petitioner No. 2 has been taking inconsistent plea inasmuch as by order dated 17th February, 2001 the financial upgradation to the scale of Rs. 10,000-15200/- was denied on the ground that there was no defined hierarchy and they had, therefore, granted the second financial upgradation in the pay scale of Rs. 7,450-11,500/-, while thereafter, another plea was taken that Respondent Nos. 1 and 2 have not fulfilled the normal promotional norms under the Recruitment Rules which were amended on 27th September, 1991. Discrimination was also contended vis-?-vis Sh.M.S. Tripathi, who, though had only an educational qualification of B. Sc.(Agriculture), however, he was granted the second financial upgradation in the pay scale of Rs. 10,000-15,200/- and similarly discrimination was alleged in relation to Sh. A.P. Singh, who had also been granted the second financial upgradation in the pay scale of Rs. 10,000-15,200/- and who had thereafter retired and after his retirement the High Court had declined to interfere in his case and had allowed him to get the retiral benefits in the pay scale of Rs. 10,000-15,200/-.

20. Learned Counsel for Respondent Nos. 1 and 2 contended that the amendment to the Recruitment Rules could not be detrimental to the case of Respondent Nos. 1 and 2 as when they had joined as Dairy Supervisor the eligibility qualification for the said post was B. Sc.(Agriculture) and hence since they had the requisite qualification they were eligible. The grievance was also made that in case of Respondent Nos. 1 and 2 permission had not been granted by the Petitioners, whereas, in the case of the other employees the permission was granted to treat the degree of B. Sc.(Agriculture) as similar to the degree required as an essential qualification for promotion to the post of Shift Manager. Relying on the case of Sh. Nooruddin Ashraf and Ors.(supra), it was very emphatically contended by Learned Counsel for Respondent Nos. 1 and 2, in the alternative, that the ratio of the said case may not be a precedent, but as in the said case of Sh.A.P. Singh the High Court had declined to interfere with the decision of the Tribunal of granting him second financial upgradation in the scale of Rs. 10,000-15,200/- as he had retired. In the case of the Respondents Nos. 1 & 2 as well, they too have retired and have been drawing their retiral benefits on the basis of having been placed in the pay scale of Rs. 10,000-15,200/-,

therefore this Court too should not interfere with the decision of the Tribunal.

21. After hearing the Learned Counsel for the parties in detail, and on perusing the writ petition, the counter reply filed by Respondent Nos. 1 and 2, the documents produced by the parties and the precedent relied on, it is not disputed that prior to the amendment in the Recruitment Rules on 27th September, 1991 the promotional hierarchy was from the Dairy Supervisor to Section Manager. Under the Recruitment Rules prior to 27th September, 1991 the post of Shift Manager was not in the hierarchy of post from the post of Section Manager as the Shift Manager post had to be filled up 100% by direct recruitment. From the facts, it has also emerged that both Respondent Nos. 1 and 2 joined as dairy supervisor prior to 27th September, 1991, and therefore, they did not have any vested right to be promoted to the post of Shift Manager as the said post was not in the hierarchy of the post for promotion. After amendment in 1991, the post of Shift Manager was also included in the promotional post from Section Manager. Consequently, on amendment to the Recruitment Rules on 27th September, 1991, no vested right of Respondent Nos. 1 and 2 have been taken away retrospectively as inferred by the Tribunal. Amendment in the Recruitment Rules on 27th September, 1991 also did not tantamount to alteration of the service conditions of Respondent Nos. 1 and 2, nor could it be termed that the service conditions were amended to their disadvantage, rather, after the amendment in 1991, the service conditions became favourable to those employees who had joined the post of dairy supervisor and who were promoted to the post of Section Manager, as another promotional post of Shift Manager became available to them subject to fulfilling the essential eligibility conditions. In the circumstances, the findings and inferences of the Tribunal that the amendment in the Recruitment Rules amounted to a retrospective amendment and it altered the conditions of service applicable to Respondent Nos. 1 and 2 to their disadvantage, cannot be sustained.

22. On amendment of the Recruitment Rules, 1991 whereby the post of Shift Manager was made a promotional post from Section Manager, subject to the educational qualification of degree or diploma in Dairying/Dairy Science/Dairy Technology with three or five years experience in running a dairy plan in a supervisory capacity, cannot be termed as "somewhat strange dispensation" as held by the Tribunal. Respondent Nos. 1 and 2, in any case, have not challenged the Recruitment Rules, nor have the Recruitment Rules been challenged by any of the other employees, or the Section Managers who wanted to be promoted to the post of Shift Manager under the 1991 Recruitment Rules.

23. The next plea of the Respondents that the other Section Managers, namely Sh. M.S. Tripathi, Sh.Y.R. Singh and Sh.N. Ashraf had been promoted to the post of Shift Manager though they did not have the essential educational qualification and consequently, Respondent Nos. 1 and 2 are also entitled and eligible for promotion to the said post of Section Manager and thus, entitled for second

financial upgradation under the ACP Scheme in the pay scale of 10,000-15,200 is also not sustainable. The Petitioners had categorically contended that Sh. M.S. Tripathi, though had a degree of B. Sc.(Agriculture), was promoted in consultation of the DOP&T and UPSC which cannot be equated with the case of Respondent Nos. 1 and 2 as there have not been any such facts which would entitle relaxation by the UPSC for promotion. The Recruitment Rules, 1991 for the post of Shift Manager under Note-I categorically stipulates that the qualification are relaxable at the discretion of the UPSC in the cases where candidates otherwise would not qualify. Consequently, on the basis of the promotion granted to Sh. M.S. Tripathi, Respondent Nos. 1 and 2 cannot claim equality.

24. In the case of Sh.Y.R. Singh and Sh.N. Ashraf, it has been revealed that they possessed M. Sc. (Agriculture) in Animal Husbandry and Dairy which was considered equivalent to a degree or diploma in Dairy/Dairy Science/Dairying Technology. Admittedly, Respondent Nos. 1 and 2 do not have post graduate qualification of M. Sc. and in any case they have graduate degrees in Agriculture and not in Animal Husbandry and Dairy. Respondent Nos. 1 and 2, therefore, cannot claim equality vis-a-vis Sh.Y.R. Singh and Sh.N. Ashraf.

25. Learned Counsel for Respondent Nos. 1 and 2 have also relied on the copy of the counter affidavit filed on behalf of Petitioner No. 2 in W.P.(C) No. 3795/2001, titled as "Rajkumar v. Union of India and Ors.", where it was asserted on behalf of Petitioner No. 2 that as per the advice of the Staff Selection Committee no order was issued by the Board of Assessment for Educational Qualifications equating the M. Sc.(Agriculture) in Animal Husbandry and Dairying as equivalent to a degree in Dairying or Microbiology or M. Sc. in Bio-Chemistry. Para 8 of the counter affidavit of Sh.B.B. Garg, Deputy General Manager of administration of Petitioner No. 2 in W.P.(C) No. 3795/2001, titled as "Rajkumar v. Union of India and Ors.", is as under:

8. That as per the advice of Staff Selection Committee, a reference was made to the Department of Animal Husbandry and Dairying for necessary clarification vide letter/note dated 27/10/1997. The Deptt. of Animal Husbandry and Dairying in turn sought clarification from the Ministry of Human Resource Development (Department of Education) and gave the following clarification vide letter dated 17/4/1998.

The Board of Assessment for Educational Qualifications recognize qualification for posts and service under the Central Government. For that purpose, the award of Recognized Universities stand automatically recognized. It has however, not issued any orders equating

M. Sc.(Agriculture) in Animal Husbandry and Dairying as Equivalent to a degree in Dairying or Microbiology or M. Sc. in Bio Chemistry as per records.

The Department of Animal Husbandry and Dairying further advised that Delhi Milk Scheme should strictly follow the Recruitment rules for appointment of Dairy

Supervisor.

That in view of the advice of the Deptt. of A.H.& Dairying, the Petitioner was not found fit by the Selection Committee and the Competent Authority.

26. Be that as it may, the stand of Petitioner No. 2 would only make Sh.Y.R. Singh, Respondent No. 3, and Sh.N. Ashraf possessing the degree of M. Sc. (Agriculture) in Animal Husbandry and Dairying as not being eligible for the post of Shift Manager. But on this account, Respondent Nos. 1 and 2 will not be entitled to claim that they should also be deemed to be eligible for promotion to the post of Shift Manager so as to be entitled for second financial upgradation in the pay scale of Rs. 10,000-15200/-. The Supreme Court in *State of Bihar v. Upendra Narain Singh and Ors.* (supra) in para 67 at page 102 had held that it is settled law that guarantee of equality before law enshrined in Article 14 is a positive concept and it cannot be enforced by a citizen or Court in a negative manner. It was further held that if an illegality, or irregularity has been committed in favor of any individual or a group of individuals or a wrong order has been passed by a judicial forum, the other cannot invoke the jurisdiction of the higher or superior Court for repeating or multiplying the same illegality or irregularity or for passing a wrong order. The Supreme Court in para 67 of the said judgment had held as under:

67. By now it is settled that the guarantee of equality before law enshrined in Article 14 is a positive concept and it cannot be enforced by a citizen or court in a negative manner. If an illegality or irregularity has been committed in favour of any individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing wrong order *Chandigarh Administration and another Vs. Jagjit Singh and another*, , Secretary, Jaipur Development Authority, Jaipur *Vs. Daulat Mal Jain and Others*, , Union of India (Railway Board) and Ors. *v. Subhaiah and Ors.*, AIR 1996 SC 2890 , *Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others*, , *State of Haryana and Others Vs. Ram Kumar Mann*, , *M/s. Faridabad Ct. Scan center Vs. D.G. Health Services and others*, , *M/s. Style (Dress Land) Vs. Union Territory Chandigarh and Another*, , *State of Bihar and Others Vs. Kameshwar Prasad Singh and Another*, , *Union of India (UOI) and Another Vs. International Trading Co. and Another*, and *Directorate of Film Festivals and Others Vs. Gaurav Ashwin Jain and Others*, .

27. In *Col. B.J. Akkara* (supra), it was held that a particular judgment of the High Court may not be challenged by the State where financial repercussions are negligible or where an appeal is barred by limitation. It may also not be challenged due to negligence or oversight of the dealing officers or on account of wrong legal advice, or on account of non-comprehension of the seriousness or the magnitude of the issues involved. This, however, will not prevent the State, nor the State would be barred from challenging the specific position or resisting the subsequent writ petitions even though the judgment in a case involving

similar issue was allowed to reach finality in the case of others. It was also observed by the Supreme Court that the position would be different if the plea is that the State has adopted a "pick and choose" policy only to exclude some of the Petitioners on account of mala fides or ulterior motives. Be that as it may, neither the principles of res judicata, nor the principles of estoppel would be attracted. It was also held that the Administrative Law Principle of legitimate expectation or fairness in action also cannot be invoked in such circumstances.

28. In the case of Nooruddin Ashraf and Ors., the Central Administrative Tribunal had held by order dated 22nd December, 2004 in OA No. 493/2004 that there was no order of the Petitioners in case of applicant in the said OA by which the Dairy Supervisor had been re-designated as Assistant Manager and placed in the scale of Rs. 5,000-8,000/-. The Tribunal also held that there was no amendment to the Recruitment Rules to reorganize structure in the cadre of Dairy Supervisor and on 9th August, 1999 there was no scale of pay of Rs. 5500-9000/- in the existing hierarchy structure for promotional post. The Dairy Supervisors had been granted first financial upgradation in the scale of Rs. 6500-10500/- and since the next promotional post of Shift Manager was in the pay scale of Rs. 10,000-15,200/-, therefore, the second financial upgradation under the ACP Scheme could be only in the scale of Rs. 10,000-15,200/-. The Tribunal had also observed that the Petitioners had itself recommended for giving this pay scale i.e. second financial upgradation to the applicant in that case. In the writ petition filed against the said order, being W.P.(C) No. 4437-38/2006, while disposing of the writ petition on 23rd March, 2006 it was noticed that out of the 10 employees the order of the Tribunal had already been implemented in the case of 9. The High Court had also noticed that since no order was filed by the Petitioners by which the Dairy Supervisors had been re-designated as Assistant Manager at the time when the matter was heard before the Central Administrative Tribunal, therefore, the High Court Bench had also declined to interfere with the order of the Tribunal. Regarding Mr. A.P. Singh, it was held that since he did not have a degree in Dairying/Dairy Science/Dairy Technology, therefore, he ought not to have been granted the benefit of the impugned judgment and that the Petitioners may have had some merits in respect of these pleas, however, as Mr. A.P. Singh had retired, therefore, without expressing any opinion on the merit of the plea, the Court had declined to interfere with the order of the Central Administrative Tribunal. It was specifically observed that the impugned judgment of the Central Administrative Tribunal dated 22nd December, 2004 shall not be treated as a precedent.

29. The Learned Counsel for Respondent Nos. 1 and 2 has contended that since these Respondents have also retired and they have been granted the 2nd financial upgradation in the pay scale of Rs. 10,000-15,200/- then on parity with the case of Mr. A.P. Singh, this Court too should not interfere with the order of the Tribunal granting the pay scale of Rs. 10,000-15,200/- as the second financial upgradation.

30. To counter the plea of Learned Counsel for the Respondent Nos. 1 and 2, the Learned Counsel for the Petitioners, Mr. Sinha, has relied on R. Dhandapani (supra) where the Supreme Court had held that the relief cannot be granted to the litigants on the basis of misplaced sympathy, generosity and private benevolence. The Court observed that there has been an increasing evidence of well meant but wholly unsustainable, tendency towards a denudation of the legitimacy of judicial reasoning and process. The relief granted should be logical and tenable within the framework of law and should not incur and justify the criticism that the jurisdiction of the Court tends to degenerate into misplaced sympathy, generosity and private benevolence. In para 8 at page 618 in R. Dhandapani (supra), the Supreme Court has held as under:

8. In recent times, there is an increasing evidence of this, perhaps well-meant but wholly unsustainable, tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability.

31. In the case of Nooruddin Ashraf and Ors.(supra), the relief was granted to Mr. A.P. Singh as a benevolence, since he had retired and not on the basis of logical and tenable appreciation of the pleas and contentions of the parties. This is not the case of Respondent Nos. 1 and 2 that the Petitioners have adopted a policy of pick and choose only to exclude Respondent Nos. 1 and 2 by challenging the order of the Tribunal or not implementing the decision of the Tribunal. The Learned Counsel for Respondent Nos. 1 and 2 have also not shown any plea of mala fides or ulterior motives in declining to grant the pay scale of Rs. 10,000-15,200/- as a second financial upgradation to Respondent Nos. 1 and 2. The pay scale of Rs. 10,000-15,200/- is denied to respondent Nos. 1 and 2 on the ground that they do not have the essential educational qualification of a degree or diploma in Dairying/Dairy Science/Dairy Technology. On the basis of the ratio of the judgments relied on by the Petitioners, the principles of res judicata, estoppel, legitimate expectation or fairness in action would not be attracted so as to grant the relief to the Respondents by giving the second financial upgradation in the pay scale of Rs. 10,000-15,200/-. Though another Bench of this Court in the case of Mr. A.P. Singh had declined to interfere with the order of the Tribunal granting second financial upgradation in the pay scale of Rs. 10,000-15,200/-, since he had retired from the service.

32. The reasoning of the Tribunal that since Respondent Nos. 1 and 2 have been

granted second financial upgradation in the pay scale of Rs. 7,450-11,500/- it amounts to implicit admission on the part of the Petitioners that Respondent Nos. 1 and 2 have fulfilled the eligibility criteria under the ACP Scheme and would be eligible for promotion to the post of Shift Manager also cannot be sustained in the facts and circumstances. The Petitioners have granted the financial upgradation in the next higher grade as specified in the standard/common pay scale on the premise that there was no defined hierarchy under the ACP Scheme which has not been challenged by the Petitioners, nor have been withdrawn. The Petitioners have also not contended that they are entitled to withdraw the second financial upgradation granted to Respondent Nos. 1 and 2 in the standard/common pay scale of Rs. 7,450-11,500/- in the facts and circumstance of the case, however, that cannot be construed to mean that Respondent Nos. 1 and 2 were eligible for the post of Shift Manager under the amended Recruitment Rules, 1991 and were, therefore, consequently entitled to the pay scale of Shift Manager as the second financial upgradation under the ACP Scheme to the pay scale of Rs. 10,000- 15,200/.

33. For the foregoing reasons, the order of the Tribunal dated 19th July, 2006 passed in OA No. 30/2005, titled as "R.C. Bajpayee and Ors. v. Union of India and Ors.", suffers from material illegality and irregularity and, therefore, cannot be sustained. Since Respondent Nos. 1 and 2 do not have the essential educational qualification of a degree or diploma in Dairying/Dairy Science/Dairy Technology and instead they have the qualification of B. Sc.(Agriculture) only, the degree possessed by them cannot be termed to be a degree or diploma in Dairying/Dairy Science/Dairy Technology, and thus, under the relevant Recruitment Rules, Respondent Nos. 1 and 2 were not eligible for promotion to the post of Shift Manager, and consequently, they are also not entitled for the second financial upgradation in the pay scale of Rs. 10,000 15,200/-. The writ petition is, therefore, allowed and the order of the Tribunal impugned by the Petitioners is set aside.

34. Against the order dated 19th July, 2006 which is impugned by the Petitioners, the writ petition was filed and came up for hearing before this Court for the first time on 29th January, 2007 by which time, the period granted by the Tribunal to implement the order had expired, and the order of the Tribunal was not complied with. The application for stay was, therefore, dismissed. Thereafter, a review application was filed against the dismissal of the stay application which was also dismissed by order dated 3rd August, 2007. The writ petition, though filed in 2007, remained pending also on account of the adjournment taken on behalf of the Learned Counsel for the Petitioners and the absence of the Learned Counsel for the Petitioners on 26th August, 2009, 24th November, 2009, 6th July, 2011, 8th July, 2011, 12th July, 2011 and 9th August, 2011. In the circumstances, though it has been held that Respondent Nos. 1 and 2 are only entitled for second financial upgradation in the pay scale of Rs. 7,450-11,500/- and not to the pay scale of Rs. 10,000-15,200, whatsoever benefits have already been paid to Respondent Nos. 1 and 2 on account of placing them for the second

financial up-gradation in the pay scale of Rs. 10,000-15,200/- shall not be refundable by them, nor shall the Petitioners be entitled to recover the same from Respondent Nos. 1 and 2 up to 30th September, 2011. That is, difference on account of giving the pay scale of Rs. 10,000-15,200/- in place of Rs. 7,450-11,500/- already paid to the Respondent Nos. 1 & 2 will not be recovered in the present facts and circumstances. However, from 1st October, 2011 Respondent Nos. 1 and 2 shall be entitled for their retiral benefits on the basis of their being placed in the pay scale of Rs. 7,450-11,500/under the second financial upgradation specified in the standard/common pay scale under the ACP Scheme which had not been challenged by the Petitioners.

35. With these directions, the writ petition is allowed and the order dated 19th July, 2006 passed by the Central Administrative Tribunal Principal Bench in OA No. 30 of 2005 titled as Sh. R.C. Bajpayee and Shri Hari Singh v. The Secretary, Ministry of Agriculture and Ors. is set aside and the original application of the Respondent Nos. 1 & 2 is dismissed. Considering the facts and circumstances, the parties are, however, left to bear their own costs.