
(2005) 06 KL CK 0008
In the High Court Of Kerala
Case No : Writ Petition No. 18069 of 2004

Union of India (UOI)

APPELLANT

Vs

Lilly Vasudevan

RESPONDENT

Date of Decision : 15-06-2005

Acts Referred:

Citation : (2005) 3 ILR (Ker) 338 : (2005) 3 KLT 1068

Hon'ble Judges : M. Ramachandran, J;K.P. Balachandran, J

Bench : Division Bench

Advocate : John Varghese, S.C.G.S.C, for the Appellant; C.S. Gopalakrishnan Nair and Chandini G. Nair, for the Respondent

Final Decision : Dismissed

Judgement

M. Ramachandran, J.—An order passed by the Central Administrative Tribunal in O.A.No. 906 of 2003 dated 12-2-2004 is under challenge. On the basis of Annexure A-1 envisaged for grant of benefits under the scheme for Assured Career Progression, the Central Government had formulated principles which would have been normally applicable, for conferment of benefits of grades to persons, taking notice of their regular service in cases, where promotions had not been received by them. In a normal case, if no promotion had been received by the person concerned, the higher grade has to be given if a screening committee cleared the case if twelve years" service was there. After putting in twenty four years service, normally there arose entitlement for the second higher grade.

2. When claims had been raised by the applicants, it was refused to be taken notice of on the stand that Women Searchers in the Commissionerate of Central Excise and Customs, could not have claimed promotion to the next category of Inspectors of Central Excise, for the reason that there was a bar in conferment of promotion to personnel who had attained the age of 45. The Tribunal, by order dated 12-2-2004 had directed grant of one higher grade to the first applicant, and had negated the claims of the second applicant altogether. The Writ

Petition is filed in the above context, the Government contending that the direction was unwarranted.

3. Of course Sri Gopalakrishnan Nair counsel for the first respondent submits that in the present case this bar could not have been there since such restrictions were there only in respect of the ministerial section of employees. However this issue need not be decided in these proceedings. The only question is as to whether in a circumstance of non entitlement for promotion as in the present case should it have had the effect of operating as ineligibility for the A.C.P. benefits.

4. The learned Standing Counsel invited our attention to the scheme as also conditions, which were to be observed before granting of such grades and especially para. 6. As extracted in the Writ Petition it reads as follows:

"Fulfillment of normal promotion norms (bench-mark, departmental examination, seniority -cum-fitness in the case of Group "D" employees, etc.) for grant of financial upgradations, performance of such duties as are entrusted to the employees together with retention of old designations, financial upgradations as personal to the incumbent for the stated purposes and restriction of the A.C.P. Scheme for financial and certain other benefits (House Building Advance, allotment of Government Accommodation, advances, etc.) only without conferring any privileges related to higher status (eg. invitation to ceremonial functions, deputation to higher posts, etc.) shall be ensured for grant of benefits under the A.C.P. Scheme."

5. The Tribunal directed the department to confer the benefit though there was no detailed discussion made in the order. The Standing Counsel strenuously argued for a position that the benefit was impermissible to be granted, but on going through AnnexureA-1, we could not find anything there operating as a restriction for conferment of A.C.P. Scheme in such a given case.

6. A.C.P. Scheme had been introduced on the recommendation of the V Pay Commission so as to minimize stagnation and the highlight was that there was no necessity for even posts to be available for a person to be conferred with the benefits of grade. What was being extended was only a personal benefit recognising service which an officer had to his credit. If we understand the situation as above, a contingency that there was no avenues for promotion could not be reasonably considered as a situation which interferes with the claim for the higher grade.

7. AnnexureA-1 is the office memorandum dated 9-8-1999, introducing the A.C.P. Scheme. To extract therefrom,

"...The A.C.P. Scheme needs to be viewed as a "Safety Net" to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues...."

8. Again, paragraph 5 is to the following effect:

"5. Vacancy based regular promotions, as distinct from financial upgradation under the A.C.P. Scheme, shall continue to be granted after due screening by a regular Departmental Promotion Committee as per relevant rules/guidelines."

It is distinct from promotion altogether. Order refers to the effort to mitigate hardship in case of acute stagnation either in a cadre or in an isolated post.

9. Even in instances where the service conditions do not at all envisage a promotion, grades are to be conferred. Annexure I to the order, by paragraph 1, prescribes as following:

"1. The A.C.P. Scheme envisages merely placement in the higher pay-scale/grant of financial benefits (through financial upgradation) 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."

It is therefore not equated or regarded as equal to a functional regular promotion. It is repeatedly stated as a personal benefit.

10. In the light of the above, therefore we need not unduly strain ourselves, by the presence of a caution incorporated in the scheme. It is specifically made clear, we notice, that the grant presupposes a condition that while accepting the grade, the employee is deemed to have given his unqualified acceptance for regular promotion. The consequences an employee may have to suffer if he opts to forego the promotion, offered in future, are also described. But we feel, it can at best be treated as one of the contingencies anticipated and is not to be mixed up with the principal objective, when we adopt normal and acceptable interpretative process. A provision in the scheme is to be understood, predominantly as arising from its contextual placement.

11. We do not find any justifiable reason to interfere with the orders of the Tribunal as only admissible benefits are directed to be given and that too confined to the first applicant. Writ Petition is dismissed.