

(2010) 10 DEL CK 0122
In the Delhi High Court
Case No : Writ Petition (C) 8485 of 2007

Union of India (UOI)

APPELLANT

Vs

Ram Singh

RESPONDENT

Date of Decision : 20-10-2010

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 30

Citation : (2010) 10 DEL CK 0122

Hon'ble Judges : Siddharth Mridul, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : B.K. Berera, for the Appellant; Shrigopal Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Though the decision impugned before us is a little hazy, but the conclusion arrived at is legally correct.

2. The ACP scheme applicable requires a financial up gradation to either the scale of pay in the promotional post immediately above and if there is no promotional post, in the pay-scale immediately above.

3. It is not in dispute that the Respondent was employed as a Library Clerk and was deputed to serve in the Department of Agricultural and Cooperation, which is under the direct supervision and control of the Ministry of Agriculture, in fact, is a Department of the said Ministry. The pay-scale in which Respondent was placed was S-5 i.e. Rs. 3,050-4,590. It is also not in dispute that the next above pay-scale i.e. S-6 was Rs. 3,200-4,900. It is also not in dispute that no post of Library and Information Assistant existed in the Department of Agriculture and Cooperation, but said post existed in other Ministries as also other departments of the Ministry of Agriculture. It is also not in dispute that the pay-scale of Library and Information Assistant was in the pay-scale of Rs. 5000-8000. It is also not in dispute that the Respondent became entitled to financial up gradation

and treating the post of a Library Clerk as an isolation post, the department upgraded his pay in the scale Rs. 3,200-4900.

4. The Respondent claimed that the post of Library and Information Assistant was the next above post and thus he was entitled to be upgraded in the scale Rs. 5000-8000.

5. Vide impugned decision the Tribunal has held that the post of Library Clerk was not an isolation post and thus it has directed the Petitioner to grant up gradation to the Respondent in the pay-scale Rs. 5000-8000.

6. Since the Tribunal has not noted the relevant clarificatory office memorandums issued, which in our opinion do not warrant any exercise to be carried out to determine whether the post in question held by the Respondent was an isolation post or not, we do not reflect upon the reasoning of the Tribunal.

7. Vide OM No. 35034/1/97-Estt.(D) dated 10.2.2000, the Department of Personnel and Training issued clarification on 58 points pertaining to the implementation of the Assured Career Progression Scheme for the Central Government Civilian Employees. Point of Doubt No. 32 and its clarification read as under:

Sl. No.

Point of Doubt

Clarification

32.

Where the cadres/hierarchy is limited to two grades only, what should be the pay scale for grant of second upgradation under ACPs?

Such a cadre/hierarchy shall not fall in the isolated category as defined at S.No.31 above. Hence, the standard/common pay scales mentioned in Annexure-II of the Office Memorandum, dated 9-8-1999 shall not be applicable in such cases. Action in such cases may, therefore, be taken as per following clarifications:-

(i) If such cadre/hierarchy exists in the Ministry/Department concerned, the second upgradation may be allowed in keeping with the pay scale of an analogous grade of a cadre/post in the same Ministry/Department. However, if no such grade exists in the Ministry/Department concerned, comparison may be made with an analogous grade available in other Ministries/Departments.

(ii) In the case of Attached/ Subordinate Offices, the second upgradation under ACPs may be given in keeping with the pay scale of an analogous grade of a cadre/post of the concerned office. However, if no such cadre/post exists in the concerned office, comparison may be made with an analogous grade available in other Attached/ Subordinate offices of the Ministry/ Department concerned.

8. Relevant would it be to note that the clarification issued makes it clear that if a higher post does not exist in a Ministry/Department concerned, comparison may be made with an analogous grade available in other Ministries/Departments. The reason is obvious. There cannot be discrimination between similarly situated Central Government Employees doing the same job but posted in different Ministries/Departments of the Government.

9. Learned Counsel for the Petitioner does not dispute that the post of Library and Information Assistant exists under the Government of India and many persons are working in the different Ministries and Departments of the Government of India as Library and Information Assistant. Counsel also does not dispute that in many departments under the Ministry of Agriculture the said post exists.

10. Thus, in terms of the OM afore-noted the inevitable conclusion is that the Respondent would be entitled to pay in the scale ` 5000-8000.

11. But, we need to write a little more, for the reason, learned Counsel for the Petitioner relies upon clarification at Serial No. 53 of the Point of Doubt raised and the clarification issued. The same reads as under:

Sl. No.

Point of Doubt

Clarification

53.

If for promotion on regular basis, an employee has to possess a higher/additional qualification, will it be necessary to insist on possession of these qualifications even while considering grant of financial up gradation under the AC Ps?

In terms of Condition No. 6 of Annexure-I to Do PandT, O.M., dated 9-8-1999, only those employees who fulfill all promotional norms are eligible to be considered for benefit under AC Ps. Therefore, various stipulations and conditions specified in the Recruitment Rules for promotion to the next higher grade, including the higher/additional qualification, if prescribed, would need to be met even for consideration under AC Ps.

12. Drawing our attention to the Model Recruitment Rules for the post of Library and Information Assistant, learned Counsel points out that vide Serial No. 8 of the Recruitment Rule, it is mandatory for the candidate to possess a Degree in Library Science from a recognized University or equivalent. It is urged that admittedly the Respondent does not possess said degree. Thus, we need to note the applicable Recruitment Rule. It reads as under:

MODEL RECRUITMENT RULES FOR THE POST OF LIBRARY AND INFORMATION ASSTT. IN THE SCALE OF Rs.1400-40- 1600-50-2300-EB-60-2600 IN THE MINISTRIES/DEPARTMENTS/U.Ts. 1.Name of Post LIBRARY & INFORMATION

ASSISTANT 2.No. of posts * (Year of framing) * subject to variation dependent on workload 3.Classification General Central Service (Group C) Non-Gazetted, Non-Ministerial. 4.Scale of Pay Rs.1400-40-1600-50-2300-EB-60-2600 5.Whether selection post or non- Non Selection selection 6.Whether benefit of added years Not applicable. of service admissible under rule 30 of the CCS (Pension) Rules 1972 7.Age limit for direct recruits Not applicable - in case promotion is the only method of recruitment. If direct recruitment is a method of recruitment the following may be inserted. "Not exceeding 28 years". Relaxable upto 40 years (upto 45 years in respect of SC/ST candidates) in case of Govt. Servants in accordance with the instructions or orders issued by the Central Govt.

Note 1 - The crucial date for determining the age limit shall be as advertised by Staff Selection Commission (In case the direct recruitment is not done through SSC the following note may be inserted).

Note 2 - The crucial date for determining the age limit shall be the closing date for receipt of applications from candidates in India (and not the closing date prescribed for those in Assam, Meghalaya, Arunachal Pradesh, Mijoram, Manipur, Nagaland, Tripura, Sikkim, Ladakh Division of J&K State, Lahaul & Spiti districts and Pangi Sub Division of Chamba district of Himachal Pradesh, Andaman & Nicobar Islands of Lakshadweep). 8. Educational & other Not Applicable - In case direct qualifications required for direct recruitment is not a method of recruits recruitment. In case direct recruitment is method of recruitment, the following provision may be kept:- Essential (1) Degree of a recognized university or equivalent (2) A Degree in Library Science from a recognized university or equivalent;

Note :- Qualifications are relaxable at the discretion of the SSC/competent authority in case of candidates otherwise well qualified. 9. Whether age & educational Not Applicable. qualifications prescribed for direct recruits will apply in the case of promotes.

10. Period of probation, if any 2 years for direct recruits ; Nil for promotes.

11. Method of recruitment Any one of the following methods of whether by direct recruitment or recruitment:- by promotion or by deputation and percentage of the vacancies (1) Promotion, failing which by to be filled by various methods. transfer on deputation;

(2) _____ percentage by promotion, failing which by transfer on deputation, and _____ percentage by direct recruitment; (3) Direct recruitment. (In case direct recruitment is the only method of recruitment, the following note may be inserted). Note:- Vacancies caused by the incumbent being away on transfer on deputation or long leave or study leave or under other circumstances for a duration of one year or more may be filled on transfer on deputation from the officials of the Central Govt. holding analogous posts on regular basis and possessing the qualifications prescribed for direct

recruits under column 8.

Note :- the percentage for promotion or direct recruitment may be fixed taking into account the number of sanctioned posts in the feeder grade. For example if there are 5 posts in the feeder grade and 10 posts in the higher grade, only 50% quota may be prescribed for promotion, and 50% may be earmarked for direct recruitment.

13. Suffice would it be to state that as per the Recruitment Rule, method of recruitment to the post of Library and Information Assistant stipulates three modes; the ones usually found: (i) Promotion, (ii) Deputation and (iii) Direct Recruitment. Vide Serial No. 8 of the Recruitment Rule applicable, essential educational qualification pertains only to a direct recruit. It is thus apparent that if the post has to be filled by promotion, there is no minimum educational qualification prescribed.

14. Point No. 53 of the Point of Doubts posed and the clarification thereto makes it clear that employees who fulfill all promotional norms are eligible to be considered to benefit under ACP. Thus, the argument of learned Counsel for the Petitioner that the Respondent did not fulfill the requisite educational qualification as prescribed by column at Serial No. 8 of the Recruitment Rules is completely misplaced inasmuch as the said column relates to direct recruitment.

15. As per OM No. 35034/1/97-Estt.(D) dated 9.8.1999, preceding the clarifications issued as per OM dated 10.2.2000, are stipulated conditions for grant of benefits under the ACP Scheme and vide Clause 6 thereof it is provided as under:

6. Fulfillment of normal promotion norms (benchmark, departmental examination, seniority-cum-fitness in the case of Group "D" employees, etc.) for grant of financial up gradations, performance of such duties as are entrusted to the employees together with retention of old designations, financial up gradations as personal to the incumbent for the stated purposes and restriction of the ACP 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 (e.g., invitation to ceremonial functions, deputation to higher posts, etc.) shall be ensured for grant of benefits under the ACP Scheme.

16. There is thus no scope to urge any argument with reference to the Respondents eligibility for ACP up gradation to be reckoned with reference to the essential educational qualifications prescribed for the post of Library and Information Assistant with reference to a direct recruitment.

17. The writ petition is dismissed.

18. No costs.