

(2007) 09 DEL CK 0127

In the Delhi High Court

Case No : Writ Petition (C) No. 8835 of 2003

Union of India (UOI)

APPELLANT

Vs

Shri R.K. Puri and Another

RESPONDENT

Date of Decision : 05-09-2007

Acts Referred:

Citation : (2007) 09 DEL CK 0127

Hon'ble Judges : Manmohan Sarin, J;Aruna Suresh, J

Bench : Division Bench

Advocate : B.S. Jain, for the Appellant; V.S.R. Krishna, for the Respondent

Final Decision : Dismissed

Judgement

Aruna Suresh, J.—Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as "CAT") while deciding OA No.56/2003 filed by the present respondents directed the petitioner-UOI vide its order dated 29th August, 2003 to give second financial upgradation to them i.e. respondents herein on completion of 24 years of service as per the ACP scheme within three months of the receipt of the order. In the present writ petition the said order has been impugned by the petitioner-UOI.

2. Respondent No.1 Shri R.K. Puri was appointed as Stenographer Grade III on 10th March, 1965 and respondent No.2 Shri G.C.Bhatt was appointed as Stenographer Grade III on 10th April, 1964 in the SSB. Subsequently, both the respondents faced the due selection process and they were selected for appointment as Sub-Inspector Stenographer under the provision of CRPF Act and Rules from the civilian cadre to the combative cadre of the SSB. On appointment as Sub-Inspector Stenographer respondent No.1 tendered technical resignation which was accepted by the competent authority. The petitioner also gave them benefit of Article 418 (b) of Central Civil Services (Pension) Rules, 1972 i.e. benefit of their past service for computing pension. Both the respondents were also subjected to medical examination before they were appointed as Sub-

Inspector (Steno) in the combative cadre. In their entire career of 30 years they were given only one promotion to the Grade of Inspector (Steno), Therefore they claimed that they were entitled to be upgraded under the Assured Career Progression Scheme (hereinafter referred to as "ACP scheme") for second financial upgradation introduced by the petitioner vide O.M. dated 9th August, 1999. They made representations which were rejected. Hence OA No.56/2003 was filed before the CAT wherein the respondents were granted second financial upgradation under the ACP scheme as they had completed 24 years of service.

3. The impugned order of the CAT is challenged by the UOI with the following submissions:

(a) ACP scheme is available only for the benefit of combative post only, whereas the respondents were appointed as Stenographer as a direct recruit and thereafter they were promoted as Sub-Inspector (Steno) and further promoted as Inspector in the combative strength.

(b) Respondents have been given two promotions in their career hence they are not entitled to the benefit of ACP scheme which is intended for those who are stagnating for 12 years and for another set of 12 years i.e. 24 years without any financial upgradation or promotion.

(c) Since the respondents had two promotions they are not covered under the ACP scheme and Therefore are not entitled for any financial upgradation as claimed.

4. Learned Counsel for the respondents on the other hand submitted that the appointment of the respondents as Sub Inspector (Steno) was a direct recruitment as they were selected for the said posts and that they received only one promotion during their career of more than 30 years when they were promoted to the rank of Inspector (Steno). He further pointed out that the respondents had joined Stenographer Grade III by way of direct recruitment and could only be promoted in the senior hierarchy as Grade II Stenographer and not as Sub-Inspector (Steno) combative cadre. Learned Counsel for the respondents further submitted that petitioner itself corrected the mistake in the appointment letter of the respondent No.1 issued in the year 1971 and in place of "Promotion" inserted the word "Appointed". Therefore, the respondents have been rightly granted financial upgradation under the ACP scheme by the CAT.

5. Before we look into the submissions of the parties let us first go through the ACP scheme introduced by the Govt. of India in accordance with the 5th Pay Commission Report vide O.M. No.35034/1/97-Estt. (D) dated 9th August, 1999. Para 5.1 of the conditions for grant of benefits under the ACP scheme annexed to the OM dated 9th August, 1999 reads:

5.1 Two financial upgradations under the ACP Scheme in the entire Government service career of an employee shall be counted against regular promotions (including in-situ promotion) and fast-track promotion availed through limited

departmental competitive examination availed from the grade in which an employee was appointed as a direct recruit. This shall mean that two financial upgradations under the ACP Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee. 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. In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him.

6. The eligibility period for grant of benefit under the ACP scheme has to be counted from the Grade in which an employee was appointed as a direct recruit. The entire controversy in the present case revolves around if the respondents were direct recruits to the post of Sub-Inspector (Steno) in the combative cadre or they were promoted from Stenographer Grade III where they were initially appointed in the SSB of the Government.

7. Sub-Inspector (Steno) which is in the combative cadre is not a feeder Grade / post from Stenographer Grade III. Stenographer Grade III could be filled only by way of direct recruitment. Stenographer Grade III is eligible for promotion to the post of Personal Assistant, Private Secretary and Assistant Director (Administration) whereas Sub-Inspector (Steno) could be promoted only as Inspector (Steno). Therefore, in no circumstances it can be said that the respondents were promoted from Grade III Stenographer to Sub-Inspector (Steno) when they were selected for said appointment. After their appointment as Sub-Inspector (Steno) combative cadre they ceased to have any right of promotion in the civilian cadre of SSB and Therefore could not be promoted to the post of Personal Assistant, Private Secretary and so on. The only promotion which the respondents got in the combative cadre was from Sub-Inspector (Steno) to Inspector (Steno) as no other promotional avenue was open in the said cadre. Simply because the pay scales of Stenographer Grade III are lower than the pay scale of Sub-Inspector (Steno), it can not be said that the respondents were promoted as Sub-Inspector (Steno).

8. Though the respondents were direct recruits as Sub-Inspector (Steno) in the combative cadre, they were continued to be considered as promotees from Grade III Stenographer to Sub-Inspector (Steno). However, the petitioner itself modified its own order dated 28th August, 1971 pertaining to the selection of respondent No.1 R.K.Puri as Sub-Inspector (Steno) in the service book of respondent No.1. Vide its Corrigendum dated 21st March, 2002. It was made clear that Shri R.K.Puri, Stenographer was "appointed" as Stenographer (Sub-Inspector) w.e.f. 11th October, 1971 instead of "promoted" as earlier mentioned in the order dated 28th August, 1971. Thus, it is obvious that the petitioner also accepted the respondents as direct recruits to the post of Sub-Inspector (Steno) and not as appointed on promotion.

9. Much is emphasized by the petitioner on the interpretation of the word

"appointed" inserted by way of Corrigendum in the order dated 28th August, 1971. It is argued that "appointment" cannot be considered as recruitment. Therefore it can not be said that the respondents were directly recruited as Sub-Inspector (Steno) and they in fact were promoted from Stenographer Grade III to Sub-Inspector (Steno).

10. We do not find much force in these submissions. The Stenographer Grade III are directly appointed in the civilian cadre having a different channel of promotion whereas Sub-Inspector (Steno) in the combative cadre is directly recruited by way of selection from persons who were already in service as Stenographer Grade III. "Appointment" means "direct recruitment only" and cannot be read as "promotion". Therefore, respondents were rightly held to have been directly recruited to the post of Sub-Inspector (Steno) by the Tribunal. The relevant part of the impugned order reads as follows:

In our view the contention as raised by the respondents that the applicants have been given promotion to the post of SI (Steno) is not tenable because on the face of the document issued by the respondents themselves on 21.3.2002 as they had modified the order and they themselves have substituted the word promoted to that of the word appointed so this is to be taken as a direct recruitment to the post of SI (Steno) and not as a promotion.

11. Respondents contend that they received only one financial upgradation i.e. one promotion to the post of Inspector (Steno) in their career of 30 years. Therefore, they are entitled to the second financial upgradation. Much is emphasized by the counsel for the petitioner that two financial upgradation in the ACP scheme are to be given in the entire Government service career of an employee which has to be counted against regular recruitment and since the respondents have received two promotions one from Grade III Stenographer to Sub-Inspector (Steno) and from Sub-Inspector (Steno) to Inspector (Steno) in their entire career as a Govt. servant, they are not entitled to any financial upgradation in the ACP scheme. However, we do not find any merit in these submissions.

12. The financial upgradation in the ACP scheme is available to the employees who were appointed as direct recruits but did not get any promotion or only one promotion in his/her entire career of more than 24 years. We have already referred to the modification made by the petitioner in the service book of the respondent No.1 treating him as direct recruit on his appointment as Sub-Inspector Stenographer. Therefore, the period of service for purposes of invoking the ACP scheme is to be reckoned from the date, the respondents were appointed as Sub-Inspector (Steno) and not promoted from Grade III Stenographer. It is not disputed that the respondents were promoted in the year 1970-71 and they had completed 24 years of service when the ACP scheme was introduced in the year 1999. They got only one financial upgradation during their entire career as a Government servant since the date of their direct recruitment as Sub-Inspector Stenographer i.e. to Inspector Stenographer. Therefore, the

respondents are entitled to the second financial upgradation under the ACP scheme on completion of 24 years of service.

13. The learned CAT has rightly assessed the facts and circumstances of the case in the light of ACP scheme introduced by the petitioner/Government in the year 1999 while allowing the OA. We find no illegality or infirmity in the order of the CAT. Hence, writ petition being without any merit is dismissed.