

(2013) 07 DEL CK 0315

In the Delhi High Court

Case No : Writ Petition (C) No. 692 of 2012

UOI and Others

APPELLANT

Vs

Jatadhar Singh and Others

RESPONDENT

Date of Decision : 08-07-2013

Acts Referred:

Citation : (2013) 07 DEL CK 0315

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

Bench : Division Bench

Advocate : Sumeet Pushkarna, for the Appellant; Ankur Chhibber, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Vide order dated November 01, 2010, OA No. 1129/2010 filed by the respondents was allowed holding that

work performed by the respondents was in the skilled category and not semi-skilled category and thus they would be entitled to wages applicable

to skilled workman and consequently benefit of first financial upgradation under the ACP Scheme to which they would be entitled to would be in

the pay scale Rs. 4000-6000 and the second financial upgradation benefit would be in the pay scale Rs. 5000-8000. The Tribunal held that the

second financial upgradation would be upon rendering 20 years service. The said order was corrected vide order dated December 23, 2010

observing that the second financial upgradation would be after rendering 24 years service and not 20 years service. Review sought by the

petitioners of the order dated November 01, 2010 as corrected on December 23, 2010 has been declined vide order dated March 17, 2011.

Respondents were appointed as Lift Attendants and were treated as semi-skilled workmen and paid salary in the then applicable pay scale Rs.

210-290. At that time skilled workmen were placed in the pay scale Rs. 260-400. The post was re-designated as a Lift Operator on June 24,

1987. Lift operators working in CPWD had raised an issue of being treated as semi-skilled workmen; claiming to be skilled workmen, which

dispute was referred to arbitration and the award came in favour of the Lift Attendants re-designated as Lift Operators. The issue as to whether

first financial upgradation benefit when the ACP scheme was introduced in the year 1998 would required Lift Operators to be upgraded in the pay

scale Rs. 4000-6000 or not was decided by a Division Bench of this Court in CCA No. 7/2001 and W.P. (C) No. 2792/1988 on September 25,

2008 and suffice would it be to note that the decision was in favour of the workmen. The award was upheld. Prior thereto, on August 16, 1996

deciding OA No. 1067/1994 the Central Administrative Tribunal held that Lift Operators working in the Military Engineering Service have to be

treated as skilled workmen and paid salary in the pay scale Rs. 260-400 and not Rs. 210-290.

2. As regards the instant case it is not in dispute that the respondents were appointed as Lift Attendants which post was re-designated as a Lift

Operator. They were all called to appear at the trade test to fill up the post of "Fitter General Mechanic" which post was previously called "Lift

Mechanic skilled". But the recruitment process was not taken to its logical conclusion.

3. The principal issue which arose for consideration before the Tribunal was whether the post of Fitter General Mechanic was a promotional post

to the post of a Lift Operator because of the reason the ACP scheme in question contemplates in situ upgradation in the next above pay scale if an

incumbent does not earn promotion in 12 years and further in situ upgradation in the next above pay scale if no promotion is earned in the next 12

years; if the posts are hierarchical the next above pay scale would be of the promotional post and if there is not hierarchical cadre the next above

pay scale would be as per the pay scales adopted by the Government.

4. Pertaining to the impugned decision which is in favour of the workmen the Tribunal has returned a finding that appointed as Lift Attendants

which post was re-designated as Lift Operators the respondents have to be treated as skilled workmen and the post of Fitter General Mechanic is

the promotional post to the said post and since pay scale of the post of Fitter General Mechanic is Rs. 4000-6000 the first ACP benefit would

require respondents to be placed in the said pay scale and upon rendering 24 years service they would be entitled to be placed in the next above

non-hierarchical cadre pay scale Rs. 5000-8000 because above the pay scale Rs. 4000-6000 is the pay scale Rs. 5000-8000. It needs to be

highlighted that since the respondents cleared the trade test for the post of Fitter General Mechanic the department gave them benefit of first

financial upgradation in the pay scale Rs. 4000-6000 but later on took the stand that the same was erroneous and past orders to withdraw the

benefit and placed respondents in the pay scale Rs. 3200-4900 when first ACP benefit had to be granted and in the pay scale Rs. 4000-6000

when second ACP benefit had to be granted.

5. The impugned order has been challenged by the petitioners on the following three grounds:-

(i) That the post of Lift Operator was a semi-skilled post and the grant of Rs. 4000-6000 as first financial upgradation to the respondents was

erroneously given after conducting the trade test.

(ii) That the post of Lift Operators is an isolated post and there being no promotional avenues, the Respondents were wrongly given the scale of

Rs. 4000-6000, whereas they were entitled to the scale of Rs. 3200-4900 as first financial upgradation and second being Rs. 4000-6000. In light

of DOPT OM dated August 09, 1999 which specifies as follows:

....in case of isolated posts, in the absence of defined hierarchical grades, financial upgradation shall be given by the Ministries/Departments

"concerned" in the immediately next higher (standard/common) pay scales as indicated in annexure-II which in keeping with Part-A of the first

schedule annexed to the notification dated September 30, 1997 of Ministry of Finance (Department of Expenditure). For instance, incumbents of

isolated posts in pay scale S-4, as indicated in Annexure-II, will be eligible for the proposed two financial up gradations only to the pay scale S-5

and S-6. Financial upgradation on a dynamic basis (i.e. without having to create posts in the relevant scales of financial upgradation under the

Scheme shall be personal to the incumbent of isolated post, the same shall be filled at its original level (pay scale) when vacated.

(iii) Thirdly deciding OA No. 2149/2008 on March 31, 2011 similar prayer made by similarly situated persons had been rejected by the Tribunal.

6. The first ground urged by the petitioner that the post of Lift Operator is a semi-skilled post is contrary to the award passed in favour of the Lift

Operators working in CPWD which has been upheld by a Division Bench of this Court as per its decision dated September 25, 2008 deciding

CCA No. 7/2001 and W.P. (C) No. 2792/1988 and suffice would it be to state it is the nomenclature of a post and its duties which matters and it

is hardly any argument that said decision pertained to Lift Operators working under CPWD. Secondly, the decision of the Tribunal pertaining to

Lift Operators working in MES is also against the petitioners. The Union of India, for administrative convenience, has various Ministries and

Offices. As long as the nature of duties is the same and nomenclature of the post is also the same, decisions by judicial forums pertaining to

employees of a particular Ministry would bind the Union when similar claims are made by others. The respondents were initially appointed as Lift

Attendants and paid salary in the pay scale Rs. 210-290. The said post of Lift Attendants was re-designated as Lift Operators on June 24, 1987.

The very placement in the said pay scale and not the pay scale Rs. 260-400. The decisions in CCA No. 7/2001 by the Division Bench of this

Court and the decision of the Tribunal dated August 16, 1996 has concluded the said issue.

7. As regards the second ground urged, it is to be noted that the respondents were initially appointed as Lift Attendants and placed in the pay scale

Rs. 210-290. On June 24, 1987 the post of Lift Attendant was re-designated as Lift Operators. As per the recruitment rules the next promotion is

to the post of Lift Mechanic (Skilled). This is evident from a copy of the Recruitment Rules to the post of Lift Mechanic (Skilled). The said post of

Lift Mechanic (Skilled) was re-designated as Fitter General Mechanic by an order dated July 06, 1994. Thus the next promotional post to the lift

operators was Fitter General Mechanic. Undisputedly in terms of the said Recruitment Rules the petitioners held a trade test for the respondents to

the post of Fitter General Mechanic on January 01, 2001. The said trade test was successfully cleared by the respondents and thus the

respondents were granted the first financial upgradation in the pay scale Rs. 4000-6000 vide order dated April 24, 2006 with effect from 1999.

The stand of the petitioners that this was a mistake is belied from the fact as late as December 07, 2011 in response to an RTI query the

petitioners have confirmed to the respondents that the post of a Lift Operator is not an isolation post and that the post of Fitter General Mechanic

is a promotional post to that of a Lift Operator.

8. As regards the third contention urged that deciding OA No. 2149/2008 the Tribunal has declined similar claim made by the applicants therein, it

would be sufficient for us to note that the Tribunal was not informed of the fact that Lift Operators working in CPWD had an award in their favour

requiring Lift Operators to be treated as skilled workmen which was upheld by a Division Bench of this Court and the Tribunal had extended

benefit of the award to Lift Operators working in MES.

9. The position therefore boils down to this. Lift Attendants, re-designated as Lift Operators have to be treated as skilled workmen and had to be

placed in the pay scale Rs. 260-400 and not Rs. 210-290 and correspondingly as and when pay revisions were effected were entitled to be

placed in the replacement scale Rs. 950-1500 which replaced the pay scale Rs. 260-400 and the pay scale Rs. 3050-4500 which replaced the

pay scale Rs. 950-1500. The post of Fitter General Mechanic being the promotional post in the pay scale Rs. 4000-6000 the first ACP benefit

had to be in the said pay scale and on completion 24 years service the next above pay scale (non-hierarchical) Rs. 5000-8000 had to be granted

to them. The decision of the Tribunal being correct we dismiss the writ petition but without any orders as to costs.