

18

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.No. 579/2002

New Delhi, this the 21st day of December, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S.K. Naik, Member (A)

Grade-I (DASS) Officers Association through:

1. President Shri G.S. Satti
2. Shri J.N.Sharma
3. Shri Y.P. Talwar
4. Shri Yogi Raj
5. Shri Amarjeet Lal

...Applicants

(By Advocate: Mrs. Avnish Ahlawat with Mr. Mohit Madan)

Versus

1. The Secretary,
Govt. of India,
Ministry of Home Affairs,
North Block,
New Delhi.
2. The Secretary,
Govt. of India,
Ministry of Personnel,
Public Grievances and Pension,
Department of Personnel & Training,
North Block,
New Delhi.
3. Government of NCT of Delhi through
The Secretary (Services),
Delhi Secretariat,
New Delhi.

...Respondents

(By Advocate: Sh. R.N. Singh for R-1 & R-2 and
Sh. Vijay Pandita for R-3).

O R D E R

Justice V.S. Aggarwal:-

Applicants seek quashing of the order of 10.8.2001 and a further direction to grant the scale of Rs.10000-325-15200

V.S. Aggarwal

to them and all other members who have put in 24 years of regular service from the date they had completed 24 years of service or 9.8.1999 whichever is later.

2. Some of the relevant facts are that the applicants were appointed as Grade-II in the Delhi Administration Subordinate Service (for short, DASS). They were promoted to the post of Grade I between 1986-1989. They have already completed 24 years of regular service between 1998-2001 and are eligible for second financial upgradation from 9.8.1999. The next higher grades were introduced in accordance with the existing hierarchy in a cadre/category of posts without creating new posts for the purpose on the date when the Assured Career Progression Scheme (for short, "the ACP") i.e. 9.8.1999 came into being. The Grade II of DASS was granted the pay scale of Rs.5000- 150-8000/-. The Grade-I was in the pay scale of Rs.6500-200-10500/- The Grade II Group B of Delhi Andaman Nicobars Islands Service had the same pay scale of Rs.6500-200-10500/-. The Grade I Group A in the DANICS was granted the pay scale of Rs.10,000-325-15200/-.

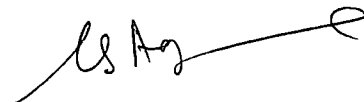
3. The ACP Scheme had been introduced for the Central Government Civilian Employees with effect from 9.8.1999. The applicants contend that they have put in more than 24 years of regular service and are entitled to the benefit of second financial upgradation. Their precise grievance is that though next promotion from DASS Grade I to DANICS Grade II Group 'B' is the normal channel of promotion, but the scale of DASS Grade-I and Grade-II DASS is the same. They

U Ag

plead that they are entitled to the financial upgradation in the next higher scale which should be Rs.10000-15200. The representation made by the applicants has since been rejected. Therefore, the present application with the reliefs already referred to above.

4. The application has been contested. Separate replies have been filed by respondents 1 and 2 and respondent No.3.

5. They plead that the ACP Scheme was introduced from 9.8.1999. In accordance with the said Scheme, the financial upgradation is given only in the next higher grade in accordance with the existing hierarchy in a cadre/category of post. The applicants are officers of DASS Grade I. They are in the scale of Rs.6500-10500/-. The posts in DASS Grade I are filled by promotion from the officers of DASS Grade-II. Accordingly, the DASS Grade II officers are eligible for first promotion to DASS Grade I and second promotion in their normal hierarchy to the entry grade of Delhi, Andaman & Nicobar Islands, Lakshadweep, Daman & Diu and Dadra & Nagar Haveli which is also in the pay scale of Rs.6500-10500/-. A proposal was received from the Government of National Capital Territory of Delhi seeking the advice of the respondents for grant of pay scale of Rs.8000-13500/- or alternatively the scale of Rs.10000-15200 as second financial upgradation. Neither of the propositions could be acceded as the next higher grade or promotional grade was the entry grade of DANICS. However,



the applicants were eligible for benefit under Fundamental Rule 22(a)(1) in their own pay scale at the time of second financial upgradation. It has been pleaded that the ACP Scheme is only a safety net against acute stagnation at the existing levels. The benefit under the ACP Scheme is resorted to where a person has not earned his regular promotion in the next hierarchical grade even after 12 years of service. Therefore, there cannot be a case where a person who stagnates for more than 12 years in DASS Grade-I is straightway placed in the scale of Rs.8000-13500/- or Rs.10000-15200 ignoring the hierarchical grade of Rs.6500-10500. Therefore, the respondents plead that the rejection of the claim of the applicants was justified.

6. The arguments were heard and the learned counsel for the applicants had read us out the provisions of the ACP Scheme. The sum and substance of the arguments was that in accordance with the Scheme, the benefit after 12 years/24 years of service is in the next higher pay scale. Even if according to the learned counsel, in the hierarchy in which the applicants are placed, their normal promotion had been in DANICS Grade II Group B which has the same scale as DASS Grade I still as per the scheme they had to get the next higher grade (pay scale) rather than the same pay scale while according to the respondents, this would lead to an anomalous situation in this regard.


7. The learned counsel for the applicants has drawn our attention to a decision of the Apex Court in the case of All



India Reporter Karamchari Sangh and Others v. All India Reporter Ltd. and Others, 1099(3) SLR 643. The Supreme Court while dealing with Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 held that two opinions on the construction of the provisions are possible, the one which advances the object of the Act and is in favour of employees for whose benefit the Act had been passed should be accepted. We do not dispute the said proposition in this regard, but necessarily it has to be seen in the facts and circumstances of each matter as to whether the other construction floated by the applicants is possible or not.

8. To appreciate the controversy, it becomes necessary to refer to the ACP Scheme dated 9.8.1999 and conditions for grant of the benefit of the said Scheme which is in form of Office Memorandum.

9. The Fifth Central Pay Commission in its report had made certain recommendations relating to the ACP Scheme. It was 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. The Scheme was enforced and it was decided to grant the financial upgradation after completion of 12 years and 24 years of regular service where the employees have no promotional avenues.



10. Para 3.1 of the Scheme pertaining to Groups 'B', 'C' and 'D' services/posts and isolated posts in this regard reads:-

"While in respect of these categories also promotion shall continue to be duly earned, it is proposed to adopt the ACP Scheme in a modified form to mitigate hardship in cases of acute stagnation either in a cadre or in an isolated post. Keeping in view all relevant factors, it has, therefore, been decided to grant two financial upgradations [as recommended by the Fifth Central Pay Commission and also in accordance with the Agreed Settlement dated September 11, 1997 (in relation to Group 'C' and 'D' employees) entered into with the Staff Side of the National Council (JCM)] under the ACP Scheme to Group 'B', 'C' and 'D' employees on completion of 12 years and 24 years (subject to condition no. 4 in Annexure-I) of regular service respectively. Isolated posts in Group 'A', 'B', 'C' and 'D' categories which have no promotional avenues shall also qualify for similar benefits on the pattern indicated above. Certain categories of employees such as casual employees (including those with temporary status), ad-hoc and contract employees shall not qualify for benefits under the aforesaid Scheme. Grant of financial upgradations under the ACP Scheme shall, however, be subject to the conditions mentioned in Annexure-1.

It further provides that the vacancy based regular promotions as distinct from financial upgradation under the ACP Scheme shall continue to be granted after due screening by a regular Departmental Promotion Committee. The Scheme provides conditions for grant of the benefit and provides that the ACP Scheme envisages merely placement in the higher pay scale/grant of financial benefits only to the Government servants concerned on personal basis. The highest pay scale

LS Ag

upto which the financial upgradation is permissible is Rs.14300-18300/-. The benefit is only available when no regular promotions had been granted during the period of 12/24 years. In this regard, the Scheme provides:-

"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."

It further provides that fulfilment of normal promotion norms will have to be effected. It does not confer any privileges relating to higher status. However, the important aspect is that the financial upgradation shall be given in the next higher grade in accordance with the existing hierarchy in the cadre. The relevant portion of the said part of the conditions which was being read to us is as under:-

"Financial upgradation under the Scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts without creating new posts for the purpose. However, 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 is in keeping with Part-A of the First Schedule annexed to the



Notification dated September 30, 1997 of the Ministry of Finance (Department of Expenditure). For instance, incumbents of isolated posts in the pay-scale S-4, as indicated in Annexure-II, will be eligible for the proposed two financial upgradations only to the pay-scales S-5 and S-6. Financial upgradation on a dynamic basis (i.e. without having to create posts in the relevant scales of pay) has been recommended by the Fifth Central Pay Commission only for the incumbents of isolated posts which have no avenues of promotion at all. Since financial upgradations under the Scheme shall be personal to the incumbent of the isolated post, the same shall be filled at its original level (pay-scale) when vacated. Posts which are part of a well-defined cadre shall not qualify for the ACP Scheme on 'dynamic' basis. The ACP benefits in their case shall be granted conforming to the existing hierarchical structure only."

It further provides that the financial upgradation under the Scheme is purely personal and has no relevance to the seniority position. On upgradation under the ACP Scheme, the pay of an employee has to be fixed under the provisions of FR 22(1) a (1) subject to a minimum financial benefit of Rs.100/-. It provides:-

"On upgradation under the ACP Scheme, pay of an employee shall be fixed under the provisions of FR 22(1) a(1) subject to a minimum financial benefit of Rs. 100/- as per the Department of Personnel and Training Office Memorandum No. 1/6/97-Pay.I dated July 5, 1999. The financial benefit allowed under the ACP Scheme shall be final and no pay-fixation benefit shall accrue at the time of regular promotion i.e. posting against a functional post in the higher grade."

11. From the aforesaid, it is clear that the purpose of the Scheme was that where the promotional avenues are not

US Ag

forthcoming to the concerned employee in Groups 'B', 'C', 'D' and isolated posts, they can be given the benefit of financial upgradation to avoid stagnation. The financial upgradation is a substitute where promotion is not forthcoming.

12. It is true that more often than once the words used are "financial upgradations" in the next given scale and it has some trappings of promotion because a Committee has been formed to consider the cases of those employees. It has only trappings of promotion while in fact it is not so.

13. To contend that the applicants irrespective of their promotion in the hierarchy in which they are placed should be given the grade in the pay scale which is much higher than the hierarchical promotion, in our opinion is the incorrect interpretation. While interpreting the Scheme common sense cannot be left in the cold storage. As one glances through the Scheme, it is patent that the financial upgradation is in the next higher grade, but it is with a rider that it is in accordance with the existing hierarchy in a cadre without creating new posts. Para 7 of the Scheme makes it clear that benefit should be granted conforming to the existing hierarchical structure only. If in the hierarchy, the scale happens to be the same which is on promotion, the result would be that the concerned person would only be entitled to the benefit of Fundamental Rule 22(1) a(1) rather than seeking a higher pay scale. In the present case in the hierarchical promotion, the applicants

ls Ag e

would have been promoted to DANICS Grade II Group 'B' which has the same scale as DASS Grade I, therefore, the applicants were rightly being awarded the benefit of Fundamental Rule 22 (1) a(1) rather than the pay scale which in any case they were not entitled to. Any other factor would tantamount to mis-reading of the Scheme.

14. Keeping in view the controversy that had arisen, a reference had been made and a clarification was forthcoming which reads:-

Point	of	doubt	Clarification
Following the recommendations of the Pay Commission, feeder and promotional posts have been placed in the same scale. Consequently, hierarchy of a post comprises of Grades 'A', 'A' and 'C' i.e. the entry level and the first promotional grade are in the same scale. What shall be his entitlements under ACPS.			Normally, it is incorrect to have a feeder grade and a promotional grade in the same scale of pay. In such cases, appropriate course of action is to review the cadre structure. If as a restructuring, feeder and promotional posts are merged to constitute one single level in the hierarchy, then in such a case, next financial upgradation will be in the next hierarchical grade above the merged levels and if any promotion has been allowed in the past in grades which stand merged, it will have to be ignored as already clarified in reply to point of doubt no. 1 of O.M. dated 10.02.2000. However, if for certain reasons, it is inescapable to retain both feeder and promotional grades as two distinct levels in the hierarchy though in the same scale of pay, thereby making a

ls Ag

provision for allowing promotion to a higher post in the same grade, it is inevitable that benefit of financial upgradation under ACPS has also to be allowed in the same scale. This is for the reason that under the ACPS, financial upgradation has to be allowed as per the existing hierarchy. Financial upgradation cannot be allowed in a scale higher than the next promotional grade. However, as specified in condition No. 9 of the ACP Scheme (vide DoP&T O.M. dated 10.02.2000, pay in such cases shall be fixed under the provisions of FR 22 (I)(a)(I) subject to a minimum benefit of Rs. 100/-."

The learned counsel for the applicants contended that the said clarification runs counter to the Scheme and, therefore, the same must be ignored. We do not dispute the proposition that if the clarification is available contrary to the Scheme, it has to be ignored, but it can be supplemented. It can only be ignored, if it is inconsistent. The clarification can, therefore, always be obtained in the peculiar facts and when as noticed above, it is not inconsistent with the Scheme, there can be no ground to accept the argument.

15. In the present case as we read the Scheme, it is obvious that the higher grade in the pay scale draws its colour and strength from the hierarchy in the cadre. Therefore, the higher grade/scale, necessarily need not be in the next pay scale because if in the hierarchy it is otherwise, the words can be interpreted to bring the precise



meaning. Even at times we can read down. Because the Words are used generally in the same sense throughout a Scheme, unless there is something repugnant in the context. The presumption that the same word is used in the same sense throughout the same enactment acknowledges the virtue of an orderly and consistent use of language, but it must yield to the requirement of the context. It is perhaps at it's weakest when the word (tm) in question is of the kind that readily draws it's precise import from the setting of the subject. Lord MacDERMOTT in Madras Electric Supply Corporation Ltd. vs. Boar Land Inspector of Taxes, (1955) 1 All England Reports page 753 said

"Even when the same word is used at different place it may not mean the same. Meaning thus can only be awarded in schemes as intended"

In the facts of the present case, we have already held that the higher grade is as in the hierarchy. The applicants have been rightly denied the next higher grade/scale.

16. No other argument has been advanced.

17. For these reasons, the application being without merit must fail and is dismissed. No costs.

S. K. Naik
(S.K. Naik)
Member (A)

/sns/

V. S. Aggarwal
(V.S. Aggarwal)
Chairman