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Central Administrative Tribunal, Principal Bench

Original Application No.1342 of 2002

New Delhi, this the 7th day of October, 2002

Hon'ble Mr. Justice V.S. Aggarwal, Chairman  
Hon'ble Mr. M.P. Singh, Member (A)

Shri Mahinder Pal Sharma  
S/o Shri Ram Chander Sharma  
R/o T-695/B-1, Gali No. 21-A  
Vishwa Karma Marg, Baljeet Nagar  
New Delhi-8

....Applicant

(By Advocate: None)

Versus

1. Union of India  
through the Secretary,  
Ministry of Science & Technology  
Department of Science & Technology,  
New Mehrauli Road,  
New Delhi-16

2. Secretary  
Department of Personnel & Training,  
North Block,  
New Delhi

....Respondents

(By Advocate: Shri Yudhvir Chauhan, proxy for  
Shri M.M. Sudan)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

The applicant was employed as Plant Operative in Delhi Milk Scheme. By virtue of the present application, he seeks quashing of the order passed by the respondents dated 4.5.2002 by virtue of which the benefit of financial upgradation under Assured Career Progression Scheme (ACP Scheme) has been denied to him. He also seeks setting aside of the Department of Personnel & Training O.M. dated 1.6.2001 to be arbitrary and discriminatory and for a direction that he should be extended the benefit of the above said Scheme.

2. Needless to state that the application has been opposed primarily on the ground that benefit of the said

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Scheme could be granted to the applicant only if he was a Matriculate and not otherwise. It is denied that the clarification dated 1.6.2001 is discriminatory or illegal.

3. It is not in controversy that the ACP Scheme had been put into service to overcome genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. In terms of the same, two financial upgradations after completion of 12 and 24 years of service were granted on certain conditions which are not relevant for disposal of the present application. So far as the applicant is concerned, admittedly he is not a matriculate. By virtue of the O.M. No.35034/2/2001-Estt.(D) dated 1.6.2001, it is clarified in unambiguous terms that benefit of the said Scheme will not be granted to those persons who don't have the minimum educational qualification specified in the recruitment rules for promotion to the next post. The relevant portion of the same reads:

"This is, however, subject to the following:-

- (i) First financial upgradation on completion of 12 years of regular service shall be at least to the pay scale of Rs.2610-60-2910-65-3300-70-4000 (S.2A).
  - (ii) The second financial upgradation on completion of 24 years of regular service shall be allowed at least to the pay scale of Rs.2750-70-3800-75-4400 (S-4). However, where Group 'D' civilian employees of the Central Government are Matriculates and are eligible for promotion to the post of Lower Division Clerk (LDC), the second financial upgradation in their case shall be allowed at least to the pay-scale of Rs.3050-75-3950-80-4590 (S-5).
2. The above decisions shall be effective from August 9, 1999 which is the date of introduction of the ACP Scheme.

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3. The financial upgradations under the ACP Scheme already granted to Group 'D' employees should as such, be reviewed and revised in the light of the above decisions.

4. In certain Ministries/ Departments/ Organizations, Group 'D' employees initially recruited at S-2/S-3 level have been allowed financial upgradation under the ACP Scheme in the LDC grade (S-5) even without possession of prescribed educational qualification viz. matriculation. Such upgradation has been allowed erroneously as in terms of the Condition No.6 of the ACP Scheme notified on August 9, 1999, fulfilment of all promotional norms (including educational qualification, if any, specified in the relevant Recruitment Rules/Service Rules), prescribed for grant of regular promotion, is an essential requirement for grant of financial upgradations in the hierarchical grades. Such cases should, therefore, be reviewed and excess payments already made be recovered forthwith."

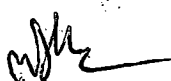
4. To state that prescribing of the educational qualification is discriminatory and, therefore, should be held to be illegal, would not be correct. This is not discrimination because equality has to be amongst equals. If educational qualifications are prescribed for a particular post or in the recruitment rules, in that event when it is prescribed that a person should be matriculate before he should take the benefit of the Scheme, this is not discrimination but keeping in view the object that has to be achieved. The object to be achieved is that persons who are well qualified should only get the benefit of the Scheme and we, therefore, have no hesitation to hold that it is not discrimination.

5. Admittedly the applicant is not matriculate and, therefore, has been denied the benefit of the Scheme. That

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being so, the present application must be deemed to be without any merit. It must fail and is accordingly dismissed.

  
( M.P. Singh )  
Member (A)

  
( V.S. Aggarwal )  
Chairman

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