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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2587/2002
MA No.2219/2002

New Delhi, this the 19th day of May, 2003

Hon'ble Shri Justice V.S.Aggarwal, Chairman
Hon'ble Shri Govindan S.Tampi, Member(A)

1. R.C. Bajpayee
s/o Sh.D.D.Bajpayee
r/o CSD/68-C, Janakpuri
New Delhi-110058

2. Hari Singh
S/o Sh.Ram Dayal
R/o WZ-51, Block G
School Road, Uttam Nagar
New Delhi-110059

.. Applicants

(Shri J. Buther, Advocate)

versus

Union of India, through

1. Secretary
Deptt. of Animal Husbandry & Dairying
Ministry of Agriculture
Krishi Bhavan, New Delhi

2. General Manager
Delhi Milk Scheme
West Patel Nagar, New Delhi

3. Shri Y.R.Singh
Section Manager
Delhi Milk Scheme, New Delhi

.. Respondents

(Shri R.N. Singh, Advocate)

ORDER (ORAL)

Justice V.S.Aggarwal:-

MA No.2219/2002

M.A. No.2219/2002 for joining together in OA
No.2587/2002 is granted.

OA No.2587/2002

Applicants had joined the Ministry of Agriculture,

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Department of Animal Husbandry and Dairying on 23.4.1965 as Dairy Supervisor. They are possessing the qualification of B.Sc. (Agriculture). Respondent No.1 introduced the Assured Career Progression Scheme (for short the "ACP Scheme") dated 9.8.1999. It was made applicable to the Delhi Milk Scheme where the applicants are serving. As per the said Scheme, two financial upgradations are given to the employees who have not got any promotion in their hierarchy throughout their employment. The applicants were granted one promotion to the post of Section Manager on 18.3.1997 and claim that they are entitled to the second financial upgradation when they completed 24 years of service.

2. Applicant No.1 had taken voluntary retirement on 1.4.2001 while applicant No.2 is still serving. As Section Manager, they are in the pay scale of Rs.6500-10500/-. Their grievance is that they had not been given the second upgradation to the scale of Rs.10000-15200/- i.e. the scale of Shift Manager. Similarly situated other persons are said to have been given the said scale. Applicants plead discrimination and, therefore, by virtue of the present application, they seek quashing of the orders rejecting their claim and for a direction to give them, the second financial upgradation to the scale of Rs.10,000-15,200/- with consequential benefits.

3. The respondents contested the application. It has been pleaded that the financial upgradations are



given to the eligible officers for next promotion as per the recruitment rules after following the Departmental Promotion Committee procedure where there is no defined hierarchy. It is denied that the applicants are entitled to the second upgradation because they do not fulfil the educational qualifications required for the post of Shift Manager. It is denied that the applicants are being discriminated. So far as Shri M.S.Tripathi is concerned, it has been pointed that in his case, there was a relaxation granted in the educational qualifications.

4. We have heard the learned counsel for the parties.

5. During the course of submissions, it was pointed that the applicants had been granted, the first promotion on 18.3.1997 and the second promotion can only be claimed after completing another 12 years of service from that date. On the face of it, the plea so taken is fallacious. Certain clarifications and instructions were issued when the ACP Scheme was put into service and in this regard point of doubt raised at Sl.No.14 and the clarification thereto reads as under:-

"Point of Doubt: 14. An employee gets first promotion after 20 years of regular service. In terms of relevant Recruitment/Service Rules, required eligibility service is 8 years for the next promotion, whether upgradation under ACPS is to be allowed on completion of 24 years of service from direct recruitment i.e. four years after the first promotion or on completion of 8 years of regular service after first promotion as per the Recruitment Rules.

Clarification - Upgradations under the scheme are to be allowed on completion of 12/24 years of service counted from direct entry in the

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Government employment. If an employee gets first regular promotion on completion of 20 years of service, he will be entitled to second financial upgradation under ACPS on completion of 4 years of service after such first regular promotion, though the Recruitment/Service Rules prescribe higher length of regular service in the grade for next promotion."

It is obvious from the aforesaid that on completion of 24 years of service, a person would be entitled to the upgradation in the scale even if he has got his promotion after 12 years. For the second financial upgradation, one has to wait for another 12 years after one has earned the first promotion. Therefore, we have no hesitation in rejecting the said claim.

6. On behalf of respondents, the argument advanced is that from the post of Dairy Supervisor, the promotion is to the post of Section Manager and further from Section Manager, promotion is to the post of Shift Manager. Admittedly, the scale of Shift Manager is Rs.10,000 - 15,200/-. The applicants had been promoted as Section Managers on 18.3.1997.

7. The respondents point out that the applicants did not fulfil the educational qualifications for the post of Shift Manager and, therefore, in accordance with the ACP Scheme, they cannot be given the said benefit.

8. It is not in dispute that in terms of the Scheme, conditions for grant of the benefit have been prescribed. Paragraphs 6 and 7 of the said Scheme read:-

"6. Fulfilment of normal promotion norms (bench-mark, departmental examination, seniority-cum-fitness in the case of Group D employees etc.) for grant of financial upgradations, performance of such duties as are

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entrusted to the employees together with retention of old designations, financial upgradations 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;

7. 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 or 'dynamic' basis. The ACP benefits in their case shall be granted conforming to the existing hierarchical nature only."

In other words, before the financial upgradation is given to the higher grade, the concerned officer has to fulfil the necessary qualifications for promotion. Column 8 of the recruitment rules for the post Shift Manager prescribed the following qualifications:-

" (i) Degree in Dairying/Dairy Science/Dairy Technology from a recognised University/Institute or equivalent. As the fulfilment of educational qualification is also one of the eligibility conditions for promotion/grant of FU under the ACP Scheme in terms of para 6 of DoPT OM dated 9.8.99 and the applicants do not fulfil the educational qualification for promotion to the post of Shift




Manager hence they are not entitled to the Second Financial upgradation in the hierarchy i.e. Rs. Rs.10,000-15200/-".

Admittedly the applicants did not fulfil the said qualifications.

9. We are conscious of the fact that no person can be promoted de hors the recruitment rules. If the matter has ended here, the applicants have no claim. But if any person junior to the applicants is given the scale of Shift Manager under the ACP Scheme ignoring them, in that event, the long arm of law would not let the injustice to perpetuate. Any discrimination cannot in this process be allowed to continue.

10. The applicants have given the names of certain other persons like Shri G.P.Sharma, Shri D.M.S.Yadav, Shri A.P.Singh and Shri N.Asharaf who had been given the benefit of second financial upgradation under the ACP Scheme. This fact has not been denied. The said persons are also only B.Sc (Agriculture). Their matter had been considered in the Departmental Promotion Committee meeting and the findings recorded are:-

"It may be seen that except S/Shri G.P.Sharma, D.N.S. Yadav, A.P. Singh and N.Ashraf who are B.Sc. (Agri) all other persons satisfy the educational qualifications mentioned in R.Rs for the post of Shift Manager. However, it may be recalled that in the meeting of the DPC held on 8.6.99 for promotion to the post of Shift Manager, DPC considered the proposal for promotion of Sh. M.S. Tripathi who was B.Sc. (Agri) for the post of Shift Manager and found them fit for promotion to the post of Shift Manager and accordingly promoted him to the post of Shift Manager vide order No.5-4/95-Admn.IV dated 8.7.99. On the same analogy it can be said that S/Sh. G.P.Sharma, D.V.S.Yadav, A.P. Singh and Noorudin Ashraf also possess the educational qualification for the post



of Shift Manager and are thus entitled for grant of 2nd financial upgradation."

In other words, in relaxation of recruitment rules, promotion was given to Shri M.S.Tripathi to the post of Shift Manager and on the same analogy S/Shri G.P.Sharma, D.V.S.Yadav, A.P.Singh and Noorudin Ashraf were given promotion to the said post. Once the applicants are equally qualified having the same qualifications as S/Shri G.P.Sharma, D.V.S.Yadav, A.P.Singh and Noorudin Ashraf, there is no logical reason as to why they have been deprived of the said benefit.

11. When similarly situated persons are treated differently without valid reasons or valid qualifications, it must be stated that it is a clear case of gross discrimination. Therefore, we have no hesitation in quashing the impugned orders whereby the benefit had been denied to the applicants.

12. Consequently, we quash the impugned orders, allow the application and hold:-

- (a) that the applicants are entitled to the second financial upgradation on completion of 24 years of service subject to the conditions of the ACP Scheme;
- (b) that the claim of the applicants cannot be rejected because they cannot be allowed to be discriminated; and
- (c) that the claim of the applicants should be considered in the light of the findings arrived at

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above for grant of the scale of Rs.10,000-15,200/-.
The decision in this regard should be taken within a
period of three months from the date of receipt of a
copy of this order.

No costs.

Announced.

(Govindan S. Tampi)
Member (A)

(V.S. Aggarwal)
Chairman