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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.3067 OF 2002

New Delhi, this the 29th day of July, 2003

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.K. NAIK, MEMBER (A)

W/ASI Jaswinder Kaur
R/O WZ -74, Janakpuri
Near Ganta Ghar, Hari Nagar
New Delhi.

... Applicant

(By Shri Yogesh,Sharma, Advocate)

Versus

1. N.C.T.of Delhi
Through the Chief Secretary
New Sectt. New Delhi.

2. The Commissioner of Police~
Delhi Police Head Quarters
I.P.Estate,
New Delhi.

3. Spl.Commissioner of Police
(Administrative): Delhi
Police Heaquarters
I.P.Estate,
New Delhi.

... Respondents

(By Advocate Shri Vijay Pandita)

ORDER (ORAL)

JUSTICE V.S. AGGARWAL

Ms.Jaswinder Kaur (applicant) had earlier filed OA No.509/2001. She was seeking entitlement of the financial upgradation as per the Assured Career Progression Scheme (for short, "ACP Scheme"). The prayer had been rejected. This Tribunal had considered the same and rejected the contention of the respondents, but directed that the matter should be reconsidered in the light of the clarification pertaining to Doubt No.35. The relevant part of the



order of this Tribunal reads:-

"4. We have considered the rival contentions of both the parties and also perused the pleadings available on record. The clarification in OM dated 10.2.2000 would not have any application in the present case as by way of latest clarification issued on 18.7.2001, it has been clarified and provided that in case there is no change in designation and no requirement of new qualification for holding the post in higher grade and which is not specified in the Recruitment Rules and there is no change in the responsibilities and duties, placement of incumbents to such upgraded posts is not to be treated as promotion, would have application in the facts and circumstances of the present case. In this view of the matter, the decision taken by the respondents on 25.4.2000 cannot be countenanced.

5. In view of the above discussion and reasons recorded, the application is partly allowed. The impugned order dated 25.4.2000 is quashed and set aside. The Respondents are directed to reconsider the decision regarding granting financial upgradation to the applicant in view of the clarification pertaining to doubt No.35 contained in OM dated 18.7.2001, within a period of three months from the date of receipt of a copy of this order. In the event the applicant has been accorded the same, she is entitled for all the consequential benefits. No costs."

2. In pursuance of the directions of this Tribunal, the respondents had considered the matter afresh and again rejected the claim of the applicant and held:-

"W/ASI(Steno.) Jasvinder Kaur No.3262/D had joined Delhi Police as ASI (Stenographer) on 31.8.92 in the pay scale Rs.1400-2300 and was confirmed in her appointment w.e.f.

18 Aug

31.8.94. Before her selection in Delhi Police, she was working as Junior Stenographer in the pay scale of Rs.1200-2040 in the National Bureau of Plant Genetics Resources, Pusa Campus, New Delhi. Under the A.C.P. Scheme issued by the Govt. of India vide O.M. dated 9.8.1999 & 10.2.2000 benefits to concerned officer are to be given on completion of 12/24 years regular service when no promotion to the concerned officer could be given for want of posts in the next higher rank. The clarification No. 35 in O.M. dated 18.7.2001 clears the doubts where rationalisation of posts/grades in the same deptt. have been effected it does not cover to the case where after resigning the old job, a new post has been joined in a higher grade. In fact the Stenographer grade in Delhi Police is higher than the grade of Stenographer in the N.B.P.G.R., Pusa, New Delhi. Higher grade ipso facto facts itself means higher responsibility and this has been classified as promotion/upgradation. The Stenographer in Delhi Police has to attend parade & also wear uniform and assist the local police on Law & Order and election arrangements if and when called upon to do so which might not have been the case in her previous deptt.

As per the terms & conditions of the previous department of W/ASI(Steno) Jasvinder Kaur, i.e. National Bureau of Plant Genetic Resources Pusa Campus, New Delhi-110012 as intimated vide letter No.24-501/99/P-111 dated 1-4-2002, her job was only taking dictation and typing while in the current job she has as well to perform uniform duties also, when required. The benefits of past service in a lower grade with lower responsibilities cannot be given to her under the ACP Scheme."

3. Some of the relevant facts for appreciation of the controversy can be again delineated. The applicant was working as a Stenographer in National Bureau of Plant Genetic Resources in the scale of Rs.1200-2040. She applied for being selected in Delhi Police as Stenographer and was selected. She submitted her technical resignation with the National Bureau of Plant Genetic Resources. She joined the Delhi Police on 31.8.1992. Her past services were counted for the purposes of fixation of

18 Aug

pay, pension and carry forward of leave. After the recommendations of the Fifth Central Pay Commission had been enforced, the applicant claimed that her past service should be counted for the benefit of ACP Scheme which had been denied. Hence the present application.

4. In the reply filed, the application has been contested. The facts are not in controversy that the applicant was working as Junior Stenographer in National Bureau of Plant Genetic Resources in the scale of Rs.1200-2040. She was selected as Stenographer (Assistant Sub Inspector) in Delhi Police in the scale of Rs.1400 -2300. It was a case of direct recruitment and thus as per the respondents her past service for the purposes of ACP Scheme should not be counted.

5. The learned counsel for the applicant had highlighted that the benefit of past service has to be accorded to the applicant for the purpose of ACP Scheme because the benefit had been given for the purpose of fixation of pay, pension and carry forward of leave. According to the learned counsel even subsequently the scale of the post which the applicant was holding before joining Delhi Police had been revised.



-5-

6. We have carefully considered the submissions that have been made and are of the considered opinion that the said argument referred to above has no force and should be rejected.

7. When the applicant had joined the Delhi Police, she was given the benefit of past service in the National Bureau of Plant Genetic Resources for the purpose of fixation of pay, pension and carry forward of leave. This had been so done keeping in view Decision No.3 recorded in Central Civil Services (Pension) Rules, 1972. This would not imply that for all practical purposes, the past service could be counted. It was limited to the fixation of pay etc. which we have already referred to above.

8. The ACP Scheme of 9.8.1999 was enforced in order to remove stagnation and hardship faced by the employees due to lack of promotional avenues. In case of Group C and D employees, on completion of 12 and 24 years of service which has to be regular service, the benefit is accorded. It does not affect the normal promotional avenues. The obvious question that crops up for consideration is as to if the applicant can claim that she has rendered 12 years of regular service and in the said service, the past service before she joined Delhi Police should be counted or not?

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9. Our attention has been drawn towards Doubt No.35 regarding which a reference was made in the earlier order of this Tribunal to contend that it should be so counted. The said clarification reads:-

"Doubt 35. - Whether placement/appointment in higher scales of pay based on the recommendations of the Pay Commissions or Committees set up to rationalize the cadres is to be reckoned as promotion/financial upgradation and offset against the two financial upgradations applicable under the ACP Scheme?

Clarification - Where all the posts are placed in a higher scale of pay, with or without a change in the designation; without requirement of any new qualification for holding the post in the higher grade, not specified in the Recruitment rules for the existing posts, and without involving any change in responsibilities and duties, then placement of all the incumbents against such upgraded posts is not be treated as promotion/upgradation. Where, however, rationalization/restructuring involves creation of a number of new hierarchical grades in the rationalised set-up and some of the incumbents in the pre-rationalized set-up are placed in the hierarchy of the restructured set-up in a grade higher than the normal corresponding level taking into consideration their length of service in existing pre-structured/pre-rationalized grade, then this will be taken as promotion/upgradation."

Perusal of the same clearly shows that the question for consideration was whether permanent appointment for higher scale of pay based on the recommendations of the Firth Central Pay Commission is to be reckoned as promotional upgradation and offset against the financial upgradation applicable under the ACP Scheme?

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-7-

The answer given is clear that it should involve a change in the responsibilities and duties and placement of all the incumbents against such upgraded posts would not be treated as promotion. The position in the present case is totally different. Herein, the applicant was inducted in Delhi Police as a direct recruit. If for certain purposes, namely fixation of pay, pension and carry forward of leave, the said benefit is accorded by necessary import will not make it applicable in case of ACP Scheme. The Scheme has been enforced to avoid stagnation where the chances of promotion are remote to give incentive to the Government employees. Herein, it is not a case of upgradation and as already referred to above, it is a case of direct induction into a new service. Stagnation part would only arise when the applicant completes 12 years of service with the respondents. Therefore the past service cannot be counted. For these reasons, we are of the considered opinion that as per Doubt No.35 referred to in the earlier order of this Tribunal, the applicant cannot be granted the said benefit.

10. As a consequence of the aforesaid, the present application being without merit must fail and

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is dismissed. No costs.

Announced.

Naik
(S.K.Naik)

MEMBER (A)

V.S.A.
(V.S. Aggarwal)
CHAIRMAN

/sns/