

Central Administrative Tribunal
Principal Bench, New Delhi

O.A.No.2495/2001

Hon'ble Shri M.P.Singh, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

Wednesday, this the 14th day of August, 2002

1. Umesh Chandra Sharma
s/o Late Shri Ram Charan Sharma
r/o Quarter No.108, Kalyan Vas
Delhi - 110 091.
2. Sarju Singh
s/o Late Shri Kishan Singh
r/o Quarter No.455, Kalyan Vas
Delhi - 110 091.
3. Nathu Singh
s/o Shri Madan Singh
r/o Quarter No.822, Kalyan Vas
Delhi - 110 091.
4. Bharat Manjhi
s/o Shri Shiv Shanker Manjhi
r/o Quarter No.631, Kalyan Vas
Delhi - 110 091.
5. Shri Krishna Nand
s/o Late Shri Laxmi Dutt
r/o Quarter No.B-63(A), Gali No.3
West Vinod Nagar
Delhi - 110 091.
6. Banbir Singh
s/o Late Shri Nar Singh
r/o Quarter No.216, Kalyan Vas
Delhi - 110 091.
7. Jai Kishan
s/o Late Shri Mahimanand
r/o Quarter No.319, Kalyan Vas
Delhi - 110 091.
8. Manvar Singh
s/o late Shri Santan Singh
r/o Quarter No.207, Kalyan Vas
Delhi - 110 091.
9. Anil Kumar Mishra
s/o Shri Bhagwati Mishra
r/o 552-B, Gali No.4
Gharoli Extension
Delhi - 110 096.
10. Shri G.R.Sundriyal
s/o Late Shri C.M.Sundriyal
r/o 90, Bank Colony
Mandoli, Delhi - 110 093.
11. Shri Madan Gopal Sharma
s/o Shri Jagdish Lal Sharma
r/o 175, Karkardooma Flats
Delhi - 110 092.

11. Shri Madan Gopal Sharma
s/o Shri Jagdish Lal Sharma
r/o 175, Karkardooma Flats
Delhi - 110 092.

12. Shri Pyare Lal
s/o Late Shri Rewati Ram
r/o F.No.298, Old Seema Puri
Delhi - 110 095.

13. Shri N.R.Verma
s/o Late Shri S.R.Verma
r/o 1479, Kalyan Vas
Delhi.

... Applicants

(By Advocate: Shri S.K.Gupta)

Vs.

1. Govt. of NCT of Delhi
through Chief Secretary
Delhi Secretariat
I.P.Estate, IG Stadium
New Delhi - 110 002.

2. The Director
Directorate of Education
Old Secretariat
Delhi.

... Respondents

(By Advocate: Shri Mohit Madan, proxy of Mrs. Avnish Ahlawat)

O R D E R (Oral)

By Mr. Shanker Raju, M(J):

MA for joining together is allowed.

2. Applicants seek quashment of respondents' order dated 19.4.2001 wherein they have been denied second financial upgradation in terms of the Office Memorandum dated 9.8.1999 on completion of 24 years of service. They have sought upgradation in the scale of Rs.5500-9000, i.e., the scale given for the post of TGT.

3. Applicants joined as Group 'D' employees and are Matriculates, they have been subsequently promoted to the post of Lab Assistant on different dates. Post of Lab Assistant is a non-selection post to be filled to the extent of 5% amongst Group 'D'

staff, interalia, included Lab Assistants. As per the Recruitment Rules, the minimum qualification for Lab Assistant is matriculate with Science or Higher Secondary with Science. 13

4. Respondents through their circular dated 27.8.1999 introduced Assured Career Progression Scheme (hereinafter called as "ACP Scheme") contained in OM dated 9.8.1999 which interalia envisages two financial upgradation on completion of 12 years and 24 years of service. As the applicants have already been given promotion from Group 'D' to Lab Assistant as per the ACP Scheme consideration for second financial upgradation on completion of 24 years of service was due.

5. Respondents' through impugned order rejected the request of the applicants for grant of second financial upgradation under the ACP Scheme on the ground that as the applicants were appointed as Group-IV officials and are receiving the scale of Rs.4000-6000 which is the higher than the initial scale in which they were appointed and they had been promoted in the higher scale, they are not entitled for second financial upgradation. Hence the present OA.

6. Shri S.K.Gupta, learned counsel appearing on behalf of the applicants, at the outset, by referring to the OM dated 9.8.1999, where the ACP Scheme was introduced, contended that as per Clause 3.1 of the Scheme which is to mitigate hardship in cases of acute stagnation, two financial upgradations

are to be accorded to the Group "B" "C" and "D" employees on completion of 12 years and 24 years of service, and as per the definition in Clause 3.2 of the Circular regular service shall be interpreted to mean the eligibility service counted for regular promotion in terms of relevant recruitment/service rules. As per the conditions for grant of benefits under the ACP Scheme under para 5.1 envisages that two financial upgradations shall be available if no regular promotions during the period of 12 and 24 years have been availed by employees and in the event he has been given one regular promotion he shall be qualified for the second financial upgradation.

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7. Shri Gupta, by referring to the Clause 7 of the conditions stating that financial upgradation under the ACP Scheme shall be given to the next higher grade in accordance with the existing cadre or category of posts without creating new posts. Moreover, placing reliance on Clauses 10 and 15 of the conditions of the Scheme supra, stated that if a person has got one financial upgradation after 10 years on regular service and two years therefrom if he refuses regular promotion, he is debarred and subsequently his promotion to the higher grade on regular basis after completion of 15 years, he shall be eligible for consideration for the second upgradation after rendering 10 more years in addition to two years of service already rendered by him after the financial upgradation in the higher grade. If an employee has already completed 24 years of service with or without promotion, second financial upgradation shall be granted directly.

8. Shri S.K.Gupta while referring to the clarification, under the Scheme of ACP issued vide OM dated 18.7.2001, and more particularly clarified at Sl. No.33, ⁱⁿ ^{it} ~~is~~ contended that subsequent creation of posts in Group "B" on introduction of the grade in the hierarchy would ~~be~~ ^{be} entitled ^{an} employee for second financial upgradation. The newly created grade "B" is to be ignored in his case, however, persons in Group "A" posts who become entitled to financial upgradation only after introduction of Grade "B" in the hierarchy, will be entitled for grant of financial upgradation only in Grade "B". According to him as per the application for promotion of TGT and as per the recruitment rules of TGT 5% of the vacancies posts are to be filled amongst the feeder cadre of Lab Assistants having five years regular service, failing which by direct recruitment. As such the hierarchy and the next promotional posts of the applicants is TGT. In this view of the matter, applicants are entitled for being accorded ^{the} ~~ed~~ the higher pay scale and second upgradation.

9. According to the applicants, if the promotion is given from the post of Group "D" employees to the post of Lab Assistant, the promotion is permissible to the post of TGT in the scale of Rs.5500-9000 on completion of 24 years of service as such applicants are entitled for second financial upgradation in the aforesaid scale.

10. On the other hand, respondents' firstly contended that as the implementation of ACP Scheme is to be done by the Union of India and as the applicants had not impled the Union of India as a party to the OA, the OA is liable to be dismissed on this count itself. It is further stated that Union of India has already taken a decision denying the benefit to the applicants but no documents have been brought on record to establish the same. 16

11. It is further stated that the applicants have been promoted to the post of Lab Assistan from Group 'D' and their pay was revised to Rs.4000-6000 w.e.f. 1.1.1996. As per the Fifth CPC recommendations the pay scale of Lab Technicians Gr.III was placed at Rs.4000-6000, Lab Technicians Gr.II in the scale of Rs.4500-7000. Applicants were placed in the replacing scale, their claim for ACP is yet to be finalised by the Union of India.

12. Shri Mohit Madan contended that financial upgradation under the Scheme shall be given to the next higher grade in accordance with the existing hierarchy in the category of post without creating new posts for the purpose and the post of TGT is not the next in the hierarchy for Lab Assistant as such the claim of the applicants is not tenable. It is stated that post of TGT is not a feeder post, in hierarchy to the post of Lab Assistant, applicants are eligible for ACP Scheme in the scale of Rs.4500-7000 and not TGT scale.

13. Learned counsel for applicants has filed rejoinder and reiterated his pleas taken in the OA.

14. We have carefully considered the rival contentions of both the parties and perused the material on record. The preliminary objection as to non-joinder of parties is liable to be rejected at the outset, as it is for the respondents in the OA to implement the Scheme of ACP once it is formulated by the Union of India.

15. In so far as the claim of the applicants on merit is concerned, they have been deprived of second financial upgradation solely on the ground that the post of Lab Assistant is not a feeder category to the post of TGT and it is not in the hierarchy to a Lab Assistant. This plea of the respondents is liable to be rejected as by letter dated 13.12.2001, Government of NCT invited applications for the post of TGT amongst the Lab Assistants of Directorate of Education which clearly shows that Lab Assistant is a feeder category for the post of TGT. In this view of the matter the contention of the respondents cannot be countenanced.

16. As per the Scheme *ibid*, which has been framed with an object to mitigate hardship in case of acute stagnation in the cadre, two financial upgradations are provided on completion of 12 and 24 years of service as per the fulfilment of conditions, even if a person has got one regular promotion, he shall be qualified for the second financial upgradation after completion of 24 years of regular service. Financial upgradation shall be given to the next

higher grade in accordance with the existing cadre/category of post without creating new post as the next promotional post of TGT for which the post of Lab Assistant is a feeder category, they are covered under the Scheme for accord of second financial upgradation.

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17. In so far as the revision of pay scale and introduction of grades in the hierarchy in view of the clarification No.33, in OM dated 18.7.2001 but newly created grade is to be ignored and as the applicants have been given only one promotion as per the hierarchy existed, they are qualified for second financial upgradation on completion of 24 years of service.

18. In the result, for the reasons to be recorded above, we partly allow this OA by quashing the impugned order at Annexure-A1(Colly.). Matter is remanded back to the respondents to reconsider for accord of second financial upgradation to the applicants in the scale of Rs.5500-9000 strictly in accordance with Scheme of ACP and its clarification and as well as keeping in view of our observations ibid. In the event the applicants are found entitled for second financial upgradation, the same be accorded to them on completion of 24 years of service subject to rules and instructions with all consequential benefits. The respondents are directed to take a final decision in this regard within a period of three months from the date of receipt of a copy of this order through a detailed and speaking order. No costs.

S. Raju
(Shanker Raju)
Member(J)

M.P. Singh
(M.P. Singh)
Member(A)