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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 2158/2004

This the 2nd day of May, 2005

HON'BLE MR. JUSTICE M.A.KHAN, VICE CHAIRMAN (J)
HON'BLE MR. S.A.SINGH, MEMBER (A)

Smt. Shanta Sharma,
W/o Sh. K.M.Sharma,
R/o 95-B, Street-4,
Krishna Nagar, Safdarjung Enclave,
New Delhi-1.

(By Advocate: Sh. Gyanender Singh proxy for
Sh. Arun Bhardwaj)

Versus

1. Govt. of N.C.T. of Delhi
through Chief Secretary,
5th level, Delhi Secretariat,
I.P.Estate,
New Delhi.
2. Principal Secretary (Home),
GNCT of Delhi,
5th level, Delhi Secretariat,
I.P.Estate, New Delhi.
3. Secretary DOPT
Ministry of Home Affairs,
Govt. of India,
North Block, New Delhi.
4. Joint Secretary (UT) Delhi
Ministry of Home Affairs,
Govt. of India,
North Block, New Delhi.
5. Chief Fire Officer,
Headquarter, Delhi Fire Service,
Connaught Lane, New Delhi.

(By Advocate: Sh. Ajesh Luthra)

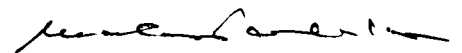
ORDER

By Hon'ble Mr. Justice M.A.Khan, Vice Chairman (J)

Applicant has filed this OA for a direction to the respondents to grant the first and second financial upgradation under the ACP scheme in the pay scale of Rs.5500-9000 and Rs.8000-13500 w.e.f. 9.8.99 at par with his junior.

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2. Applicant joined the office of Delhi Fire Service as Telephone Operator in the pay scale of Rs.260-400 in 1964. She was promoted to the post of Assistant Mobilizing Officer in 1983 in the pay scale of Rs.330-560 (pre-revised). In 1983 in the wake of modernization of the communication system of Delhi Fire Service and on the recommendation of the Committee 27 existing post of Telephone Operators were converted as Radio Telephone Operator from amongst those who passed departmental test and had 5 years of service. The post of Radio Telephone Operators also carried the same pay scale as the pay scale of AMO. According to the applicant while she was promoted to the scale of Rs.330-560 after 17 years of service, her junior colleagues Telephone Operators were placed in the same scale after completion of only 5 years service. The post of AMO was not a feeder post to the post of Assistant Wireless Officer (Operational) which was the promotional post in the hierarchy of the newly created post of Radio Telephone Operators. As such the applicant was discriminated vis-à-vis her junior Telephone Operators. Applicant made representation and in 1997 the post of AMO was also made feeder to the promotional post of AWO (Operational) in the scale of Rs.550-9000. In 1995 newly converted RTOs filed OA No.983/95 titled Mukesh Prakash and others vs. Govt. of NCT and others praying that they should be given the pay scale of Rs.380-560 equivalent to Radio Operators on the principle of equal pay for equal work. The OA was allowed. The department implemented the order subject to outcome of a Writ Petition filed by it challenging the order of the Tribunal before the Hon'ble High Court. In 2001 applicant also filed OA No.2760/2001 for granting higher pay scale and was granted grade of the category of Radio Telephone Operators. The Tribunal allowed the OA and granted the higher pay scale of Rs.380-560 as was granted to the RTOs.



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Applicant has been granted second financial upgradation in the ACP scheme in the scale of Rs.5500-9000 on 27.8.2001. Applicant was given the pay scale of AMO in 1983 as first financial upgradation at the time of her promotion as AMO-II in the grade of Rs.260-400 to Rs.380-560 revised to Rs.3050-4500 and then to Rs.4000-6000 from the post of Telephone Operator w.e.f. 9.8.1999. In 2003 applicants junior Telephone Operators filed OA-1084/2003, who had been converted as Radio Telephone Operators in the pay scale of Rs.4000-6000, alleging that the conversion was not a promotion, therefore, they should be granted first financial upgradation in the ACP scheme in the scale of Rs.5500-9000 after 12 years of service in the grade. The Tribunal allowed it and the RTOs were granted financial upgradation in the pay scale of Rs.5500-9000 and the second financial upgradation in the pay scale of Rs.8000-13500 after 24 years of service. Applicant has also prayed that she should also be given the first and second financial upgradation at par with those RTOs.

3. The respondents in the counter have repudiated the claim of the applicant. It is alleged that in 1983, 27 existing posts of telephone operators were converted to RTO from amongst the existing incumbents who had passed departmental test and had 5 years service. Applicant has admitted in para 4.3 of the application that she was promoted to the post of AMO-II in the pay scale of Rs.330-560 from the post of Telephone Operator in the year 1983. Applicant as such is entitled only to the second financial upgradation which was given to her in the pay scale of Rs.5500-9000 on 9.8.1999. It was submitted that in 1983 all the posts of Telephone Operators were converted into Radio Telephone Operators and those who had 10 years of experience as TRO/R.O. were considered eligible for promotion to AWLO (Operational). Applicant was promoted from the post of T.O. in the scale of Rs.260-400 to the post of AMO in the scale of Rs.350-560 and again she has been granted second financial upgradation on 9.8.99 under the ACP scheme. So she was not discriminated against. It is also alleged that as per the recruitment rules AWLO (Operational)



in the pay scale of Rs.5500-9000 was financed by the Government after Delhi Fire Service was taken over from the MCD and the applicant was beyond the zone of consideration to the post of AWLO. The other allegations were also denied.

4. In the rejoinder applicant has reiterated her case and denied the allegations made in the counter reply.

5. We have heard the learned counsel for the parties and have also gone through the relevant record.

6. The material facts are not in dispute. Applicant had joined the post of Telephone Operator in the pay scale of Rs.260-400 in the year 1964. She was promoted to the post of Assistant Mobilization Officer Grade-II in the scale of Rs.330-560. The Assured Career Progression Scheme came into force with effect from 9.8.1999. The relevant extract for grant of financial upgradation under the scheme is given below:

“1. The ACP Scheme envisages merely placement in the higher pay-scale/grant of financial benefits (through financial upgradation) only to the Government servant concerned on personal basis and shall, therefore, neither amount to functional/regular promotion nor would require creation of new posts for the purpose;

3. The financial benefits under the ACP Scheme shall be granted from the date of completion of the eligibility period prescribed under the ACP Scheme or from the date of issue of these instructions whichever is later;

4. The first financial upgradation under the ACP Scheme shall be allowed after 12 years of regular service and the second upgradation after 12 years of regular service from the date of the first financial upgradation subject to fulfillment of prescribed conditions. In other words, if the first upgradation gets postponed on account of the employee not found fit or due to department proceedings, etc. this would have consequential effect on the second upgradation which would also get deferred accordingly.

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)

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pay-scales as indicated in Anneuxre-II which is in keeping with Part-A of the First Scheme annexed to the Notification".

7. The salient features of this Scheme as per these conditions are that financial upgradation granted under the Scheme does not amount to functional or regular promotion and that it is only the grant of higher pay scale with no change in the designation, duties and responsibilities attached to the post. The object of the scheme is to relieve the government servant from hardship and acute stagnation for lack of adequate promotional avenues. The first financial upgradation is granted after 12 year of regular service and the second after 24 years of regular service, in case the government servant was stagnating for want of promotion to the higher post. The benefit under the scheme is to be given under the existing hierarchy of cadre/category of posts as on the date on which the government servant has become entitled to ~~the~~ grant of The financial upgradation. The scheme came into force on 9.8.99. The first and second financial upgradation were to be granted subject to the fulfillment of other conditions on 9.8.99 or on a date thereafter when 12 years/24 years service as the case may be, was completed.

8. Admittedly, the applicant who was initially appointed to the post of Telephone Operator was promoted to the higher post of AMO Grade-II which carried higher pay scale in the year 1983 as such she has received one promotion during her service. In terms of conditions for financial upgradation under the ACP scheme she was entitled to only second financial upgradation under the scheme after completion of 24 years of service. She has already been granted this benefit by financial upgradation in the scale of Rs.5500-9000. She was in the scale of Rs.4000-6000 and she has been granted financial upgradation in the scale of Rs.5500-9000 in the existing hierarchy of the cadre.

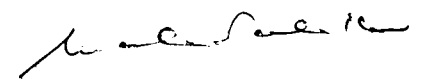
9. The grievance of the applicant, however, is that other Telephone Operators who were junior to the applicant have been granted first financial upgradation in the pay scale of Rs.5500-9000 and the second financial

per cent on the

upgradation in the pay scale of Rs.8000-13500 which is arbitrary and discriminatory. The contention has no force.

10. It is admitted that the post of Telephone Operators were converted into the post of Radio Telephone Operator in the year 1983 and the existing incumbant who passed the departmental test and had 5 years of service were appointed to the converted post which carried the same pay scale as was attached to the post of AMO-II. The conversion of the post of Telephone Operators to the post of Radio Telephone Operators was held by the department to be a promotion. This was challenged by the RTOs in OA-1084/2003 and the Tribunal held that conversion of the post of Telephone Operators to the post of Radio Telephone Operators was not a promotion. Applicant was not holding the post of Telephone Operator nor did she ever hold the post of Radio Telephone Operator. She had been working on the promotional post of AMO Grade-II. As a consequence of the order of the Tribunal the RTOs have been granted two financial upgradation in terms of the Scheme. Whereas applicant was eligible to the grant of only one financial upgradation, i.e. second financial upgradation since in the span of 24 years of service she has earned one promotion.

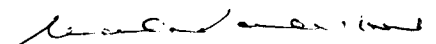
11. The contention of the applicant that her juniors have been granted two promotions whereas she has been discriminated and has been granted only one financial upgradation or that she was entitled to be granted the same financial upgradation as the RTOs were granted had no merit. Having got one promotion in the year 1983 she cannot be granted two financial upgradations under the scheme. The financial upgradation has to be in accordance with the ACP scheme. There is no question of parity between two groups. The promotional avenues of the RTOs was in reorganized service. The channel of promotion of the applicant was different. It may be a little unjust that applicant despite her being senior in service has not been granted second financial upgradation in the scale of Rs.8000-13500. But it is not a case of promotion that she may claim




parity with her juniors. She has filed the present application for grant of financial upgradation under the ACP scheme which can be granted only in terms of the Scheme and not on the basis of parity or equality. The principle of equality enshrined in Article 14 and 16 of the Constitution of India cannot be applied to grant of financial upgradation at par with RTOs.

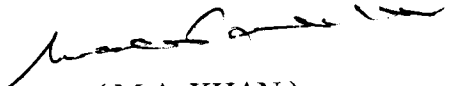
12. The learned counsel for the respondent has stated that apart from the fact that OA has no merit it is otherwise much beyond the period prescribed by Section 21 (1) read with Section 20 (2) of the AT Act, 1985. He has cited State of Karnataka vs. S.M.Kotrayya (1996) 6 SCC 267 wherein it was held that although it was not necessary to give an explanation for the delay which occurred within the period mentioned in sub-sections (1) or (2) of Section 21, explanation should be given for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should satisfy itself whether the explanation offered was proper. In the case before the Hon'ble Court the explanation offered was that they had come to know of the relief granted by the Tribunal in 1989 and that they filed the petition immediately thereafter which was not considered a proper explanation and that was required of them to explain under sub-sections (1) and (2). It was held that they must explain as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under sub-section (1) or (2) and since no explanation was given, the Tribunal was unjustified in condoning the delay.

13. In the present case, it is submitted that the present OA is filed on 3.9.2004 whereas the financial upgradation has been granted to other Radio Telephone Operators on 29.10.2003. They were granted the first and second financial upgradation in the scale of Rs.5500-9000 and Rs.8000-13500 respectively. This petition was filed within one year from the grant of the financial upgradation to the RTOs so OA is in time by virtue of Section 21 (1) read with Section 20 (2) of AT Act, 1985 to file the present application.



14. The applicant has no case on merit, we dismiss the OA but leaving parties to bear their own costs.


(S.A. SINGH)
Member (A)


(M.A. KHAN)
Vice Chairman (J)

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