

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 2310/2004

This the 16th day of October, 2005

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

Balbir Singh, Group-D,
S/o Late Sh. Molar singh,
R/o Bhopra,
P.O. Pasaunda,
Distt. Ghaziabad.

.....Applicant.

(By Advocate: Sh. Subhash Sharma)

versus

Kendriya Vidyalaya Sangathan through its
Assistant Commissioner,
Delhi Region,
JNU Campus,
New Mehrauli Road,
New Delhi-67.

....Respondent

(By Advocate: Sh. S.Rajappa)

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 financial upgradation under the Assured Career Progression Scheme (ACP Scheme).

2. Applicant had joined a Group 'D' post in the respondent Kendriya Vidyalaya Sangathan (KVS) on 13.8.1965 in the pay scale of Rs.750-940. He retired in June 2004. He has neither been given the benefit of financial upgradation under 'Career Advancement Scheme' which was applied to the employees of KVS vide office memorandum dated 18.8.99 nor has he been granted first and second financial upgradation in the pay scale of

.....

Rs.2610-4000 and 2750-4400 under the ACP Scheme after completing 12 years and 24 years regular service respectively while other group D employees have been granted the financial upgradation under ACP Scheme which has been applied to KVS employees w.e.f. 12.10.2000. His TA No. 40/99 for grant of benefit of financial upgradation under "Career Advancement Scheme" implemented in KVS vide OM dated 7.4.1995 was dismissed by the Tribunal on 21.9.2000 (Annexure A-10) and writ petition filed assailing the order was dismissed as withdrawn. Earlier OA No.2277/2003 filed for grant of similar relief was disposed off on 31.3.2004 with a direction to the respondent to decided the representation of the applicant for grant of financial upgradation. The representation of the applicant has since been rejected vide memorandum dated 11.6.2004.

3. The respondent have repudiated the claim of the applicant on the ground that the applicant was promoted as Laboratory Assistant on 15.3.99 and again on 7.12.2000 but he did not join the post as a consequence he was debarred for 5 years from getting any promotion. It was alleged that he has become ineligible to the grant of financial upgradation in terms of condition No.10 of the ACP scheme.

4. We have heard the learned counsel for the parties and perused the record.

5. ACP Scheme was introduced by the Govt. of India on 9.8.99 to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. Conditions for grant of financial benefits have been prescribed under the ACP Scheme. The ACP Scheme benefits as such are available strictly in accordance with

Munir Gareeb

the terms and conditions laid down under the scheme and not otherwise.

Applicant has filed the copy of the ACP Scheme as Annexure-1. The conditions for grant of the financial benefit under the scheme are at page 78 onward. It will be appropriate to examine those conditions summarily. Condition No.1 provided that the ACP scheme envisages merely placement in the higher pay scale and was not functional or regular promotion nor would require creation of the new posts. Condition No.2 has put a ceiling of the benefit under the scheme up to the pay scale of Rs.14,300-18300.

Condition No.3 being important is reproduced as under:-

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

The crucial date for grant of first or second financial upgradation under the Scheme is the date on which the employee completes 12 years or 24 years regular service, as the case may be, or the date on which the Scheme was issued, whichever was later.

6. Condition No.4 laid down that the first financial upgradation under the Scheme would be allowed after 12 years of regular service and the second upgradation after 12 years of regular service from the date the first financial upgradation subject to fulfillment of the prescribed condition etc.

7. Condition No.5.1 also being important is reproduced below:-

“Two financial upgradations under the ACP Scheme in the entire Government service career of an employee shall be counted against regular promotions (including in situ promotion and fast track promotion availed through limited departmental competitive examination) availed from the grade in which an employee was appointed as a direct recruit. This shall mean that two financial upgradations under the ACP Scheme shall be available only if no regular promotion during the prescribed periods (12 and 24 years)

to be continued

18

have been availed by an employee. If employee has already got one regular promotion, he shall qualify for the second financial upgradation only on completion of 24 years of regular service under the ACP Scheme). In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him.”

8. Condition No.7 has provided that financial upgradation under the scheme shall be given under the next higher grade in the cadre/category of posts without creating new posts for the purpose etc. According to condition No.8 the financial upgradation under the scheme would be purely personal and would not have any relevance to the seniority position. Condition No.9 prescribed the procedure of fixation of pay on upgradation. Condition No.10 which has been relied upon by the respondent for denying the upgradation under the scheme is being reproduced as under:

“Grant of higher pay-scale under the ACP Scheme shall be conditional to the fact that an employee, while accepting the said benefit, shall be deemed to have given his unqualified acceptance for regular promotion on occurrence of vacancy subsequently. In case he refuses to accept the higher post on regular promotion subsequently, he shall be subject to normal debarment for regular promotion as prescribed in the general instructions in this regard. However, as and when he accepts regular promotion thereafter, he shall become eligible for the second upgradation under the ACP Scheme only after he completes the required eligibility service period under the ACP Scheme in that higher grade subject to the condition that the period for which he was debarred for regular promotion shall not count for the purpose. For example, if a person has got one financial upgradation after rendering 12 years of regular service and after 2 years therefrom if he refuses regular promotion and is consequently debarred for one year and subsequently he is promoted to the higher grade on regular basis after completion of 15 years (12+2+1) of regular service, he shall be eligible for consideration for the second upgradation under the ACP Scheme only after rendering 10 more years in addition to two years of service already rendered by him after the first financial upgradation (2+10) in that higher grade i.e. after 25 years (12+2+1-10) of the regular service because the debarment period of one year cannot be taken into account towards the required 12 years of regular service in the higher grade”

.....

9. Other conditions from 11 to 15 are not necessary to be produced as they are not relevant for the controversy raised in the present case.

10. Applicant having been appointed to a Group 'D' post on 13.8.1965 has not availed of any promotion to the higher post/grade in the hierarchy of cadre/the category of post before his retirement from service in June 2004. The Scheme has been applied to the employees of KVS respondent w.e.f. 12.10.2000. Before the Scheme was adopted by the KVS the respondent issued an order of promotion of the applicant to the next higher grade in the hierarchy of promotional post in the cadre, i.e. post of Library Attendant on 15.3.1999. The applicant did not avail of it. According to applicant in KVS the promotion is made on an out station post and in March 1999 when he was promoted as Library Attendant he could not avail of this promotion since his wife was not in good health. After this Scheme came into force on 12.10.2000, he was again given promotion on 7.12.2000. He again could not avail of this promotion too for the same reasons. Thereupon the applicant was debarred for promotion for 5 years from promotion.

11. As observed above, the financial upgradation under ACP Scheme is to be granted to the employee strictly in accordance with the terms and conditions of the Scheme. None of the conditions for grant of financial upgradation in the Scheme debarred the applicant from getting the benefit under the Scheme on the ground that he had not availed of promotion when it was made on 15.3.99, i.e. before the Scheme came into force. The Scheme of course would have made him ineligible for first financial upgradation had he availed of the promotion before 12.10.2000. In other words, he would have got one promotion during the span of his service

Subrahmanyam

making him ineligible for first financial upgradation. He was debarred from further promotion for 5 years on his refusal to avail of the promotion offered to him on 7.12.2000, i.e. after the Scheme came into force.

12. I have already discussed the conditions briefly under which the benefits of the Scheme are granted. As per condition No.3 which has been reproduced, the financial benefit under the Scheme would be granted from the date of completion of the eligibility period prescribed under the Scheme or from the date of issue of the Scheme whichever is later. In other words, the eligibility for grant of financial upgradation under the Scheme will be considered on the date on which the KVS employee had become eligible for first and the second financial upgradation, i.e. after 12 years and 24 years regular service or from the date of the enforcement of the Scheme. In the present case the applicant has already completed more than 24 years of regular service in the cadre on a Group 'D' post. When the Scheme came into force on 12.10.2000, he was eligible for grant of both the financial upgradations having completed 24 years regular service without availing of any promotion.

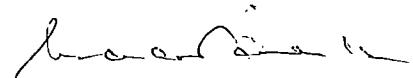
13. As per Condition No.5.1 which has also been extracted above two financial upgradation will be available only, if no regular promotion during the prescribed period of 12 and 24 years has been "availed" by an employee. If the employee has already got one promotion he would qualify for second financial upgradation on completion of 24 years of regular service and in case two prior promotions have been "received" by the employee no benefit under the ACP Scheme would accrue to him. Another condition for grant of the upgradation is that the employees who

Handwritten signature

21

otherwise is eligible as per the service rules for promotion, i.e. fulfilled all the eligibility conditions for promotion but could not be promoted because of non-availability of the promotional post or the post held by him was an isolated post with no hierarchy of promotional post. The applicant in the present case has not received "any promotion" during his 12 and 24 years of regular service when the Scheme came into force on 12.10.2000. In accordance with condition No.5.1 he should have received the promotion, i.e. he should have joined the promotional post to make him disqualified for the benefit of the Scheme. If he has not accepted the promotion, it would not debar him from grant of financial upgradation under the scheme. As per the condition No.5.1 he would not be deemed to have "availed of" the promotion. Condition No.5.1 does not stipulate that the employees would not be eligible if he had refused the offer of promotion. This condition, therefore, does not disentitle the applicant from consideration of financial upgradation under the Scheme before ^{on} 12.10.2000.

14. Coming to condition No.10, learned counsel for applicant has fervently argued that the mischief of this condition would come into play only after the financial upgradation had been granted to an employee and not before that. There seems force in this contention. A careful scrutiny of this condition would show that an employee who had been granted upgradation under the scheme if subsequently refused to accept the higher post on regular promotion, he would render himself ineligible for grant of second financial upgradation until he accepts the regular promotion. He will then become eligible for second financial upgradation on completion



of 12 years regular service from the date of first upgradation excluding normal debarment period from counting. The scope and import of this rule have been illustrated in this condition by an example given which need not be elaborated.

15. In the instant case the offer of promotion made by the respondent on 7.12.2000 was refused by the applicant and he did not join the new post and suffered debarment of 5 years for regular promotion. Till then he had not been granted a financial upgradation under the scheme. Therefore, Rule 10 does not make him ineligible for grant of two financial upgradations under the Scheme. The eligibility conditions for grant of both the financial upgradations after 12 years and 24 years of regular service in accordance with condition prescribed under the Scheme as discussed above were fulfilled by the applicant as on 12.10.2000 when the entitlement of the applicant for upgradation was to be considered. The denial of benefit of upgradation to the applicant with the help of condition No.10, to our view, is not justified. Of course, regular promotion of the applicant would be subject to the condition of the debarment period.

16. Counsel for applicant has filed a copy of the order of the Punjab and Haryana High Court in RA No.1768/2004 - Haryana State Govt. and another vs. Vidya Devi decided on 4.5.2004 wherein it was held that the eligibility of an employee for release of second higher standard scale was to be considered as on 1.1.94 since the plaintiff has already completed 24 years of regular satisfactory service on that day and that subsequent policy and notification issued by the State Government were not applicable to the case of the applicant and that the benefit once granted to the applicant

could not be withdrawn as the fact would show the benefit had already been granted under a Scheme of the State Government which was sought to be withdrawn on the strength of subsequent orders which is not a case before us.

17. The result of the above discussion is that the OA succeeds. Respondents are directed to consider the grant of first and second financial upgradation to the applicant as on 12.10.2000 when the ACP Scheme came into force in KVS and in case the applicant is granted the financial upgradation his pay and pension would be revised accordingly and he be paid the consequential benefits. This exercise will be completed within 4 months from the date on which the copy of the order is received by the respondents. No costs.


 M.K. MISRA)
 Member (A)


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

'sd'