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O.A. No. 858 of 2006
Ramesh Chandra Debata ... Applicant
Versus
UOI & Ors. ... Respondents

O.A. No. 859 of 2006
Rabindra Kumar Pal ... Applicant
Versus
UOI & Ors. ... Respondents

1. Order dated 10th November, 2009.

C O R A M
THE HON'BLE MR. JUSTICE K. THANKAPPAN, MEMBER (J)
A N D
THE HON'BLE MR. C. R. MOHAPATRA, MEMBER (A)
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Shri Ramesh Chandra Debata is the Applicant in Original Application No. 858 of 2006 and Shri Rabindra Kumar Pal is the Applicant in OA No. 859 of 2006. Both of them are working as Laboratory Attendant in the Institute of Hotel Manager and Catering Technology, Bhubaneswar. Their case is that both of them are Matriculate having one year craft course in Restaurant and counter service from the Food Craft Institute, Orissa, Bhubaneswar. They joined under the Respondents as Laboratory Attendant in the year 1981. On the acceptance of the recommendation of the Vth Pay Commission for providing financial up-gradation to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues, the Government of India introduced a scheme known as Assured Career Progression "in short 'ACP'" for the Central Government civilian employees in all

Ministries/Departments vide order dated 09.08.1999 and in the said scheme it was provided for grant of two financial up-gradations in the entire Government service career of an employee the first financial up-gradation under the ACP scheme shall be allowed after 12 years of regular service and the second one after 12 years of regular service from the date of the first financial up-gradation subject to fulfillment of prescribed conditions and further if no regular promotion during the prescribed periods has been availed by an employee. It is further provided that if an employee has already got one regular promotion he shall qualify for the second financial up-gradation 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. According to the Applicants, as no promotion during their entire period of service was availed by them, as per the ACP scheme they were allowed first financial up-gradation to the scale of pay of Rs.3050-4590/- w.e.f. 09.08.1999. Their grievance is that they were entitled to the second financial up-gradation to Rs.4000-1000-6000/-. But the Respondents granted them the second financial up-gradation under ACP to Rs.3200-4900/- w.e.f. 20.06.2005 and 17.7.2005 respectively. Their grievance is that as per the ACP scheme, financial up-gradation shall be given to the next higher grade in accordance with the existing hierarchy in cadre/category

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without creating new post for the purpose. The first financial up-gradation was given to the Applicants to the Rs.3050-4590/- which is the scale meant for LDC in the institute. The post of Lower Division Clerk in the Hotel Management is the feeder cadre of Upper Division Clerk carrying the scale of pay of Rs.4000-6000/-. In terms of the Rules, Laboratory Attendants are entitled to be considered for promotion to LDC, thereafter to the post of UDC etc. Being aggrieved by such action of the Respondents they made representations but the said representation of the applicants were rejected and communicated to them in letter dated 08.03.2006 on the ground that as they do not possess the minimum educational qualification of graduation prescribed in the rules for promotion to the post of UDC, they were rightly allowed the 2nd financial up-gradation to Rs.3200-4900/-. Thereafter, they made representation to the Additional Director General, Ministry of Tourism Government of India and no reply having been received by them on the said representation, they approached this Tribunal praying as under:

- “(A) To quash the letter No.1835 dated 08.03.2006 (as per Annexure-A/3) and office order No.1311 (3) dated 22.11.2005 issued by the Respondent No.3 (as per Annexure-A/2) in so far as the grant of second financial up-gradation of the applicant is concerned;
- (B) To quash the provision of LDCs having the minimum qualification of graduation for promotion as UDC prescribed in the
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recruitment rule for promotion from LDC to UDC (Annexure-A/4);

- (C) To issue order(s) direction(s) to the respondent No.3 to grant the financial up-gradation to the applicant by placing him in the scale of pay of Rs.4000-100-6000/- with effect from 17.7.2005 onwards instead of in the scale of pay of Rs.3200-85-4900/-;
- (D) To pass such other order(s)/direction(s) as may be deemed fit and proper in the bonafide interests of justice; and
- (E) To order and direct that the cost of litigation be paid to the applicant by the respondents."

2. The stand of the Respondents (in both the cases) are that fulfillment of all promotional norms including educational qualification, if any, specified in the relevant Recruitment Rules/Service Rules prescribed for grant of regular promotion is a precondition for grant of financial up-gradation in the hierarchical grades in terms of the ACP scheme introduced by the Government of India. They having fulfilled the provisions of the Recruitment Rules in vogue since 1984. The 1st Financial up-gradation was allowed to them according to the hierarchy of the promotional posts. But when they became eligible to receive 2nd financial up-gradation, the earlier Recruitment Rules, 1984 were superseded by the Recruitment and Promotion Rules, 2003 providing therein to become UDC one must have the qualification of graduation which the applicants do not have. Therefore, they were allowed the scale of pay of Rs. 3200-85-4900/- under 2nd ACP. In regard to the challenge of the

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provision of the Recruitment Rules, it is stated by the Respondents that this was framed by the Government as a matter of policy keeping in view the need of the institution. Therefore, the challenge of the Rules showing the provision in other Department of the Government of India is of no consequence. Accordingly, Respondents have prayed for dismissal of both the OAs being devoid of any merit.

3. Applicants reiterating more or less some of the facts stated in their Original Application and by giving examples of the rules of other departments of the Government of India have stated that by putting the condition of graduation as the minimum educational qualification for becoming UDC, the Respondents have caused discrimination among similarly placed Government of India employees and, as such, it has been stated that since the said condition offends provisions enshrined under Articles 14 and 16 of the Constitution, the amendment inserting the educational qualification graduation needs to be quashed with direction to the Respondents to grant the replacement scale to the applicants under ACP to Rs.4000-6000/- instead of Rs.3200-4900/-.

4. It was submitted by Learned Counsel for the Applicant that in the Recruitment Rules, 1984 the Government of India/Respondents maintained the uniformity by way of providing educational qualification etc. in accordance with the

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Rules framed and in existence in other Departments of the Government of India whereas when there is no change so far in the educational qualification etc. for the post of LDC and UDC in other Departments, insertion of higher qualification in the present Department is not a bona fide exercise of power meeting the provision of Articles 14 and 16 of the Constitution of India. Further it has been stated that even if it is amended the same should not have been made applicable to the employees recruited prior to the amendment or else it would amount to taking away the rights of the pre-amended Rules, 2003 without giving them any opportunity and that it would tantamount to taking retrospective effect which is not sustainable in the eyes of law. Change of Rule is unreasonable being opposed to Articles 14 and 16, he has relied on the decision of the Hon'ble Apex Court in the case of Pradip Kumar Biswas v Indian Institute of Chemical Biology, (2002) 5 SCC 111. Further it was argued by Learned Counsel for the Applicant that by way of policy to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues, ACP scheme was introduced by the Government directing grant of two financial up-gradations during entire service career of an employee. Therefore, the condition of possessing minimum educational qualification of graduation by the LDCs for promotion to UDC as well as for financial up-gradation under ACP is unreasonable and unfair. His next contention is that

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there would not be any discrimination between a graduate LDC and on-graduate LDC. Once both of them became LDC, they are supposed to be promoted to the post of UDC irrespective of their qualification and by making artificial discrimination the Respondents cannot deny the benefits of second financial up-gradation to the Applicants and grant the same to the LDC who has the qualification of graduation. It was also argued that the Respondents having allowed the scale of Rs.4000-6000 w.e.f. 22.6.2000 by way of second financial up-gradation under ACP to Shri S.K.Hota, LDC, the same cannot be denied to the Applicants and denial of said benefit is nothing but amounts to gross discrimination and discrimination being anti-thesis to rule of law, the Applicants are entitled to the reliefs claimed in this OA.

On the other hand, Respondents' Counsel argued that no miscarriage of justice or discrimination caused in the decision making process of the matter of granting 2nd up-gradation under ACP. It was stated by him that Recruitment Rules, 1984 provided promotion of LDC to UDC having a minimum qualification of matriculation which was subsequently changed by promulgation of Recruitment Rules 2003 making the minimum qualification of graduation. Since Shri Hota was eligible for the second financial up-gradation before the new Recruitment Rules came into existence, he being a matriculate,

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was granted the scale of Rs.4000/- by way of second financial up-gradation. Secondly it was argued by him that as a matter of policy, the Government thought it prudent to amend the rules providing graduation as the minimum qualification for the post of U.D.C. and it is settled law that the courts and tribunals have no power or competence to interfere in the policy decision of the Government. As such, merely because in other departments such qualification is not available in the rules, cannot give any right to the applicants to claim for change of the Rules made by the Government keeping in view the requirement and other factors into consideration. Accordingly, Respondents' counsel reiterated his stand that there being no merit in these OAs, the same are liable to be dismissed.

5. After giving in-depth consideration to various submissions made by the parties, perused the materials placed on record. We note that this is a matter in regard to interference in the Rules for recruitment and promotion which have been made by the Respondents by way of policy in exercise of the powers conferred by the provision of the constitution. In this connection, we may further state that the scope of judicial review in such matters is no more res integra by promulgation of various decisions of the Hon'ble Apex Court, by various Hon'ble High Courts as also various Benches of the Tribunal. It is settled law that in service jurisprudence the prescription of

qualification not only refers to numeric superiority but is essentially related to better mental capacity, ability and maturity to shoulder the responsibilities which are entrusted to the candidates after their selection to a particular post. All the more it is important for efficient and effective administration. The object of prescribing qualification is to select the best amongst the better candidates who possess more competence than the others. The CAT is not competent to lay down criteria for selection and appointment to the post in Government.

6. The nature of work and responsibilities of posts are matters which can be better evaluated by the experts in the Government/management. For similar posts different qualification has been prescribed in other department cannot be a ground to annul the Rules framed by the Government in the present department, as it is trite law that whether posts are equal or should carry equal pay, depends upon several factors. The functions of the post may at time appear to be same or similar but there may be qualitative/quantitative difference. Therefore, the work of evaluation of posts or pay must be left with the executive or the management. The Tribunal or the Courts lack jurisdiction, competence or authority to determine or evaluate the fixation of qualification or pay scale for any post in any department relying upon affidavits only and that too of the interested persons.

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7. In regard to the submission of the Learned Counsel for the Applicants that the Rules offend the constitutional provision adumbrated under Article 16 of the Constitution of India, it is profitable to refer that what is guaranteed by Article 16 (1) of the Constitution is equality of opportunity in the matter of an appointment in State Services and nothing more. It is open to the Government to frame necessary rules prescribing the requisite qualifications and it is also open to the authorities to lay down such conditions for appointment as would be desirable for administrative purpose.

8. Further rulings of the Hon'ble Apex Court are that Court cannot arrogate to itself the powers of the executive or legislature. There is broad separation of powers under the constitution and the judiciary, too, must know its limits. Such directions are executive functions, and it is not appropriate for the court to encroach into the functions of another organ of the state (vide **Indian Drugs and Pharmaceuticals Ltd v. Workmen**-(2007) 1 SCC (L&S) 270 (pp.426-27 & 431).

9. Last but not the least, it must be realized that there is no right in any employee of the state to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes. Except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government

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servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service (vide P.U. Joshi and others v Accountant General, Ahmedabad and others, 2003(2) SCC 632)

10. In view of the above, we are not inclined to interfere in the Recruitment Rules framed by the Respondents as a matter of policy for recruitment and promotion to the posts of LDC and UDC.

11. The next question is in regard to grant of second financial up-gradation under ACP. As per the ACP scheme one must fulfill all the promotional norms provided in the rules for grant of regular promotion for getting the benefits under the ACP. This was also the view taken by the **FULL BENCH** of the Tribunal, Chandigarh in OA Nos.125 and 465/CH/ 2003 disposed of on 8.12.2004 in the case of **Krishan Kumar and others v Union of India and others**. It is not in dispute that the applicants do not fulfill the conditions provided in the Recruitment Rules, 2003. It is also not in dispute that Applicants became eligible for the second financial up-gradation only after the new Rules came into existence and that Mr. Hota got the second up-gradation in the scale of UDC prior to the new Rules came into force. In view of the above, we find no infirmity in the decision making process of granting the Applicants the scale of pay of Rs.3200-4900/- under 2nd ACP.

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12. When the factual scenario is examined in the background of the legal principles set out above, the inevitable conclusion is that both the OAs sans any merit. Accordingly, both the OAs stand dismissed. No costs.

Sd/-
MEMBER (J)

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MEMBER (A)