

क.प्र.प्र. (प्रक्रिया) नियमावली के नियम 22 के अन्तर्गत निः शुल्क प्रति

8/5

CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR

Original Application Nos. 73/2007, 74/2007, 75/2007, 76/2007,
115/2007 and 190/2007

Date of order: 02.04.2008.

HON'BLE MR. M.L. CHAUHAN, MEMBER (J).
HON'BLE MR. R.R. BHANDARI, MEMBER (A).

(1) O.A. No. 73/2007

Rajendra Kumar S/o Shri Shanker Lal, by caste Harijan Balmiki, aged about 38 years, resident of Gali No. 17, Rampura Basti, Lalgarh Bikaner, at present posted as "D" Group Employee, Kendriya Vidyalaya Sangathan No. 1, Bikaner.

...Applicant.

(2) O.A. No. 74/2007



Chhaju Ram S/o Shri Mala Ram, by caste Harijan Balmiki, aged about 47 years, resident of Sheetla Mata Ka Mohalla, VPO Singhana, District Jhunjhunu, at present working as "D" Group Employee, Kendriya Vidyalaya Sangathan No. 1, Bikaner.

...Applicant.

(3) O.A. No. 75/2007

COMPARED &
CHECKED

Mohan Lal S/o Late Shri Ladu Ram, by caste Suthar, aged 41 years, resident of Ward No. 2, Suratgarh District Sri Ganganagar, at present posted as "D" Group Employee, Kendriya Vidyalaya Sangathan, S.T.P.S. Suratgarh District Sri Ganganagar.

...Applicant.

(4) O.A. No. 76/2007

Tulshi Ram S/o Shri Shanker Lal, by caste Harijan Balmiki, aged about 57 years, resident of C-209, Sahadulganj, Bikaner, at present posted as 'D' Group Employee, Kendriya Vidyalaya Sangathan No. 2, Bikaner.

...Applicant.

I/16

2

(5) O.A. No. 115/2007

Jagga Ram S/o Naina Ram, by caste Harijan, aged about 54 years, resident of Balsamand Road, Royalty Naka, Mandore, Jodhpur, at present posted as "D" Group Employee, Kendriya Vidyalaya No. 2, Air Force School, Suratgarh.

...Applicant.

(6) O.A. No. 190/2007

Ujja Ram S/o Naina Ram, by caste Harijan, aged about 59 years, resident of Narwa Tehsil & Dist : Jodhpur, at present posted as "D" Group Employee, at K.V.S., B.S.F., Mandore Road, Jodhpur.

...Applicant.

Mr. H.S. Sidhu, counsel for applicants - in all the O.As.

VERSUS



1. Union of India through the Secretary, Ministry of Human Resources Development, Department of Education, New Delhi.
2. The Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shahid Jit Singh Marg, New Delhi.
3. Sr. Administrative Officer, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shahid Jit Singh Marg, New Delhi.
4. Assistant Commissioner, Kendriya Vidyalaya Sangathan, 92, Gandhi Nagar Marg, Bajaj Nagar, Jaipur

...Respondents - in all the O.As.

Mr. U.S. Kumawat, proxy counsel for
Mr. P.S. Bhati, counsel for respondents - in all the O.As.

ORDER

Per Mr. M.L. Chauhan, Member (J)

By this common order, we propose to dispose of the aforesaid Original Application Nos. 73/2007, 74/2007, 75/2007, 76/2007, 115/2007 and 190/2007, as common question of facts and law are involved in these cases.



2. Briefly stated facts of the cases are that the applicants who are Group 'D' employees, were granted the first financial up-gradation by the respondents on different dates in the year 2002 and 2003 after the completion of 12 years of service and subsequently the said benefits were withdrawn vide impugned order(s) dated 09.03.2007 (Annexure A/1) on the ground that the applicants are not having the educational qualification of the next higher post i.e. the Lab. Attendant. The said order(s) was passed after issuing the show cause notice. It is this order(s) which is challenged in these Original Applications.



The applicants have prayed that this impugned order(s) dated 09.03.2007 (Annexure A/1) be quashed and set aside and the respondents may be restrained to make any recovery pursuant to the said order(s) and also that any order, if any, which debar the applicants from the financial up-gradation on the basis of the educational qualification may also be quashed and set aside.

3. Before examining the matter in issue, it may be useful to quote certain relevant facts, which are not under dispute and may be useful for the disposal of these cases. As already stated above, the applicants are Group 'D' employees working with the respondent-department i.e. Kendriya Vidyalaya Sangathan (K.V.S., for short). The respondents vide Office Memorandum dated March 21, 2001 (Annexure A/3) decided to implement the Assured Career Progression (A.C.P., for

short) Scheme for the non-teaching employees of the K.V.S. and the Board of Governors of K.V.S. in its 69th Meeting held on 01st March, 2001 approved the A.C.P. Scheme to the non-teaching employees of K.V.S. with effect from 12th October, 2000 by adopting the guidelines issued by the Department of Personnel and Training vide O.M. No. 35034/1/97-Estt. (D) dated 09.08.1999 and it was decided that the said Scheme shall apply mutatis mutandis to the non-teaching employees of K.V.S., by superseding the earlier Scheme of Career Advancement of Group 'C' and 'D' employees as circulated vide O.M. No. 6-10/96-KVS (Adm.I), dated 18th August, 1999.



Pursuant to the said decision, the respondent-department on the basis of recommendation of the Screening Committee held on 13.10.2003, granted the benefit of the A.C.P. Scheme to various Group 'C' and 'D' employees, including the applicants, who fulfill the conditions as laid down in the Annexure-I of the DOPT Office Memorandum dated 09.08.1999. Subsequently, a clarification was received from the K.V.S., (H.Q.), New Delhi vide its letter dated 25.10.2006 addressed to all Regional Offices thereby stating that the benefit of A.C.P. Scheme may be withdrawn in respect of those Group 'D' employees whose qualification is less than 8th class pass, by issuing a show cause notice to them as the requisite educational qualification which is required for next promotion as Lab. Attendant is 8th class pass. Accordingly, the show cause notices were issued to the applicants and after considering the cases of the applicants, the respondents has

2/19



withdrawn the benefit of A.C.P. Scheme, granted earlier to the applicants, vide impugned order(s) dated 09.03.2007 (Annexure A/1) with immediate effect.

4. Thus, on the basis of the facts as stated above, the question which requires our consideration is "whether a person, for getting financial up-gradation under the A.C.P. Scheme dated 09.08.1999 to the next grade/scale, is required to be possessed of educational qualifications required for appointment/promotion to the next higher post, carrying the same scale which is to be given now under the Scheme as a financial up-gradation?"



5. We have heard learned counsel for the parties and gone through the material placed on record.

6. Learned counsel for the applicants submits that the Scheme itself was evolved to mitigate the hardship of such employees who could not be promoted. It is further submitted that by giving the financial up-gradation what is made available is only a financial benefit and not an elevation in status. For all intents and purpose applicants continue to be a Group 'D' employees performing the same duties as before but enjoying only a higher pay scale after rendered service for a specified period without any promotion chance, as such the condition of fulfilling the minimum qualification of the post of which the pay scale is being granted is not warranted and in any case

the educational qualifications insisted upon by the respondents is discriminatory and contrary to the A.C.P. Scheme.

7. On the other hand, submission made by the learned counsel for the respondents is that as per para 6 of the Scheme, a person must fulfill normal promotion norms before granting financial up-gradation. For that purpose, learned counsel for the respondents has also placed reliance upon the clarification No. 53 issued by the Department in terms of para 6 of Annexure-I of DOPT Office Memorandum dated 09.08.2009, whereby it is stated that various stipulations and conditions specified in the recruitment rules for promotion to the next higher grade, including the higher/additional educational qualification, if prescribed, would need to be met even for consideration under ACP Scheme. Thus, according to the learned counsel for the respondents before granting A.C.P. benefit to a person, he must fulfill the norms of promotion including the educational qualification.



8. According to us, the matter on this point is no longer res integra. The Full Bench of the Tribunal at Chandigarh in the case of Shri Krishna Kumar and Ors. vs. Union of India and Ors. - 2006 (1) A.T.J. 91, has considered this matter in depth thereby relying upon the decision of the Apex Court as well as the contrary view taken by the Ernakulam Bench of the Tribunal in the matter of V.E. Chandran and Ors. v. Union of India & Others [2002 (2) ATJ (CAT) 47], has answered



the question posed before the Bench, as under: -

"40. A person for grant of financial upgradation under the ACP Scheme dated 9.8.1999 to the next higher grade/scale is required to possess the educational qualifications required for appointment/promotion to the next higher post carrying the same scale....."

9. Thus, in view of the decision rendered by the Full Bench in the case of **Shri Krishna Kumar and Ors.** (supra), we are of the view that the applicants are not entitled to any relief and we see no infirmity in the impugned order(s) dated 09.03.2007 (Annexure A/1) whereby the A.C.P. granted to the applicants were withdrawn with immediate effect. Since the impugned order(s) is prospective in nature, as such the prayer of the applicants that the respondents may be restrained from making any recovery pursuant to impugned order(s) dated 09.03.2007 (Annexure A/1) is wholly misconceived.



10. With these above observations, all the aforesaid Original Application Nos. 73/2007, 74/2007, 75/2007, 76/2007, 115/2007 and 190/2007, are dismissed with no order as to costs.

SD/-

[R.R.BHANDARI]
MEMBER[A]

SD/-

[M.L.CHAUHAN]
MEMBER[B]

Kumawat

CERTIFIED TRUE COPY
Dated 08-4-2008

Narash

सहायक अधिकारी (न्याय.)
Section Officer (Judl.)
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
जोधपुर न्यायपीठ, जोधपुर
Jodhpur Bench, Jodhpur.

R. COPY

Atty

Re H.S. Sidney

at

8/4/08.

Cap. R. R. R.
T. S. 1/1

Part II and III destroyed
in my presence on 12/1/14
under the supervision of
section officer () as per
order dated 12/18/2014

Section officer (Records)