

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 11/01.2005

OA No.130/2002

D.N.Mathur s/o Shri Hari Narain Mathur, r/o C-478, Mahesh Nagar, Tonk Phatak, Jaipur, presently Head Clerk (AS). K.V.No.1, Kota. Raj.

.. Applicant

Versus

1. Kendriya Vidyalaya Sangathan through Commissioner, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi through its Commissioner.
2. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Jaipur Region, 92, Gandhi Nagar Marg, Bajaj Nagar Tonk Road, Jaipur.

.. Respondents

Rajendra Vaish, counsel for the applicant
Mr. V.S.Gurjar, counsel for respondents

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. A.K.BHANDARI, MEMBER (ADMINISTRATIVE)

ORDER

Per Hon'ble Mr. M.L.Chauhan

The applicant has filed this OA thereby praying for the following reliefs:-

- "(i) by an appropriate order or direction, the respondents may be directed to insert the name of the applicant at serial No.1 of the order dated 8.2.2002 (Anx.A/5) and provide benefits of Assured Career Progression Scheme with financial upgradation.
- (ii) by an appropriate order or direction, the respondents may be directed to provide financial upgradation 20.7.99
- (iii) by an appropriate order or direction, the respondents may be directed to step up of pay of the applicant qua his juniors in view of seniority list Anx.A/3 and

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order dated 8.2.2002 (Anx.A/5);
iv)"

2. Briefly stated, the applicant was appointed as Lower Division Clerk and joined in the respondent department on 1.5.71. He remained on the said post for a period w.e.f. 1.5.71 to 29.10.78. The applicant was subsequently promoted as Upper Divisional Clerk (UDC) under the service rules and he worked against that post w.e.f. 30.10.78 to 19.7.85. The applicant was further appointed to the post of Head Clerk which was subsequently re-designated as Assistant Superintendent on 20.7.85. The respondents in order to implement benefit under the Assured Career Scheme (ACP) held meeting of the Screening Committee on 5.2.02 for grant of financial upgradation under the said scheme to its employees. The Screening Committee examined the cases of eligible employees for the post of Assistant Superintendent as well as Upper Division Clerk thereby recommending names of 20 employees for grant of financial benefit whereas remaining 21 cases were not found fit for grant of financial upgradation. These facts can be gathered from the minutes of the screening committee held on 5.2.2002 which has been placed on record by the respondents as Ann.R1. Against the name of the applicant, reason for not granting financial upgradation is that he has already got two financial upgradation through promotion and fast track promotion through departmental examination. The grievance of the applicant in this OA is that such benefit has been extended to a person junior to him whereas the same has been wrongly denied to him and further according to the applicant, he has earned only one promotion during his entire service career when he was promoted to the post of UDC whereas his appointment as Head Clerk/Assistant Superintendent was by

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way of direct recruitment which cannot be termed as promotion, as such, he has not got two promotions during his entire service period. Thus, as per policy of the Government as notified vide OM dated 9.8.99, the applicant is entitled to second financial upgradation after completion of 24 years of service, which the applicant has completed in the year 1995. Thus, according to the applicant, action of the respondents in denying the benefit of financial upgradation to the applicant is arbitrary, more particularly, when the said benefit has been given to the persons who are junior to the applicant.

3. The respondents have filed reply. In the reply, it has been stated that the case of the applicant for grant of financial upgradation on the post of Head Clerk in terms of ACP scheme was considered and examined by the Screening Committee alongwith other proposals in its meeting held on 5.2.2002 but the same could not be acceded to as per the conditions contained in para 5.1 of Ann.R1 of the memorandum. The applicant has already got two financial upgradation through promotion from the post of LDC to UDC by the DPC and fast track promotion from the post of UDC to Head Clerk through limited departmental examination. Therefore, the claim of the applicant does not sustainable on any ground pleaded in support thereof.

4. The applicant has filed rejoinder thereby reiterating the submissions made in the OA. It is further stated that there is no provision either in the service rules or otherwise in respect of fast track promotion/accelerated promotion as fast track promotions are available and theory of fast track promotion is applicable with the Govt. of India in departments like Income Tax and AG office where no future promotions are

available. The case of the applicant is of direct recruitment and not of the fast track promotion. The applicant was appointed by direct recruitment as Head Clerk/Assistant Superintendent on 20.7.1985 and applications were also called for recruitment to the post of Head Clerk. The application Anx.A/1 also states for recruitment and Anx.A2 is the *order of appointment* ^{ad} *not promotion order* _{et}

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

5.1 It is not in dispute that the case of the applicant for financial upgradation is covered under the ACP scheme for Central Govt. civilian employees as issued by the DOPT vide OM dated August 9, 1999. Such scheme has been formulated to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues and according to the said scheme Group 'B', 'C' and 'D' employees are entitled for financial upgradation after 12, 24 years of regular service subject to conditions mentioned in Ann. II attached with that OM. Further, one more rider is that financial upgradation to employees on completion of 12 years or 24 years shall be subject to condition No.4 and 5.1. At this stage, it will be useful to quote condition No. 5.1 of Ann. II which will have bearing in this case and which is in the following terms:-

"5.1 Two financial upgradation 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 direct recruit. This shall

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mean that two financial upgradation under the ACP scheme shall be available only if no regular promotion during the prescribed periods (12 and 24 years) have been availed by an employee. If an 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."

5.2 Thus as per condition contained in para 5.1 of the memorandum dated 9.8.1999, the person who has already got two financial benefits through promotion including in-situ promotion and fast track promotion availed through limited departmental competitive examination, he would not be entitled to financial upgradation under the ACP scheme. In other words the benefit of two financial upgradation under the ACP scheme shall be available if no promotion during the prescribed period of 12 or 24 years has been availed by an employee. So far as promotion to the post of UDC is concerned, there is no dispute that the applicant has availed this promotion from the post of LDC. However, the dispute is regarding appointment of the applicant on the post of Head Clerk /Assistant Superintendent. According to the applicant, he was appointed to the post of Head Clerk/Assistant Superintendent by way of direct recruitment and the same cannot be treated as promotion. For that purpose, the applicant has drawn our attention to his application dated 1.8.94 whereby he has applied for recruitment to the post of Head Clerk and subsequent appointment letter dated 10.7.85 (Ann.A2) whereby it has been indicated that the applicant on the basis of his

performance in the departmental examination has been selected for appointment against temporary post of Head Clerk. Thus, according to the applicant since in the appointment letter the word 'promotion' has not been indicated whereas the word 'appointment' has been shown, as such he was appointed to the post of the Head Clerk as direct recruit and he was not promoted to the said post and as such, the same cannot be treated as promotion and if it is so, the applicant is entitled for second financial upgradation after completion of 24 years of service. We do not agree with the submission made by the learned counsel for the applicant. The respondents have placed on record recruitment rules for the post of Assistant Superintendent. Against column 10, the method of recruitment whether by direct recruitment or by promotion or by deputation/transfer and percentage of the vacancies to be filled by various methods, it has been mentioned that 66 2/3% by promotion failing which by direct recruitment through Limited Departmental Examination failing which by Direct Recruitment and remaining 33 1/3% by direct recruitment through limited Departmental Examination failing which by direct recruitment. Against column No. 11 in case of recruitment by promotion/by deputation/transfer grades from which promotion/deputation/transfer to be made, it has been mentioned that the post has to be filled by promotion on the basis of merit-cum-seniority from amongst UDCs of KVS who have rendered atleast five years regular service in the aforesaid grade in the Sangathan and by direct recruitment through Limited Departmental Examination open to posts in the pay scale of Rs. 4000-6000 with five year regular service in the KVS. The selection shall be made on merit. Thus from the perusal of the provisions contained in the recruitment rules, only the method suggested for filling the post of Head

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Clerk/Assistant Superintendent was only by way of promotion on the basis of merit-cum-seniority from amongst the UDCs having requisite number of regular service in the aforesaid grade or by direct recruitment through Limited Departmental Examination from the post in the pay scale of Rs. 4000-6000 with requisite number of service in KVS. Thus, recruitment to the post of Head Clerk was to be made only from the in-service candidaes and not from the open market. Thus, it cannot be said that the applicant was appointed as Head Clerk as a direct recruittee. Rather, he was promoted to the post of Head Clerk/Assistant Superintendent under the 33 1/3 % direct recruitment quota through Limited Departmental Examination, which for all intended purposes is a promotion from in-service candidates having requisite number of qualifying service through selection method viz. Limited Departmental Examination. If the matter is viewed from this angle, the case of the applicant is fully governed as per the conditions stipulated in para 5.1 of Ann.I appended with OM dated 9.8.1999 and accordingly the applicant is not entitled to the second financial upgradation after completion of 24 years of service as the applicant has already earned two promotions during his service career.

5.3 Further ~~contend~~ contention of the learned counsel for the applicant that employees junior to him have been granted financial upgradation under ACP scheme, as such he is also entitled for stepping up solely on the basis of seniority cannot be accepted. As can be seen from the ACP scheme, the benefit under this scheme has been given with a view to overcome the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues and as such the benefit has to be given on completion of 12 years and 24 years of regular service. In terms of instructions contained in the ACP scheme, it is manifest that

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employee in order to be eligible for grant of financial upgradation should not only completed 12 years and 24 years of regular service but he shoud not have earned regular promotion including in-situ promotion and fast track promotion availed through Limited Departmental Competitive Examination from the grade in which the employee is recruited as direct recruit during the aforesaid prescribed period. It is on the basis of this criteria that the employee is entitled for financial upgradation under ACP scheme and grant of financial upgradation is not based on seniority. Thus, even if a junior person who has not earned two promotions on completion of 12 and 24 years of service can avail the benefit under the ACP scheme and on that count the applicant cannot be held entitle for grant of ACP as was granted to the persons junior to him which shall be contrary to the provisions contained in the AC scheme.

6. For the reasons stated above, the OA is dismissed with no order as to costs.

~~(A.K.BHANDARI)~~

Member (A)

~~(M.L.CHAUHAN)~~

Member (J)