

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.2029/2010

Order reserved on: 22.12.2016.

Order pronounced on:10.02.2017.

Hon'ble Mr. Raj Vir Sharma, Member (J)
Hon'ble Mr. K. N. Shrivastava, Member (A)

1. Sh. H.L.Kanojia,
Aged about 71 years,
R/o Block-R-57/C, Dilshad Garden,
Delhi-110095.
2. Sh. P.R.Mittal,
Aged about 75 years,
S/o Late Sh. Amrit Lal
R/o B-1/93, Yamuna Vihar,
Delhi-110053.
3. Sh. Amar Jit Singh,
Aged about 70 years,
S/o Late Sh. S. Nand Singh,
R/o H.No.1172, Deva Ram Park,
Tri Nagar, Delhi-110035.
4. Sh. R.K.Chopra,
Aged about 73 years,
S/o Sh. K.C.Chopra,
R/o 51/11, V.G.F.,
Old Rajindra Nagar,
New Delhi-110060.

-Applicants

(By Advocate: Shri S.K.Gupta)

Versus

1. Union of India through
The Secretary,

M/o Health & Family Welfare,
Govt. of India, Nirman Bhawan,
New Delhi.

2. Director General of Health Services,
Govt. of India, Nirman Bhawan,
New Delhi.
3. National Institute of Communicable Diseases
Through its Director,
22, Sham Nath Marg. -Respondents

(By Advocate: Shri Rajesh Katyal)

ORDER

Mr. K.N. Shrivastava, Member (A):

The applicants, through the medium of this Original Application, filed under Section 19 of the Administrative Tribunals Act, 1985, have prayed for the following main reliefs:

“(i) quash and set aside the speaking order dated 09.02.2009 issued by respondent no.3, i.e. National Institute of Communicable Diseases (Directorate General of Health Services), Delhi;

(ii) allow the instant OA and declare that the applicants are entitled for grant of First and Second A.C.P. & further declare that the higher revision of scale of the applicants way back in the year 1982 cannot come in the way of grant of A.C.P. to the applicants and;

(iii) direct the respondents to fix the pay/pension of the applicants accordingly with all consequential reliefs including arrears of pay/pension etc. and;”

2. The brief facts of the case are as under:

2.1 The applicants joined the respondent No.3 organization-National Institute of Communicable Diseases (NICD) on different dates between the years 1964-1967 as Stenographers. The Ministry of Health and Family Welfare (respondent No.1) vide letter dated 04.01.1978 (P.39) informed respondent no.2 that 08 posts of Stenographers each in NICD (R-3) and NMEP are upgraded from the pay scale of Rs.330-560 to Rs.425-700. The said letter also indicated the attachment of the upgraded posts of Stenographers to various senior officers of these two organizations.

2.2 Apparently, cadre restructuring of Stenographers cadre took place in the year 1982 and three grades, namely, Stenographer Grade-I, Grade-II and Grade-III were created and the post of erstwhile Stenographer was rechristened as Stenographer Grade-III. Following the creation of the 3 grades, these 04 applicants naturally became Stenographer Grade-II. The order dated 26.05.1982 (P.44) indicates the date(s) of upgradation of these applicants to the grade of

Stenographer Grade-II and date(s) of their deemed positioning in the re-designated cadre of Stenographers Grade-II as indicated in the table below:

| Name of applicant | Date of re-designation as Stenographer Grade-III (Pay Scale Rs.330-560) | Date of upgradation as Stenographer Grade-II (Pay Scale Rs.425-700) |
|--------------------------------|---|---|
| H.L. Kanojia, applicant No.1 | 01.01.1982 | 05.02.1982 |
| P.R. Mittal, applicant No.2 | 01.12.1981 | 05.02.1982 |
| Amar Jit Singh, applicant No.3 | - | 05.02.1982 |
| R.K. Chopra, applicant No.4 | 01.02.1982 | 05.02.1982 |

2.3 The main contention of the applicants is that since the Recruitment Rules (RRs), 1983 talk of just one cadre of Stenographers and as such their upgradation to the grade of Stenographer Grade-II cannot be construed as promotion. In support of this contention, the applicants have drawn our attention to the ibid RR, which would read as under:

| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|-----------------|---|--|---------------------------------------|----------------|---|---|
| 4. Stenographer | 7 | General Central Service Group 'C' Non-Gazetted Ministerial | Rs.330-10-380-380-EB-12-500-EB-15-560 | Not applicable | Between 18 and 25 years (Relaxable upto 35 years in case of Govt. servants) | Essential: (i) Matriculation or equivalent qualification from a Recognized University or Board. (ii) Speed in Shorthand |

| | | | | | | |
|--|--|--|--|--|--|--|
| | | | | | | and type- writing 100 and 40 words per minute respectively. |
|--|--|--|--|--|--|--|

2.4 The applicants have also relied upon clarification of DoP&T issued vide OM dated 18.07.2001, which *inter alia*, reads as under:

“Whether placement/appointment in higher scales of pay based on the recommendations of the Pay Commissions or Committees set up to rationalise the cadres is to be reckoned as promotion/financial upgradation and offset against the two financial upgradations applicable under the ACP Scheme?”

The Department of Personnel & Training clarified the above query as under:

Where all the posts are placed in a higher scale of pay, with or without a change in the designation; without requirement of any new qualification for holding the post in the higher grade, not specified in the Recruitment Rules for the existing post, and without involving any change in responsibilities and duties, then placement of all the incumbents against such upgraded posts is not be treated as promotion/upgradation. Where, however, rationalisation/restructuring involves creation of a number of new hierarchical grades in the rationalised set up and some of the incumbents in the pre-rationalised set up are placed in the hierarchy of the restructured set up in a grade higher than the normal corresponding level taking into consideration their length of service in existing pre-structured/pre-rationalised grade, then this will be taken as promotion/upgradation.”

2.5 The applicants, claiming benefits of 2nd financial upgradation under the ACP Scheme, approached this

Tribunal in OA No.991/2006, which came to be allowed vide order dated 07.07.2008 with a direction to the respondents to re-consider the claim of the applicant for grant of ACP. The relevant portion of the Tribunal's order is extracted below:

“4. Learned counsel for the applicant, at the outset, states by referring to the decision in **M.G. Seshagri Rao v. D.R.M. Sough Cen. Rly.**, 1990(7) SLR 363 to contend that when there is a upgradation of the cadre, the same would not amount to promotion.

5. In the light of above, the stand of the respondents that the applicant on upgradation having been promoted and once given a financial upgradation, there is no possibility or permissibility under rule to be accorded 3rd ACP, which is not in consonance with the DOP&T OM of 9.8.1999.

6. On careful consideration of the rival contentions of the parties and having regard to the additional affidavit filed for which sufficient opportunity was accorded to file reply it as no reply has come forth, the upgradation without change of status and discharge of functional requirements duties attached to the post in legal parlance as a trite law would not amount to a promotion to impede the right of the applicant for grant of benefits of financial upgradation under the ACP.

7. In the light of above, OA stands disposed of with a direction to the respondents to reconsider the claim of the applicants for grant of ACP by duly adhering to the law relied upon above in our observation where upgradation on restructuring or cadre management is not to be treated as promotion. A reasoned order shall follow within a period of two months from the date of receipt of a certified copy of this order.”

2.6 In compliance of the direction of the Tribunal contained in order dated 07.07.2008 in OA-991/2006,

the respondents have passed the impugned Annexure

A-1 speaking order, which reads as under:

“Sh. H.L.Kanojia & Others filed an O.A. No.991/2006 vs. UOI & Others in Central Administrative Tribunal, Principal Bench, New Delhi requesting respondents may be directed to grant IInd ACP.

The Hon’ble CAT while deliberating the Judgment, directed as under:

“In the light of above, OA stands disposed of with a direction to the respondents to reconsider the claim of the applicants for grant of ACP by duly adhering to the law relied upon above in our observation where upgradation on restructuring or cadre management is not to be treated as promotion. A reasoned order shall follow within a period of two months from the date of receipt of a certified copy of this order.”

In compliance of the Hon’ble CAT directions, the matter has been examined in consultation of Directorate General of Health Services and Ministry of Health & Family Welfare, New Delhi and it has been decided that:

“The applicants pay was fixed under FR 22(c) now FR 22(I)(a)(i) which is applicable for fixation of pay of the promotional posts as per the Central Government instructions. The applicant Sh. H.L.Kanokia and three who were earlier designed as Steno grade II were re-designated as Steno grade II w.e.f. 5.2.1982 vide NICD order number 1-29/72.Vol.(III)/Estt.II dated 26.5.1982. The applicant Mr. H.L. Kanojia was given further promotion on 7.2.1992 vide order number 19-2/92-Estt. Dated Nil. His entitlement for promotion to Steno grade with effect from date of becoming Steno grade II was based on his seniority. Similarly other applicants in this OA were granted two promotions/financial upgradations under ACP scheme as under:

Similarly Sh. P.R. Mittal was granted first promotion on 5.2.1982 from Stenographer grade III to

Stenographer grade II and he was given second promotion from 28.5.98 from Steno grade II to Sr. P.A.

Sh. Amarjeet Singh was granted first promotion on 5.2.1982 from Steno grade III to Steno grade II and was given second ACP w.e.f. 9.8.99 in the pay scale of Rs.6500-10,500/- from the scale of Rs.5000-8000.

Sh. R.K. Chopra was granted first promotion on 5.2.1982 from Steno grade III to Steno grade II and was given second ACP w.e.f. 9.8.99 in the pay scale of Rs.6500-10,500 from the scale of Rs.5000-8000.”

2.7 Aggrieved by the impugned Annexure A-1 order the applicants have filed the instant OA, praying for the reliefs as indicated in para-1 above.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply. The applicants thereafter filed their rejoinder. The main contention of the respondents in their reply is that the applicants were indeed promoted vide order dated 26.05.1982 (P.44). It is further stated that pursuant to this promotion, their pay was fixed in terms of FR-22 (1) (a)(i), which is applicable only to the promotional posts. The respondents have further stated that all the posts of Stenographers were not upgraded from Grade-III to Grade-II and only 08 of them were upgraded and hence the upgradation done vide order dated

26.05.1982 of which the applicants were beneficiaries, was in fact promotion. In support of their contention the respondents have relied upon a judgment of the Hon'ble Supreme Court in the case of **Uday Pratap Singh and Ors. etc. etc. v. The State of Bihar and Ors.**, [1994 Supp. (4) SCR 72], in which it has been held as under:

“It is obvious that an executive direction stands even on a much weaker footing. It is true, as laid down in Bishan Sarup Gupta etc. etc v. Union of India & Ors. etc. etc., [1973] 3 S.C.C. 1, that effect of upgradation of a post is to make the incumbent occupy the upgraded post with all logical benefits flowing therefrom and can be treated as promoted to the post.”

4. The applicants, in support of their contention that their upgradation to Stenographer Grade-II was not promotion, have placed reliance on the judgment of this Tribunal in OA No.421/2013 – **Ram Gopal Baghel & Ors. v. DDA & Ors.**, decided on 24.07.2014, in which it has been held as under:

“(iii) Therefore, when there is an advancement to a higher pay scale without change of post, it may be referred to as upgradation or promotion to a higher pay scale. But there is still difference between the two. Where the advancement to a higher pay-scale without change of post is available to everyone who satisfies the eligibility conditions, without undergoing any process of selection, it will be upgradation. But if the advancement to a higher

pay-scale without change of post is as a result of some process which has elements of selection, then it will be a promotion to a higher pay scale. In other words, upgradation by application of a process of selection, as contrasted from an upgradation simplicitor can be said to be a promotion in its wider sense that is advancement to a higher pay scale.”

5. The arguments of the learned counsel for the parties were heard on 22.12.2016.

6. We have given our careful consideration to the arguments of the learned counsel of the parties and have also perused the pleadings and documents annexed thereto. Admittedly, only 08 posts of Stenographers were upgraded vide order dated 04.01.1978 and all the posts of Stenographers were not upgraded to the grade of Rs.425-700. The pay of the applicants was also fixed in terms of FR 22 (1) (a) (i) which is applicable in the context of promotion only. If all the posts of Stenographers had been upgraded from the pay scale of Rs.330-560 to Rs.425-700 then undoubtedly it could have been construed that the upgradation was not promotion. Vide order dated 04.01.1978, only 08 posts of Stenographers have been upgraded to the higher pay scale in NICD (R-3) and

such posts are also identified as attached with senior officers. Hence, the logical conclusion would be that these upgradations were in the nature of promotion only. The intent behind issuance of the order dated 04.01.1978 is that the Stenographers attached to the senior officers were discharging higher responsibilities and as such they need to be promoted to the higher pay scale. This derivation gets further fortified by the judgment of the Hon'ble Supreme Court in the case of **Uday Pratap Singh** (supra). The contention of the applicants that the RRs of 1983 have remained unchanged, which recognize only Stenographers and Senior Stenographers posts and not Stenographer Grade-I, II and III and hence their upgradation vide order dated 04.01.1978 is not a promotion, is not at all acceptable. No doubt, the respondents ought to have taken steps to first amend the RRs and capture the cadre re-structuring done for the Stenographers cadre before giving promotion to the applicants vide order dated 26.05.1982. Nevertheless, the issue has been settled by the Hon'ble Supreme Court in **Uday Pratap**

Singh (supra), which all are obliged to adopt. The Annexure R-3 clarification of DoP&T issued vide OM dated 18.07.2001 (P.232), on which the applicants have heavily relied upon, is not applicable to the instant case for the simple reason that the DoP&T OM basically speaks of a situation where pursuant to the cadre re-structuring some new grades/pay scales get created and the incumbents are required to be placed in those new grades/pay scales following the principle of rationalization. In the instant case, there has not been any such ambiguity or mismatch. The pay scales existing prior to the cadre re-structuring have continued even after the cadre-re-structuring.

7. We would further like to state that the judgment of this Tribunal in OA-421/2013 dated 24.07.2014 *ibid* cannot be applied to the instant case for the reason that the 08 posts of Stenographers identified for upgradation were those which were attached to the senior officers of respondent No.3 and hence were endowed with higher responsibilities; in consideration of which the upgradation was sanctioned by the

respondents. More so, the ratio of law on this issue has already been laid down by the Hon'ble Apex Court in **Uday Pratap Singh** (supra).

8. In the conspectus of the discussions in the foregoing paras, we do not find any merit in the OA. Accordingly, the OA is dismissed.

9. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Raj Vir Sharma)
Member (J)

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