

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.1065 OF 2003

New Delhi, this the 4th day of February, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

1. K.L.Sharma, S/o Late Sh.N.Mal,
R/o T-147, Indra Colony,
Narela,
Delhi
2. Smt. Sushma Lal,
W/o Sh. Har Govind Lal,
R/O D-3/3181,
Vasant Kunj,
New Delhi.
3. Sh. P.D.Napat,
S/o Late Sh. Soni Lal,
R/O 191, Saraswati Vihar Housing Board
Colony,
Gurgaon.
4. Ms. Kirti Sharma,
D/o Late Sh. R.D.Sharma,
C/o Mrs. Laxmi Sharma,
Flat No.154, Pocket D-15,
Sector-7, Rohini,
Delhi.

...Applicants

(By Advocate : Shri G.S.Gupta)

Versus

1. The Govt. of NCT of Delhi, through
the Lieutenant Governor of Delhi,
Raj Niwas,
Delhi-110007
2. The Secretary,
Department of Social Welfare,
Govt. of NCT of Delhi,
New Secretariat Building,
I.P.Estate,
New Delhi-110002
3. The Director,
Department of Social Welfare,
Govt. of NCT of Delhi,
1, Canning Lane, Kasturba Gandhi Marg,
New Delhi-110001

...Respondents

(By Advocate: Shri Shishir Singh, proxy for Shri
Rajan Sharma)

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ORDER

Shri R.K.Upadhyaya, Administrative Member:

This application under section 19 of the Administrative Tribunals Act, 1985 has been filed seeking a direction to the respondents to grant two financial upgradations to the applicants raising their pay to Rs.6500-10500/- and Rs.10,000-15200/- under the Assured Career Progression Scheme (ACP Scheme for short). The applicants have also requested for quashing of the order dated 5.3.2003 by which their claims have not been granted in full. The further claim of the applicants is that they should not only be granted two financial upgradations but should be paid arrears with interest also.

2. The applicants had earlier filed OA No.2437/2002 which was disposed of by order dated 19.9.2002 with the direction to the respondents to "go into the representations (Annexure-A8 to A-21) and also the fact that the other similar persons specifically are alleged to have been given the ACP Scheme vide Annexure A-6." The applicants state that the respondents by their order dated 3.2.2003 (Annexure-A2) had granted financial upgradations to the applicants in the scale of Rs.5500-9,000/- and Rs.6500-10500/- only. The applicants are stated to have joined as Welfare/Probation Officers in the scale of Rs.5500-9000/-. The pay of next promotional post of Deputy Superintendent has also been fixed in the scale of Rs.5500-9000/-. In other words, there is no higher pay scale if any officer is promoted as Deputy Superintendent. It is claimed

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that the nature of duties of both the posts, namely, Welfare/Probation Officer and Deputy Superintendents are almost alike. Both were granted the same pay scale and the post of Deputy Superintendents were advised to be merged by restructuring the cadre. The grievance of the applicants is that the "respondents have been lingering on the matter of merger of the 'superfluous', 'non-functional' and unreal posts of Deputy Superintendent despite repeated advice of Central and State Govts." for so many years. It is further stated by the applicants that by orders dated 10.9.2001 and 31.3.2002 (Annexure-A6 and A7) similarly situated persons have been granted two financial upgradations in the pay scales of Rs.6500-10500/- and Rs.10000-15200/- but in the case of the applicants, the respondents have not granted the same benefits and have issued the impugned order dated 5.3.2003 (Annexure-A1) which states as follows:-

"If the scale of Feeder post and Promotional post are identical after the introduction of 5th Pay Commission Scales, the financial upgradation cannot be allowed in the scale higher than the next promotional grade in the hierarchy. However, as specified in Condition No.9 of the ACP Scheme vide DOPT's OM dated 10.2.2000, pay in such cases shall be fixed under the provisions of FR 22(1)(a)(i) in the next promotional grade carrying the identical pay scale."

After consideration, it was found that in view of above clarification No.52 dated July 18,2001, the applicants cannot be granted upgradation by the two scale. They can be given only as per clarification No.46 dated July 18,2001 issued by DOPT, Govt. of India vide OM No.35034/1/970-Estt(D)(Vol.IV).

"The cases of employees holding the higher promotional grade/any other post on Adhoc basis for grant of financial upgradation under ACP should not be ignored. On being recommended for

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reference to the pay drawn in the post held on regular basis under FR.22 (1)(a)(i) subject to the minimum benefit of Rs.100/- as per the provisions spelt out in the initial scheme of ACP".

3. The learned counsel of the applicants stated that Clarification No.52 dated 18.7.2001 does not apply to the facts of this case. The applicants should have been granted higher pay scale as stated earlier.

4. The respondents in their reply have stated that the applicants have already been granted financial upgradations under ACP Scheme as per their eligibility and there is no legitimate grievance left. According to the respondents, as per ACP Clarification No.52 of OM No.35035/1/97-Estt.(D) (Vol.IV) dated 18.7.2001, the applicants are entitled for two financial upgradations in the pay scale of Rs.5500-9000/- and 6500-10500/- instead of Rs.6500-10500/- and Rs. 10000-15200/-. Regarding grant of financial upgradations to the similarly placed other adhoc Deputy Superintendents, the respondents have stated that the same have since been revised in the pay scale of Rs.5500-9000/- and 6500-10500/- as per recommendations of Review Screening Committee.

5. We have heard the learned counsel for the parties and have perused the material on record.

6. On account of acute stagnation in certain cadres, the Government issued ACP Scheme as per OM dated 9.8.99. As there were certain doubts, the clarifications were issued from time to time. The

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relevant clarification being Serial No.52 circulated along with OM dated 18.7.2001 which reads as follows:-

"52. Point of doubt: Following the recommendations of the Pay commission, feeder and promotional posts have been placed in the same scale. consequently, hierarchy of a post comprises of Grades 'A', 'A' and 'C' i.e. the entry level and the first promotional grade are in the same scale. What shall be his entitlements under ACPS.

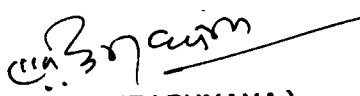
Clarification: Normally, it is incorrect to have a feeder grade and a promotional grade in the same scale of pay. In such cases, appropriate course of action is to review the cadre structure. If as a restructuring, feeder and promotional posts are merged to constitute one single level in the hierarchy, then in such a case, next financial upgradation will be in the next hierarchical grade above the merged levels and if any promotion has been allowed in the past in grades which stand merged, it will have to be ignored as already clarified in reply to point of doubt No.1 of OM dated 10.2.2000. However, if for certain reasons, it is inescapable to retain both feeder and promotional grades as two distinct levels in the hierarchy though in the same scale of pay, thereby making a provision for allowing promotion to a higher post in the same grade, it is inevitable that benefit of financial upgradation under ACPS has also to be allowed in the same scale. This is for the reason that under the ACPS, financial upgradation has to be allowed as per the 'existing hierarchy'. Financial upgradation cannot be allowed in a scale higher than the next promotional grade. However, as specified in condition No.9 of the ACP Scheme (vide DoP&T O.M. dated 10.2.2000, pay in such hall be fixed under the provisions of FR 22 (1)(a)(i) subject to a minimum benefit of Rs.100."

7. From the perusal of the above indicates that if both feeder and promotional grades as two distinct levels in the hierarchy are retained, the benefit of upgradation under ACP has to be allowed in the same scale. However, the benefits under the provisions of FR 22(1)(a)(i) subject to a minimum

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Rs.100/- shall be allowed in such cases. The respondents in their order dated 3.2.2003 have accordingly fixed the scale of the applicants. They have also stated in the impugned order dated 5.3.2003 that such a benefit has been given to the applicants in view of the provisions contained in Govt. of India's OM Dated 18.7.2001. We find that the orders of the respondents are in conformity with the rules and instructions on the subject. Therefore, there is no scope for any interference at present.

8. In view of what has been stated in the preceding paragraphs, this OA is dismissed without any order as to costs.


(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER


(V.S. AGGARWAL)
CHAIRMAN

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