

(8)

Central Administrative Tribunal, Principal Bench

Original Application No. 1319 of 2003

New Delhi, this the 16<sup>th</sup> day of January, 2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman  
Hon'ble Mr. S.K. Naik, Member (A)

Shri M.L. Bhatt,  
S/o Shri Chandrama Kumar,  
B-26, Rajpur Khurd,  
New Delhi-68

....Applicant

(By Advocate: Shri S.C. Rana)

Versus

1. Govt. of N.C.T.  
Through Deputy Secretary (Services-II)  
Delhi Secretariat, A-Wing  
4th Floor, I.P. Estate,  
New Delhi

2. Development Commissioner  
5, Rajpur Road, NCT,  
Delhi

....Respondents

(By Advocate: Shri Vijay Pandita)

O R D E R

By Justice V.S. Aggarwal, Chairman

Applicant M.L. Bhatt seeks a direction that he is entitled to the upgradation of pay scale in view of Assured Career Progression Scheme (ACP Scheme), 1998 and for quashing of the order No. 567 dated 19.2.98 by which the respondents had cancelled the earlier order and deducted the amount paid to the applicant under the Scheme.

2. The relevant facts are that the applicant joined Delhi State Mineral Development Corporation (DSMDC) as Junior Assistant in 1985. The said DSMDC, on a policy decision of the Government, was wound up and all its employees were declared surplus and absorbed under Delhi Government in various offices. The applicant on an earlier

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occasion had preferred O.A.1852/98. It was decided on 13.10.99. The petition was allowed except for the benefit of ACP Scheme. The applicant had not claimed the same in the relief clause.

3. An order was passed on 22.1.96 granting exemption from passing the typing test to the applicant. His annual increments were released. Subsequently another order was passed dated 19.2.98. The applicant was not served with any show cause notice while passing the said order. In pursuance of that order, the respondents effected recovery from the applicant's salary. The applicant contends that he has rendered more than 18 years of service and is, therefore, entitled to the ACP Scheme benefit which is being denied. This results in filing of the present petition.

4. The petition has been contested. The respondents plead that the present application is not maintainable. The previous application i.e. O.A. 525/2003 had been withdrawn. The only prayer granted was that he could file a fresh petition with respect to the ACP Scheme benefit. The other reliefs cannot be claimed. The respondents contend that the applicant's representation regarding the grant of ACP Scheme benefit had been considered and rejected. The Government of India had clarified vide Office Memorandum dated 18.7.2001 that past service in autonomous body cannot be counted for the purpose of ACP Scheme benefit. Accordingly it is contended that the claim of the applicant is without any merit.

A handwritten signature in black ink, appearing to read "M. Ag" followed by a stylized surname.

5. We have heard the parties counsel and have seen the record.

6. The applicant had earlier filed O.A.525/2003. It was decided on 7.3.2003. This Tribunal recorded:

"Learned counsel for the applicant states that the present OA may be dismissed as withdrawn with liberty to the applicant to file a fresh OA with respect to the relief for the benefits under the Assured Career Progression Scheme.

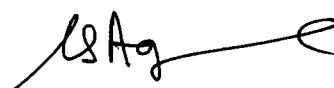
2. Allowed as prayed.

3. Subject to aforesaid, the OA is dismissed as withdrawn."

7. It is abundantly clear from the aforesaid that when the earlier petition was withdrawn, the only right saved for the applicant was that he could file a fresh petition with respect to the relief under the ACP Scheme. In face of the aforesaid, the applicant indeed cannot claim any other relief which would be deemed to have been given up.

8. Some of the other facts relevant for the controversy can conveniently be delineated. It is admitted that the applicant who was earlier serving in DSMDC was declared surplus when the said Corporation was wound up. Keeping in view the winding up of the DSMDC, certain employees who were declared surplus were absorbed. The order absorbing such employees had been issued on 1.6.94. The relevant portion of the same for the present controversy reads:

"Consequent upon winding up of the Delhi State Mineral Development Corporation and the staff being rendered surplus, the Chief Secretary, Delhi

 (Signature)

Administration is pleased to order absorption of the following surplus staff of the DSMDC with immediate effect. The absorption of these employees is subject to fulfilment of the CCS (Re-deployment of surplus staff) Rules, 1990.

xxxx           xxxxx           xxxx           xxxx

In case the absorbed staff has been appointed on a lower pay scale than that he was holding at the time being declared surplus shall be allowed to carry his current pay scale to the re-deployed post as personal to him.

A surplus employee re-deployed in the Govt. is treated to have been transferred in public interest, and thus his services remain continuous and he will normally draw his next increments as admissible to him under the rules."

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9. On the strength of the same, the learned counsel for the applicant contended that the transfer is in public interest and, therefore, the applicant should be given the benefit of ACP Scheme. From the paragraphs reproduced above, it is clear that the pay of the applicant had to be protected and on his deployment, he was to be treated to have been transferred in public interest.

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10. The question that still comes up for consideration is as to whether in these circumstances, the applicant is entitled to the ACP Scheme benefit or not.

11. The ACP Scheme had been drawn keeping in view the recommendations of the 5th Central Pay Commission. In face of the stagnation in various Govt. offices and keeping in view that large number of employees did not have promotional avenues, the said Scheme had been drawn. Certain conditions had been affixed and subject to that the employees who otherwise were not promoted, were given the financial upgradation.



12. Reliance is being placed on paragraph 14 of the conditions for grant of the financial upgradation to contend that since the applicant has been transferred, therefore, his past service in the previous Corporation may be counted. The said paragraph reads:

"In case of an employee declared surplus in his/her organisation and in case of transfers including unilateral transfer on request, the regular service rendered by him/her in the previous organisation shall be counted along with his/her regular service in his/her new organisation for the purpose of giving financial upgradation under the Scheme."

13. The obvious question would be as to whether the past service rendered in the organisation which was an autonomous body can be counted for the benefit of ACP Scheme or not. This point of doubt even had been referred and the clarifications are:

S.No.	Point of doubt	Clarification
43.	Whether service rendered in an autonomous body/statutory body/State Government prior to appointment in Central Government as a direct recruit prior to appointment in the Central Government will be counted while computing regular service for the purpose of grant of financial upgradations under the ACP Scheme?	ACP Scheme is applicable to Central Government Civilian employees and for the purpose of financial upgradations under the ACP Scheme, only the regular service rendered after regular appointment in a Central Government civilian post is to be counted. Therefore, service rendered in an autonomous body/statutory body/State Government is not to be counted for the purpose. Correspondingly, promotions earned in these bodies prior to appointment in the Central Government are also to be

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ignored. The clarification in reply to point of doubt no.4 to 6 in DoP&T O.M. dated 10.2.2000 providing for counting of past service in another organisation in the same grade is only in relation to past service in a civilian post held in the Central Government."

Keeping in view the above clarification, it is clear that the applicant is not entitled to count his service rendered in the previous Corporation.

14. On behalf of the applicant, reliance was placed on Point of Doubt No.4 in Swamysnews (March, 2000) to contend that the said service should be counted. We reproduce the same:

S.No.	Point of Doubt	Clarification
	"4. In a case where a person is appointed to a post on transfer (absorption) basis from another post, whether 12 years and 24 years of service for the purpose of ACPS will count from the initial appointment or otherwise."	The benefits under ACPS are limited to higher pay scale and do not confer designation, duties and responsibilities of the higher post. Hence, the basic criterion to allow the higher pay scale under ACPS should be whether a person is working in the same pay scale for the prescribed period of 12/24 years. Consequently, so long as a person is in the same pay scale during the period in question, it is immaterial whether he has been holding different posts in the same pay scale. As such, if a Government servant has been appointed to another post in the same pay

*M. A. J.*

scale either as a direct recruit or on absorption (transfer) basis or first on deputation basis and later on absorbed (on transfer basis), it should not make any difference for the purpose of ACPS so long as he is in the same pay scale."

15. Even the said clarification will not come to the rescue of the applicant because he has not been transferred from another post. If he was declared surplus and was absorbed, he cannot claim as of right that earlier service rendered by him should be counted for the ACP Scheme benefit.

16. We have support in this view of a decision of the apex court in the case of Yogendra Prasad Mandal vs. State of Bihar and others, (1998) 3 SCC 137. The Supreme Court held:

"4. It is the contention of the appellant that he was not freshly appointed in the service of the State Government but he was merely transferred and is, therefore, entitled to continuity of service and all consequential benefits. We have not been shown any provision or any Rule under which the services of an employee of an autonomous body can be transferred to the State Government with continuity of service or preservation of seniority. In the minutes of 11-11-1981 there is no mention of any continuity of service being maintained or the seniority of the staff absorbed being preserved from the date of their joining the Bihar State Forest Development Corporation. In the absence of this specific provision, the appointment in the State cadre has to be considered as appointment from the date when it takes effect. The High Court, therefore, was right in coming to the conclusion that the services of the appellant will count from the date of his appointment in the State Trading Wing of the Forest Department of the State of Bihar and the earlier service rendered by him with the Corporation will not be counted for the purpose of seniority and other benefits. The appeal is, therefore, dismissed. There will,



however, be no order as to costs."

17. Similar view had been expressed by the Supreme Court in the case of Union of India and another vs. G.R.K. Sharma, (1998) 6 SCC 186. The findings of the Supreme Court are:

"Having considered the rival contentions as well as the relevant recruitment rules governing the question of promotion, we are of the considered opinion that a redeployed employee who has been posted in the Printing Press must render eight years of service as a Lower Division Clerk in the Printing Press so as to be eligible for being considered for promotion to Upper Division Clerk. The expression "regular service of eight years in the grade" would connote rendering eight years of service in the organisation to which he has been appointed. In a somewhat similar situation, this Court has considered similar expression in the case of Union of India v. K. Savitri, (1998) 4 SCC 358 where it has been held that the past service of redeployed surplus employee cannot be counted for his seniority in the new organisation and equally, the past experience also would not count as the so-called past service rendered will not be service in the grade. The aforesaid decision interpreting the similar expression "service in the grade" would equally apply in the present case where the statutory rule also uses the expression "regular service of eight years in the grade."

18. Keeping in view the clear and unambiguous findings that have been arrived, we are of the considered opinion that the applicant is not entitled to the relief claimed. Resultantly, the O.A. being without merit must fail and is dismissed.

Naik  
( S.K. Naik )  
Member(A)

Aggarwal  
( V.S. Aggarwal )  
Chairman

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