

(P)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A.NO.1375/2003

this the 5th day of March, 2004

Hon'ble Shri Kuldip Singh, Member (J)  
Hon'ble Shri S.A.Singh, Member (A)

R.K.Garg,  
S/o Late Shri Kakhi Ram,  
18/1, Dhariwal Chowk, Shakti Nagar,  
Delhi-110 007. ....Applicant.

(By advocate: Shri K.N.R.Pillai)

VERSUS

1. Union of India,  
through The Secretary,  
Ministry of Information & Broadcasting,  
Shastri Bhawan,  
New Delhi.
2. The Director,  
Publications Division,  
Patiala House,  
New Delhi.

(By Advocate: Shri R.N.Singh)

....Respondents.

O R D E R

By Shri Kuldip Singh, Member (J)

The applicant has filed this OA impugning rejection of his representation that since even after 21 years of continued service in ad hoc capacity as Technical Assistant, he has not been considered for regular appointment, so he should be returned to substantive post of Library Assistant in the Publication Division where because of his having completed 37 years of service without a single promotion, he is entitled to two financial upgradations from 9.8.1997 as per the Assured Career Progression (ACP) Scheme.

2. The facts in brief are that the applicant had joined the service with the respondents as Library

k

Assistant on 19.11.1965 in the Publications Division, Ministry of Information and Broadcasting. It is further submitted that the Library Assistant had no avenue for promotion inspite of the Fifth Pay Commission recommendations dated 1.1.96 Central Government having introduced a pay structure for library staff introduced on 24.7.1990. According to which, Library Assistants were entitled to promotion as Senior Library and Information Assistant.

3. Since there was no promotion channel and applicant was stagnating in the same post for over 15 years, he was appointed on ad hoc basis as Technical Assistant in the Employment News in the pay scale of Rs.1640-2900/, which has been revised to Rs. 5500-9000/- w.e.f.1.1.1996. The applicant continued for 14 years on ad hoc basis as Technical Assistant and his representation for regularisation was not entertained. Therefore, he had filed OA-1573/1995 which was allowed with the following directions:-

"In the circumstances, we feel that the ends of justice would be met if we direct the respondents to continue the applicant in the post of Technical Assistant on ad hoc basis till such time that they take action to fill the post by direct recruitment in accordance with the recruitment rules. Accordingly, we set aside the impugned order dated 17.7.1995 reverting the applicant to the substantive post of Librarian. Respondents would also consider the relaxation of age and educational qualification in respect of the applicant in the matter of direct recruitment to enable him to apply for the same by direct entry. The Government may also consider an amendment of the recruitment rules to make the recruitment by promotion as an alternate method but we refrain from giving carry



(3)

(a)

direction on the subject since the respondents are the best judge as to what should be the requirement for recruitment to the post."

4. The applicant also submits that he had made representations for regularisation in accordance with the judgment but nothing came out.

5. It is further stated that on the basis of Fifth Central Pay Commission (CPC) recommendations, Government of India had issued an OM directing the uniform implementation of the pay structure issued earlier on 24.7.1990 along with the revision of the scales of Library staff. There was another development on 9.8.1999, the DOPT notified the ACP Scheme. Since the applicant has put in 34 years of regular service in his substantive post, now in the pay scale of Rs.5500-9000/-, so he became entitled to two upgradations.

6. The applicant further alleges that since he had not been regularised even after 21 years of continued service, he submitted two representations requesting for return to the parent Department on substantive post of Library Assistant in the scale of Rs.5500-9000/- where he was entitled to two financial upgradations under the ACP Scheme. But the respondents had rejected the same vide Annexure A-2. The said rejection is being challenged on the ground that the impugned order has been passed without reference to the applicant's prayer for relating to original cadre which implies that the prayer for grant of ACP Scheme is also rejected. It is stated that they had rejected his prayer without assigning any reason which makes the impugned order arbitrary, illegal and infringes

kr

(10)

the applicant's fundamental rights for equal treatment under Articles 14 and 16 of the Constitution.

7. The respondents are contesting the OA. In their reply they admitted that the applicant was appointed on 20.11.1965 in the then existing pay scale of Rs.210-425/-, which was revised to 425-700/- w.e.f. 1.1.73. But the applicant appointed to the post of Technical Assistant under Respondent No.2 purely on ad hoc basis as a stop gap arrangement in the pay scale of Rs.550-900/- w.e.f. 30.6.1981 when he was drawing basic pay of Rs.640/-. After working as Technical Assistant on ad hoc basis for certain period, the applicant reported for regularisation in the post of Technical Assistant. However, the applicant was reverted to his parent post of Library Assistant on 17.7.1995, (Annexure A-4) but the applicant had filed OA 1573/1995 challenging the reversion to the post of Library Assistant. The said OA was disposed of and the order has been reproduced above. As per the order of Tribunal, the applicant continued on the post of Technical Assistant until he retired from Government service on superannuation w.e.f. 31.5.2003.

8. It is further stated that till 21.2.2002 the post of Library Assistant was carrying the pay scale of Rs. 5000-8000/- of the Ministry of Finance revised the pay scale of Library Assistant as Rs.5500-9000/- with retrospective effect from 1.1.1996. Thus, the pay scales to the posts of Library Assistant and Technical Assistant became identical. On 30.12.2002, the applicant opted to



(iv)

join his parent post of Library Assistant with immediate effect. Request was examined with the cadre controlling authority and it was found that the Tribunal in its judgement in OA 1573/1995 had directed to continue the applicant in the post of Technical Assistant on ad hoc basis till such time respondents take action to fill up the post by direct recruitment in accordance with the Recruitment Rules. Now since the applicant has retired as Technical Assistant and has got retirement benefits on the same basis as he would have drawn, if he was to be selected on direct recruitment basis. Thus, the order of the Tribunal had been implemented in toto by not reverting the applicant to his parent cadre and the applicant had been given the benefit of service of Technical Assistant. It is further stated that the applicant deliberately kept his status as Technical Assistant so long as the post carried high scale. It is only after issue of the Ministry of Finance's OM dated 20.12.2002 revising the pay scale of Library Assistant and applicant thought of applying for the reversion to parent post of Library Assistant with a view to get the benefit of ACP Scheme.

9. The applicant had challenged his reversion order which was issued in the year 1995. Now the applicant can be allowed to seek reversion and then to take the benefits of ACP as the applicant cannot be reverted on the applicant as per court order was directed to be continued as Technical Assistant.

10. We have heard the parties and perused the record.

k

11. At the outset, we may mention that the applicant had retired w.e.f. 31.5.2003 as Technical Assistant on which post he was allowed to continue in implementation of the orders passed by the Tribunal whereby the applicant himself had challenged the order of reversion to the post of Library Assistant and that order had been quashed on the OA filed by the applicant himself. Now the question arises whether just because of change in circumstances when the Ministry of Finance has issued an OM dated 20.12.2002, the applicant can be allowed to revert back to hold his previous post in changed circumstances when he wanted to continue as Technical Assistant.

12. Learned counsel for the applicant also referred to the order passed by the Tribunal in OA-1573/1995 and submitted that the court had directed the respondents to continue in the post of Technical Assistant on ad hoc basis till such time they take action to fill up the post by direct recruitments in accordance with the rules and respondents should also consider the relaxation of age and educational qualification in respect of the applicant in the matter of direct recruitment to enable him to apply for the same by direct entry. Learned counsel for the applicant further submits that since the action for consideration to fill up the post by direct recruitment had been taken by the respondents and the case of the applicant had not been considered for his regularisation as Technical Assistant, so the applicant was to be reverted when the action was taken to fill the post of Technical Assistant and applicant has not been regularised, so the applicant is entitled to be reverted back and after reversion he is

✓  
K

entitled for grant of the benefit under ACP Scheme.

13. Learned counsel for the applicant also referred to the Clarifications issued on the ACP Scheme and submits that he is otherwise entitled to be promoted and his promotion should not be ignored only on the ground since two posts carrying different pay scales constituting two rungs in a hierarchy have not been placed in the same pay scale as a result of rationalisation of pay scales. This resulted into change in the hierarchy inasmuch as two posts which constituted feeder and promotion grades in the premerged scenario have become one grade.

14. So relying upon the rule available of pay scales, learned counsel submits that the applicant had been working on the post of Technical Assistant, which was higher to the Library Assistant but now since that had been upgraded and had resulted into double benefits of having identical scales. The applicant is entitled to the benefits of ACP Scheme.

15. We have considered the contention raised by the learned counsel.

16. At the outset, we may mention that the applicant is appropriating and rapprobating in the same dearth. Applicant had earlier come to the court seeking a direction that he should not be reverted back to the post of Library Assistant and for implementation of the judgement. He had been allowed to continue on the said post of Technical Assistant. Since pay scales of Library

JK

Assistant have been revised and pay scales had become identical w.e.f. 20.12.2002, so, the applicant wants that should be reverted back to the post of Library Assistant, which cannot be permitted because a direction had been given by the court only to consider the applicant for regularisation in the post of Technical Assistant and steps have also been taken to regularise the applicant. Even the Department had considered the case and written a letter to the UPSC for relaxation in age and educational qualification so that applicant may be regularised in the post of Technical Assistant. But it is submitted that applicant himself has faulted for not submitted application in time as such the question of regularisation was not considered by the UPSC. Thus it is only in compliance of judgement of this Tribunal wherein applicant had been allowed on the post as Technical Assistant.

17. As regards the clarifications referred to by the applicant, particularly Clarification-I two posts carrying different pay scales constituting ~~two~~ rungs in a different hierarchy have not been placed in the same pay scale as a result of rationalisation of pay scales. This resulted into change in the hierarchy inasmuch as two posts which constituted feeder and promotion grades in the premerged scenario have become one grade. We find that this Clarification is not applicable in the case of the applicant, as the post of Library Assistant is in a different cadre to the posts of Technical Assistant and both posts are also not within the hierarchy either under the premerged scenario or after the upgradations of the scales to the posts of Library Assistant, so this

h

(AS)

clarification does not apply at all to the case of applicant.

18. As regards the clarification-IV relied upon by the applicant is concerned, it states that a person is appointed to the post on transfer (absorption) basis from another post, whether 12 years and 24 years of service for the purposes of granting benefits of ACPS will count from the initial date of appointment. This has been answered by the DOPT that 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 number of service of 12/24 years.

19. Admittedly the applicant before appointment to the post of Technical Assistant was allowed the pay scale as they had been appointed as Technical Assistant and was drawing higher pay scale than that of post of Library Assistant. It is only after on 20.12.2002 before his retirement when the pay scale of Library Assistant had been upgraded which became to be equivalent as Technical Assistant. So the applicant now cannot claim that he has been throughout in the same pay scale.

20. We have examined the applicant's case from all angles, we find that the applicant is not entitled to the benefits of ACP Scheme nor he is entitled to be reverted back to the post of Library Assistant since the applicant after having availed the benefits on the basis of the order

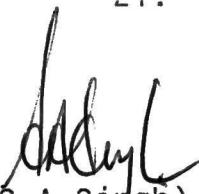
Lm

(10)

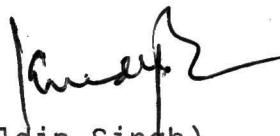
(16)

passed in his favour in OA 1573/1995 wherein he had challenged his reversion to the post of Library Assistant and now claims that he should be reverted back to his substantive post. Hence the OA is bereft of merit and the same has to be dismissed.

21. Accordingly, the OA is dismissed. No costs.



(S.A. Singh)  
Member(A)



(Kuldip Singh)  
Member(J)

/kdr/