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Central Administrative Tribunal, Principal Bench

Original Application No. 2554 of 2003
M. A. No. 2192/2003

New Delhi, this the 9th day of August, 2004

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

1. All India CPWD (MRM)
Karamchari Sangthan,
4823, Balbir Nagar Extn.,
Gali No.13, Shahdara,
Delhi through its
President Satish Kumar
2. Vikram Singh,
s/o late Shri Kunwar Singh
Peon, R/o H.No.4823,
Gali No.13, Balbir Nagar Extension,
Shahdara, Delhi-32
3. Ram Prakash
S/o Shri Ram Dutt,
Chowkidar, R/o H.No.4828,
Gali No.13, Balbir Nagar Extension,
Shahdara, Delhi-32
4. Gajraj Singh,
S/o Ram Singh
Sweeper, R/o 210,
Rd.No.3, Andrews Ganj,
New Delhi

...Applicants

(By Advocate: Ms. Shilpa Chohan, proxy for Shri Naresh
Kaushik).

Versus

1. Govt. of India, through

The Secretary,
Ministry of Personnel, Public Grievances
and Pensions, Department of Personnel
and Training, New Delhi
2. The Director General (Works),
Central Public Works Department (CPWD)
Nirman Bhawan,
New Delhi

....Respondents

(By Advocate: Ms. Harvinder Oberoi)

O R D E R

Justice V.S. Aggarwal, Chairman

Applicant No.1 is an Association of the Central
Public Works Department (MRM). Applicant No.2 is a Peon

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working in the Central Public Works Department. Applicant No.3 is a Chowkidar while applicant no.4 is a Sweeper in the same department.

2. By virtue of the present application, they seek a direction to the respondents to grant them the benefit of Assured Career Progression Scheme (for short 'ACP' Scheme) by refixing the pay scales of Chowkidars, Peons and Sweepers to Rs.3050-4590 after they completed 12 years of service, alongwith arrears.

3. Some of the relevant facts are that the Government of India after the Fifth Central Pay Commission report on 9.8.99, made applicable ACP Scheme. After 12 years of regular service, a person is entitled to the next higher scale to be referred to hereinafter subject to the condition that he has not earned any promotion. Applicants contend that the Chowkidars and Peons are getting the pay scale of Rs.2550-3200 and respondents have granted them the scale of Rs.2610-3540 making the ACP Scheme applicable to them while they are entitled to the scale of the Lower Division Clerk i.e. Rs.3050-4590. Similarly, it is stated that in the case of Sweepers, the next promotional post is of Sewerman in the scale of Rs.3050-4590. The same has not been awarded to them and a lower scale as already referred to above has been granted to the Sweepers. It is in this backdrop that the present petition with the reliefs referred to above has been filed.

4. In the reply filed, the petition has been



contested. According to the respondents, the Department of Personnel and Training vide office memorandum of 1.6.2001 have clarified that the first financial upgradation to Group 'D' employees on completion of 12 years of regular service shall be at least to the scale of Rs.2610-4000. It is in accordance with the same that the scales of the applicants have been fixed on grant of the Assured Career Progression Scheme. It is denied that the applicants are entitled to the scale of Lower Division Clerk.

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

6. On behalf of the applicants, great stress was laid on the fact that in accordance with the ACP Scheme, a person who completes 12 years of regular service and has not earned any promotion, is entitled to the scale of LDC which is the next promotional post.

7. At the outset, we had put it to the learned counsel for the applicants as to what is the next promotional avenue. We were informed that so far as Chowkidar is concerned, there is no promotional avenue. A Peon is entitled to be promoted as Daftry and a Sweeper is entitled to be promoted as Sewerman as per the rules.

8. So far as the post of LDC is concerned, it is only an avenue of accelerated promotion in case of Group 'D' employees who were Matriculates and possessed an equivalent qualification. It is not a standard

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hierarchical structural promotion. In accordance with instructions, only a specific quota is prescribed and certain persons from the level of Peons etc. can be considered partly by departmental examination and at times on basis of seniority subject to fitness. Therefore, it is clearly a conditional promotion and not a straight channel of promotion envisaged under the ACP Scheme. To that extent, the plea of the applicants must fail.

9. However, it must be stated that the ACP Scheme which was made applicable made from 9.8.1999, had provided the conditions for grant of the same. In Paragraph 7 of the conditions for grant of the benefit under the ACP Scheme, the financial upgradation is given in the next higher grade in accordance with the existing hierarchy in the cadre/category of posts. The said paragraph reads:

"Financial upgradation under the Scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts without creating new post for the purpose. However, in case of isolated posts, in the absence of defined hierarchical grades, financial upgradation shall be given by the Ministries/Departments concerned in the immediately next higher (standard/common) pay scales as indicated in Annexure-II which is in keeping with Part-A of the First Schedule annexed to the Notification dated September 30, 1997 of the Ministry of Finance (Department of Expenditure). For instance, incumbents of isolated posts in the pay-scale S-4, as indicated in Annexure-II will be eligible for the proposed two financial upgradations only to the pay scales S-5 and S-6. Financial upgradation on a dynamic basis (i.e. without having to create posts in the relevant scales of pay) has been recommended by the Fifth Central Pay Commission only for the incumbents of isolated posts which have no avenues of promotion at all. Since financial

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upgradations under the Scheme shall be personal to the incumbent of the isolated post, the same shall be filled at its original level (pay-scale) when vacated. Posts which are part of a well-defined cadre shall not qualify for the ACP Scheme on 'dynamic' basis. The ACP benefits in their case shall be granted conforming to the existing hierarchical structure only."

10. It leaves without any pale of controversy that financial upgradation is to be given in the next grade in the hierarchy.

11. On behalf of the respondents, reliance is being placed on the clarifications dated 1.6.2001 by the Department of Personnel & Training stating that Peons, Chowkidars and Sweepers are entitled to the first financial upgradation in the scale of Rs.2610-4000.

12. It is a settled principle of law that it is the main Scheme which would be applicable. The points of clarification can only clarify the doubts. If the language of the Scheme is clear and unambiguous, then the clarification will not supplant the same. Supplementary instructions can only be issued when there are ambiguities therein. The clarifications will not override the main Scheme. Therefore, necessarily clarification would only be made applicable in case where there is any doubt and no promotional avenue can be traced in the hierarchy i.e. the next higher grade.

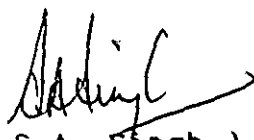
13. So far as the Chowkidars are concerned, as already referred to above, it was not disputed at either end that there was no channel of promotion prescribed.




Therefore, in this regard, the clarifications ^{10.1} could be issued and in accordance with the above said clarification dated 1.6.2001, the next higher scale of the individual can be fixed at Rs.2610-4000.

14. So far as the Peon is concerned, as already referred to above, there is promotional avenue i.e. the post of Daftry. The Peon can only get the said scale in accordance with the Scheme. As regards Sweepers, the next promotional avenue in the hierarchy is Sewerman and the scale admittedly is Rs.3050-4590. He would be entitled to the said scale.

15. Original Application is disposed of accordingly directing that if any arrears are due, the same should be paid to the applicants from the date the Scheme was enforced.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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