

1

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 2790/2003

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

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A. SINGH, MEMBER (A)

K.S. Negi
s/o Shri R.S. Negi
aged about : 36 years
Resident of: L-1/294-B, D.D.A. Flats
Kalkaji
New Delhi - 110 019.

AND EMPLOYED AS:

Nursing Assistant in the office of the
Directorate General of Security
(Special Service Bureau)
Ministry of Home Affairs
Government of India
Block No.V(East), R.K.Puram
New Delhi - 110 066. .. Applicant

(By Advocate: Sh. B.B. Raval)

Versus

1. Union of India through
The Secretary
Ministry of Home Affairs
Government of India
North Block
New Delhi.
2. The Secretary
Department of Personnel and Training
Ministry of Personnel, Pensions and Public Grievances
Government of India
North Block
New Delhi - 110 001.
3. The Director
Directorate General of Security
Block V (East)
R.K.Puram
New Delhi - 110 066. ... Respondents

(By Advocate: Sh. B.S. Jain)

O R D E R (Oral)

Justice V.S. Aggarwal:-

Applicant (K.S. Negi) joined as Laboratory Technician in the office of the Divisional Organizer, Ranikhet. He joined the National Security Guard (for short 'NSG'), Manesar in April, 1993. According to him, during his posting with the NSG, he developed

ls Ag

Glaucoma in the right eye and was advised to undergo surgery for Vernal Catarrh with Steroid induced Glaucoma in All India Institute of Medical Sciences. In February, 1994 the surgery was performed. On 30.7.1994, he was repatriated to his parent department because of the said medical problem and was posted to Pauri. Thereafter, he was transferred to Imphal. He represented and he was transferred to T.C. Sarahan. On 11.4.2001, the DIG (EA), SSB, New Delhi issued a letter to the Medical Superintendent, Dr. Ram Manohar Lohia Hospital, New Delhi to get the applicant medically examined and to opine as to whether he was fit to perform the duties as Laboratory Technician. The Senior Eye Specialist in Dr. Ram Manohar Lohia Hospital had opined that the applicant was unfit for the post of Laboratory Technician. Result was that on 7.8.2001, an order was issued giving the applicant three months notice for premature retirement. On 29.10.2001, he submitted Original Application No.2993/2001. It came up for consideration before a Bench of this Tribunal and the same was disposed of with the following order:

"8. In view of this position, this OA is disposed of in the following terms:

Applicant shall respond to the letter dated 11.3.2002 immediately giving his willingness to accept the lower scale post. Thereafter respondents are directed to protect the last pay drawn by the applicant in the post of LT when he is posted and joins duty as Nursing Assistant in SSB (para medical), by grant of personal pay/special pay to him as admissible under rules. Interim order granted by the Tribunal on 2.11.2002 stands vacated."

LS Ag

2. In accordance with the directions of this Tribunal, applicant submitted an application accepting the lower post of Nursing Assistant. He was transferred on 7.10.2002 as Nursing Assistant from New Delhi to Jammu. The said order of transfer even was set aside by this Tribunal.

3. By virtue of the present application, the applicant seeks setting aside of the order dated 10.10.2003 and prays that he should be given benefit under the Assured Career Progression Scheme and placed in the scale of Rs.5500-9000 and his pay should be fixed as Nursing Assistant accordingly.

4. At this stage, it is relevant to mention that as already pointed above, the applicant had joined as Laboratory Technician on 15.2.1990 and had completed 12 years of service on 15.2.2002. It is on the strength of these facts that the applicant contends that having completed 12 years of service, he is entitled to the benefit of first upgradation under the Assured Career Progression Scheme.

5. The application has been contested. The first and foremost question that comes up for consideration is as to what was the scale of the applicant in February, 2002 when he completed 12 years of service.

6. An order had been issued on 29.5.2003 by the respondents pertaining to fixation of the pay of the applicant. The same reads:

As Ag

"In supersession of Force Hqrs. order NO.14/SSB/A-4/2001(1)-2012-17 dated 07.05.2003, the pay of Sh. K.S.Negi, Civilian Lab Tech. (now Nursing Assistant) in SSB is fixed on the revision of pay scale from Rs.4000-100-6000/- to Rs.4500-125-7000/- w.e.f. 01/01/1996 vide Cab. Sectt. Order No.1/69/99-EA.I-4545 dated 10/12/2001 read with MHA UO No.27012/82/2001/PF-III dated 07/04/2003:-

Sl. No.	Name of official	Emoluments as on 31/12/95 (Pre-revised scale)	Pay fixed in revised pay scale of Rs.4500-125-7000/-
1.	Shri K.S.Negi	Rs.4481/-	01/01/96 Rs.4625 01/02/96 Rs.4750 01/02/97 Rs.4875 01/02/98 Rs.5000 01/02/99 Rs.5125 01/02/2k Rs.5250 01/02/01 Rs.5375 01/02/02 Rs.5500

2. In view of appointment of Shri K.S.Negi to the post of Nursing Assistant on his declaring unfit for the post of Lab. Tech. by the Medical Board on 16/12/2002, his pay fixed in the rank of Nursing Assistant vide order No.14/SSB/A-4/2000(4)-241-45 dated 21/01/2003 is re-fixed as under:-

- (a) Pay as on 15/12/02 = Rs.5500/- in the revised pay scale in the rank of Lab. Tech. i.e. Rs.4500-125-7000/-.
- (b) Pay Scale of Nursing Assistant = Rs.2650-65-3300-70-4000/-.
- (c) Pay fixed in the rank of Nursing Assistant on joining the post on 16/12/2002 as per provisions of FR-22(3) = Rs.4000 PP Rs.1500/-"

7. The above said order clearly shows that the pay of the applicant had been revised in the scale of Rs.4500-7000 from 1.1.1996. This was in pursuance of the Fifth Central Pay Commission's report. It is therefore, established beyond any pale of controversy that the applicant on 15.2.2002 was in the scale of Rs.4500-7000.

As Ag

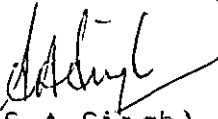
8. In the preceding paragraph, we have referred to the brief background of the applicant's case. It clearly shows that the applicant was retired prematurely and the said order was set aside and presently he is working as Nursing Assistant. From 9.8.1999, the Assured Career Progression Scheme had been introduced. It is not in dispute that if a person has not earned promotion after completion of 12 years of service, he is entitled to be considered for the first upgradation under the ACP Scheme.

9. Learned counsel for the respondents states that the applicant has already been found unsuitable. In this regard, the learned counsel tried to take advantage of certain findings in the decision of this Tribunal in OA 2993/2001. We hasten to add that it was the controversy as to whether the order passed for premature retirement was valid or not. The claim of the applicant necessarily has to be considered in the light of the ACP Scheme afresh regarding which this Tribunal, for the present, need not express any opinion.

10. There was some controversy pertaining to the date from which the applicant should be so considered. He had joined as Nursing Assistant only in December, 2002. Therefore, when he completed 12 years of service in February, 2002, his claim has to be considered in the light of the scale in which he was working and to be placed in the next higher scale in accordance with the rules and instructions.

18 Ag e

11. For these reasons, we dispose of the present application holding that the applicant had completed 12 years of service on 15.2.2002 and was eligible to be considered for the first upgradation under the Assured Career Progression Scheme. On that date, he was in the scale of Rs.4500-7000. He should be considered for the next higher scale in accordance with the relevant rules. This exercise may preferably be completed within four months of the receipt of the certified copy of the present order.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

/NSN/