

O.A.No.3112/2003:

1. Sudhir Kumar
s/o Late Sh. Patras
r/o 3380, Chrischan Colony
Karol Bagh
New Delhi. Applicant

(By Advocate: Sh. Yogesh Sharma)

Versus

1. N.C.T. of Delhi through
The Chief Secretary
New Sectt. New Delhi.

2. The Director
Directorate of Social Welfare
Govt. of NCT of Delhi
Kasturba Gandhi Marg
New Delhi - 1. .. Respondents

(By Advocate: Sh. Saurabh Ahooja, proxy for Sh. Ajesh Luthra)

O R D E R

Justice V.S. Aggarwal:-

By this common order, we propose to dispose of the above said two Original Applications. For the sake of convenience, we are taking the facts from O.A.2681/2003 entitled Ishwar Singh Chillor & Others v. National Capital Territory of Delhi & Others.

2. The applicants joined as Craft Instructors in Social Welfare Department and their particulars are:

Name	Date of Appointment	At present
Ishwar Singh Chillor	21.1.69	Retired on 30.6.2002
Smt. Phool Ahuja	5.5.71	Retired on 30.11.01
R.S.Tanwar	15.11.69	Working in HMRP(C) Awantika

ls Ag

10

[3]

Gopal Dutt 12.2.70 Working in
Central
Workshop"

3. The applicants were appointed in the Grade of Rs.5000-8000 (Revised) and subsequently earned promotion to the grade of Rs.5500-9000 (In-situ) in the year 1992. The Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training on 9.8.1999 had introduced the Assured Career Progression Scheme (for short 'ACP Scheme') for the Central Government Civilian employees in all Ministries and Departments. In accordance with the said ACP Scheme, it is asserted that on completion of 12 and 24 years of regular service, a person is entitled for the financial upgradation.

4. Applicants' claim is that they have completed 24 years of service and have fulfilled all the conditions of the Scheme and thus, they are entitled to the benefit of the ACP Scheme. By virtue of the present application, the applicants seek quashing of the order of 8.7.2003 refusing the claim of the applicants and declare that the action of the respondents is illegal and that the applicants are entitled to the upgradation of their pay scales.

5. At this stage, it is relevant to mention that the claim of the applicants had been rejected vide impugned order dated 8.7.2003 by recording the following reasons:



"1. That no Junior Instructors has been granted the financial upgradation in the scale of Rs.10,000-15,200/- as claimed by the applicants.

2. As regards 13 Instructors who have completed service of 24 years were also considered for granting ACP but as per instruction No.53 of Office Memorandum No.F.35034/1/97-Estt(D) (Vol.IV) Govt. of India, Ministry Personnel Grievance and Pension (DOPT) dated 18.07.01 in terms of condition No.6 of Annexure 1 to DOPT OM dated 09.08.99, only those employees who fulfil all promotional norms are eligible to be considered under ACPS. Therefore various stipulations and conditions specified in the RRs for promotion to the next higher grade, including higher/additional educational qualification if prescribed would need to be met also for consideration under ACPS. The next promotional/Hierarchy scale of Craft Instructor in the pay scale of Rs.5500-9000/- is as Deputy Supdt. in the pay scale of Rs.5500-9000/- and as per RRs in case of promotion to the post of Dy. Supdt. only those officers will be eligible for promotion who are atleast graduate but as per service record of other craft instructors no one possessed graduation. As such the cases of other instructors, it was observed that they being either seniors or juniors were not considered by the screening committee and the cases of the craft instructors for granting ACP Scheme were recommended to only those craft instructor who possessed qualification of being graduate."

6. The applications are being contested. It is stated that as per the recruitment rules, for the post of higher/promotional posts of Deputy Superintendent, the qualifications prescribed is graduate. The applicants are under-graduates and are not eligible for the grant of said benefits. Therefore, they are not entitled to the benefit of the ACP Scheme.

ls Ag

7. The short question agitated during the course of submission was as to if, when the applicants do not fulfil the educational qualifications for the promotional avenues, they are still entitled to the benefit of the ACP Scheme or not. It is not in dispute that for the next promotion, minimum educational qualification is Graduate and the applicants are not Graduates.

8. Reliance on behalf of the applicants was placed on the Scheme known as ACP Scheme to contend that it is an upgradation and not a promotion and, therefore, the educational qualifications prescribed need not be satisfied.

9. At the first blush, we were swayed by the pleas so raised but our attention was drawn towards condition of grant of the benefit under the ACP Scheme. It provides:

"5.3 Fulfilment of normal promotion norms (bench-mark, departmental examination, seniority-cum-fitness in the case of Group 'D' employee, etc) for grant of financial upgradations, performance of such duties as are entrusted to the employees together with retention of old designation, financial upgradation as personal to the incumbent for the stated purpose and restriction of the ACP Scheme for financial and certain other benefits (house Building Advance, allotment of Govt. accommodation, advances, etc) only without conforming any privileges related to higher status (e.g., invitation to ceremonial functions, deputation to highest posts, etc) shall be ensure for grant of benefits under the ACP Scheme."

10. It clearly shows that fulfilment of normal promotional norms for grant of financial upgradation is a must before a promotion can be

UAg

granted. The expression that it should meet the benchmark, departmental examination, etc. are only illustrative and not exhaustive. Once for fulfilment of normal promotional avenues, a person has to be a Graduate, necessarily he must fulfil that condition also.

11. To the same affect is the Office Memorandum No.35034/1/97-Estt.(D)(Vol.IV), dated 18.7.2001 which pertains to clarification No.53. It reads as under:

Doubt 53.- If for promotion on regular basis, an employee has to possess a higher/additional qualification, will it be necessary to insist on possession of these qualifications even while considering grant of financial upgradation under the ACPS?

Clarification.- In terms of Condition No.6 of Annexure-I to DoP&T, O.M., dated 9-8-1999, only those employees who fulfil all the promotional norms are eligible to be considered for benefit under ACPS. Therefore, various stipulations and conditions specified in the Recruitment Rules for promotion to the next higher grade, including the higher/ additional educational qualification, if prescribed, would need to be met even for consideration under ACPS."

12. None of the said OMs have been challenged.

13. We also rely in this regard on clarification on ACP Scheme. Of course, it pertains to Group 'D' employees. It conveys the same meaning as we have referred to above. ^{by analogy} It refers to paragraph 6 of the Scheme and states that even educational

ls Ag

qualifications must be fulfilled. We find no reason as to why the same analogy would not be applicable to the applicants.

14. Once the applicants do not fulfil the educational qualifications, their claim has rightly been rejected, because they are not Graduates.

15. In that event, learned counsel for the applicants urged that applicants are being discriminated. Some junior persons have been granted the said benefit. The said contention has to be stated to be rejected because if the juniors are Graduates, they would get the benefit of ACP Scheme.

16. No other arguments have been raised.

17. Resultantly, the applications being without merit must fail and are dismissed.

Member (A)

Chairman

/NSN/