

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 56/2003

This the 29th day of August, 2003

HON'BLE SH. KULDIP SINGH, MEMBER (J)
HON'BLE SH. R.K.UPADHYAYA, MEMBER (A)

1. Sh. R.K.Puri,
Private Secretary,,
SSB HQRS.,
Block No.V (East),,
R.K.Puram,
New Delhi-66..
2. Sh. G.C.Bhatt,
Private Secretary,,
SSB HQRS.,
Block No.V (East),,
R.K.Puram,
New Delhi-66..

(By Advocate: Sh. V.S.R.Krishna)

Versus

Union of India through

1. The Secretary,
Ministry of Home Affairs,,
Govt. of India,
North Block,
New Delhi.
2. The Director General,
SSB Directorate,
Block No.V (East),,
R.K.Puram,
New Delhi-66..

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

O R D E R (ORAL)

By Sh. Kuldip Singh, Member (J)

This is a joint application filed by 2 applicants as they have a common grievance with regard to the grant of second financial upgradation under the Assured Career Progression Scheme launched by the Govt. vide DOPT OM dated 9.8.99. Both the applicants have made a representation for grant of second financial upgradation but the same had been rejected by the respondents.



2. Facts in brief as alleged by the applicant are that both the applicants joined the service under the respondents in the SSB as Stenographer Grade-III. Thereafter applicant No.2 was appointed as SI (Steno) in the combatised cadre of SSB as direct recruit on 6.3.1970. Applicant No.1 was appointed similarly as SI (Steno) in the combatised cadre of SSB on 11.10.1971. On 8.5.92 applicant No.2 was given promotion to the post of Inspector and applicant No.1 was given his promotion to the post of Inspector (Steno) on 30.10.1995. It is stated that they had been stagnating in the feeder grade for more than 24 years. It is further stated that DOPT vide their scheme dated 9.8.99 pertaining to Assured Career Progression Scheme had accorded grant of at least two financial upgradations to Govt. servant who stagnate in the same grade for more than 12/24 years. Hence applicant submit that since they had stagnated for more than 24 years, so they are entitled to the benefits of ACP scheme issued by the DOPT.

3. OA is being contested by the respondents. From the stand taken by the respondents in the OA, it appears that the respondents have treated as if applicants had been promoted from the post of Stenographer Grade-III to the post of SI (Steno) and they were given second promotion from the post of SI (Steno) to Inspector. Thus, according to the respondents the applicants have got two promotions in their career, so they are not entitled to two financial upgradations as envisaged under the ACP scheme.

4. Applicants challenging the stand of the respondents stated that initially applicant had joined the department as Stenographer Grade-III but the post of SI (Steno) is in the

km

combatised cadre and is the base post without having a feeder grade, therefore there was no question of any person being promoted to the said post as SI (Steno) and the only manner in which this post of SI (Steno) could be filled up is by way of direct recruitment. It is also pleaded that hierarchy of promotion in civilian cadre are different and in combatised cadre are different. A Stenographer in the civilian cadre is eligible for promotion to the post of Personal Assistant, Private Secretary and then Assistant Director (Admn.) whereas SI (Steno) in the combatised cadre has only one promotion grade i.e. Inspector (Steno). Therefore, the department cannot consider the appointment of the applicant in the combatised cadre as promotion from the civilian cadre.

5. Respondents in their reply still insist that both the applicants are promoted as SI (Steno). Respondents further submitted that the post of Stenographer Grade-III was in the pay scale of Rs.130-280 and post of SI (Steno) was in the pay scale of Rs.210-320. Thus, it was a promotion for Stenographer Grade-III and entry in the service book also show that they were promoted and there have been no entry made about their technical resignation and about their appointment as direct recruit SI (Steno). Respondents deny that civilian cannot be promoted to the post of SI (Steno).

6. Respondents have also taken an objection that SSB is a border guarding force, so it is outside the jurisdiction of the CAI and since the applicant's themselves state that they are in the combatised cadre and the relevant recruitment rules also state that they are part of combatised clerical Cadre under Rules of 1988, so they are outside the jurisdiction of the Tribunal. It is further stated that applicants have not

substantiated their claim by producing documents to show that they were recruited directly to the post of SI (Steno) in 55B. So respondents insist that since the applicants have got two promotion one from Stenographer Grade-III to SI (Steno) and another from SI (Steno) to Inspector (Steno). So they are not entitled to the second financial upgradation as envisaged under the ACP scheme.

7. We have heard the learned counsel for the parties and gone through the record.

8. As regards the preliminary objection about the jurisdiction of the Tribunal is concerned, applicant has placed on record an order dated 16.6.99 which shows that the post of Inspector (Steno) which was being occupied by the applicants has been switched over to the post of Inspector (GC) i.e. General Cadre and PS (GC) and as such they are appointed in the pay scale of Rs.6500-10,500 and they have taken over as SO (GC) and PS (GC) which post has been created under Cabinet Secretariat order No.A-11011/02/98-DO-1-33 dated 14.1.99 with simultaneous abolition of one post of Inspector and 3 posts of Inspector (Steno) on the combatised side. So on the basis of this, learned counsel for the applicant submitted that though they were holding the post of combatised Inspector (Steno) since they have been switched over to the post of SO and PS, so this Court has got jurisdiction to try this petition. This document is not denied by the respondents and reading of this document shows that the post of Inspector on the combatised side has been abolished and same has been switched over to Civilian General Cadre as SO and PS. Hence, on the basis of this document it can be safely said that this Tribunal has jurisdiction to try the petition as the

ku

applicant's post of Inspector (Steno) which was earlier a combatised post has been converted to the post of SO/PS which is of a General Cadre. So the objection with regard to the jurisdiction of this Tribunal does not lie.

9. Next issue to be resolved is whether the applicants were appointed directly to the post of SI (Steno) or they were promoted from the post of Stenographer Grade-III to the post of SI (Steno). In this regard, counsel for the applicant has invited our attention to a document Annexure A-2 which is issued by respondents itself with regard to one of the applicant, namely, R.K.Puri. This document is dated 21.3.2002 and it reads that "in modification of the order dated 28.8.71 Sh. Puri is appointed as SI (Steno) in the scale of Rs.210-10-320 w.e.f. 11.10.71 instead of promoted as earlier mentioned in the aforesaid order." Thus the department itself uses the terminology of appointment instead of promotion and had modified the order of promotion issued in the year 1971 itself. Similarly in the case of one another employee, namely, Sh. T.S.Karakoti which speaks about a technical resignation of the similarly placed employee whose name is also mentioned in the list pertaining to the switching over to the post from combatised cadre to the general cadre. There is another document which also shows that at the time of appointment as SI (Steno) these people were also medically examined whereas it is a common knowledge that in case of promotion no medical examination is conducted. But still the respondents counsel insisted that it was not a direct appointment to the post of SI (Steno) but it was only a promotion from the post of Stenographer Grade-III.

fm

10. In our view the contention as raised by the respondents that the applicants have been given promotion to the post of SI (Steno) is not tenable because on the face of the document issued by the respondents themselves on 21.3.2002 as they had modified the order and they themselves have substituted the word 'promoted' to that of the word 'appointed' so this is to be taken as a direct recruitment to the post of SI (Steno) and not as a promotion.

11. However, counsel for respondents still insisted that even if the posting of the applicant as SI (Steno) then also under the ACP scheme the applicant is not entitled for another upgradation since in the entire Govt. service applicant is to be given two upgradation and since applicant has availed that so he is not entitled to the upgradation. In this regard, counsel for applicant referred to para 5.1 of the ACP scheme issued by the DOPI. Para 5.1 is reproduced herein below.

"Two financial upgradations under the ACP Scheme in the entire Government service career of an employee shall be counted against regular promotions (including in-situ promotion and fast-track promotion availed through limited departmental competitive examination) availed from the grade in which an employee was appointed as a direct recruit. This shall mean that two financial upgradations under the ACP Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee. If an employee has already got one regular

for

promotion, he shall qualify for the second financial upgradation only on completion of 24 years of regular service under the ACP Scheme. In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him."

12. Counsel for applicant had relied upon the words 'in the entire Govt. service' in the first line of the para 5.1 and submitted that the financial upgradation in the ACP scheme is to be given in the entire Govt. service career of an employee. On the basis of the same counsel for respondents submitted that since the applicant had joined as Stenographer Grade-III they got the financial upgradation when they were posted as SI (Steno) and the second financial upgradation when they were posted as Inspector (Steno), so they are not entitled for any financial upgradation under this scheme. However, para 5.1 of the ACP scheme cannot be interpreted in the manner as suggested by learned counsel for respondents because it further uses the word 'that an employee is entitled for two financial upgradations availed from the grade in which employee was appointed as a direct recruit.' Since the document of the department itself shows that the applicants were appointed as SI (Steno), so they are to be deemed as a direct recruit when they were appointed as SI (Steno) so they are to be given two financial upgradations in the career of Govt. service. Their service starts from the day they were appointed as direct SI (Steno). From the direct recruitment of SI (Steno) during the period of 24 years as envisaged in

kan

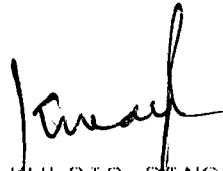
Under the ACP Scheme they have got only one promotion as Inspector (Steno) so they are entitled to the second financial upgradation as per the ACP scheme itself.

13. Para 5.1 further says that if an employee has already got one regular promotion then he shall qualify for the second financial upgradation on completion of 24 years of regular service. But in this case applicants have already completed 24 years of service and they have got only one promotion from the date they were appointed as SI (Steno), so they are entitled to the second financial upgradation from the date they completed 24 years.

14. We find that the OA deserves to be allowed. Accordingly, we allow the OA and direct the respondents to give them second financial upgradation on completion of 24 years of service as per the ACP Scheme. This exercise shall be completed within a period of 3 months from the date of receipt of a copy of this order.



(R.K. UPADHYAYA)
Member (A)



(KULDIP SINGH)
Member (J)

sd