

Unreportable
IN THE HIGH COURT OF DELHI AT NEW DELHI

+WP(C) No.18491/2004

Date of Decision: 02.05.2008

#Sh. J.L. Mehra
!

....Petitioner
Through: Mr. R.K. Saini

Versus

\$High Court of Delhi & Anr.
^

.....Respondent
Through Mr.Viraj R. Datar

CORAM :-

***THE HON'BLE MR.JUSTICE A.K.SIKRI**
THE HON'BLE MR. JUSTICE J.M. MALIK

- 1.Whether Reporters of Local papers may be allowed to see the Judgment?
- 2.To be referred to the Reporter or not?
- 3.Whether the judgment should be reported in the Digest?

A.K. SIKRI, J.

:

1. The petitioner was an employee of this Court, who retired on 31.7.2004 after attaining the age of superannuation. He had started his career with appointment as a Junior Translator of this Court at

Circuit Bench, Shimla (Himachal Pradesh) on 26.6.1967. He was transferred to Delhi in June 1968 and was re-designated as Assistant in the same pay scale applicable to Junior Translators. He was promoted as Court Master with effect from 19.3.1991 on ad hoc basis and was confirmed to the post of 24.7.2000.

2. The Department of Personnel and Training (DOPT) introduced a scheme called Assured Career Progression Scheme (ACP Scheme), which was circulated vide its memo dated 9.8.1999. In terms of this scheme, two financial upgradations at the end of 12 years and 24 years respectively are available to those employees who are not able to get promotions during the said period. If an employee has already got one promotion within 12 years, he would be entitled to second financial upgradation only on completion of 24 years of service. Those who received two promotions are not entitled to any benefit under the scheme. The petitioner is demanding one financial upgradation under the said scheme. This scheme is predicated on the premise that during his entire service he got only one promotion to the post of Court Master with effect from 19.3.1992. He, therefore, claims that on completion of 24 years of service, which he completed on 25.6.1991,

he should have been given higher scale of Rs.12,000-16,500/- with effect from 9.8.1999 when the ACR scheme was enforced.

3. The petitioner had submitted representation for this purpose on 28.4.2004, which has been rejected by the High Court vide its reply dated 12.7.2004. On the rejection of his representation, he has approached the Court for claiming the said benefit.
4. The reason for rejection of the petitioner's demand, which is stated in the counter affidavit as well, is that the ACP scheme is not available and applicable to those who are Group 'A' employees, as stated in para-2.1 of the OM dated 9.8.1999, which reads as under:-

“2.1 In respect of Group 'A' Central Services (Technical/Non-Technical), no financial upgradation under the Scheme is being proposed for the reason that promotion in their case must be earned. Hence, it has been decided that there shall no benefits under the ACP Scheme for Group 'A' Central Services (Technical/Non-Technical). Cadre Controlling Authorities in their case would, however, continue to improve the promotion prospects in organizations/cadres on functional grounds by way of organizational study, cadre review, etc., as per prescribed norms.”

5. It is pointed out by the respondent that since post of Court Master is a

Group 'A' post to which post the petitioner got promotion on 18.3.1991, he was not covered by the said scheme, which was introduced in the year 1999.

6. There is no dispute that the ACP scheme is not applicable to Group 'A' post and the post of Court Master is a Group 'A' post. Therefore, an employee who becomes Court Master before the introduction of the said scheme cannot avail any benefit under the scheme. However, the claim of the petitioner flows from different argument, namely, on 19.3.1991 he was promoted as Court Master only on ad hoc basis and that promotion was not on regular basis. He was confirmed as Court Master on 24.7.2000. Thus, as on 9.8.1999 when the ACP scheme was introduced, he was carrying the post of Court Master only on ad hoc basis and since a person promoted on ad hoc basis on a higher post holds the substantive rank only on lower post, which was Group 'B' post in the case of the petitioner. It is, thus, contended that he was not holding a Group 'A' post on substantive basis and had no right to continue in the said post which was occupied by him only on ad hoc basis and therefore, as on that date he should be treated as Group 'B' employee and thus, would be entitled to the benefit of ACP scheme.

7. To buttress this submission, learned counsel for the petitioner also argued that the salient features of the ACP scheme circulated by the Government itself refer to 'regular service', namely, a person in order to get the financial upgradation should have 12 years/24 years 'regular service'. He specifically referred to the note appended to salient feature No.1 in this behalf:-

"Salient Features of the ACP Scheme

- (i) Two financial upgradations shall be granted to Group 'B', 'C' and 'D' employees on completion of 12 years and 24 years of regular service.

Note: "Regular Service" means eligible service that could be counted for regular promotion as per rules."

8. He also mentioned that the condition of grant of benefits under the said ACP scheme which are laid down in the said circular also makes the position clear. Relevant conditions in this behalf are:-

"Conditions for Grant of Benefits under the ACP Scheme

- (i) The ACP Scheme does not amount to regular promotion or requires creation of

new posts. It only gives higher scales of pay as personal to the employee.

- (ii) The highest pay-scale upto which the financial upgradation under the scheme is available, shall be Rs.14,300 – 18,300.
- (iii) The first financial upgradation shall be allowed after 12 years of regular service and the second after 12 years of regular service from the date of first financial upgradation. The first effective date shall be the date of completion of the eligibility period prescribed or the date of issue of these instructions, which is later.
- (iv) Two financial upgradations under the ACP Scheme shall be available only if no regular promotions during the prescribed periods of 12 and 24 years have been availed by an employee.”

9. He also referred to the clarifications issued by the DOPT vide Office Memo dated 10.2.2000. Clarification No.11, which was pressed into service by the learned counsel for the petitioner, is to the following effect:-

	<i>Point of doubt</i>	<i>Clarification</i>
1	In the case of an employee appointed on ad-hoc basis and who is subsequently regularized, the ad-hoc service is counted	No. In terms of para 3.2 of the Office Memorandum dated August 9, 1999 (ACPS), only regular service which counts for the purpose of regular promotion in terms

	towards increment. Whether the ad-hoc service may be counted for the ACPS also?	of relevant Recruitment/ Service Rules, shall count for the purpose of upgradation under ACPS.”
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10.Learned counsel for the respondent, on the other hand, submitted that the purpose of giving financial upgradation under the ACP scheme was to give benefit of higher pay scale to who were not able to get promotion and were stagnating at existing pay scale. It was, thus, to mitigate this kind of hardship. In so far as the petitioner is concerned, it was argued that when he was promoted as Court Master even on ad hoc basis, he started getting higher pay scale. Therefore, such a person would not be entitled to the financial benefit under the ACP scheme. He also highlighted the following provisions contained in the ACP scheme dated 9.8.1999

“1. The ACP Scheme envisages merely placement in the higher pay-scale/grant of financial benefits (through financial upgradation) only to the Government servant concerned on personal basis and shall, therefore, neither amount to functional/regular promotion nor would require creation of new posts for the purpose.

2. xxxxx

3. The financial benefits under the ACP

Scheme shall be granted from the date of completion of the eligibility period prescribed under the ACP Scheme or from the date of issue of these instructions whichever is later.

3. xxxxx

4. The first financial upgradation under the APC scheme shall be allowed after 12 years of regular service and the second upgradation after 12 years of regular service from the date of the first financial upgradation subject to fulfillment of prescribed conditions. In other words, if the first upgradation gets postponed on account of the employee not found fit or due to departmental proceedings, etc. this would have consequential effect on the second upgradation which would also get deferred accordingly.

5. xxxxx

5.1. 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 availed 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 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 benefits under the ACP Scheme shall accrue to him;

5.2 Residency period (regular service) for grant of benefits under the ACP Scheme shall be counted from the grade in which an employee was appointed as a direct recruit;

6. xxxxx

7. xxxxx

8. The financial upgradation under the ACP Scheme shall be purely personal to the employee and shall have no relevance to his seniority position

.....

9. xxxxx

10. xxxxx

11. xxxxx

12. xxxxx

13. xxxxx

14. xxxxx

15. Subject to Condition No.4 above, in cases where the employees have already completed 24 years of regular service, with or without a promotion, the second financial upgradation under the scheme shall be granted directly.”

11.After perusing the relevant provisions of the scheme as well as clarifications issued by the Government and considering the submissions of the learned counsel for the parties on either side, we

are of the view that the petitioner cannot be granted the benefit of the ACP scheme. It is clear from the ACP scheme itself that said scheme is applicable in case of those employees who are below Group 'A' Central Services. The moment an employee enters Group 'A' service, the scheme provides that he is supposed to earn further promotions and would not be given financial benefit under the APC scheme.

12.No doubt, in the provisions relied upon by the learned counsel for the petitioner there is reference to 'regular service'. However, one is to bear in mind the purpose for which said 'regular service' is introduced/included. This is only for the purpose of computing the period of 12 years or 24 years for grant of first and second financial upgradation respectively. The pre-requisite is that a concerned employee should be covered by the ACP scheme. Once he is covered by the ACP scheme, namely, he belongs to Group 'B', 'C' or 'D' category. For grant of benefit under the ACP scheme to such employees, primarily two conditions are to be fulfilled: (a) he has not been able to get promotion to the higher post and is stagnating on the existing post for a period of 12/24 years; (b) he is to be given benefit of first financial upgradation after completion of 12 years and 24 years

regular service. Thus, it is only for the purpose of computation of 12 years and 24 years period. The scheme provides that this period must be in the regular service. For that purpose it is clarified that regular service should be such which is normally counted for regular promotion as per rules. The expression 'regular service' is, thus, to be considered for limited and specific purpose, as mentioned above. Even in the clarification No.11 issued vide circular dated 10.2.2000 the reference is to computation of 12/24 years' period.

13. Admittedly, an employee who gets promotion to the higher rank within 12 years would not be entitled to the benefit of ACP scheme. Likewise, an employee, who gets second promotion within 24 years, would not be entitled to second financial upgradation. In so far as this promotion to the higher scale is concerned, the scheme nowhere mentions that such promotion also has to be only on ad hoc basis. The reason is more than obvious. Financial upgradation is available to a person who has not been able to get promotion and thus, salary of higher post and is stagnating in his existing post. Where a person gets the promotion to higher post even on ad hoc basis and with that starts getting salary of higher post, he would not be entitled to financial upgradation under

the ACP scheme. If the contention of the petitioner is accepted, it would amount to giving double benefit to such employees who get promotion on ad hoc basis and start getting higher salary and thereafter would be given financial upgradation as well. By way of illustration, we may take a case of an employee who gets promotion to a higher post after 11 years on ad hoc basis and is put in a higher scale also. If the contention of the petitioner is accepted, within one year he would start getting next higher scale even though he was not stagnating in the lower pay scale as he started getting higher pay scale after 11 years of service. That is not the purpose with which ACP scheme was introduced. The object of the scheme was to mitigate hardship in cases of acute stagnation either in a cadre or in an isolated post by providing them pay scale of a higher post even if they have not been able to achieve the said higher scale otherwise because of their non-promotion. Since the petitioner was promoted to a higher scale on 18.3.1991, albeit on ad hoc basis and thereby entered Group 'A' service, we are of the opinion that for the purpose of ACP scheme he would be treated as Group 'A' employee even as on 9.8.1999 when the ACP scheme was introduced and therefore, would not be entitled to the benefit of ACP scheme. This writ petition is, thus, devoid of any

merits and is accordingly dismissed. However, there shall not be any orders as to costs.

(A.K. SIKRI)
JUDGE

May 02, 2008
HP.

(J.M. MALIK)
JUDGE