

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) No. 1251/2007

Reserved on: 26th May, 2009

% Pronounced on: 3rd July, 2009.

Sh. Yashpal Malhotra & Ors. Petitioner

Through: Mr. Surat Singh, Advocate

VERSUS

Govt. of NCT of Delhi Respondents

Through: Mr. Amiet Andley, Advocate

CORAM:-

THE HON'BLE MR. JUSTICE A.K. SIKRI

THE HON'BLE MR. JUSTICE V.K.JAIN

- 1. Whether Reporters of Local newspapers may
be allowed to see the Judgment? Yes.**
- 2. To be referred to the Reporter or not? Yes.**

**3. Whether the Judgment should be reported in
the Digest? Yes.**

V.K.Jain, J.

1. The petitioners were initially appointed as Typist on daily wages basis. They filed Writ Petition No. 253 of 1988 (**Prakash Chand Jain & Others v Delhi Administrative & Others**) for regularization of their services. Vide order dated 31.10.1988, the Hon'ble Supreme Court directed the respondents to frame a scheme regarding regularization of the services of the petitioners and similarly situated persons who had been in service for more than one year. In another Writ Petition (**Jag Pal Singh & Others v Delhi Administration & Others**), the Hon'ble Supreme Court, vide order dated 28.07.1995, directed the respondents to create sufficient number of regular posts in Group C, for the petitioners. Pursuant to the above referred decisions, the respondents created 66 posts of Work Assistants, Typists and NTS, in the pre-revised Pay Scale of Rs. 950-1500/-. The post of Typist was classified as Group C and the petitioners were regularized on the post of Typists in the revised pay Scale of Rs. 3050-4590/-. For the purpose of granting benefit of

Assured Career Progression Scheme (ACP), the petitioners were granted First Financial Up-gradation in the Pay Scale of Rs. 3200-85-4900/-. The case of the petitioners is that since the posts of Typists and LDCs are comparable and have parity in all respects, they ought to have been granted First Financial Up-gradation in the pay scale of Rs. 4000-6000/-, which is the pay scale of the post of UDC. It would be pertinent to mention here that next promotional post in the cadre of LDC, being UDC, the petitioners would have been granted First Financial Up-gradation in the pay scale of Rs. 4000-6000/-, had they been regularized as LDCs.

2. Since the respondents did not concede the demand of the petitioners for granting First Financial Up-gradation to them in the Pay Scale of Rs. 4000-6000/-, they filed O.A. No. 1083 of 2006 before Central Administrative Tribunal (CAT). The O.A. was dismissed vide order dated 4.5.2006.

3. The case of the petitioners is that the Recruitment Rules for the post of Typists and LDCs are identical and therefore applying the principle of “equal pay for equal work”, they are entitled to the same pay scale as are available to the LDCs. This is also the case of the petitioners that though they were appointed on different dates between

1981 and 1985, they have been regularized only w.e.f. 1.6.1989 whereas they are entitled to be regularized w.e.f. the date of their initial appointment.

4. A perusal of the office order No. F.31(6)/Estt./CD-VII/GPC/97/2991 dated 16.8.1997 issued by the respondents shows that the services of the petitioners were regularized in the pre-revised pay scale of Rs. 950-1500/- , against the post of Typists. Vide Order F.2(63)/2001-Estt/ACP/1266 dated 28.6.2005, they were granted First Financial Up-gradation under Assured Career Progression scheme, in the pay scale of Rs. 3200-4900.

5. O.A. No. 1083 of 2006 was filed by the petitioners only on 24.5.06. Admittedly, they did not plead for their regularization as Typists at any time prior to the year 2005. For 9 years, the petitioners did not even file a representation against their regularization against the post of Typists. If they were dissatisfied with their regularization against the post of Typists in the pre revised pay scale of Rs. 950-1500/-, they ought to have represented against it and then taken their representation to its logical conclusion by taking appropriate steps available to them under the law. It is true that First Financial Up-gradation in the pay scale of Rs. 3200-4900/- was granted on 28.6.05.

But, that would hardly make any difference because the petitioners knew since 16.08.1997 that they were regularised as Typists and not as LDCs and therefore the First Financial Up-gradation to them would be granted in the pay scale of Rs. 3200-4900 and not in the pay scale of Rs. 4000-6000/- . Therefore, the petitioners are guilty of laches and their petition has rightly been dismissed by the Tribunal on this ground.

6. The petitioners are seeking First Financial Up-gradation in the Pay Scale of Rs. 4000-6000/- which is the pay scale attached to the post of UDC. Admittedly, the post of UDC is not in the hierarchical line of promotion for Typists, though, it is in the hierarchical line of promotion for the LDCs. Since the petitioners were regularized as Typists and not as LDCs, they cannot be granted First Financial Up-gradation in the pay-scale attached to the post of UDCs. Admittedly, for the Typists, placed in the pay scale of Rs. 3050-4590/-, the next higher scale in the hierarchy is the scale of Rs. 3200-85-4900/- which has already been granted to the petitioners.

7. It was contended by Ld. Counsel for the petitioners that since Recruitment Rules for the post of Typists are same as for the post of LDCs, they are entitled to First Financial Up-gradation in the pay

scale applicable to the post of UDCs. We find that the tribunal has specifically noted that while appointment to the post of LDCs and UDCs is done by DSSSB/SSC after proper tests, the petitioners were appointed as Typists on Muster Roll basis, without any selection process. Admittedly, the petitioners did not pass the test with the prescribed speed and were not appointed through open competitive examination. We have no material before us to hold that the Typists are performing the same functions as are being performed by the LDCs. Moreover, alleged identity of Recruitment Rules is only one of the relevant factors, and not the sole factor for application of the principle of “equal pay for equal work”. There are various other considerations which have relevance to efficiency in service and may justify the difference in pay scale. Other relevant factors may include the extent of responsibility and accountability in discharge of duties and functions, extent of powers vested in the incumbent, method of recruitment, level at which the recruitment is made, nature of duties and public dealings. Fixation of pay and determination of parity, duties and responsibilities is a complex matter which primarily is for the executive to discharge and there would be no justification for interference by the court unless there is clear case of hostile

discrimination. The courts would normally interfere when the decision taken by the executive is ex facie unreasonable, unjust and prejudicial to a section of the employees. We, therefore, cannot accept that post of LDCs and Typists are comparable in all respects. In any case, as noted earlier, the petitioners were regularized without qualifying in a test and without competing through the open selection process.

8. The affidavit filed by respondents on 23.3.09 shows that there is no post of Typist in the regular establishment in the Department of Irrigation and Flood Control of Government of NCT of Delhi and this post was specifically created pursuant to the order of Hon'ble Supreme Court. There are separate Recruitment Rules, particularly for Group C and Group D Work-Charged category, in Irrigation and Flood Control Department of Government of NCT of Delhi. These rules are annexed as R-2 to the affidavit. Annexure R-3 to the affidavit are the approved pay scales for grant of first and second financial Up-gradation to the Work Charged Establishment (Group C). It is evident from a perusal of these pay scales that the Typist who is initially placed in the Pay Scale of Rs. 3050-4590/-, will be placed in the Pay Scale of Rs. 3200-4900/- on initial financial Up-gradation and in the Pay Scale of Rs. 4000-6000/- on second financial Up-

gradation. The affidavit of the respondents further shows that the post of Typist as an isolated post, having no promotional avenue, which was created on Work Charged establishment pursuant to the orders of the Hon'ble Supreme Court. The instructions issued by the DOPT on 9.8.1999 in respect of ACP provide as under:

“Group B,C and D services/posts and isolated

“POSTS IN GROUP ‘A’, ‘B’, ‘C’ AND ‘D’ CATEGORIES

3.1 While in respect of these categories also promotion shall continue to be duly earned, it is proposed to adopt the ACP Scheme in a modified form to mitigate hardship in cases of acute stagnation either in the cadre or in an isolated post. Keeping in view all relevant factors, it has, therefore, been decided to grant two financial Up-gradations (as recommended by the Fifth Central Pay Commission and also in accordance with the Agreed Settlement dated September 11, 1997 in relation to Group ‘C’ and ‘D’ employees) entered into with the Staff Side of the National Council (JCM)). Under the ACP Scheme to Group ‘B’, ‘C’ and ‘D’ employees on completion of 12 years and 24 years (subject to condition no. 4 in Annexure-I) of regular service respectively. Isolated posts in Group ‘A’, ‘B’, ‘C’ and ‘D’ categories which have no promotional avenues shall also qualify for similar benefits on the pattern indicated above. Certain categories of employees such as casual employees (including those with temporary status), ad-hoc and

contract employees shall not qualify for benefits under the aforesaid Scheme. Grant of financial upgradation under the ACP Scheme shall, however, be subject to the conditions mentioned in Annexure-I.

Conditions for grant of Benefits under the ACP Scheme

7. 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 posts for the purpose. However, in case of isolated posts, in the absence of denied 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 Minister 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 the dynamic basis (by 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 avenue of promotion at all. Since financial 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."

Since the post of Typist on Work Charged Establishment are isolated post, the benefit of ACP is to be granted to them on 'dynamic' basis in the immediate next higher pay scale. The petitioners have therefore been rightly granted their first Financial Up-gradation in the revised Pay Scale of Rs. 3200-85-4900/- which is the next higher Pay Scale, as is evident from Annexure R-4 to the affidavit.

9. The affidavit also clarifies that the post of LDCs and UDCs are duty posts of Grade IV and Grade III of DASS cadre respectively and the Recruitment Regulations for these posts are included in the DASS Rules, 1967. All posts in Grade III are to be filled by promotion of officials of Grade IV, having eight years regular service in the Grade of Rs. 3050-4590/-, on the basis of seniority subject to rejection of 'unfit', on the recommendation of Departmental Promotion Committee. Thus, LDCs on regular establishment have promotional avenue as UDC, as is borne out from the notification dated 7.6.2007 annexed as R-5 to the affidavit of the respondents.

10. We are, therefore, unable to direct grant of First Financial Up-gradation to the petitioners in the revised pay scale of Rs.4000-6000/-. As regards, the effective date of regularization of the petitioners, we find that the prayer made in this regard was not pressed before the tribunal. No arguments on this prayer were advanced before us. We, therefore, need not pass any order as regards the date of regularization of the petitioners.

For the reasons stated above, the Writ Petition is hereby dismissed.

(V.K. JAIN)

JUDGE

(A.K. SIKRI)

JUDGE

July 3, 2009.

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