

IN THE HIGH COURT OF DELHI AT NEW DELHI

CIVIL APPELLATE JURISDICTION

LETTER PATENT APPEAL NO. 2115 OF 2006

Reserved On : January 13, 2009
Date of Judgment : April 15, 2009

Delhi Development Authority Appellant
Through Mr. Arun Birbal, Advocate

Versus

Jai Singh & Others Respondents
Through Mr. J.P.Sengh, Sr. Advocate
with Ms. Garima Kapoor, Advocate

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

1. Whether Reporters of local papers 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

SUDERSHAN KUMAR MISRA, J.

1. This appeal under Letters Patent has been preferred by Delhi Development Authority (DDA) impugning the decision of a Single Judge of this Court whereby the DDA was directed to apply the Assured Career Progression Scheme (ACP of 1999) to the respondents in terms of circular dated 14th October, 1999, issued by the DDA.

2. The facts necessary for the decision of this appeal are as follows:-

The DDA had recruited the respondents as Stenographers between January, 1980 and March, 1981. At that time, the DDA had one cadre of, "Stenographers", in the pay scale of Rs. 330-700. Later on, from 1st January, 1986, this cadre was bifurcated into two cadres, namely, "Stenographers" and "Senior Stenographers". The newly formed cadre of Stenographers was assigned the pay scale of Rs. 330-560 while that of Senior Stenographers was given the pay scale of Rs. 425-700. This is stated to have been done to implement the recommendations of the Fourth Pay Commission. In this context, the report of the Committee constituted by the DDA to go into the question of adoption in the DDA of all the orders of the Government of India relating to the Fourth Pay Commission becomes relevant. This Committee came to be appointed consequent upon a resolution passed by the DDA adopting the entire package of recommendations of the Fourth Pay Commission in respect of group B, C and D employees of the Central Government as accepted by the Government of India, for similar employees of the DDA. The Committee felt that the basic anomaly in accepting the recommendations was in connection with the pay-scale of Stenographers in the DDA. After examining the scales of Stenographers in the Government of India and also the method of recruitment thereto, it found that as against two scales of Stenographers in the government of India, in the DDA, there was only one cadre of Stenographers and that the existing scale of Stenographers in the DDA was a combination of the two scales of

Stenographers that existed in the Government of India. The Committee felt that since there was no pre-revised scale in the Government of India corresponding to the DDA's scale of Rs. 330-700 for Stenographers, it found it difficult in relating this existing scale of Stenographers in the DDA with the revised scales that were to be adopted in terms of the aforesaid resolution of the DDA. It also noticed two other prominent variations in the scale of the Stenographers in the DDA as compared to the two scales of pay admissible to Stenographers in the Central Government. They were;

"(a) The rate of increment is Rs. 15/- which is that of the scale of Senior Stenographer while scale starts at Rs. 330/-, i.e. the beginning of lower scale of the Jr. Stenographer.

(b) At the stage of E.B., there is a lump sum jump of Rs. 50/- as against the normal practice of one increment which is allowed to all officials at the stage of crossing of E.B."

It is with a view to overcoming these difficulties, and a view to implementing the decision of the DDA to adopt the recommendations of the Fourth Pay Commission, that the Committee examined various alternatives and ultimately decided to recommend the adoption of both the scales prevalent in the Central Government by placing some posts in the Junior Scale and some in the Senior Scale. It suggested that the existing, single cadre, be split into a Junior Scale and Senior Scale and some of the posts be placed in the Junior Scale while others be placed in the Senior Scale. In recommending the placement of certain posts in the Senior Scale, the Committee gave the following reasoning:

".....the Committee felt that in any case Stenographers who have already crossed the

stage of E.B., i.e. Rs. 405 in the pre-revised scale will have their initial scale fixed at a stage above Rs. 1400/- and *in a way can be considered equivalent to the Senior Stenographers.*"

[Emphasis Added]

The Committee, therefore, felt that Stenographers recruited prior to 1980 would automatically be placed in the senior category. At the same time, Stenographers recruited during 1981 also be allowed to be placed in the senior scale, "considering the initial recruitment and experience having already been put in by them." Even as regards Stenographers recruited during the year 1983, the same recommendation was made. In addition, the Committee also recommended that those Stenographers who had joined the DDA after Ist January, 1983 be initially placed in the cadre of Stenographers and then in the cadre of Senior Stenographers after completion of three years service. It felt that in this way till 1989, all Stenographers that had been recruited till Ist January, 1986 would be in the cadre of Senior Stenographers. It also recommended that after Ist January, 1986, all recruitment be made only at the level of Stenographers. Significantly, the Committee clarified that the placing of the Stenographers in the senior scale, "will be considered as personal to the officials and will not tantamount to creation of these posts in the senior scale." These recommendations were made by the Committee on 19th January, 1987, and were duly approved and adopted by the DDA on 13th March, 1987. Consequently, the DDA sanctioned a revised pay scale of Rs. 1400-2300 to such of the Stenographers who were recruited upto 31st December, 1986 on their completion of three

years of service. It is in this manner that the petitioners before the Single Judge came to be placed in the post of Senior Stenographers. It might be noted that nothing has been shown to us from the records to indicate any proposal or decision to promote the respondents to the next post or even any decision taken to the effect that the placing of all Stenographers who were recruited up to 31st December, 1986 in the senior scale of Rs. 1400-2300 shall be considered as having been promoted to that post. On the contrary, while recommending the placement of officers, such as the respondents, in the scale of Rs. 1400-2300, the Committee had categorically stated that this scale will be considered personal to the officials and will not tantamount to creation of these posts in the senior scale.

3. At the time when the respondents were initially recruited to the post of Stenographers, the next promotion, to which they would have been entitled, was to the post of Private Secretary. It is nobody's case that the respondents have in fact been promoted to that post at any time up to now. We also note that the initial pay-scale of Rs. 330-700, to which the respondents were recruited, was revised from time to time only on the basis of recommendation of the various Pay Commissions and on receipt of orders from the Ministry of Urban Development and in fact they had never been granted any promotion at any point of time and no such entry had been made in their service records.

4. Thereafter, with effect from 1st January, 1996, Fifth Pay Commission recommended implementation of the Assured Career Progression Scheme (ACP Scheme) to Central Government employees.

The "conditions for grant of benefits under the ACP Scheme", that has been annexed by the appellants along with the office memorandum of the Government of India dated 9th August, 1999 setting out the salient features of the Scheme, states that the ACP Scheme is aimed at dealing with stagnation and hardship faced by employees "due to lack of adequate promotional avenues". It further states that the benefits of the Scheme shall be available to Group B, C and D employees on completion of 12 years and 24 years of regular service. The first financial upgradation under the ACP Scheme shall be allowed after 12 years of regular service and the second upgradation after 24 years of regular service. The conditions which are set down in Annexure 1 to the aforesaid memorandum dated 9th August, 1999, filed by the respondents before the Single Judge, inter alia, state as follows:-

"Two financial upgradation under the ACP Scheme in the entire government service career of an employee shall be counted against regular promotion including institute promotion and first-tract 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 get 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 benefit under the ACP Scheme shall accrue to him."

It further states as follows:-

"The financial upgradation under the ACP Scheme shall be purely personal to the employee and shall have no relevance to his seniority position. As such there shall be not additional financial upgradation for the senior employee on the ground that the junior employee in the grade has got higher pay scale under the ACP Scheme."

And that,

"The Financial benefit allowed under the ACP Scheme shall be final and no pay fixation benefit shall accrue at the time of regular promotion i.e. posting against as functional post in the higher grade."

On 14th October, 1998, the aforesaid ACP Scheme was adopted by the DDA.

5. Brief submissions have been filed by both parties. In their submission, the appellant-DDA contends that as a matter of fact, the respondents have already received one promotion, and therefore, they are not entitled to benefits equivalent to two promotions. According to the DDA, it was merely by chance that the respondents happened to be recruited in the DDA when there happened to be a single cadre of Stenographers in the pay scale of Rs. 330-700. They submit that before 14th February, 1979, there existed two cadres, one of Stenographers in the pay-scale of Rs. 330-560, and the other of Senior Stenographers in the pay-scale of Rs. 425-700. At that time, the former cadre of Stenographers was the feeder cadre for the cadre of Senior Stenographers and consequently Stenographers were promoted to the post of Senior Stenographers. It is the case of the

appellants that since the decision was taken to bifurcate the single cadre of Stenographers to which cadre the respondents were appointed, once again into the two cadres that originally existed before 14th February, 1979 in order to remove the anomalies that would arise whilst implementing the decision of the DDA to adopt and implement the recommendations of the Fourth Pay Commission, the respondents have received one promotion since they have been placed on senior scale on the recommendation of the Committee.

6. We do not agree. The respondents were recruited by the DDA as Stenographers in a particular scale of pay against a designated post in a specified cadre. Admittedly, at that time, there was only one cadre of Stenographers. The next promotional post was the post of Private Secretary. The cadre was split into two with a view to implementing the recommendations of the Fourth Pay Commission. On the other hand, the object of the ACP Scheme was quite different. It was adopted to deal with the problem of stagnation due to lack of adequate promotional avenues to those working in the cadre of Stenographers in the organization. It is obvious that the need for extending the benefit as recommended by the Fifth Pay Commission for Central Government employees of the ACP Scheme to all its Group B, C and D employees was also felt by the DDA because there was stagnation and a lack of adequate promotional avenues. The respondents fall within the scope of this Scheme. After their appointment as Stenographers, the next promotion for the respondents was to the post of Private Secretary, and thereafter to Deputy Director. Admittedly, this has not been attained by some

officers of this cadre for 12 to 24 years. Under these circumstances, for the DDA to contend that since the measures recommended by an expert Committee to resolve an anomaly that was likely to arise in the straight forward application of the decision of the Central Government to implement the recommendations of the Fourth Pay Commission qua Central Government employees, to the existing cadre of Stenographers of DDA, cannot mean that while doing so, the DDA has in fact given one promotion to some of the Stenographers. Significantly, even the aforesaid Committee of the DDA which went into this aspect, does not state that those officers who have been recommended by it to be placed in the Senior Scale be deemed to be promoted either to the post of Senior Stenographer or to the next promotional post of Private Secretary in existence according to the hierarchy when they were recruited. For that reason, therefore, the contention of the appellants that the placing of the respondents in the senior scale after the bifurcation of their own cadre amounts to promotion, cannot be accepted.

7. In this context, we might also advert once again to the conditions for grant of benefits under the ACP Scheme reproduced above, which states clearly that the financial upgradations envisaged under the Scheme, "shall be counted against *regular* promotion" and that the same shall be available, "only if no *regular* promotions have been availed by an employee", and that the benefit shall not be available to the employee in case he has already received, "two prior promotions on *regular* basis" Clearly, the Scheme envisaged that those who had received, "*regular* promotions" would not be entitled to

its benefits. The word "*regular*" is defined by the Concise Oxford Dictionary, 8th Edition, as, "1. conforming to a rule or principle; systematic" and "done or recurring uniformly or calculably in time or manner, conforming to a standard of etiquette or procedure;" "according to convention, properly constituted or qualified" and the word, "promote" is defined as "advance or raise (a person) to a higher office, rank, etc." In the expression, "regular promotion" employed in the Scheme, the word 'regular' has been used as an adjective to define the word 'promotion' which has been used as a noun. In other words, the type of promotion that may disentitle an employee to the benefit of the ACP Scheme must be one that can be regarded as one that was given in a, "regular", manner, i.e., conforming to a standard of procedure according to convention or the Rules, for which the officer is fully qualified and for which all formalities are complied with. Here, conventionally, the next promotional post, to which the respondents could have aspired after recruitment to the post of Stenographer, was that of Private Secretary. Admittedly, they were never promoted to this post. In addition, the Committee also did not recommend any deemed or actual promotion for the respondents even to the post of Senior Stenographers. In addition, admittedly, there is no entry in their service record indicating that they have been granted any promotion to any post. Furthermore, any doubt that we may have had in this regard have also been removed by a clarification issued by an office memorandum dated 10th February, 2000 issued by the DoPT where it is pointed out that even in case where, as a result of rationalization of pay-scales, two posts carrying different pay-scales

constituting two rungs in a hierarchy have now been placed in the same pay-scale, as a result of which, the feeder and promotion grades in the pre-merged scenario have become one grade, for the purpose of application of the ACP Scheme, the promotion from the lower to the higher rung of the pre-merged pay-scales shall be ignored, and an employee who got promoted from the lower pay-scale to the higher pay-scale as a result of promotion before the merger of the pay-scales, shall nevertheless be entitled under the ACP Scheme ignoring that promotion. It, therefore, follows that if the intent is to grant benefit even to those employees who have actually been duly promoted from the feeder cadre to the next cadre before the two were unified, then there can be no question of denying benefit to those who were part of a single cadre which was split into two later on by creating a feeder cadre and the promotion cadre, and some officers, such as the respondents, were then merely, "placed", in the higher cadre at the time of the split and were not even promoted to the same.

8. The expression, "cadre", is ordinarily used to denote the permanent establishment of a regiment forming the nucleus for expansion at time of need. In service jurisprudence, the term has a definite legal connotation and in **Director General of Health Services & Ors. vs. Bikash Chatterjee & Ors.** AIR 1969 Calcutta 525, the expression "cadre" has been held to mean not a post but a strength of the establishment and in **State of U.P. and others vs. J.P. Chaurasia and Ors.** (1989) 1 SCC 121, it has been held that promotion from one post to another is associated with advancement to

a higher office, climbing one more ladder in the service career but a different grade for persons for the same cadre even on seniority-cum-merit with the same work and responsibility cannot amount to promotion. In **M.Umar Farooq Hussain and Ors. vs. The Managing Director, Chennai Metropolitan Water Supply, Sewerage Board and General Manager and Ors.** decided by Hon'ble Madras High Court in Writ Petition (C) Nos. 45840 of 2002 and 3626 of 2003 on 19th June, 2003, it was held that whatever benefits accrue as a result of merger or re-designation cannot be interpreted either as promotion or appointment in a new cadre. Here, in the instant case also, in our view, the respondents were merely re-designated on the recommendations of an Expert Committee with the intention of resolving an anomaly in adopting the decision of the Central Government to implement the recommendations of the Fourth Pay Commission qua Stenographers in the DDA. Significantly, the Committee itself had clarified that the placing of the Stenographers in the Senior Scale will be personal to the officials and will not tantamount to the creation of these posts in the Senior Scale. As we understand it, apart from re-designating the post of the respondents, no additional benefits were conferred upon them. Their salary, pay and allowances remained the same. Consequently, to our mind, such re-designation cannot be interpreted as a promotion.

9. It is also noteworthy that when the respondents were appointed, both the posts of Stenographers and Senior Stenographers did not exist. There was merely one post of Stenographer in the pay-scale of Rs. 330-700. Over a period of time, this scale was revised

from time to time on the basis of various pay commissions and orders of the Ministry of Urban Development to Rs. 1640-2900. This was a completely different post and the Committee looking into the matter of the adoption of the recommendations of the Fourth Pay Commission felt that all Stenographers could not have been put in a single cadre equivalent to any existing Cadre in the Government of India. This is because as noted above, the initial recruitment to the post of Stenographers in the DDA, of persons such as the respondents, was in a scale that was higher than that of the Junior Scale Stenographers with the Government of India and lower than that of the Senior Scale Stenographer. It is for this reason that the Committee was constrained to recommend that persons such as the respondent be merely, "placed" in the newly created cadre of Senior Stenographers. What the Committee was doing was that it was merely working out an equivalence within the newly created hierarchy and had determined that the position held by the respondents be considered equivalent to that of a Senior Stenographer. It is perhaps for this reason that no recommendation of any deemed promotion of the respondents to the post of Senior Stenographer was made. The object of the ACP Scheme was to deal with stagnation and hardship faced by employees, due to "lack of adequate promotion avenues". Under the Scheme, if the incumbent had not received any, "regular promotions", during the prescribed periods, he would be entitled to the financial upgradation envisaged therein. Nothing prevented the aforesaid Committee constituted by the DDA to recommend that officers such as the respondents be promoted, or be deemed to be promoted, to the post

of Senior Stenographer whilst recommending the division of the cadre of Stenographers into two cadres of Stenographer and Senior Stenographers, thereby disentitling these officers from the benefit of ACP Scheme with regard to at least one regular promotion, but it did not do so. Even the DDA restricted itself to merely accepting the recommendations of the Committee and did not think it fit to make any changes to those recommendations. In the absence of any specific order promoting the respondents to the post of Senior Stenographers, the only conclusion that follows can be that the respondents' post has merely been re-designated.

10. It is further noteworthy that even the establishment order issued by the DDA on 28th August, 1992 dealing with the revision of pay-scales of Stenographers whereby it had resolved to revise the pay-scales of Stenographers to Rs. 1400-2600 with effect from Ist January, 1986 made it clear that the Stenographers placed in the scale of Rs. 1400-2300, to which the respondents belong, "will henceforth be designated as Senior Stenographers", and not that they will stand promoted to that post".

11. We might add that the Fourth Pay Commission was concerned with adequacy of scales of pay of various employees and with a view to implementing the same, the respondents were, "placed" as, "Senior Stenographers". There was no scope for any promotion in this context and nor was any promotion granted. On the other hand, the ACP Scheme is concerned with the lack of promotional avenues and not with any scales of pay. Under it, certain ameliorative packages have been granted to mitigate the frustration and

inadequacy due to lack of promotion over a span of 12 to 24 years of service. The two are independent of each other and, subject to the terms and conditions mentioned in each of them, both must be applied independently.

12. For all the aforesaid reasons, we do not agree with the contentions of the appellants that the respondents have already received one promotion and therefore, they are not entitled to the benefit under the ACP Scheme. The facts show that the post on which respondents are working was merely re-designated as that of Senior Stenographer as recommended by the Committee itself, and that the respondents were merely "placed", in that post and not promoted to that post. The other contention of the appellants that the respondents, "are merely trying to take advantage of chance situation that they joined DDA between 1st January, 1979 and 1st January, 1986 when there was a unified cadre of Stenographers," has no force. We are unable to really comprehend what the expression, "chance situation" employed by counsel for the appellant in his synopsis really means in the context. The respondents were recruited against a particular post in a particular cadre. The fact that the cadre came into existence after 1st January, 1979 is really of no consequence. The terms and conditions of the recruitment were unequivocal and the expert Committee has sought to resolve the dilemma by recommending the creation of two cadres at par with the cadres of Stenographers and Senior Stenographers with the Central Government and recommended only the, "placement" of the respondents to the post of Senior Stenographer. Even a "deemed

promotion" was not recommended nor was any promotion actually made. This has been done for good reasons.

13. Consequently, we do not find any infirmity in the decision of the learned Single Judge and the same is upheld. The DDA is granted three months' time to implement the decision of the learned Single Judge delivered on 2nd August, 2006.

14. The appeal is dismissed. Each respondent shall be paid Rs. 7,000/- by the appellant towards costs.

SUDERSHAN KUMAR MISRA, J.

SANJAY KISHAN KAUL, J.

New Delhi
April 15, 2009.