

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

+ **W.P. (C.) No. 2361/2010**

% **Date of Decision: 09.04.2010**

UNION OF INDIA & ORS. Petitioners
Through Mr. Amit Anand, Advocate

Versus

R.L. SETHI Respondent
Through None

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

MOOL CHAND GARG, J.

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CM No. 4732/2010

Exemptions allowed subject to just exceptions.

W.P. (C.) No. 2361/2010

1. The petitioners have assailed the order dated 31.07.2009 passed in OA No. 733/2008 by the Central Administrative Tribunal (hereinafter referred to as the Tribunal) whereby the Tribunal while dismissing the original application filed on behalf of the respondent, Shri R.L. Sethi and holding that neither the petitioner was entitled to ACP nor to the grade promotion except with effect from 2002 and 2005 respectively and held that the benefits granted to the respondent who stands retired in the peculiar facts of the case may not be withdrawn from him. It is against the direction given in Para 7 of the order, the petitioners have

filed the present writ petition. Those directions for the sake of reference are reproduced hereunder:

7. We find that the applicant's case has been dispassionately considered in the light of the earlier observations made by this Tribunal. He may not be entitled to any prior dates then those have been assigned to him in the matters of promotion. We also make it clear that in view of the renewed exercises, which led to the impugned orders, the applicant should not be mulcted with any recovery proceedings. In other words, monetary benefits which have been granted to him should be permitted to be kept back by him, especially since we have to take notice of the special facts of the case. O.A., however, is dismissed. No costs.

2. The only submission made on behalf of the petitioners is that the respondent as per his own case was not entitled to ACP, which fact has also been admitted by him in the petition filed before the Tribunal and as per his service record he was also not entitled to Grade promotion. He was, however, granted benefit of ACP with effect from 01.05.2002 and 05.09.2005 respectively erroneously and by inadvertence with effect from 09.08.1999 and second upgradation from 31.08.1999. The same was withdrawn as per the order passed by the petitioners vide order dated 26.08.2008 and, thus, the petitioners are entitled to seek recovery of the access amount paid to the respondent. Since there was no relief sought for by the petitioner regarding stay of such recovery, the order passed by the Tribunal is unjustified.

3. It would be appropriate to take notice of some of the facts in this case. Admittedly, the respondent was appointed by the petitioners with effect from 24.01.1975 as driver. He retired at the age of 60 years i.e.

with effect from 30.11.2006. In 1999, the Government of India prepared a scheme for Staff Car Drivers with three graded structure of pay in which it was decided to place Staff Car Drivers in three scales viz. 3050-4590, 4000-6000 and 4500-7000 in the ratio of 55:25:20. Minimum eligibility criteria with effect from 01.08.1993 was as follows:

<u>Grade</u>	<u>Eligibility Period</u>
Ordinary Grade (950-1500)	Basic Grade
Grade-II (1200-1800)	9 years Regular Service in OG.
Grade-I (1320-2040)	6 Years of Regular Service in Grade-II

4. The respondent, admittedly, was the senior most person in the cadre of drivers and as per the scheme became entitled for promotion in Grade-I with effect from 01.08.1993, as the respondent had completed 15 years of service as on 01.08.1993 but he was not granted such promotion. On 06.09.2000, instead of considering the respondent for his promotion in accordance with the Staff Car Drivers promotion scheme, the petitioners vide order dated 06.09.2000 granted the benefit of upgradation under the ACP scheme to the grade of 4000-6000 with effect from 09.08.1999 and the second upgradation in the pay scale of 4500-7000 with effect from 31.08.1999 i.e. the date of completion of 24 years of service. Even though the respondent objected for granting him the benefits under the ACP scheme, because the respondent was entitled for regular promotion as per the time bound promotion scheme with effect from 1993, however no action was taken on the aforesaid representation.

5. In fact, vide order dated 20.12.2004 i.e. after a period of 11 years since the respondent had become eligible as per Staff Car Drivers promotion scheme who had already completed around 18 years in 1993, the Chief Post Master General, vide his order dated 20.12.2004 rejected the request of the respondent for granting the promotion to respondent under time bound promotion scheme mainly on the ground that DPC held on 10.12.2004 did not consider him fit for such promotion on account of minor penalty charge-sheet pending against the respondent, even though penalty of reduction by three stages was awarded to the respondent only on 31.08.1997 for a period of three years. It was the case of the respondent that since as on 01.09.1993 when the benefit of Staff Car Drivers promotion scheme became available to him, there was no charge-sheet pending against him. It is also a matter of record that the DPC constituted in 2004 again did not consider him for the grant of promotion under the aforesaid scheme even though there were no requirements under the scheme with the post of Grade-II and Grade-I were not to be given by way of seniority as it was not a selection post.

6. It was in these circumstances, the respondent had been making representations to the petitioners but of no consequence. On 31.05.2007 again a DPC was constituted by the petitioners which found the applicant fit for granting the ACP but for granting regular promotion declared him unfit. It is against this order, the respondent approached

the Tribunal. The Tribunal vide order dated 31.05.2007 gave the following directions to the petitioners:

“5. There appears to be some gray areas, which have to be appropriately explained and notwithstanding retirement of the applicant, some follow up directions require to be issued. We direct that the respondents are to examine themselves as to whether in the case of the applicant what was admissible as ACP benefits or the Time Bound Grade promotions. If necessary, appropriate reworking might have to be carried out thereafter. Of course, it appears that a vacancy of Special Grade had arisen only w.e.f. 5.9.2005. the right of the applicant for earlier promotion/upgradation, and consequential benefits requires to be examined with some amount of expedition. If ultimately the applicant is adjudged as entitled to any fixation to his advantage, it has to be to enhance his pension.”

7. After the aforesaid directions were given, the petitioners passed the order dated 26.02.2008 whereby they decided to withdraw the benefit of grant of ACP from the respondent which was granted with effect from 09.08.1999 and 31.08.1999 respectively after the completion of 15 years/ 24 years respectively.

8. The Tribunal has taken note of all the aforesaid facts and while observing that the petitioner was not entitled to ACP at the relevant time on account of his bad record and he was also not entitled to Grade promotion but in the peculiar facts of the case and taking into consideration the conduct of the petitioners, passed the directions as contained in Para 7 referred to above.

9. We are also of the considered view that the manner in which the petitioners have treated the case of the respondent inasmuch even after

completion of 18 years, the respondent having become eligible for the Staff Car Driver promotion scheme as framed in 1993 no action was taken for conferring such benefits upon the respondent at the relevant time, rather the petitioners on their own conferred ACP scheme upon the respondent which even as per the respondent was not available to him and in fact he had been objecting to it. In such circumstances, the directions given to the petitioners and to ask for not to refund of the benefits conferred upon the respondents voluntarily without settling his claim for which he was entitled at the relevant time does not appear to suffer from any such infirmity which may call for any interference by this Court under Article 226 of the Constitution of India. Accordingly, the writ petition is dismissed.

CM No. 4732/2010

Dismissed as having become infructuous in view of the orders passed above.

MOOL CHAND GARG, J.

APRIL 09, 2010

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ANIL KUMAR, J.