

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

% Date of Decision: 26th October, 2010

+ **W.P.(C) 4550/2010**

SHRI RAM AVADH Petitioner
Through: Mr.Harpreet Singh with Mr.Rajesh
Gupta, Advocates

Versus

GOVT. OF INDIA STATIONERY OFFICE AND ORS.
.... Respondents
Through: Mr.B.N.Niren, Advocate for R-1 to 3

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

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

PRADEEP NANDRAJOG, J. (Oral)

1. Vide impugned judgment and order dated 29.4.2010, OA No.2063/2009 filed by the petitioner has been dismissed.
2. The reasoning of the Tribunal is to be found in para 9 and para 10 of the impugned order which reads as under:-

“9. It is trite that any promotion made has to be in terms of the Recruitment Rules. Thus, for promotion to LDC from Group ‘D’ under the 10% quota, the employee concerned must possess the requisite educational qualification (i.e., Matriculation or equivalent), requisite length of service in Group ‘D’

(i.e. 5 years), and pass the departmental examination and also satisfy the prescribed age requirement as on the date of the examination. On the date of the examination, that was held on 25.10.2004, the applicant was overage. Thus, even had a vacancy of LDC existed on that date, and had the applicant applied if a departmental was held for the purpose, he would not have been allowed to appear as he would not have satisfied the age requirement even at that time. We, therefore, do not find any illegality or arbitrariness in the respondents in denying him promotion on this ground.

10. In this connection, we may also observe that ACP Schemes are framed to provide financial relief to employees who have put in long years of service but have not been able to secure promotion due to stagnation generally resulting from non-availability of posts. The applicant has accordingly been given under the ACP Scheme in question given two financial upgradations and his having been benefited under the Scheme, after passing of the departmental examination held to assess his suitability for this, would not given him any right to be promoted in violation of the Recruitment Rules. The "confusion" appears to have been created by incorporation of Clause (b) in the Office Order dated 12.01.2000, i.e., Grant of higher pay scale under the A.C.P. Scheme is subject to the condition that the employees benefited by the scheme shall be deemed to have given his/her unqualified acceptance for regular promotion on occurrence of vacancy subsequently. Be that as it may, the incorporation of said clause would not give a right to the applicant to be promoted in violation of the recruitment rules."

3. Suffice would it be to state that as per the Tribunal the petitioner could not seek promotion to the post of Lower Division Clerk in respect of the 10% quota allocated to Group-D employees who not only possess the requisite educational qualifications but even successfully cleared a departmental examination and are not over-age. Clause (b) of the Office Order dated 12.10.2010 has been held by the Tribunal as the source of "confusion".

4. It may be noted at the outset that the petitioner is simply fighting for an honour. If claim filed by the petitioner is allowed the only result would be that he would be formally designated as a Lower Division Clerk. There would be no financial impact for the reason while granting the second ACP upgradation to the petitioner w.e.f. 9.8.1999, the petitioner has been placed in the pay scale ₹3050-4590 i.e. the pay scale of a Lower Division Clerk.

5. Clause (b) of the Office Order referred to by the Tribunal and held to be the source of "confusion" reads as under:-

"b) Grant of higher pay scale under the ACP Scheme is subject to the condition that the employee benefited by the scheme shall be deemed to have given his/her unqualified acceptance for regular promotion on occurrence of vacancy subsequently."

6. It is not in dispute that the petitioner was appointed as a labourer by the respondent and to enhance his career prospect, after taking permission from the competent authority, cleared the matriculation examination. It is also not in dispute that at a departmental examination he was declared successful and hence was granted the second ACP upgradation for placing him in the pay scale ₹3050-4590 which is the pay scale applicable to the post of LDC.

7. However, the petitioner was treated as a labourer. He got a higher scale. He wants a higher status.

8. Clause (b) of the Office Order granting second ACP upgradation to the petitioner clearly holds that the grant of the higher pay scale under the ACP scheme is subject to the condition that the petitioner is deemed to have given his unqualified acceptance for regular promotion on occurrence of vacancy subsequently.

9. Now, what does it mean?

10. As per the petitioner the relevant averments pertaining to Clause (b) are in para 6 of the OA which reads as under:-

“6. Respondent No.1 by Establishment order No.73 of 2004 dated 25.10.2004 informed the applicant that since he had qualified in the Departmental examination, the competent authority has been pleased to grant second financial upgradation to him under ACP scheme and the upgraded scale of pay was fixed at Rs.3050-4590 with effect from 09.08.1999. It was also informed by the said establishment order that the financial upgradation was subject to the conditions detailed in the said order. One of the conditions detailed in the said order reads as under:

“b) Grant of higher pay scale under the ACP Scheme is subject to the condition that the employee benefited by the scheme shall be deemed to have given his/her unqualified acceptance for regular promotion on occurrence of vacancy subsequently.”

Copy of establishment order No.73 of 2004 dated 25.10.2004 is annexed as “**ANNEXURE A-9**”

11. The response of the respondent to the averments made in para 6 of the reply filed are as under:-

“Para 6 That the applicant had been granted 2nd financial upgradation in the pay scale of Rs.3050-4590 wef 09.8.99 vide GISO, Kolkata order No.73 dt. 25.10.2004. That vide office order which was issued mentioning general guidelines of DOPT was subject to the condition that the employees benefited by the scheme shall be deemed to have given his or her unqualified acceptance for regular promotion on account of vacancy subsequently.”

12. Now, the respondent itself has pleaded that the grant of the benefit under the ACP scheme shall be the deemed unqualified acceptance for regular promotion on

account of a subsequent vacancy.

13. We have repeatedly asked learned counsel for the respondent as to where is the confusion when the respondent itself pleads that Clause (b) referred to by the petitioner means that the department has treated it to be a case of a deemed and unqualified acceptance by the petitioner for regular promotion on account of a subsequent vacancy.

14. Thus, the Tribunal has unnecessarily ventured into a question which never arose for consideration. We wonder what was the need to discuss whether the petitioner was eligible to be promoted as an LDC. The ACP scheme simply envisages the petitioner clearing a limited departmental examination which he did; it required the petitioner to have served for 24 years which he did. Having thereupon granted petitioner the ACP upgradation and placed him in the pay scale applicable to LDC and making it clear that as and when a vacancy would arise the petitioner would be promoted as an LDC, we see no scope for an argument that the petitioner be not treated as a promote to the post of LDC.

15. We reiterate once again that it is only a matter of status and there is no financial implication for the reason as a result of the ACP upgradation benefit granted to the petitioner, he is already receiving salary as an LDC. We further note that learned counsel for the petitioner urges and to which learned counsel for the respondent consents, there is no scope for the petitioner to claim further promotion. The petitioner is too junior to be promoted as a UDC. He would attain the age of superannuation in the year 2013 and he would not be in the seniority of LDCs and he would have no chance of even being within the zone of consideration for promotion as a UDC.

16. The writ petition is allowed. Impugned order dated 29.4.2010 is set aside and OA No.2063/2009 stands disposed

of directing the respondent to promote the petitioner as an LDC.

17. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(SIDDHARTH MRIDUL)
JUDGE

OCTOBER 26, 2010

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