

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

Date of decision: 16th November, 2011

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W.P.(C) 8245/2010

SUNIL KUMAR GUPTA Petitioner

Through: Mr. Sanjiv Sharma, Adv.

Versus

GOVT. OF NCT OF DELHI & ORS. Respondents

Through: Mr. Rajiv Nanda, Standing Counsel,
GNCTD with Mr. Abhijeet Kakoti,
Adv. for R-1&3.

AND

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W.P.(C) 7924/2010

GOVT. OF NCT OF DELHI & ANR Petitioners

Through: Mr. Rajiv Nanda, Standing Counsel,
GNCTD with Mr. Abhijeet Kakoti,
Adv.

Versus

SUNIL KUMAR GUPTA & ANR. Respondents

Through: Mr. Sanjiv Sharma, Adv.
Mr. Baldev Malik, Adv. for R-2.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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.

ACTING CHIEF JUSTICE

1. It is unfortunate that the petitioner who is a Law Officer in Tihar Jail and is defending the Jail Authorities in various legal cases has to knock the doors of courts to seek justice for himself, specially when the respondents appreciate and understand the plight of the petitioner and the unfair treatment which has been meted out to the petitioner in grant of pay scales as well as non-promotion and though the respondents themselves appreciated and recommended for not only providing proper promotional avenues but also suitable upgradation to the higher pay scales; however when it came to implementation thereof, the respondents utterly failed therein.

2. The petitioner was appointed as Asstt. Supdt. in the Prison Department of the respondent no.1, Govt. of NCT of Delhi on 8th May, 1981. While the petitioner was working in the aforesaid capacity, the Government had set up Justice A.N. Mulla Committee on prison reforms. The said Committee submitted its report in March, 1983 making various recommendations for reforming the prisons. These recommendations included creation of post of Law Officer in a jail housing 750 prisoners and Dy. Director (Legal Affairs) at Prison Headquarters. Pursuant to the aforesaid recommendation, on 27th June, 1986 *ad hoc* post of Law Officer was created with pay scale of ₹2375-225-3500. However Recruitment Rules for this post were formulated. The petitioner, on 16th October, 1986 was promoted to the post of Dy. Supdt. Grade-II. The petitioner was appointed as Law Officer on *ad hoc* basis on 15th May, 1996. Vide order

dated 14th May, 1997 his appointment as Law Officer was regularized w.e.f. 15th May, 1996 i.e. the date of which the petitioner was initially appointed as the Law Officer. He was given the pay scale of ₹7450-11500, the then pay scale of the said post. He was notionally promoted to the post of Dy. Supdt. Grade-I w.e.f. 23rd December, 1994, which was the regular cadre in which he initially joined the services in the Prison Department. This notional promotion was given to him up to 15th May, 1996 when he had joined as Law Officer.

3. It will be demonstrated from the above that before the petitioner joined as Law Officer, in his erstwhile cadre he had got promoted from Asstt. Supdt. to Dy. Supdt. Grade II and thereafter Dy. Supdt. Grade-I. However after becoming Law Officer the petitioner stagnated. It is because of the reason that not only the post was created on *ad hoc* basis but there were no Recruitment Rules for the said post.

4. The petitioner made representations for creating promotional avenues. These representations were forwarded with strong recommendation of the Director General (Prison) to the Home Department of the respondent no.1. The Addl. Secretary (Home) even recommended creation of one post of Chief Law Officer and five posts of Law Officer. The Prison Department had taken up the case with 6th Central Pay Commission as well for according financial upgradation to the post of Law Officer after 8 years and 13 years of service respectively in the absence of any promotional avenues. Such a recommendation was made even by the Chief Secretary. However, as pointed out above, notwithstanding these

recommendations when it came to implementation, no such steps were taken to grant benefit in real terms to the petitioner herein. In these circumstances, after impatiently waiting for all these years and when the petitioner was not getting any cogent results he approached the Tribunal by filing an application under Section 19 of the Administrative Tribunal Act, 1985. In this OA he made following prayers:-

- “a. Quash and set aside the order dated 8.9.09 passed by Principal Secy. (Home), Govt. of NCT and order dated 16.9.09 passed by Director (Delhi), Ministry of Home Affairs, Govt. of India.
- b. Direct the Respondents to grant the scale of ₹1000-15000 w.e.f. 15.5.2004 viz the date when the applicant completed 8 years of services as Law Officer in the pay scale of ₹7450-1150.
- c. Direct the Respondents to grant the next scale of ₹12000-16500 w.e.f. 15.4.09 viz. the date when the applicant completed 13 years of service as Law Officer in the pay scale of ₹7450-11500.
- d. Direct the Respondents to provide promotional avenues to the post of Law Officer on which the applicant has been working since 1996 on the same pattern as done in other States and in particular the State of Madhya Pradesh.”

5. This OA has been decided by the Tribunal vide impugned order dated 19th August, 2010. Though in the opening para of the impugned order the Tribunal has noted the relief which the petitioner claimed, while giving the directions in the last para, none of these prayers are taken care of except prayer ‘a’ which is allowed by the Tribunal quashing the order dated 8th September, 2009 passed by Principal Secretary (Home), Govt. of

NCT of Delhi and order dated 16th September, 2009 passed by the Director (Delhi) Ministry of Home Affairs, Govt. of India. Even while setting aside these orders the only direction which is given is to consider the claim of the petitioner for ACP as per the scheme and clarification in the appropriate pay scale in the hierarchy, as stipulated in the ACP Scheme, by a speaking order to be passed within a period of three months.

6. We may note, at this stage, that under the Assured Career Progression (ACP) Scheme, financial upgradation is permissible at the end of 12 and 24 years respectively in those cases where the incumbents are not able to get promotion even when the promotional avenues are provided and they are stagnating at their existing post.

7. As stated above, in the case of the petitioner there are no promotional avenues, therefore it is a case where for absence of post in the hierarchy at a higher level, the petitioner is stagnating. It is a case where there is no post at higher level provided at all. It was because of this reason the Chief Secretary had recommended upgradation of the petitioner to higher pay scale after 8 years and 13 years of service respectively. This recommendation was in the following terms:-

“Apart from the above justification, the D.G.(Prisons) has also taken up the case of isolated post of Law Officer, in the Delhi Prisons presently in the pay scale ₹7450-11500 (pre revised). He has proposed that since there is no promotion avenues for the incumbent to the post of Law Officer, a time scale of ₹10000-15200 after 8 years and ₹12000-16500 after 13 eyars of service may be allowed to this post as in the case of DANICS Cadre

Officers. This matter was also taken up before the 6th Central Pay Commission but it seems that it has escaped the attention of the Pay Commission.”

8. Prayers ‘b’ & ‘c’ were predicated on the aforesaid recommendations of the Chief Secretary who is the Appointing Authority of the petitioner as well. The Tribunal has not even considered the submissions on merits and instead financial upgradation is ordered under the normal ACP Scheme. Further prayer ‘d’ is not adverted to at all whereby the petitioner had claimed the relief of providing promotional avenues.

9. It is in these circumstances, the aforesaid order is challenged by the petitioner by filing instant petition.

10. The Govt. of NCT of Delhi has also challenged the order questioning the partial relief granted by the Tribunal. In view of the direction we are going to give in the writ petition filed by the petitioner, the writ petition filed by the Govt. of NCT of Delhi has to fail and is hereby dismissed accordingly. We may only observe that it is not understood what prompted the Government even to challenge the partial and minimal relief given by the Tribunal.

11. Coming back to the petition filed by the petitioner impugning the order of the Tribunal, we first take up the issue of absence of promotional avenues in the Recruitment Rules. Before we advert to this issue, we may point out that the petitioner claims that though there are ten jails in the Tihar Complex, there is singular person working as Law Officer managing the legal affairs of these jails. It is pointed out that Section 6 of the Delhi

Prisons Act, 2000 stipulates that for every prison there is to be a Law Officer; on this basis, there should have been 10 Law Officers for 10 jails. However as the petitioner is the only Law Officer, he is taking care of the legal problems pertaining to more than 10000 prisoners as well as the prison headquarters in Delhi. His duties include advising the Director General (Prisons) and other officers of Prison Department, vetting of appeals filed by the convicts in the High Court of Delhi and Supreme Court of India; such appeals are approximately 250 per year. He also prepares comments on the various applications filed by the staff and prisoners before different fora like Central Administrative Tribunal, High Court, Supreme Court, National Human Right Commission, National Minority Commission, Delhi Minority Commission, Delhi Women Commission, National Commission for Protection of Child Rights etc. He helps in the appointment of government counsels and liasoning with them, preparing notes for the counsels appearing in various cases and also attending hearings in these fora as and when called along with the record of the case. Besides the aforesaid work, the petitioner is also looking after other jobs like disposal of applications under RTI Act, preparing reply to the questions raised in Parliament/Delhi Assembly, acting as Press Relation Officer of the jail, organizing special courts for disposal of petty offences, releasing of prisoners on relaxed surety conditions in co-ordination with judiciary, handling of various reformatory activities in the jail, publication of Tihar Newsletter and Annual review etc. It is also stated in the petition that because of his exemplary work he has been conferred

with the President Medal twice; once on 26th January, 2003 for Meritorious Services and second time in the year 2007 for Distinguished Service, again on Republic Day.

12. Mr. Sharma, learned Counsel for the petitioner submits that it is the right of the petitioner to at least have two promotions in his career as Law Officer. In support of this submission he has referred to the judgment of Supreme Court in the case of ***Council of Scientific & Industrial Research v. K.G.S. Bhatt*** AIR 1989 SC 1972 and has drawn our attention specifically to the following observations in the said judgment:-

“9. That then is the scope of bye-law 71(b)(ii). But that does not mean that we should interfere with the relief granted to respondent-1. By pointing out the error that crept into the decision of the Tribunal, we need not to take to its logical end which will defeat justice. Respondent-1 is not a lay-man. He is a highly qualified engineer. Although he joined service with a diploma in Engineering, he later passed Bachelor of Engineering (B.E.) and also acquired M. Tech. degree and one more diploma (D.P.M.). He was however, left without opportunity for promotion for about twenty years. This is indeed a sad commentary on the appellant's management. It is often said and indeed, abroitly, an organisation public or private does not 'hire a hand' but engages or employees a whole man. The person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well. (See : Principles of Personnel Management by Flipo Edwin B. 4th Ed. p. 246). Every management must provide realistic opportunities for promising employees to move

upward. "The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both no managerial employees and their supervisors". (See : Personnel Management by Dr. Udai Pareek p. 277). There cannot be any modern management much less any career planning, manpower development, management development etc. which is not related to a system of promotions. (See : Management of Personnel in Indian Enterprises by Prof. N.N. Chatterjee, Chap. 12 p. 128). The appellant appears to have overlooked this basic requirement of management so far as respondent-1 was concerned till N.R. & A.S. was introduced."

13. It is further submitted that as an ideal employer, the Government is supposed to provide promotional avenues. (The Supreme Court in ***Raghunath Prasad Singh v. Secretary, Home (Police) Deptt.*** AIR 1988 SC 1033 held that reasonable promotional opportunity should be available in every wing of public service; the same generates efficiency and fosters attitude to grow for achieving excellence in service; in absence of promotion prospects, service is bound to degenerate and stagnation kills the desire to serve properly). Other judgment referred to by the learned counsel is ***O.Z. Hussain (Dr.) v. Union of India*** 1990 Supp. SCC 688 wherein the Court expressed its views in the following manner:-

"7. This Court, has on more than one occasion, pointed out that provision for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective. Promotion is thus a normal incidence of service. There too is no justification why while similarly placed officers in other ministries would have the benefit of

promotion, the non-medical 'A' Group scientists in the establishment of Director General of Health Services would be deprived of such advantage. In a welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend to the representations of the Council and its members and provide promotional avenue for this category of officers. It is, therefore, necessary that on the model of rules framed by the Ministry of Science and Technology with such alterations as may be necessary, appropriate rules should be framed within four months from now providing promotional avenue for the 'A' category scientists in the non-medical wing of the Directorate."

14. He submitted that these two judgments are again followed by the Supreme Court in the case of ***Food Corporation of India v. Parashotam Das Bansal*** (2008) 5 SCC 100 wherein the Supreme Court laid down, in certain terms that the Court can even direct creation of avenues for promotion in their absence in the following manner:-

“12. When employees are denied an opportunity of promotion for long years (in this case 30 years) on the ground that they fell within a category of employees excluded from promotional prospect, the Superior Court will have the jurisdiction to issue necessary direction.

13. If there is no channel of promotion in respect of a particular group of officers resulting in stagnation over the years, the Court although may not issue any direction as to in which manner a scheme should be formulated or by reason thereof interfere with the operation of existing channel of promotion to the officers working in different departments and officers of the Government but the jurisdiction to issue direction to make a scheme cannot be denied to a Superior

Court of the country.”

15. The aforesaid dicta laid down by the Supreme Court has been followed in a series of judgment. We are of the view that the Court has power to give direction to the respondents to create promotional avenues for those categories of employees who were excluded from promotional prospects. No doubts, this Court will not issue direction as to the manner in which the rules are to be formulated; however direction can be given to the extent that that promotional avenues should be provided by incorporating suitable provisions in the Recruitment Rules. We thus direct the respondents to make proper amendments in the Recruitment Rules for the post of Law Officer in Prison Department of the Govt. of NCT of Delhi.

16. While passing these directions, we are also fortified by the similar rules which prevail in other States. Mr. Sharma, learned counsel for the petitioner has drawn our attention to the Recruitment Rules of the Law Officer in the Jail Department in State of Madhya Pradesh. The position there is as under:-

<u>“S.No.</u>	<u>Post</u>	<u>Pay Scale before VIth Pay Commission</u>
1.	Law Officer	₹8000-12000
2.	Sr. Law Officer (Promotional Post. Eligibility after 5 years services as Law Officer)	₹10000-15200

3. DIG (P) Law (Promotional Post. ₹12000-16500 Eligibility after 5 years services as Sr. Law Officer)”

17. These rules provide for two promotions and a person who is recruited

as Law Officer is entitled to be considered for promotion as Sr. Law Officer and thereafter DIG (P) Law. The eligibility for promotion to the post of Sr. Law Officer is five years of service as a Law Officer likewise after rendering five years service as Sr. Law Officer the incumbent becomes eligible for promotion to DIG (P) Law.

18. Even in the Prosecution Deptt. of respondent no.1 itself a person who has joined the service at the entry level of Asstt. Public Prosecutor, gets upgraded to Addl. Public Prosecutor after seven years of service, as Chief Prosecutor after five years of service as Addl. Prosecutor and then Director (Prosecution) after serving five years as Chief Prosecutor. The pay scales drawn by such persons in different post are indicated below:-

<u>S.No.</u>	<u>Post</u>	<u>Pay Scale before VIth Pay Commission</u>
1.	Assistant Public Prosecutor	₹6500-10500
2.	Additional Public Prosecutor (Promotional Post. Eligibility 1s 7 years regular service as Asst. Public Prosecutor)	₹7450-11500 upgraded to 8000-13500
3.	Chief Prosecutor (Promotional Post.	₹10000-15200

Eligibility is 5 years regular service
as Addl. Public Prosecutor)

4. Director (Prosecution) (Promotional ₹12000-375-16500
Post. Eligibility is 5 years regular
service as Chief Prosecutor).”

19. We thus see no reason why the Law Officer in the Jail Department of the Govt. of NCT of Delhi should be meted out discriminatory treatment by not providing any promotional avenues. A mandamus is accordingly issued to the respondents to suitably amend the Recruitment Rules by providing appropriate promotional avenues to the Law Officer in the Jail Department. We also expect that necessary provisions in this behalf shall be made within a period of three months from today. After providing promotional avenues, the case of the petitioner shall be considered on the basis of his entire length of service as Law Officer within one month thereof.

20. Once the respondents carry out the aforesaid exercise and have considered the case of the petitioner for consequential promotions, the relief of ACP as claimed by the petitioner may not even be necessary. However in the interregnum the question of grant of ACP to the higher pay scale of ₹10000-15000 after 8 years of service and ₹12000-16500 after 13 years of service at par with DANICS cadre which has been recommended by the Chief Secretary himself, arises for consideration. As pointed out above, the Chief Secretary had recommended aforesaid upgradation. This recommendation is contained in communication dated 1st December, 2008

of the Chief Secretary addressed to Ministry of Home Affairs. A perusal of this letter would show that two issues were raised by the Chief Secretary. One pertains to the pay scales of Jail Prison cadre official/officers and their equivalent rank in Delhi Police and Govt. of NCT of Delhi. This obviously had reference to the other prisons staff and not the Law Officer. In respect of Law Officer a separate and independent recommendation was made proposing two upgradations after 8 years and 13 years of service respectively in the absence of promotional avenues for the isolated post of Law Officer i.e. the petitioner herein. The Ministry of Home Affairs however rejected the proposal vide letter dated 16th September, 2009. Para 2 of the said letter shows that the two issues raised by the Chief Secretary though independent of each other, were mixed up and which resulted in rejection, pertain to the first issue. The case of the petitioner herein which related to isolated post of Law Officer was not given any consideration independently. The Tribunal in the impugned judgment has already set aside the aforesaid communication dated 16th September, 2009. We find that the reasons given for rejection are irrelevant in so far as the case of the petitioner is concerned. We state at the cost of repetition that the Chief Secretary had emphasized that it was a case of isolated post of Law Officer; there were no promotional avenues for the incumbent to the post of Law Officer; and that in such circumstance there should be two upgradations in the pay scale given to the Law Officer. We may also emphasize that ACP Scheme is available to those government servants who are provided promotional avenues in their respective cadres. In spite

of such promotional avenues, when the incumbent is not able to get promotion because of want of vacancies in the higher grade and stagnates at the given post, ACP Scheme stipulates providing of two upgradations on the expiry of 12 years/24 years of service. In those cases even when the incumbent gets upgradation after 12 years he will get promotion within few years thereafter. However in such contrast, in the case of the petitioner, the recommendation was made as there is no promotional avenue at all. It was for this reason that the Chief Secretary thought it appropriate to recommend that the upgradation should be after 8 years and 13 years of service. Even the 5th Pay Commission had given such a recommendation in respect of isolated post which is contained in para 22.41 of its report. Presumably, emboldened by those recommendations the Chief Secretary had stipulated period of 8 years and 13 years of service for two upgradations. There are certain posts where the incumbent will keep on doing the same work even when he is promoted to a higher grade. Examples would be of technical post, the post where the incumbent carries on the research like scientific post, post of Secretary etc. The post of Law Officer falls in the same category. Even when a person, who is appointed as a Law Officer is given promotion, will continue to discharge the same duties. It is for this reason, in so far as technical and scientific post are concerned in order to give incentives and to boost their morale, the Government has framed rules for giving time bound promotions whereby stagnation is taken care of by providing such type of rules. We do not understand as to why similar exercise cannot be undertaken in respect of

Law Officer in the Jail Department in Jail Prisons which is again an isolated post.

21. We accordingly direct that the recommendation of Chief Secretary contained in communication dated 1st December, 2008 shall be acted upon having regard to the observations made by us in this judgment and necessary orders giving two upgradations to the petitioner after the expiry of 8 years and 13 years service respectively, shall be passed within two months from today.

ACTING CHIEF JUSTICE

RAJIV SAHAI ENDLAW,J

NOVEMBER 16, 2011

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