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

Date of decision: July 29, 2013

+ **W.P.(C) 543/2013**

OM PRAKASH Petitioner
Represented by: Ms.Sriparna Chatterjee and
Mr.Ajesh Luthra, Advocate

versus

UNION OF INDIA AND ORS. Respondents
Represented by: Mr.Saqib, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The short question which arises for our consideration is, whether the petitioner is entitled to the second upgradation under the Assured Career Progression Scheme to the grade of Upper Division Clerk?
2. The claim of the petitioner has been rejected by the Tribunal *inter alia* holding that the petitioner got *in situ* promotion to the post of Lascar (Tindal) and thereafter to the post of Lower Division Clerk and in terms of clarification dated February 10, 2000, the petitioner has no case.
3. The petitioner was initially appointed as a Lascar on November 17, 1973 and admittedly with effect from April 01, 1991 he started receiving salary in the grade of Lascar (Tindal) i.e. ₹2650-4000. The Recruitment Rule for the post of Lower Division Clerk listed some

percentage of posts to be filled up through a Limited Departmental Competitive Examination from amongst Lascar (Tindal) and undisputedly the petitioner cleared the said examination and was appointed by way of promotion as a Lower Division Clerk on August 22, 1997.

4. Vide order dated March 05, 2002, upon completion of 24 years service the petitioner was granted the benefit of Assured Career Progression Scheme with effect from August 09, 1999 and was placed in the pay scale of ₹4000-6000 which was sought to be withdrawn when an intimation dated February 20, 2004 was sent informing that the ACP scheme benefit was wrongly granted in view of the fact that the petitioner had already been granted two promotions : from Lascar to Lascar (Tindal) and therefrom to a Lower Division Clerk. Petitioner responded pointing out that his colleagues similarly placed were granted placement in the pay scale ₹4000-6000. The respondents withdrew the benefit granted. OA No.91/2006 filed by the petitioner was disposed of by the Tribunal with a direction that a reasoned decision be taken. The petitioners took a reasoned decision on December 13, 2006 which was challenged vide OA No.2265/2007. The same was dismissed vide order dated August 11, 2008. Review filed there against has been dismissed.

5. This is the history which we need to note while simultaneously noting the relevant facts.

6. We have seen the applicable Recruitment Rules for the post of Lower Division Clerk under the respondents called '*Indian Air Force Group 'C' (Upper Division Clerk and Lower Division Clerk/Clerk/Hindi Typist post) Recruitment Rules, 1986*'. As amended

in the year 1989, pertaining to the method of recruitment to the post of Lower Division Clerk, the Rule reads as under :-

“90% by transfer failing which by direct recruitment; 10% by appointment of Group ‘D’ employees born of regular establishment subject to the following conditions.

a) Selection shall be made through a departmental examination confined to such Group ‘D’.”

7. In so far as the posts of Lascar and Lascar (Tindal) are concerned the same are governed by the ‘*Class-IV Civilians (Defence Service) Recruitment Rules, 1969*’. As amended, the post of Lascar (Tindal) is a promotional post and the feeder posts are Lascar/Anti Malaria Lascar.

8. This happened when the amendment to the 1969 Rules was made on November 14, 1991. What has happened is this. Simultaneously when decision was taken to provide a promotional avenue to Lascars by amending the Recruitment Rules for the post of Lascar (Tindal) a decision was taken to grant *in situ* promotion to persons holding the post of Lascar and this explains the *in situ* promotion granted to the petitioner as per order dated April 01, 1991.

9. The learned counsel for the petitioner did not deny that the petitioner was promoted under Limited Departmental Competitive Examination to the post of Lower Division Clerk. Her contention primarily is with regard to the *in situ* promotion to the post of Lascar (Tindal) which was granted to the petitioner.

10. Learned counsel for the respondents has placed before us the conditions for grant of benefits under the Assured Career Progression Scheme. Para 5.1 of the same lays down the following:-

“Two financial upgradations under the ACP Scheme in the entire Government service career of an employee shall be counted against regular promotions (including in-situ

promotion and fast-track 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 got the 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.”

11. A perusal of the said paragraph would show that an *in situ* promotion and fast track promotion availed through Limited Departmental Competitive Examination shall be counted against regular promotions. In the eventuality two prior promotions on regular basis have already been received by an employee no benefit under the Assured Career Progression Scheme shall accrue to him.

12. In the present case there is no denial to the fact that the petitioner had got *in situ* promotion in the grade of Lascar (Tindal) in the pay scale of ₹2650-4000 with effect from April 01, 1991 and promotion to the post of Lower Division Clerk through the Limited Departmental Competitive Examination vide order dated August 22, 1997, which shows that he having received two prior promotions on regular basis, para 5.1, as reproduced above, of conditions for grant of benefits under the Assured Career Progression Scheme, would come into play in his case and he would not be entitled to the benefit under the Assured Career Progression Scheme dated August 09, 1999 and the clarifications issued thereafter.

13. The Tribunal in para 9 of the impugned order has held as under:-

“Though, the clarification issued in the OM dated 10.02.2000 has not been explicitly mentioned in the order, we find that such clarification would not support the case of the applicant as the said clarification has prescribed two conditions to be fulfilled for making the employees eligible for the ACP. Those conditions are 9a) the promotion should be in the selection grade or in-situ promotion and (b) the post to which the in-situ promotion/selection grade is granted should not be in the hierarchy of promotions. In the present case, the Respondents very unambiguously have submitted that promotions from Lascar to Lascar (Tindal) to LDC is in the promotion hierarchy of the department. The applicant got the in-situ promotion to Lascar (Tindal) and LDCE promotion to LDC. In view of the clarifications furnished in the written submission of the Respondents, we find that there is no merit in the claim of the applicant to apply the clarification No.2 as extracted within.”

14. The conclusion of the Tribunal is correct. We do not see any merit in the writ petition. The same is dismissed.

15. No costs.

(V.KAMESWAR RAO)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

JULY 29, 2013
mm/rk