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

% *Judgment Reserved on : November 18, 2015*
Judgment Delivered on : November 27, 2015

\+ **LPA 107/2013**

S.P.THAPLIYAL .....Appellant
Represented by: Mr.Ashok Gurnani, Advocate

versus

SECRETARY GENERAL & ANR. .....Respondents
Represented by: Mr.J.P.Sengh, Sr.Advocate instructed by Ms.Zubeda Begum, Ms.Sana Ansari and Ms.Vanessa Singh, Advocates

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. Motivation is the tonic for an employee. Promotion in the cadre motivates an employee to work hard so that he achieves the prescribed benchmark to earn a promotion. A motivated hardworking employee is an asset to an organization and the employer gains in productivity, if the employee works hard and constantly moves in the direction of achieving higher and better results.

2. There are various court decisions, which we need not catalogue, impressing upon employers to provide career prospects opportunities to employees by so structuring the human resource cadre that if not more, at least two career advancement opportunities are available to an employee.

3. In its recommendations made to the Central Government by the 5th Central Pay Commission it was proposed that if due to non-availability of a promotional post an employee does not earn a promotion within 12 years of joining service the employee should be placed either in the next above pay scale or in the pay scale of the promotion post and if after serving for 24 years the employee does not earn a second promotion he should be placed in the next above pay scale or in the pay scale of the promotion post. The Central Government accepted the recommendation and issued an office memorandum on August 09, 1999, relevant part whereof reads as under:-

"August 09, 1999

Office Memorandum

Subject: THE ASSURED CHAREER PROGRESSION SCHEME FOR THE CENTRAL GOVERNMENT CIVILIAN EMPLOYEES

The fifth Central Pay Commission in its Report has made certain recommendations relating to the Assured Career Progression (ACP) Scheme for the Central Government civilian employees in all Ministries/Departments. The ACP Scheme needs to be viewed as a 'Safety Net' to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. Accordingly, after careful consideration it has been decided by the Government to introduce the ACP Scheme recommended by the Fifth Central Pay Commission with certain modifications as indicated here under:-

5.1 Two financial upgradation 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 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."

4. The Rajya Sabha, of which the appellant is an employee of, likewise gave career advancement opportunity to the employees of the Rajya Sabha and issued an office memorandum on October 05, 2001, relevant part whereof reads as under:-

"Dated: the 5th October, 2001

RECRUITMENT AND CONDITIONS OF SERVICE ORDER

Subject: <u>Assured Career Progression/Financial Upgradation (ACP/FU) Scheme</u>

In pursuance of the recommendations contained in para 3.3. of Chapter III of the Second Report (2001) of the Parliamentary Pay Committee the Chairman, Rajya Sabha, after consultation with the Ministry of Finance, has been pleased to direct that Assured Career Progression/Financial Upgradation (ACP/FU) Scheme, as indicated below, may be implemented in the Secretariat:-

(i) The ACP/FU Scheme shall come into force with effect from 09.08.1999. The ACP/FU Scheme envisage merely placement in the higher pay scale/grant of financial benefits (through financial upgradation) only to the employees concerned on personal basis and shall, therefore, neither amount to functional/regular promotion nor would require creation of new posts for the purpose.

(ii) This scheme is intended to provide financial relief to employee who have put in the prescribed period of service in a grade/post but cannot be promoted to the next higher grade/ post for want of vacancies/posts.

(iii) Under the scheme, every employee appointed in a particular grade/scale of pay shall be allowed two financial upgradations during his entire career span. An employee shall become eligible for the first upgradation after completion of a period of 12 years of regular service in the respective feeder grade/post in respect of posts/grades in all Groups and the second after completed of 24 years of regular service in the secretariat.

(iv) In the case of an employee who has been recruited to isolated posts/scales of pay where there are no further promotional avenues in the hierarchy, two financial upgradations shall be given to the next higher scales of pay available in the Secretariat after completion of 12 years and 24 years of service from the date of his induction to the isolated post.

(v) An employee who is already placed in the next higher scale of pay under this Scheme shall not be entitled or another financial upgradation before his regular promotion to the grade/post. This however shall not be applicable to employees who are holding isolated posts/grades.

(vi) x x x x x x x x x

(vii) x x x x x x x x x

(viii) x x x x x x x x x

(ix) Where an employee is recruited to a particular grade/post and subsequently switches over to another cadre/line, his previous service in the original post/grade shall not be counted for the purpose of financial upgradation in the new cadre/line. He will be entitled to the first financial upgradation in the new cadre after completion of the prescribed period of 12 years of service in the new cadre.

(x) x x x x x x x x x

(xi) x x x x x x x x x

(xii) x x x x x x x x x

(xiii) x x x x x x x x x

(xiv) x x x x x x x x x

(xv) x x x x x x x x x

(xvi) x x x x x x x x x

(xvii) The financial upgradation proposed under this Scheme shall be subject to fitness and screening thereof by a Screening Committee to be constituted for the purpose."

5. On the admitted fact that the appellant joined service as a direct recruit on December 04, 1975 as a Committee Reporter, followed by, as a direct recruit appointment as a Parliamentary Reporter on May 06, 1977, he earned a promotion as a Senior Parliamentary Reporter on June 10, 1992. He superannuated from service on April 30, 2002, but before that made a representation on December 28, 2001 making a reference to the office memorandum dated October 05, 2001 praying that he having completed 24 years' service reckoned from when he joined as a Parliamentary Reporter as a direct recruit on May 06, 1977, he should be granted the benefit of the second financial upgradation envisaged upon rendering 24 years' service because he did not earn a second promotion and thus should be placed in the next above pay scale with effect from May 06, 2001. The request was turned down on the ground that having earned a first promotion on June 10, 1992, the 12 year period to compute entitlement under the scheme would reckon from said date, which would come to an end on June 10, 2004; and since appellant superannuated on April 30, 2002, he could not be granted the benefit.

6. The matter moved to Court. Writ petition was filed by the appellant making a prayer as per the representation made by him. The learned Single Judge has dismissed the writ petition and the reasoning is that the office memorandum dated October 05, 2001 cannot be granted retrospective operation. The learned Single Judge has held that the object

of the scheme was that after the effective date of the scheme, which we note is August 09, 1999, the scheme would operate i.e. 12 years period would be reckoned from August 09, 1999; a reasoning given by the learned Single Judge which learned senior counsel for the respondent very fairly concedes is incorrect and not as per the stand taken by the respondent.

7. The stand of the respondent is, as noted above, that the scheme envisages a first financial upgradation if no promotion is earned within first 12 years of service. The second financial upgradation would be after further 12 years if stagnation continues; as per the respondent if a promotion was earned before the scheme was introduced and which may be after 12 years of initial joining of service, the next 12 year period had to be reckoned from the date of promotion which in the case of the appellant was June 10, 1992.

8. Our job is simple. To interpret the policy decision.

9. It is trite that a beneficial policy must receive a liberal construction and thus guided by the lodestar that a beneficial policy must receive a liberal construction, we construe the policy dated October 05, 2001. Clause (i) of the policy makes it applicable with effect from August 09, 1999 and the reason is that the Central Government introduced a similar policy with effect from said date. Clause (ii) of the policy guides, by proclaiming its intention evident by the use of the words '*this scheme is intended*', to provide financial relief to employees who had put in the prescribed period of service in a grade/post but could not be promoted for want of vacancy/post. Clause (iii) needs to be highlighted because it contains the pith and substance of the scheme. It proclaims that every employee appointed in a particular grade/scale shall be allowed two financial upgradations during his entire career; becoming eligible for the

first upgradation after completion of a period of 12 years of regular service and the second after completion of 24 years of regular service in the secretariat. The clause does not link the second financial upgradation to completion of 12 years' service if first promotion was earned at any point of time.

10. Contention of learned senior counsel for the respondent was that the scheme has to be read as a whole, a proposition of law with which there can be no quarrel, but in what manner if read as a whole the scheme brings out that if first promotion is earned then benefit of second financial upgradation is available after 12 years of first promotion was not brought out by learned senior counsel.

11. In the preceding para 9 above we have analyzed three clauses of the scheme which unequivocally bring out that the object of the scheme is to grant first financial upgradation after 12 years of service and second after rendering 24 years' service if within said period the first and second promotion are not granted to an employee.

12. Allowing the appeal, we set aside the impugned order dated January 03, 2013 and dispose of W.P.(C) No.5990/2002 filed by the appellant issuing a direction to the respondent to appraise the appellant for grant of ACP benefit for the reason entitlement of financial upgradation, as per clause (xvii) is subject to fitness being determined by a Screening Committee. If appellant is found fit to be granted the financial upgradation, the second financial upgradation would be granted to the respondent with effect from May 06, 2001 and for which arrears of salary would be paid after adjusting the amount paid till appellant superannuated from service on April 30, 2002 and reckoned from May 01, 2002 pension would be revised accordingly. The exercise shall be positively completed within 6 months from today.

13. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

NOVEMBER 27, 2015
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