

\$~27

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

+ W.P.(C) 8612/2014

%

Date of Judgment: 24th September, 2015

BINA CHADHA

..... Petitioner

Through : Mr. D. R. Gupta , Advocate.

Versus

UNION OF INDIA AND ANR.

..... Respondents

Through : Mr. Arun Bhardwaj, CGSC with
Ms. Manpreet Kaur, Advocate.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J.

1. In the present petition, the petitioner seeks quashing and setting aside of the order dated 30.10.2014 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 485/2011.
2. The necessary facts which have led to the filing of the present writ petition are that the petitioner was initially appointed as Lower Division Clerk (LDC) in the Ministry of Commerce & Industry in the Central Secretariat Clerical Service (CSCS) and later on sought transfer in the Directorate General of Foreign Trade (DGFT), Mumbai. She tendered her technical resignation and joined the office of DGFT, Mumbai on 30.09.1978. Vide order dated

1.08.1983 she was appointed as Junior Hindi Translator (JHT). As per the Recruitment Rules (RRs) of August, 1979, for the post of Junior Hindi Translator (JHT), the matter of recruitment was prescribed as “by deputation failing which by transfer and failing both by direct recruitment”. Accordingly, the petitioner was appointed as JHT, subject to the approval of the Departmental Promotion Committee (DPC) vide the office order dated 01.08.1983. The petitioner was thereafter promoted to the post of Senior Hindi Translator (SHT) and further as Hindi Officer in due course. In this case while the respondents claim that since the petitioner has been granted three upgradations/promotion in the posts of JHT, SHT and Hindi Officer, she is not entitled to any other benefit under the Assured Career Progression (ACP) Scheme or Modified ACP Scheme, the petitioner’s stand is that her appointment to the post of JHT was not a promotion but a direct recruitment and, therefore, her appointment to the post of JHT should not be taken as upgradation/promotion and she is entitled to one more upgradation under the MACP Scheme. The petitioner retired in the year 2010. In 2011, the petitioner approached the Tribunal by filing O.A. No. 485/2011 which was dismissed by the Central Administrative Tribunal vide order dated 22.09.2011. Thereafter, petitioner approached this Court by filing writ petition No. 4060/2012. Vide order dated 01.05.2013 this Court remanded the matter to the Tribunal for fresh adjudication on merits.

3. Mr. D. R. Gupta, learned counsel appearing on behalf of the petitioner submits that the order passed by the Central

Administrative Tribunal is unjust, illegal, arbitrary and based on wrong facts. The counsel for the petitioner further submits that the petitioner was directly recruited on the basis of her qualification i.e. MA in Hindi and other experience with regard to translation and not promoted as stated by the respondents to deprive the petitioner of the benefit of third financial upgradation under the MACP Scheme.

4. The counsel for the petitioner also submits that the LDC can be promoted to the next higher post of UDCs in their cadre and not to the still higher post of JHT and, therefore, being an ex-cadre post, her appointment as JHT could not be a promotion but a direct recruitment.
5. Per contra, Mr. Arun Bhardwaj, learned counsel appearing on behalf of the respondents submits that the respondents have filed relevant Recruitment Rules as directed by Hon'ble High Court and along with it, the minutes of the DPC held on 09.09.1983 in which the name of the petitioner appears at serial number 16. The minutes clearly state that "the committee examined the C.C rolls of the individuals concerned and approved the promotions of the persons to the posts indicated against them" and the applicants name is indicated at serial number 289 of the seniority list. The date of promotion therein has been indicated as on 01.08.1983 and the post to which she was promoted as JHT.
6. We have heard learned counsel for the parties at considerable length and given our thoughtful consideration to the arguments advanced by them. We have also perused the impugned order

passed by the Central Administrative Tribunal dated 30.10.2014 and the material placed on record. It is the case of the petitioner that the respondents have failed to consider her appointment to the post of JHT as a direct recruitment and treated this as a promotion. It is further the stand of the petitioner that her appointment to the post of JHT should not be treated as upgradation/promotion and hence, she is entitled to one more upgradation under the MACP Scheme, 2009. The short point which comes up for consideration before this Court is whether the appointment of the petitioner to the post of Junior Hindi Translator was by way of direct recruitment or promotion. It would be useful to reproduce para 7 of the judgment of the Central Administrative Tribunal, which reads as under:

“The RRs for the post of JHT indicate that the method of recruitment is by deputation failing which by transfer and failing both by direct recruitment. Invoking Rule 5 of the RRs, the respondents relaxed the rules and promoted the applicant to the post of JHT along with several others. It is clear from the minutes of the DPC that this was a promotion. The order dated 1.08.1983 also shows that the appointment as JHT was subject to the approval of DPC. DPCs are held, as the name suggests, for promotion. Therefore, there is no doubt that the applicant earned first promotion as JHT and the appointment was not as a direct recruitment. Nothing has been brought on record to indicate that the respondents had indeed gone in for direct recruitment that year and the applicant had appeared in some competitive test for appointment as JHT. For reasons best known to the respondents, right or wrong, instead of deputation or transfer, they took the promotion route for appointing the applicant as JHT. But certainly this was

not a direct recruitment and the argument of the applicant that she is eligible for third upgradation under MACP is not made out. The circular of the Office of the Controller General of Accounts dated 10.12.2012 also relates to those appointed as Hindi Translators Grade II after qualifying the departmental examination. In this case, there was no departmental examination and the applicant was promoted, as explained above, through a DPC.”

7. Admittedly, as per the MACP Scheme, 2009 there shall be three financial upgradations counted from the direct entry grade on completion of 10, 20 and 30 years respectively. In the present case, it appears that the petitioner has already obtained three next hierarchy grade pay of Rs. 4,600/-, Rs. 4,800/- and Rs. 5,400/- on promotion from LDC to JHT, JHT to SHT and SHT to Hindi Officer respectively. It was also clarified by the respondents that the petitioner was promoted to the post of JHT in relaxation of the Recruitment Rules (as provided in Rule 5 of the Recruitment Rules) by the DPC held on 09.09.1983. Hence, there is no doubt that the petitioner earned first promotion as JHT and such appointment cannot be treated as direct recruitment. It is also apparent from the appointment order dated 1.08.1983 that the appointment of the petitioner as JHT was subjected to the approval of DPC. The minutes of DPC annexed with this petition further clarify that the petitioner got promoted on 01.08.1983, in the light of this document the case of the petitioner appears to be of promotion and not recruitment hence, in our considered view the relief sought by the petitioner for the grant of Third Financial

upgradation for which she became entitled in terms of MACP Scheme, 2009 on completion of more than 10 years in the same scale cannot be granted as she has already been given third financial upgradation in the pay hierarchy.

8. In view of the aforesaid facts and circumstances of the case, we feel that the petitioner is not entitled to the relief which has been set out by her in the writ petition and accordingly the writ petition is dismissed being without any merit.
9. We find no infirmity in the judgment of the Central Administrative Tribunal. No order as to costs.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 24, 2015

SC