

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

+ **W.P.(C) 5833/2016**

Date of Decision: 17th October, 2016

DELHI TRANSPORT CORPORATION Petitioner

Through: Mr. Purvesh Buttan, Adv.
versus

PREM NATH SHARMA Respondent

Through: Mr. Sanjoy Ghose, Ms.
Pratishtha Vij and Mr.
Rhishabh Jaitly, Advs.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE SUNITA GUPTA

SANJIV KHANNA, J: (ORAL)

1. The petitioner-Delhi Transport Corporation in this writ petition impugns the order of the Central Administrative Tribunal, Principal Bench, New Delhi, dated 25.02.2016 whereby the O.A. 4259 of 2014 filed by the respondent-Prem Nath Sharma, has been allowed and the petitioner has been directed to consider the respondent for grant of 3rd financial upgradation under the Modified Assured Career Scheme (MACP). The said exercise has to be completed within two months. The Tribunal has quashed the order dated 24.09.2013 whereby the respondent's request for grant of 3rd financial upgradation was declined.

2. The facts are not in dispute.

(a) The respondent was employed as retainer crew driver in the petitioner Corporation on 22.02.1973 and granted monthly rate of pay with effect from 24.08.1973.

(b) The petitioner Corporation introduced and implemented Assured Career Progression Scheme (ACP) with effect from 12.08.2002. The respondent was granted 1st and 2nd financial upgradation as he had completed 24 years of service on or before 12.08.2002.

(c) The respondent was offered a promotion to the post of Assistant Traffic Inspector with effect from 25.04.2003 vide memo dated 31.03.2003. The respondent, however, refused to accept the said promotion vide his letter dated 02.04.2003. Subsequently, the respondent was again offered promotion and was thereafter promoted as an Assistant Traffic Inspector on 11.08.2008.

(d) As a result of the respondent's refusal to accept the promotion on the first occasion, the two financial upgradations granted under the Assured Career Progression Scheme were withdrawn, with effect from 25.04.2003.

(e) The respondent retired on 31.08.2012.

(f) Post his retirement, the respondent made representations for the restoration of the 1st and 2nd financial upgradations under the Assured Career Progression Scheme, and grant of 3rd financial upgradation under the Modified Assured Career Scheme. On 02.09.2013, the petitioner's corporation passed an order that the respondent would be entitled to 2nd financial upgradation after he had accepted his

promotion to the post of Assistant Traffic Inspector. However, the benefit of 3rd financial upgradation under the Modified Assured Career Progression Scheme was denied.

3. The tribunal in the impugned order has held that the promotion offered to the respondent for the post of Assistant Traffic Inspector vide Memo dated 31.03.2003 was on an *ad-hoc* basis. Therefore, the clause 10 of the Assured Career Progression Scheme would not be applicable.

4. There is some merit in the contention of the petitioner Corporation that the initial promotion to the post of Assistant Traffic Inspectors was on Ad-hoc basis but thereafter about 400 Assistant Traffic Inspectors so promoted were regularised with effect from 25th October, 2003. In spite of aforesaid observation, we would not like to modify the final directions given in the impugned order, for the reason at best the petitioner's corporation could have excluded the period from 04.02.2003 to 11.08.2008 i.e. the period when the respondent had refused promotion to the post of Assistant Traffic Inspector and date on which he was finally promoted to the post of Assistant Traffic Inspector. The aforesaid position is clear when we read and interpret paragraph 10 of the Assured Career Progression Scheme and paragraph 25 of the Modified Assured Career Scheme. The said paragraphs are read as under:-

Assured Career Progression Scheme

“10. Grant of higher pay-scale under the ACP Scheme shall be conditional to the fact that an employee, while accepting the said benefit, shall be deemed to have given his unqualified acceptance for regular promotion on occurrence of vacancy subsequently. In case he refuses to accept the higher post on regular promotion subsequently he shall be subject to normal debarment for regular promotion as prescribed in the general instructions in this regard. However, as and when he accepts regular promotion therefore, he shall become eligible for the second upgradation under the ACP Scheme only after he completes the required eligibility service/period under the ACP Scheme in that higher grade subject to the condition that the period for which he was debarred for regular promotion shall not count for the purpose.”

XXX

Modified Assured Career Progression Scheme

“25. If a regular promotion has been offered but was refused by the employee before becoming entitled to a financial upgradation, no financial upgradation shall be allowed as such an employee has not been stagnated due to lack of opportunities. If, however, financial upgradation has been allowed due to stagnation and the employees subsequently refuse the promotion, it shall not be a ground to withdraw the financial upgradation. He shall, however, not be eligible to be considered for further financial upgradation till he agrees to be considered for promotion again and the second the next

financial upgradation shall also be deferred to the extent of period of debarment due to the refusal.”

5. The petitioner has relied upon paragraph 10 of the Assured Career Progression Scheme. However, according to us, the said paragraph would not be applicable for the respondent is claiming benefit of the 3rd financial upgradation under the Modified Assured Career Scheme which was enforced with effect from 01.09.2008. The Assured Career Progression Scheme did not provide for the grant of 3rd financial upgradation. Paragraph 25 of the Modified Assured Career Scheme stipulates that the period during which the government servants had refused to accept the promotion should be excluded, the reason being that financial upgradation is introduced and allowed owing to stagnation and lack of promotion. The last sentence of Paragraph 25 of the Scheme states that a government servant would not be eligible for being considered for further financial upgradation till he agrees to be considered for promotion. Thus, when the government servant agrees to be considered for promotion, then the benefit of financial upgradation cannot be denied. Further, the next financial upgradation would be deferred to the extent of the period of debarment due to refusal or rejection of the offer of promotion. In the present case, the respondent had accepted and was promoted as Assistant Traffic Inspector on 11.08.2008, i.e. before the Modified Assured Career Progression Scheme was notified.

6. We have to, therefore, compute the period of debarment which is to be excluded. The period of debarment in the present case would

be 5 years, 3 months and 16 days i.e. from 22.04.2003 till 11.08.2008. Even if we exclude the said period, the respondent had completed more than 30 years of service. The period of 30 years has to be calculated keeping in view the service rendered by the respondent after he had joined service of petitioner Corporation till 01.04.2003 and the when the respondent was promoted with effect from 11.08.2008. The error made by the petitioner Corporation is that they have treated the date of promotion as Assistant Traffic Inspector i.e. 11.08.2008, as the beginning of the fresh period of 10 years. This is not mandated and stated in paragraph 25 of the Modified Assured Career Progression Scheme. The word "deferred" means to postpone or put off to a later time. The interpretation by the petitioner Corporation is not what is stipulated in Paragraph 25 quoted above. On a government servant refusing regular promotion, no financial upgradation is to be granted. He is entitled to be considered for financial upgradation once he agrees to be considered for promotion again. This period of refusal has the effect of deferring and delaying the grant of next financial upgradation as the period is to be excluded on account of the refusal.

7. Paragraph 10 of the Assured Career Progression Scheme is also to a similar effect on the question of exclusion of the period of refusal, though the stipulation for the purpose of computing the required period of service for the purpose of eligibility under the Assured Career Progression Scheme is somewhat differently worded. In the present case, we need not interpret Paragraph 10 of the Assured Career

Progression Scheme, for the respondent's claim for entitlement to a 3rd financial upgradation is covered under the Modified Assured Career Progression Scheme and not under the Assured Career Progression Scheme.

8. At this stage, learned counsel for the petitioner submits that operation of the impugned order was stayed by order dated 15.07.2016. We grant two months time to petitioner Corporation to comply with the impugned order.

9. In view of the aforesaid discussion, we do not find any merit in the petition and the same is dismissed.

SANJIV KHANNA, J

SUNITA GUPTA, J

OCTOBER 17, 2016/ssc