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

Judgment dated: 22nd August, 2016.

+ W.P.(C) 4696/2015

M.M.L. VIJ

..... Petitioner

Through : Mr. N.L. Bareja, Advocate.

versus

UOI AND ORS.

..... Respondents

Through : Mr. Jaswinder Singh, Advocate for R1
& 2.
Mr. Anil Shrivastava, Advocate for
R3.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S.MEHTA

G.S.SISTANI, J (ORAL)

1. The petitioner is aggrieved by the order dated 17th December, 2013, passed by the Central Administrative Tribunal (hereinafter referred to as '*the Tribunal*') in the OA and the order dated 11th March, 2014 passed in the review application whereby the OA No. 4101/2011 and the review application No. 29/2014 filed by the petitioner were dismissed by the Tribunal.
2. With the consent of the parties, we set down the writ petition for final hearing and disposal. Before the rival submissions of the learned counsel for the parties can be considered, we deem it appropriate to notice some necessary facts required for disposal of the present writ

petition. The petitioner had joined the Central Tibetan Schools Administration ('CTSA' in short) as a Section Officer (SO), through direct recruitment in the year 1986. The petitioner superannuated on 31st October, 2010. The petitioner is also receiving his pension.

3. In the year 1999, the Government formulated the Assured Career Progression Scheme ('ACP' scheme) on 9th August, 1999. Various clarifications to the ACP scheme were also issued vide OM dated 10th February, 2000. The petitioner is aggrieved by the facts that although, he has been given the benefit of the ACP scheme but the respondents have not applied the ACP scheme and the clarifications thereto in the correct perspective. It is also the grievance of the petitioner that the post of Section Officer with respondent No. 3 is not an isolated post and, therefore, he should be given the benefit as per the Annexure I to the ACP scheme. Petitioner claims that his last drawn pay was as per serial No. 11, 'S-12' i.e. Rs.6500-200-10,500/- . On applying the ACP scheme, treating the post of the petitioner of not being an isolated post, he would be entitled to Rs.10,000-325-15200/- as per the Serial No. 15, 'S-19'.
4. A common stand of the respondents is that the post of the petitioner is an isolated post and thus, the petitioner would be entitled to the ACP scheme and would be given the next higher grade in accordance with the existing hierarchy which would entitle him to serial No. 12, 'S-13' of Rs.7450-225-11,500/- as per the table shown at page No. 44 of the paper book and which has already been granted to him.
5. Learned counsel for the petitioner submits that the Tribunal has erred and not considered the recruitment rules for the post of 'Under Secretary' in the CTSA, which is to be filled up by 'transfer or

deputation' from amongst the Section Officers in the Government / Semi Government / Public Sector / Autonomous Bodies with eight years of experience. Likewise, the post of the section officer in the CTSA is to be filled by (i) 50% by direct recruitment & (ii) 50% by 'composite method' from amongst the persons holding the post of Assistants or the analogous post of the Govt./Semi Govt./Autonomous Bodies, in the grade/cadre for a minimum period of 5 years. The RRs also ordain that if the departmental candidate is selected for the post of Section Officer, he is deemed to be 'promoted' to the said post. Implying thereby, that the post of SO has the Feeder Cadre in hierarchy of appointments from the post of Assistants.

6. It is also contended that the Government of India introduced the Assured Career Progression (ACP) Scheme vide DoPT OM No.35034/1/97-Estt. (D) dated 09.08.99 as a 'safety net' to deal with the problem of genuine stagnation and hardships faced by the employees due to lack of adequate promotional avenues. The scheme envisages two financial up-gradations after 12 and 24 years of service in the event when no promotion is earned. However, the same has now been modified as 10 and 20 years of service by way of MACP.
7. It is further contended that the condition No. 7 of the ACP Scheme stipulates that financial up-gradation shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts, without creating new posts for the purpose. However, in case of isolated posts, in the absence of defined hierarchical grades, the financial up-gradation shall be given by the Ministries/ Departments concerned in the immediately next higher (standard / common) pay – scales as indicated in Annexure-II of the ACP Scheme.

8. Learned counsel for the petitioner submits that the Isolated post is further clarified vide clarification No. 31 issued vide O.M. dated 10.02.2000, which ordains that an 'Isolated Post' for the purpose of ACP Scheme, is a Stand Alone Post, having neither feeder grade nor promotional grade. As such, a post having no promotional grade but having a feeder grade and vice-versa shall not be treated as 'Isolated Post' for the purposes of ACPs. Above part, the clarification No. 32 further stipulates that where the cadre/ hierarchy is limited to two grade only, such cadre/hierarchy shall not fall in the isolated category as defined at S.N. 31 above.
9. It is also submitted that the Governing Body of the CTSA in its 62nd meeting held on 30.11.2000, accepted ACP Scheme in toto, and accorded approval for giving the benefits of the financial up-gradations under ACP scheme, as contained in the aforesaid OMs to all the employees of the CTSA, and made the same effective w.e.f. 30.11.2000.
10. Learned counsel for the respondent No. 1 & 2 submits that the post of Section Officer working with respondent No. 3 is in fact an isolated post. The respondent No. 3 has treated the post as an isolated post, which is evident upon reading of a communication dated 15th July, 2009, which reads as under :

"I am directed to refer to you're your letter No. 20-16/2007-Sch. 3 dated 22.6.2009 requesting this office to confirm as to whether the post of Section Officer in CTSA is an isolated post or not as per the definition of isolated post given under ACP Scheme.

As per the clarification No. 31 issued by the DoPT vide their OM dated 10.2.2000. "isolated post is a stand alone post,

having neither feeder grade nor promotional grade. As such, a post having no promotional grade, but having a feeder grade and vice versa shall not be treated as isolated post for the purpose of ACPS.” A copy of the DoPT OM dated 10.2.2000 is enclosed herewith.

In terms of the above clarification, the matter has been examined in this office in consultation with the Internal Audit Section of CTSA. Shri M.M.L. Vij, SO was given upgraded pay scale under ACP Scheme with effect from 30.11.2000. As per the prevailing recruitment rules at that time, Section Officer did not have any promotional avenue as the mode of recruitment for the higher post of Under Secretary was deputation. However, the Assistants of CTSA with 5 years regular service was eligible for the post of Section Officer under composite method and if the departmental Assistant is selected, he will be deemed to be promoted. Thus, the post of Section Officer in CTSA had feeder grade.

Therefore, in our view the post of Section Officer in CTSA is not an isolated post.”

11. Mr. Jaswinder Singh, relies on the note of DoPT wherein, the case of the petitioner was considered and as per which, the post of the petitioner was treated as an isolated post. Learned counsel appearing for respondent No. 3 also supports the respondent No. 1 and 2. He has relied upon the Annexure 1 to the ACP scheme i.e. the conditions of grant of benefit under the ACP scheme, more particularly, at serial No. 7. Learned counsels for the respondents submit that since the post of the petitioner is an isolated post, he should be and has been given the next higher standard/common pay scale as communicated in Annexure 2. Counsel for the respondent No. 3 further submits that even without going into the question that whether the post of petitioner is an isolated post or not, petitioner is entitled to be given the benefit

mentioned at serial No. 7 of the conditions for grant of benefits under the ACP scheme. The relevant portion of the Annexure I reads as under :

“7. Financial upgradation under the Scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts without creating new posts for the purpose. However, in case of isolated posts, in the absence of defined hierarchical grades, financial upgradation shall be given by the Ministries/Departments concerned in the immediately next higher (standard/common) pay-scales as indicated in Annexure-II which is in keeping with Part-A of the First Schedule annexed to the Notification dated September 30, 1997 of the Ministry of Finance (Department of Expenditure). For instance, incumbents of isolated posts in the pay-scale S4, as indicated in Annexure-II, will be eligible for the proposed two financial upgradations only to the pay-scales S-5 and S-6. Financial upgradation on a dynamic basis (i.e. without having to create posts in the relevant scales of pay) has been recommended by the Fifth Central Pay Commission only for the incumbents of isolated posts which have no avenues of promotion at all. Since financial upgradations under the Scheme shall be personal to the incumbent of the isolated post, the same shall be filled at its original level (pay-scale) when vacated. Posts which are part of a well-defined cadre shall not qualify for the ACP Scheme on ‘dynamic’ basis. The ACP benefits in their case shall be granted conforming to the existing hierarchical structure only.”

12. We have heard learned counsel for the parties. The short question which arises for our consideration is as to whether the post of Section Officer with respondent No. 3 is an isolated post or not. According to

the petitioner, it is not an isolated post. According to respondent No. 1 and 2 it is an isolated post.

13. It would be useful at this stage to refer to the office memorandum of 10th February, 2000 which deals with certain clarifications on points of doubts and read as under:

*Reference:- Office Memorandum No.35034/1/97-Estt(D) (Vol.IV)
10.2.2000*

<i>S.No.</i>	<i>Point of doubt</i>	<i>Clarification</i>
30.	<i>Whether the benefit of past service will be extended to temporary status employees after their regularisation?</i>	<i>No, the benefit of past service shall not be extended to temporary status employees after their regularisation for the purpose of ACPS.</i>
31.	<i>What is an isolated post for the purpose of the ACP Scheme.</i>	<i>Isolated post is a stand alone post, having neither feeder grade nor promotional grade. As such, a post having no promotional grade but having a feeder grade and vice-versa shall not be treated as isolated post for the purpose of ACPS.</i>
32.	<i>Where the cadres/hierarchy is limited to two grades only, what should be the pay-scale for grant of second upgradation</i>	<i>Such a cadre/hierarchy shall not fall in the isolated category as defined at S.No.31 above. Hence, the standard/common pay-scales mentioned in</i>

	<i>under ACPs?</i>	<i>Annexure-II of the Office Memorandum dated 9.8.1999 shall not be applicable in such cases. Action in such cases may, therefore, be taken as per following clarifications:-</i> <i>(i) If such cadre/hierarchy exists in the Ministry/Department concerned, the second upgradation may be allowed in keeping with the pay-scales of an analogous grade of a cadre/post in the same Ministry/Department. However, if no such grade exists in the Ministry/Department concerned, comparison may be made with an analogous grade available in other Ministries/Departments.</i> <i>(ii) In the case of attached/subordinate offices, the second upgradation under ACPS may be given in keeping with the pay-scale of an analogous grade of a cadre/post of</i>
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		<i>the concerned office. However, if no such cadre/post exists in the concerned office, comparison may be made with an analogous grade available in other attached/subordinate offices of the Ministry/Department concerned.</i>
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14. A reading of the clarification at serial No. 31 which has been extracted herein above would show that an isolated post is a ***stand alone*** post having neither the feeder grade nor the promotional grade. According to Mr. Jaswinder Singh, learned counsel for respondent No. 1, there is no promotional avenue of a Section Officer working in respondent No. 3, as the next higher post to the Section Officer is of an Accounts Officer. While, it is the case of the petitioner that a Section Officer can be considered for the post of an Accounts Officer, he can be considered for the post of 'Under Secretary' also. The relevant recruitment rules of Under Secretary are reproduced below:

<i>Name of the Post (Column 2)</i>	<i>Method of Recruitment (Column 11)</i>	<i>Essential Qualifications, etc. (Column 12)</i>
<i>Under Secretary</i>	<i>Transfer on deputation</i>	<i>Essential Qualifications:</i> <i>1. Officer holding the regular post of Under</i>

		<i>Secretary in the pay scale of Rs.3000-4500 or analogous post in the pay scale of Rs.3000-4500 in Central Govt./Autonomous Bodies</i> <i>Or</i> <i>2. Section Officer or equivalent in the pay scale of Rs.3000-4500 in the Govt./Semi Govt./Public Sector/Autonomous Bodies with 8 years of experience.</i> <i>Or</i> <i>4. 5 years experience in the pay scale of Rs.2200-4000.</i>
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15. At this stage, it would be useful to reproduce the observations made by the Tribunal in para 5 and 5.1 of the impugned judgment:

“5.After hearing the submissions of both sides, we are inclined to agree with the respondents. In our opinion in the Recruitment Rules for the post of Section Officer of CTSA there is no provision for appointment by promotion to the post of Section Officer. In both the methods of recruitment provided for i.e. direct recruitment or composite selection there is provision for Assistants of all Government/Semi

Government/Public Sector/Autonomous Bodies to be considered. Had there been provision for promotion of departmental Assistants this post would not have been thrown upon Assistants of other Bodies. In each of the two methods, the departmental Assistants have also been allowed to participate but the post is not reserved for promotion from amongst them alone. The deeming provision merely states that in case departmental Assistant is so selected, he will be deemed to be promoted. The language of the provision itself is important which states that if a departmental candidate is selected . Hence the respondents are right in saying that the post of Section Officer does not have a feeder grade. Similarly, the post of Under Secretary is to be filled by transfer on deputation as in the Recruitment Rules there is no provision for promotion of a Section Officer of the department to this post. Thus, we hold that the post of Section Officer of CTSA has neither a promotional post nor a feeder post and is therefore is an isolated one. Consequently, the respondents were right in granting the pay scale of Rs.7450-11500 to the applicant as that was the next higher pay scale available as per standard/common pay scales given in the annexure to the ACP Scheme.

5. Counsel for the applicant had also argued that the applicant deserves to get the scale of Under Secretary by making a comparison with analogous post in other Ministries. It is well known that Section Officers in the Ministries are promoted to the level of Under Secretary. Based on the same principle, the applicant should also be given the scale of Under Secretary. In our opinion, this argument is not tenable because the applicant's counsel is going merely by designations of the posts. He has not made out any case of parity between the Section Officer of CTSA and Section Officer of Ministry. Nor has he made out any case for parity of Under Secretary of CTSA and Under Secretary of any Ministry. Such parity can be contemplated by making a comparison between the source of recruitment, the manner of recruitment, the nature of duties and the hierarchy of posts etc. Since no such case has been made out by the applicant, this argument deserves to be rejected."

16. The Tribunal has observed that the post of Section Officer in which the petitioner was appointed in CTSA and had been working, is an isolated post as the post of Section Officer in CTSA is not having the feeder grade and the post of Section Officer is also not a feeder grade for the post of Under Secretary in CTSA. The respondents were right in granting the pay scale of Rs.7450-225-11500 to the petitioner as that was the next higher pay scale available as per the standard/common pay scales given in the Annexure to the ACP scheme.
17. The stand of the petitioner is that since as per the recruitment rules, this post of 'Under Secretary' can be considered on the basis of transfer on deputation, the post of a Section Officer is not an isolated post.
18. In our view, the Tribunal has taken a correct view for the reason that a Section Officer can only be considered for the purpose of transfer on deputation and none of them are a promotional and thus, it leaves no room for doubt that in fact, there are no promotional avenues for the petitioner, this aspect was also considered by the Department. The relevant file reads as under :

"Dy.No.20[5985]/US(D)/2011

Notes from page 44/N onwards explain the case in detail.

2. It is observed that Shri MML Vij was initially appointed as Section Officer in the pay scale of Rs.2000-3500 (revised to Rs.6500-10500 and further revised to Grade Pay of Rs.4600) the Central Tibetan Schools Administration (CTSA), an autonomous body under the control of Ministry of Human Resource Development.

3. *The post of Section Officer in the CTSA does not have any promotional avenue. It is, however, observed from the RRs that the post of Under Secretary is to be filled up on 'transfer on deputation' basis. Hence, this post cannot be treated as a promotional post of Section Officer in the CTSA. Further, the following pay scales in CTSA are available above the scale of Section Officer in 'Non-Teaching pay scale' and 'Teaching pay scale'.*

<i>'Non-Teaching pay scale' (pre-revised)</i>	<i>'Teaching pay scale' (pre-revised)</i>
<i>Accounts Officer- Rs.7450-11500 (revised to GP of Rs.4600)</i>	<i>Vice Principal – Rs. 7500-12000 (revised to GP of Rs.4800)</i>
<i>Dy. Director – Rs.10000-15200 (revised to GP of Rs.6600)</i>	<i>Principal – Rs.10000-15200 (revised to GP of Rs.6600)</i>

4. *As per the ACP Scheme of August, 1999, the benefits of 1st and 2nd financial upgradations have been allowed in the promotional hierarchy w.e.f. (9.8.1999 or on completion of 12 and 24 years of regular service, whichever is later in case the Government employees have not earned any promotion during this period. However, for isolated posts, the benefits of financial upgradations under the ACPS had been allowed in the immediately next higher (standard/common) pay scales as indicated in Annexure-II of ACPS.*

5. *In view of para 3 above, the post of Section Officer in the CTSA is to be treated as an 'isolated post'. Accordingly, the benefit of 1st financial upgradation on completion of 12*

years of regular service would be allowed to Sjhri Vij in the immediately next higher (standard/common) pay scales as indicated in Annexure-II of ACPS i.e. Rs.7450-11500 instead of Rs.10000-152000 as demanded by him.

6. With the above observations, the file may be returned to the referring Department for further necessary action at their end as per the directions of the Hon'ble Tribunal.

(A.K.

Srivastava)

Deputy

Secretary

01.02.2011

19. The scheme by itself in serial No. 7 as extracted in paragraph no. 11 foregoing pertains to the method of granting the financial upgradation to a person, who is placed as the petitioner, which benefit has already been granted to the petitioner and thus, it cannot be said that the case of the petitioner is to be dealt with in a manner otherwise than the way it has been dealt with.
20. We find no infirmity in the order passed by the Tribunal. We find the post of the petitioner to be an isolated post and the respondents have rightly applied the serial No. 7 to Annexure 1 to the ACP scheme i.e. the conditions of grant of benefit under the ACP scheme. The respondents were right in granting the pay scale to the petitioner which was the pay scale of Rs7450-11500..
21. At this stage, Mr. Bareja submits that he would then press the case of petitioner to be dealt with as per serial No. 32 to Annexure 1 to the ACP scheme. We do not find any force in this submission as the serial

No. 32 to Annexure 1 applies to the second upgradation, while the case of the petitioner pertains to first upgradation.

22. Accordingly, in view of above, the writ petition being devoid of merits is hereby dismissed.

G.S.SISTANI
(JUDGE)

I.S. MEHTA
(JUDGE)

AUGUST 22, 2016
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