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

+ **Date of Decision: 11.03.2019**

% W.P.(C) 794/2017

ACHILESH NIGAM AND ORS

..... Petitioner

Through: Mr. Anuj Bhandari with Mr. Abhinav
Srivastava, Advs.

versus

MINISTRY OF LABOUR AND EMPLOYMENT DIRECTORATE
GENERAL OF EMPLOYMENT & TRAINING GOVERNMENT
OF INDIA AND ANR

..... Respondent

Through: Mr. Praveen Kumar Jain with Mr.
Raghav Dhanda, Advs.
Mr. Manish Sharma, SSO, R-2
Mr. Amit Jenewal, ASO, R-1.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J. (ORAL)

1. The petitioners assail the order dated 14.10.2015, passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No. 4620/2011. The Tribunal has, by the impugned order, rejected the said Original Application preferred by the petitioners. The petitioners had preferred the said Original Application to seek the following reliefs:

“(a) Issue directions to the Respondents for placing the Applicants in the upgraded replacement scales of pay in terms of recommendations of the V Central Pay Commission and further direct the Respondent No.1 to take immediate decision on the assurances contained in its impugned letter No.DGE&T-

A-11014/1/2002-Adm.I dated 23.08.2011 for ensuring the Applicants to have appropriate promotional avenues in their service.

(b) Direct the Respondents to include the Applicants in the restructured service constituted by the Respondent No.2 Ministry in terms of Notification dated 12.02.2002 even if it requires relaxing the revised eligibility standards fixed by Respondent No.2 and consider the Applicants eligible to be promoted to the promotional posts from the dates they became eligible for the same on the basis of qualifications as were required prior to Pay Commission's report as other employees limited to the arbitrary number fixed for inclusion in the restructured services from their cadre and who were included in the restructured service through arbitrary demarcation of posts in the Respondent No.1 Ministry.

(c) Direct the respondents to revise the grade of pay of the applicants with retrospective effect and to treat them as promoted to the posts on the basis of their notional seniority of being considered eligible for the posts from such retrospective dates when they could have become eligible if the revised pay in replacement scale would have been accorded to them as per the recommendations of V Central Pay Commission and on the introduction of restructured services in terms of notification dated 12.02.2002.

(d) Direct the respondents to issue necessary instructions in the matter to pay the arrears of restructured pay to the applicants in terms of the dates on which they were eligible to be placed in the grade of restructured pay and notionally eligible for promotions.

(e) To award costs in favour of the applicant. ”

2. The Tribunal rejected the Original Application by holding that it does not wish to interfere in the matter except to the extent that, since the Recruitment Rules (RRs) now stood finalized, the respondents may consider

the request of the petitioners/ applicant in the light of their own letter dated 23.08.2011, which stated that once the RRs are finalized/ approved, the SSS Division may be approached for relaxation etc. While rejecting the claims of the petitioners, the Tribunal observed that the decision taken by the respondent as to how to constitute the SSS, and as to which level of posts were to be included therein, was within their exclusive domain and there was no scope for the Tribunal to intervene in such policy decisions.

3. The petitioners were recruited as Junior Computers/ Comptometer Operators in the Director General of Employment and Training (hereinafter referred to as DGET), Ministry of Labour between 1997 and 2000. In the year 2002, respondent No. 2 formed the Subordinate Statistical Service (SSS) and notified the SSS (Group C) Rules 2002 vide notification dated 12.02.2002. The said service was constituted by pooling in the concerned posts in various Ministries of the Government of India, handling statistical work.

4. When the petitioners had joined the service, the hierarchy as it existed was as follows:

- (i) Junior Computers/ Comptometer.
- (ii) Junior Investigator (to be filled 100 per cent by promotion).
- (iii) Senior Investigator (to be filled 50 per cent by promotion and 50 per cent by direct recruitment).
- (iv) Research Officer (to be filled 50 per cent by promotion and 50 per cent by direct recruitment).

5. Pursuant to the constitution of SSS, the promotional posts of Junior Investigator and Senior Investigator in the DGET were included in the SSS, whereas the posts held by the petitioners continued to remain in the DGET. The petitioners, therefore, continued to be governed by the RRs of the DGET, which lay down the eligibility criteria, including the educational qualifications for consideration for promotion to the promotional posts of Junior and Senior Investigator. However, since the aforesaid promotional posts stood transferred to SSS, while the petitioners continued to hold the posts of Junior Computers/ Comptometer Operators in the Ministry concerned, they lost out on the opportunity of being considered for promotion. The petitioners being thus aggrieved, approached the Tribunal seeking the aforesaid reliefs, which have been rejected by the Tribunal.

6. It appears that the reason for the petitioners not being sent to the Feeder Cadre of the SSS was that the pay scales of the petitioners were not upgraded by the Parent Department i.e. DGET and, therefore, they were not eligible for being included in SSS. The Parent Department DGET refused to upgrade their pay scales, on account of financial considerations. The result of the aforesaid situation is that the petitioners have continued to stagnate as Junior Computers/ Comptometer Operators in the DGET, Ministry of Labour, since their appointment between the years 1997 and 2000. Thus, they have not been able to earn any promotion despite the fact that the RRs under which they were recruited, which specifically provide for promotion as Junior Investigator and Senior Investigator, continue to remain in force even after the creation of the SSS.

7. In answer to the grievance raised by the petitioner, the submission of the respondents is that the petitioners are being granted the benefit of MACP Scheme in lieu of the promotion, to which they would have been entitled under the relevant RRs of DGET.

8. In our view, the grant of benefit under the MACP Scheme can not be considered as a fair substitute when one views the fact that the RRs providing for promotional avenues continue to remain in force, and they are being denied promotional avenues only on account of transfer of the posts of Junior Investigator and Senior Investigator to the SSS. It is not that when the petitioners were recruited, they joined on isolated posts. If that had been the case, they would not have had any prospects for promotion, and they would not have had a grievance. In the present case, after the petitioner had joined service of DGET, the respondents, at the time of creating the SSS, have taken away all the promotional posts in the hierarchy in the rank of Junior Investigator and Senior Investigator by transferring them to SSS, leaving the petitioners high and dry.

9. The grant of benefit under the MACP does not entail the grant of the pay scale associated with the promotional posts. It only entails the grant of higher grade pay, which results in pay which is generally much lower than the pay scale associated with the higher post. The petitioners, in the present case, are being denied the opportunity to be promoted as Junior Investigator and Senior Investigator, even though the said promotional avenues continue to exist in the RRs of DGET. The respondents chose to transfer all these promotional posts to SSS while ignoring the interest of this small Cadre of

Statistical Officers within the Ministry. As per the own stand of the respondents, this Cadre of Junior Computers/ Comptometer is a dying Cadre and the problem of stagnation being faced by them is, therefore, only of a temporary nature.

10. The situation arising, in the present case, is rather peculiar and to remedy the same, we are inclined to innovate, and it would only be fair and just, that the petitioners are granted the pay scales associated with the promotional posts of Junior Investigator and Senior Investigator by using the parameters prescribed in the Assured Career Progress (ACP) Scheme, as the case may be, subject to, of course, to their meeting the norms laid down in the RRs of DGET, which admittedly continue to be in force.

11. We dispose of this petition in the aforesaid terms while making it clear that the arrangement worked out is on equitable considerations and in the peculiar facts and circumstances of the case, and the same shall not be treated as a binding precedent. The respondent should hold DPCs for consideration of the petitioners for promotion to the posts of Junior Investigator and Senior Investigator in the above terms & grant them all consequential monetary benefits.

12. The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J.

REKHA PALLI, J.

MARCH 11, 2019 *N.Khanna*