



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

% *Date of decision: 17th October, 2023*

(9) + W.P.(C) 5597/2015 & CM Appls. 10062/2015, 48228/2018

UNION OF INDIA & ORS

..... Petitioners

Through: Mr. Rajeev Sharma, Sr. Adv. with
Ms. Radha Lakshmi R., Mr. Saket
Chandra, Mr. Sahil Bhalaik,
Mr. Siddharth Anil Khanna,
Mr. Uddyam Mukherjee and
Mr. Swapnil Pattnayak, Advs. for
UOI

versus

RISHI RAJ & ORS.

..... Respondents

Through: Mr. M.K. Bhardwaj, Mrs. Priyanka
M. Bhardwaj, Mr. Arun Prakash and
Mr. Mana Mugesh Kannan H., Advs.

Mr. Manish K. Bishnoi, Mr. Nirmal
Prasad, Ms. Palavi Singh and
Mr. Hitesh Lodwal, Advs.

Mr. Harshit Anand, Adv. for
Mr. Shadan Farasat, ASC (GNCTD)
for R-1 to 8, 11, 13 and 17

AND

(10) + W.P.(C) 10215/2015 & CM Appls. 25305/2015, 25308/2015,
13408/2016

UNION OF INDIA & ORS

..... Petitioners



Through: Mr. Rajeev Sharma, Sr. Adv. with
Ms. Radha Lakshmi R., Mr. Saket
Chandra, Mr. Sahil Bhalaik,
Mr. Siddharth Anil Khanna,
Mr. Uddyam Mukherjee and
Mr. Swapnil Pattnayak, Adv. for
UOI

versus

JAGAT SINGH & ORS

..... Respondents

Through: Mr. Harshit Anand, Adv. for
Mr. Shadan Farasat, ASC (GNCTD)
for R-1 to 8, 11, 13 and 17

AND

(11)+ W.P.(C) 10218/2015 & CM APPL. 25318/2015

UNION OF INDIA & ORS

..... Petitioners

Through: Mr. Rajeev Sharma, Sr. Adv. with
Ms. Radha Lakshmi R., Mr. Saket
Chandra, Mr. Sahil Bhalaik,
Mr. Siddharth Anil Khanna,
Mr. Uddyam Mukherjee and
Mr. Swapnil Pattnayak, Adv. for
UOI

versus

ASSOCIATION OF RADIO & TELEVISION ENGINEERING
EMPLOYEES & ORS

..... Respondents

Through Mr. Manish K. Bishnoi, Mr. Nirmal
Prasad, Ms. Palavi Singh and
Mr. Hitesh Lodwal, Adv.
Mr. D.P. Sharma, Adv. for R-2



Mr. Harshit Anand, Adv. for
Mr. Shadan Farasat, ASC (GNCTD)
for R-1 to 8, 11, 13 and 17

AND

(12)+ W.P.(C) 8735/2019 & CM APPL. 41238/2022

HOOBRAJ SINGH THAKUR & ORS. Petitioners
Through: Dr. Ashwani Bhardwaj, Adv.

Versus

AJAY MITTAL & ORS. Respondents
Through: Mr. Harshit Anand, Adv. for
Mr. Shadan Farasat, ASC (GNCTD)
for R-1 to 8, 11, 13 and 17
Mr. Jitesh Vikram Srivastava, Sr.
Panel Counsel with Mr. P.V.
Srivastava, Adv. for UOI with
Mr. Jitendra Kumar Tripathi, GP

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

1. These four petitions have been filed by the petitioners namely Union of India and others in [W.P.(C) Nos.5597/2015, 10215/2015 & 10218/2015] and Hoobraj Singh Thakur & Ors. in [W.P.(C) No.8735/2019]. The Union of India and others have challenged the order dated April 03, 2014 in OA 1949/2012, order dated September 26, 2014 in OA 3474/2014 and order dated October 10, 2014 in OA No. 3607/2014 ('OAs', for short). Whereas, Hoobraj Singh Thakur and



others have challenged the judgment and order dated January 18, 2019 in C.P. No. 390/2017 in OA 3394/2016.

2. The challenge by the Union of India in the aforesaid three writ petitions being W.P.(C) Nos.5597/2015, 10215/2015 & 10218/2015 is primarily with regard to the grant of scale of ₹4500-7000/- as a first financial upgradation, which is the scale of Technician, to the respondents in the said writ petitions. The writ petition being W.P.(C) No.8735/2019 has been filed by Hoobraj Singh Thakur and others, challenging the dismissal of the contempt petition being C.P. No.390/2017, by the Tribunal which was filed on the ground that the respondents in the said writ petition have violated the order of the Tribunal dated October 04, 2016, passed in O.A. 3394/2016 in favour of Hoobraj Singh Thakur and others.

3. The brief facts in writ petitions being W.P.(C) Nos.5597/2015, 10215/2015 & 10218/2015 are, that the respondents herein had approached the Tribunal by stating that they work as Helpers in the Prasar Bharti (Doordarshan / All India Radio) and as such entitled to first financial upgradation under the ACP Scheme in the pay scale of ₹4500-7000/-, which is the scale of Technician and not in the pay scale of ₹3050-5490/-, which is the pay scale of LDC, which has been granted by the petitioners herein to them. The Tribunal has allowed the OAs by *inter-alia* holding that as per the Recruitment Rules of the post of LDC as well as the post of Technician, the Helpers are eligible to compete for promotion in limited departmental examination for both the posts i.e., LDC as well as Technician but the post of LDC is not exclusively meant for Helpers and it is open to all Group-D staff. On



the other hand, the post of Technician is not open under promotion quota to all Group-D staff, but only for Helpers. By holding so, the Tribunal rejected the contention of the petitioners herein that the post of Technician is not a hierarchical post of Helper. This ratio of the Tribunal as laid down in O.A. No. 1949/2012 is the subject matter of challenge in W.P.(C) No. 5597/2015, which is the lead matter before us, inasmuch as the order passed by the Tribunal in the aforesaid O.A. has been followed by the Tribunal in O.A. being 3474/2014 and 3607/2014 which are the subject matter of challenge in the other two writ petitions being W.P.(C) 10215/2015 and 10218/2015. The relevant paragraphs being 3.2, 3.3 and 4 of the order dated April 03, 2014, passed in O.A. 1949/2012 is reproduced as under:-

“3.2 We are conscious of the fact that AGP Scheme has been introduced to do away with stagnation, which may result on account of non-availability of promotional posts. One of the conditions for grant of ACP benefit is that the person being given this benefit is otherwise eligible for promotion. In the instant case we notice that while the benefit of financial upgradation under the ACP Scheme is to be given after 12 years, the requirement of promotion to the grade of Technician is 11 years of service. Thus, any helper being granted ACP benefit after 121 years of service would also have requisite service for promotion to the post of Technician. From this angle also, there is no hindrance in granting Technician’s grade as ACP.

3.3 The applicants have also prayed that the respondents be directed to designate them as Broadcast Assistants and give oil consequential benefits from the due date. They have stated that a Cadre Review Committee had acknowledged the fact that promotional prospects of helper were very bad and had recommended that this post be re-designated as Broadcast



Assistant with PB-I with grade pay of Rs.2800. However, the respondents have not implemented, this recommendation so far. In reply the respondents have stated that the recommendations of Cadre Review Committee have still not been accepted by the department. Under these circumstances, it would suffice for us to direct the department to take appropriate decision in the matter expeditiously.

4. On the basis of above analysis, we allow this O.A. and direct the respondents to grant the scale of Technician i.e. ₹4500-7000/- to the applicants from the due date. This will be done within a period of eight weeks from the date of receipt of a certified copy of this order. The applicants will also be entitled for grant of arrears as a result of re-fixation of their pay. The respondents are also directed to take a decision on the recommendations of cadre review Committee expeditiously, in so far as the applicants are concerned. No costs."

4. Since a common issue arises in all the writ petitions, we have already given the facts above, which are relevant to decide the said issue.

5. Mr. Rajeev Sharma, learned Senior Counsel appearing for the petitioners in writ petitions being W.P.(C) Nos.5597/2015, 10215/2015 & 10218/2015 would submit that the Tribunal has erroneously passed the order directing the petitioners to grant ACP benefits to the respondents on the basis of a promotional pay scale applicable to a selection post as against the pay scale applicable to the post to be filled by seniority. According to him, there is an apparent error on the face of the order of the Tribunal, inasmuch as, where two promotional avenues are available from a post, the next post in hierarchy would be the one to which the promotion can be claimed as a matter of right based on



seniority and not the scale attached to a post to which promotion can be claimed only by clearance of an examination.

6. He submits that the Tribunal has not considered the fact that giving an upgradation to the pay scale of Technician to Helpers under the ACP Scheme is in fact against the terms of the ACP Scheme, which contemplates financial upgradation to the next post in hierarchy. The post of Technician is not the next post in hierarchy for a Helper but is in fact several posts higher. The next post in hierarchy for a Helper is the post of LDC since Helpers are eligible to be promoted to the post of LDC in regular course without clearing any examination as per the Recruitment Rules. He has also relied upon the instructions issued by the DoPT on July 18, 2001, which makes it clear that if for promotion an additional qualification is required, the same would have to be met even for consideration for grant of ACP benefit. He submits, the order of the Tribunal, directing grant of ACP benefit to the respondents even when they have not appeared and cleared the examination, is untenable. In support of his submissions, Mr. Sharma has drawn our attention to the Rules governing the promotion to the post of LDC and also Technician. He has also drawn our attention to the Office Memorandum dated February 10, 2000 of the DoPT.

7. On the other hand, Mr. M.K. Bhardwaj, Advocate, Mr. Harshit Anand, Advocate and Mr. Manish K. Bishnoi, Advocate, appearing for the respondents herein in support of their contentions would reiterate the submissions as were advanced before the Tribunal, inasmuch as the post of LDC though, filled on seniority basis but that is with regard to the persons holding Group-D post and in that sense it is not only



confined to Helpers but persons working on other Group-D post. However, insofar as the Rules governing the post of Technician is concerned, the same is filled through the process of promotion, which is confined to Helpers only.

8. That apart, they have also relied upon the judgment of the Supreme Court in the case of *Amresh Kumar Singh and Ors. v. The State of Bihar and Ors.*, MANU/SC/0462/2023, wherein the Supreme Court has clearly held that the purpose of grant of ACP is only to remove stagnation and as such the law being no more *res-integra*, the order of the Tribunal need to be upheld.

9. Having heard the learned counsel for the parties, we agree with the submissions made by Mr. Bhardwaj, Mr. Bishnoi and Mr. Anand, more specifically in view of the Rules stipulated for the post of LDC and Technician, which we reproduce as under, perusal of which reveal that the post of LDC has a larger zone of consideration, wherein, any employee working in Group-D is eligible for promotion to the said post.

"RECRUITMENT RULES FOR THE POST OF LDC

Name of the Post	Number of post	Classification	Scale of Pay	Whether Selection post or non selection post	Whether benefit of added years of service admissible under rule 30 of the Central Civil Services (Pension) Rules 1972.
1. Lower division Clerk/ Teleprinter Operator/ Telephones Attendant/ Tabulator Clerk/ Hindi Language Typist.	2. 2286*	3. General Central Service Group "C" Non-Gazetted Non-Ministerial	4. Rs.950-20-1150- EB-25-1500.	5. Non-Selection	6. No
*Subject to variation dependent upon work load.					



Method of recruitment Whether by direct recruitment or by promotion, or by deputation / transfer and percentage of the vacancies to be filled by various methods.	In case of recruitment by promotion/deputation/ transfer, grades from which promotion/deputation transfer to be made.	If a Departmental promotion Committee exists, what is its composition.	Circumstances in which Union Public Service Commission is to be consulted in making recruitment.
11.	12.	13.	14.
A. 90% by direct recruitment through staff Selection commission;	Promotion to the 5% vacancies on the basis of seniority subject to the rejection of the unit.	Departmental promotion Committee + (if considering promotion/confirmation).	
B. 5% by promotion on the basis of seniority subject to the rejection of the unit;	From amongst Group 'D' employees of all India Radio/ Doordarshan having nine years regular service in Group 'D' posts and	1. Senior Head.....Chairman 2. Assistant Station director/ Assistant Station Engineer/ Programme Executive Assistant Engineer..... Member 3. Administrative Officer..... Member	
C. 5% by promotion on the basis of limited departmental competitive examination.	(ii) Possessing the minimum qualifications prescribed in column 4.		
Note: The 10% quota (5+5) at B and C above shall not be carried forward to the next recruitment years.	B. Promotion to the 5% vacancies on the basis of limited departmental competitive examination: From amongst Group 'D'		

RECRUITMENT RULES FOR THE POST OF TECHNICIAN

SCHEDULE

Sl. No.	Name of post	Number of posts	Classification	Scale of pay	Whether selection or non-selection posts	Whether benefit for added years of services admissible under rule 30 of Central Civil Services (Pension) Rules 1972
1	2	3	4	5	6	7
3.	Technician.	1440* (1995) *subject to variation dependent on work load.	General Central Services Group 'C' Non-gazetted Non-Ministerial.	Rs. 1200-30-1440-FB-40-1800.	Non-Selection	Not-applicable



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8	THE GAZETTE OF INDIA: EXTRAORDINARY		[PART II—SEC. 3(1)]
12	13	14	15
% by direct recruitment. 40% by promotion	Helpers working in All India Radio and Doordarshan. (a) who have completed 11 years of service as Helper on the 1st July of the year and (b) Helpers who have passed the Departmental Competitive Examination with 50% minimum marks in each paper.	Head of Engineering Division—Chairman. An officer of the station/office familiar with the work of the post for which recruitment is being made—Member. An officer of an outside Department of appropriate level having requisite technical competence—Member.	Not applicable.

”

10. Insofar as, the post of Technician is concerned, the same is confined to Helpers and it is not the case of the petitioners that the respondents are not working as Helpers. If that be so, the petitioners shall be entitled to first financial upgradation to the scale of ₹4500-7000/-, as has rightly been granted by the Tribunal.

11. We agree with the reliance placed by Mr. Bhardwaj, Mr. Bishnoi and Mr. Anand on the judgment of the Supreme Court in the case of **Amresh Kumar Singh (supra)** wherein the Supreme Court in paragraphs 14 to 17 has held as under.

“14. The object and purpose of ACP/MACP Scheme has been reiterated by this Court in Union of India and Ors. v. C.R. Madhava Murthy and Anr. MANU/SC/0426/2022 : (2022) 6 SCC 183, as one to relieve the frustration on account of stagnation and it does not involve actual grant of promotional post but merely monetary benefits in the form of next higher grade subject to fulfilment of qualifications and eligibility criteria.

15. In sum and substance, both ACP and MACP Schemes are schemes devised with the object of ensuring that the employees who are unable to avail of adequate promotional opportunities, get some relief in the form of financial benefits. Accordingly, the schemes provide for regular financial upgradation on completion of 12-24 years and 10-20-30



years of service without promotion. They are incentive schemes for the employees who complete a particular period of service but without getting promotion for lack of promotional avenues. The effect of the schemes must be judged keeping in view the object and the purport of the scheme.

16. In Union of India and Anr. v. G. Rajanna and Ors. reported in MANU/SC/8202/2008 : (2008) 14 SCC 721, the three-Judges Bench of this Court held that in situ promotions are made to remove stagnation of grade C and grade D employees by giving them certain monetary benefits.

17. It was further observed that fulfilment of educational qualifications prescribed under the recruitment Rules for the purposes of promotion are not necessary for non-functional in situ promotion. In other words, educational qualification required for the purposes of promotion is not necessary for the grant of in situ promotion, i.e., only for extending the monetary benefit where there are no promotional avenues and the employees are likely to be stagnated.

(emphasis supplied)

12. In view of the above, we are of the view, that the orders of the Tribunal cannot be faulted and the petitions being without any merit, are dismissed.

13. Insofar as the writ petition being W.P.(C) No. 8735/2019 is concerned, as stated above, the same has been filed by the petitioners therein challenging the order of the Tribunal in C.P. No. 390/2017 in OA No.3394/2016. The contempt petition was filed alleging non-compliance of order dated October 04, 2016, passed by the Tribunal in OA 3394/2016 in favour of the petitioners therein. Vide order dated October 04, 2016, the Tribunal had in paragraphs 2 and 3 directed as under:-



“2. Learned counsel for the applicant argued that this case was similar to OA No. 1949/2012 which was decided by a Co-ordinate Bench of this Tribunal on 03.04.2014. The aforesaid judgment was also followed in OA No. 3607/2014 decided on 10.10.2014. Learned counsel stated that the applicants would be satisfied in case directions were given to the respondents to examine the case of the applicants and extend to them the same benefits.

3. In view of the limited prayer made by the applicants, we dispose of this OA at admission stage itself without issuing notice to the respondents and without going into the merits of the case with a direction to them to examine the case of the applicants herein in the light of the judgment in and OA No. 3607/2014. In case it is found that the case of the applicants is similar to these aforementioned judgments, then they be extended the same benefits as were granted to the applicants therein. The respondents shall decide the case of the applicants within a period of sixty days from the date of receipt of a certified copy of this order and they shall communicate their decision to the applicants by means of a reasoned and speaking order. No costs.”

14. In compliance with the order of the Tribunal dated October 04, 2016, the petitioners in the above three writ petitions being W.P.(C) Nos.5597/2015, 10215/2015 & 10218/2015 passed the speaking order, which forms part of the impugned order passed in CP 390/2017 and has been reproduced as under for ready reference:-

“3. In compliance of the aforesaid orders, the respondents issued the Speaking Order dated 20.12.2016 and the relevant part of the same reads as under:-

“WHEREAS, Shri Hoobraj Singh Thakur & 62 ors. filed OA No.3394/2016 Vs. UOI & 2 ors. before the



Hon'ble CAT, New Delhi seeking financial upgradation under ACP in the pay scale of Rs. 4500-7000 for the applicants as 1st ACP and 2nd ACP in the next pay scale as per their hierarchy. The Hon'ble CAT, Principal Bench, New Delhi passed an order on 04.10.2016 with the direction to the respondents to examine the case of the applicants in the light of the judgment in OA No. 1949/2012 and OA No. 3607/2014. In case, it is found that the case of the applicants is similar to these aforementioned judgments, then they be extended the same benefits as were granted to the applicants therein.

AND WHEREAS, some similarly situated persons had filed OA No. 1949/2012 and 3607/2014 for similar relief, which was disposed of by the Hon'ble CAT vide their order dated 03.04.2014 and 10.10.2014 respectively, inter-alia, directing the respondents to grant the scale of Technician, i.e. 4500-7000 to the applicants therein from the due date as ACP benefits.

AND WHEREAS, as per Recruitment rules Promotional avenue for the post of Helper, erstwhile Group 'D' post to Lower Division Clerk (LDC) & Technical is as under:

(A) 5% of the post of LDC are being filled by promotion on the basis of seniority subject to the rejection of the unfit (i) from amongst Group 'D' employees of All India Radio/ Doordarshan having nine years regular service in Group 'D' posts and (ii) possessing the educational qualifications for the post.

(B) 5% of the post of LDC are being filled up by promotion on the basis of Limited Departmental Competitive Examinations (LDCE) amongst Group 'D' employee of AIR & DDn.



(C) 5% of the post of Technician are being filled by promotion on the basis of Limited Departmental Competitive Examination from Helper.

Further, DG:AIR, being Cadre Controlling Authority of Engineering Staffs vide its letter dated 06.08.2014 informed that Helpers being erstwhile Gr. D employee are eligible for promotion as LDC and Technician. For promotion on the basis of seniority subject to the rejection of the unfit is only in the post of LDC. Therefore their next promotional post is LDC and not Technician since they can be promoted to the post of Technician only if they possess desired educational qualification required for the post of Technician and qualify the Limited Departmental Competitive Examination (LDCE) and not on seniority basis. In addition, Helpers including other certain posts who were granted upgraded pay scale by M/o I & B No.310/173/97-B (D) dated 25.02.1999 have not been granted/ approved for extending the benefit of ACP by the Ministry of I & B so far. Therefore, extending the benefit as per verdict of Hon'ble CAT, PB, New Delhi to the applicants of OA No. 1949/2012 appears contrary to the relevant provision of DOP&T on ACP instructions issued from time to time. Further, DG: DD was advised to challenge the Hon'ble CAT's order.

AND WHEREAS, DG: Doordarshan had filed Writ Petition no.5597/2015 before the Hon'ble High Court, New Delhi challenging order dated 03.04.2014 passed by the Hon'ble CAT, New Delhi. The Hon'ble High Court vide its order dated 27.05.2015 gave following interim relief, "In the meanwhile, save and except to the extent that partial implementation of the order has already taken place, without disturbing the same, rest of the implementation of the order shall remain stayed till further order."



NOW THEREFORE, in view of the above, the Writ Petition is still pending for adjudication before the Hon'ble High Court and sub-judice, the competent authority has come to the conclusion that further necessary action in the matter i.e. financial upgradation under ACP in the pay scale of Rs.4500-7000 to the applicants working as Helpers would be taken up after final verdict in the case, which is hereby communicated to all applicants. This issues with the approval of DG: DD."

15. The submission of Dr. Ashwani Bhardwaj before the Tribunal was that, as the respondents herein have complied with the order of the Tribunal in OA No. 1949/2012, which became the subject matter of W.P.(C) No.5597/2015 i.e. *Union of India and Ors. v. Rishi Raj* (lead matter before us) and the order passed by the Tribunal in the aforesaid OA has not been stayed by this Court and also when the said order has already been implemented partially, the action of the respondents herein in not granting the same benefit to the petitioners herein is in violation of the order of the Tribunal.

16. Suffice to state, the Tribunal while closing the petition, has in paragraph 8, stated as under:-

"8. We cannot agree with the submission of the learned counsel for the petitioners. Admittedly, the petitioners sought extension of benefit of the judgment in Rishi Raj and Others case. The Hon'ble High Court in W.P. (C) No.5597/2015 filed against the judgment in Rishi Raj and Other, after noticing that the orders in the said OA were complied with to some extent, saved that part and stayed the implementation of the remaining order. That means, once the order on which the petitioners are placing reliance is stayed by the Hon'ble High Court, the action of the respondents cannot be said to be a willful



disobedience. It is not in dispute that the said stay is still in operation and the said W.P. is still pending.”

17. It may be true that the Tribunal has said that the writ petition being W.P.(C) Nos.5597/2015, is pending consideration before this Court and the implementation of the remaining of the order passed by the Tribunal has been stayed by this Court, as we have dismissed the said writ petitions and, it is the conceded case that the petitioners herein are similarly placed like the respondents in the aforesaid three writ petitions, therefore, as corollary, they should also get the same benefit. We instead of relegating the petitioners herein to the Tribunal for filing fresh OA, allow, W.P.(C) 8735/2019 by setting aside the order dated January 18, 2019 and directing that the petitioners, in this writ petition, shall be entitled to same benefit, as the respondents in the three petitions have got.

18. As we have dismissed the writ petitions being W.P.(C) Nos.5597/2015, 10215/2015 & 10218/2015, the benefits arising from the order of the Tribunal passed in OA 1949/2012, dated April 03, 2014, if not been granted to the respondents in the aforesaid three writ petitions, the same shall be granted from the due date, in terms of the orders of the Tribunal. The benefits shall be released in terms of this order within three months from today. No costs.

CM APPL. 48228/2018 in W.P.(C) 5597/2015

This is an application filed by some of the respondents seeking a direction to the petitioners herein to release the pension and other pensionary benefits of the respondents as per their last pay drawn. We say nothing on the prayer made, as the same doesn't arise from the



issue, which arose for consideration before the Tribunal. If any grievance of the respondents subsists, they are within their rights to seek appropriate remedy.

CM APPL. 25308/2015 in W.P.(C) 10215/2015

This is an application filed by the petitioners herein, to place certain additional documents on record.

For the reasons stated in the application, the same is allowed.

Application is disposed of.

CM APPL. 10062/2015 in W.P.(C) 5597/2015

CM APPLs. 25305/2015 & 13408/2016 in W.P.(C) 10215/2015

CM APPL. 25318/2015 in W.P.(C) 10218/2015

CM APPL. 41238/2022 in W.P.(C) 8735/2019

Dismissed as infructuous.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

OCTOBER 17, 2023/ak