



2024:DHC:7291-DB



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

% **Decision delivered on: 19.09.2024**

+ **W.P.(C) 6587/2015 & CM APPL. 38139/2022**

UNION OF INDIA AND ORS.

.....Petitioners

Through: Mr. Subhash Tanwar, CGSC with
Mr. Sandeep Mishra and Mr.
Ashish Choudhary, Advocates for
UOI.
Mr. Sushil, Senior Panel Counsel
for UOI.

versus

SUBHASH KUMAR GHOSH AND ORS.

.....Respondents

Through: Ms. Sumita Hazarika and Ms.
Masi Mehta, Advocates.

+ **W.P.(C) 4948/2016**

UNION OF INDIA & ORS

.....Petitioners

Through: Mr. Subhash Tanwar, CGSC with
Mr. Sandeep Mishra and Mr.
Ashish Choudhary, Advocates.

versus

ARUP KUMAR PATRA & ANR

.....Respondents

Through: Appearance not given.

W.P.(C) 6587/2015 & Ors.

Page 1 of 10 pages



+ **W.P.(C) 3787/2018**

UNION OF INDIA & ORS

.....Petitioners

Through: Mr. Subhash Tanwar, CGSC with
Mr. Sandeep Mishra and Mr.
Ashish Choudhary, Advocates.

versus

RANJAN BHAR & ORS

.....Respondents

Through: Ms. Sumita Hazarika and Ms.
Mansi Mehta, Advocates.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T (O R A L)

1. These three writ petitions have been filed under Articles 226 & 227 of the Constitution of India to assail the orders dated 15.10.2014 (*in OA No. 3606/2013*), 20.11.2014 (*in OA No.4097/2014*) and 15.09.2017 (*in OA No. 3167/2015*) passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as “learned Tribunal”) and the same are taken up together, the factual and legal matrix being similar. The petitioners are seeking the following reliefs in their respective writ petitions.

W.P.(C) 6587/2015

“(a) Issue a writ of certiorari or any other appropriate writ, calling for the records of the order dated 15.10.2014 passed by the Ld. Central Administrative Tribunal, Principal Bench, New Delhi in OA No.3606/2013.



(b) Pass an order to set aside the judgement dated 15.10.2014 passed by the Ld. CAT/PB ,New Delhi in OA No.3606/2013.

W.P.(C) 4948/2016

(a) Issue a writ of certiorari or any other appropriate writ, calling for the records of the order dated 20.11.2014 passed by the Ld. Central Administrative Tribunal, Principal Bench, New Delhi in OA No.4097/2014;

(b) Pass an order to set aside the judgement dated 20.11.2014 passed by the Ld. CAT/PB, New Delhi in OA No.4097/2014.

W.P.(C) 3787/2018

a) Issue the writ of Certiorari or any other appropriate writ or order to declare illegal and set aside the order dated 15.09.2017 In O.A. No. 3167/2015 passed by Central Administrative Tribunal Principal Bench, New Delhi.”

2. Since the relief sought same and similar, therefore, with the consent of the parties, the writ petitions mentioned above are taken up for final disposal.

3. The respondents joined the Railway Accounts Department as Clerk Grade-II during the period 1980 to 1982. They were promoted as Clerk Grade-I after three years of service. In case of directly recruited Clerk Grade-I, the joining date was 1983. In 1987 pursuant to the recommendations of the IV Central Pay Commission, the Accounts Cadre was restructured and 80% of the posts of Clerk Grade-I were re-designated as Accounts Assistants and given the pay scale of Rs.1400-2600. The remaining posts continued in the pay scale of Rs.1200-2040 and were re-designated as Junior Accounts Assistants. The respondents were placed in the pay scale of Rs.1400-2600 as Accounts Assistants



w.e.f. 01.04.1987.

4. The grievance of the respondents before the learned Tribunal was that their placement was being treated as promotion by the petitioners herein for the purpose of ACP and MACP benefits. According to them, that was only a financial up-gradation pursuant to the recommendations of IV CPC and should have been ignored in terms of Clause 5.1 of the OM dated August 1999 by which the ACP scheme was introduced. The said OM was further clarified by the Government of India by OM No. 35034/1/97-Estt(D) dated 10.02.2000 of Department of Personnel and Training (hereinafter referred to as “DoPT”) in which it was held that since the benefits of upgradation under ACP Scheme were to be allowed in the existing hierarchy, the mobility under ACP Scheme shall be in the hierarchy existing after merger of pay scales by ignoring the promotion. Thus, an employee who got promoted from lower pay scale to higher pay scale as a result of promotion before merger of pay scales shall be entitled for upgradation under the ACP Scheme ignoring the said promotion, as otherwise they would be placed in disadvantageous position *vis-a-vis* the fresh entrants in the merged grade.

5. The further case of the respondents before the learned Tribunal was that some similarly placed Railway Accounts Assistants had filed OA 3335/2007 before the Madras Bench of the learned Tribunal. The said OA was decided on 26.08.2008, whereby it was held that placement of Clerks Grade-I in the pay scale of Rs.1400-2600 in 1987 was not



promotion but only a result of restructuring of the cadre.

6. In view of the above, the learned Tribunal held that the respondents therein were entitled to financial up-gradation under the ACP Scheme after ignoring the said placement. The said order of the learned Tribunal was challenged in the High Court of Madras in *Union of India versus V. Venkataraman* by way of Writ Petition No.21112/2009. However, the said writ petition was dismissed in October 2010. The said matter was taken up by the petitioners before the Hon'ble Supreme Court of India by way of SLP (CC) No. 9422/2011, however, the said SLP was also dismissed vide order dated 04.01.2012. Consequently, the order of the learned Tribunal attained finality.

7. Learned counsel for the respondents before the learned Tribunal contended that a similar case was decided by High Court of Mumbai in Writ Petition No.559/2008 and vide order dated 29.09.2009 held that restructuring of the post of Clerk Grade-I in the railways could not be treated as promotion. The respondents had further pleaded that their case was similar to the above-mentioned cases and they deserved the same relief as was allowed to the applicants therein.

8. The case of the petitioners before the learned Tribunal was that ACP and MACP Schemes were introduced to deal with the problem of hardship faced by the employees due to stagnation. Their contention was that DoP&T as Nodal Department of the Government of ACP & MACP Schemes have clarified that every financial upgradation has to be



counted as upgradation and offset against the financial upgradation under the MACP Scheme.

9. Further, the DoP&T vide Clarification No.35 regarding the MACP Scheme issued vide OM No.35034/1/97-Estt(D) dated 18.07.2001 had clarified that where all the posts were placed in a higher scale of pay with or without a change in the designation, without requirement of any new qualification for holding the post in higher grade, not specified in the Recruitment Rules for the existing posts and without involving any change in responsibilities and duties this placement of all the incumbents against such upgraded posts was not to be treated as promotion-upgradation. However, in the case before the learned Tribunal, only 80% of the posts were placed in the higher pay scale of Rs.1400-2600 and 20% posts remained in the pay scale of Rs.1200-2050. These posts were not abolished but became feeder posts for promotion to the pay scale of Rs.1400-2600. Those who had completed three years of service were eligible for such promotion. There was also a requirement of passing the departmental examination. Moreover, when the respondents were placed in the pay scale of Rs.1400-2600, they were allowed benefit of pay fixation under FR-22(C) which was admissible only in the case of promotion to posts having higher duties and responsibilities.

10. Accordingly, the learned Tribunal was of the opinion that the case of the respondents was not covered under Clarification 35 of DoP&T but was squarely covered by the Board's Instructions which categorically



stipulated that when only a part of the posts were placed in higher scale and rest were retained in existing scale then such an exercise involved creation of another grade in the hierarchy requiring framing of separate Recruitment Rules for the upgraded posts. The placement of existing incumbents on upgraded posts would also be treated as promotion/upgradation and offset against entitlement under the ACP Scheme.

11. Learned counsel for the petitioners in support of his contention relied upon the judgment passed by High Court of Madras in the case of ***All India Postal Accounts Employees Association vs. Union of India & Ors.***, decided on 24.02.2017 wherein High Court of Madras observed and held as under:

“2. The writ petitioners herein, have approached the learned Tribunal, seeking the following relief:

“To call for the records pertaining to the order of the 3rd respondent which is made in No.33(1)/09/PA-Admn.1/KWII/137 dated 20.6.2012 and set aside the same and consequently,

“to direct the respondents 1, 3 and 4 to extend the benefit of judgment rendered in OA No.335 of 2007 dated 26.08.2008 by this Tribunal by treating the placement of the members of the 1st applicant association in the Higher Grade in the Higher scale as Senior Accountants from the cadre of Junior Accountants due to restructuring of Accounts cadre as not a promotion and thereby to direct the respondents 1, 3 and 4 to grant ACP benefits to them accordingly with all consequential benefits including monetary benefits.



11. Though at first blush, it appears that a plausible argument was advanced by the learned counsel appearing for the petitioners, the facts remains that at the time when the appointment was made from Junior Accountant to Senior Accountant, the pay of the petitioners was fixed under FR22(C) (old Rule). This fact would clearly demonstrate that such appointment cannot be construed except as one of promotion.

13. In the conspectus of the above facts, we are of the view that the petitioners have not made out any case for grant of relief and the order of the learned Tribunal impugned in the Writ Petition does not suffer from any infirmity. As regards the decision relied upon by the learned counsel for the petitioner, it is to be noted that the learned Tribunal has given a factual finding on this aspect that there was an element of selection involved in the appointment and the petitioners had the benefit of fixation of pay under FR 22(C) (old Rule), which fact would unequivocally demonstrate that it was not a mere upgradation but one of promotion.

For the foregoing reasons, the Writ Petition fails and it is dismissed. No costs."

12. Accordingly, learned counsel appearing on behalf of the petitioners submits that as regards the order of Chennai Bench of learned Tribunal, High Court of Madras, High Court of Mumbai and dismissal of SLP by Hon'ble Supreme Court of India, has held in a catena of judgments that mere dismissal of SLP does not amount to upholding the order from which leave to appeal is sought. In this regard they have relied upon the judgments passed by Hon'ble Supreme Court of India in the cases of ***Kunhayammed & Ors. vs. State of Kerala & Anr.***, (2000) 6 SCC 359 and ***V.M. Salgaokar & Bros Ltd. vs. CIT*** (2000) 5 SCC 373. Thus, dismissal of the SLP by Hon'ble Supreme Court does not amount



to upholding the orders of High Court of Madras or the Chennai Bench of the learned Tribunal.

13. Moreover, the petitioners contended before the learned Tribunal that the orders of Madras Bench of the learned Tribunal and High Court of Madras were passed without taking into cognizance the relevant instructions and factual rule position, which was not brought to their notice.

14. It is not in dispute that the benefit given by the learned Tribunal, which reached upto the Hon'ble Supreme Court pursuant to OA No. 335/2007 has been extended to the applicants therein. Also, the case of Mumbai High Court, which reached the Supreme Court has also extended the benefit to the petitioners therein.

15. In addition to above, judgment of Madras High Court in ***Venkataraman*** (*Supra*) was confirmed by the Hon'ble Supreme Court of India vide judgment dated 04.01.2012 and the judgment of High Court of Patna in the case of ***Union of India & Ors. vs. Binit Kumar Verma*** dismissed the petition and confirmed the order passed by the learned Tribunal of Patna Bench. The said judgment was also confirmed by the Hon'ble Supreme Court of India vide order dated 30.03.2022 in SLP No. 352-353 of 2018.

16. In view of the above, we find no error or perversity in the orders passed by the learned Tribunal.

17. Accordingly, finding no merit in the aforesaid petitions, the same



2024:DHC:7291-DB



are accordingly dismissed. Pending application(s) also stand disposed of.
18. The petitioners are directed to comply with the directions of the learned Tribunal within six weeks from today.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

SEPTEMBER 19, 2024/ry