2025:DHC:706-DB

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

\+ W.P.(C) 3923/2018

FATEH SINGH CHAUHAN .....Petitioner

Through: Ms. Sumita Hazarika and Mr. Prakhar Gupta, Adv.

versus

UNION OF INDIA AND ORS .....Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

% **04.02.2025**

C. HARI SHANKAR, J.

1. This writ petition assails judgment dated 10 November 2017 passed by the Central Administrative Tribunal[1], whereby OA 2224/2014, filed by the petitioner, sands dismissed.

Issue

2. The petition raises a limited issue. In an earlier Original Application[2], instituted by the petitioner before the Allahabad Bench of the Tribunal, the following findings were returned, in judgment dated 30 November 2012:

[1] "the Tribunal", hereinafter
[2] "OA", hereinafter

"5. Arguments were heard and documents perused. It is not denied that the applicant entered the service as LDC and got two promotions, viz., Auditor and Senior Auditor. (See Annexure A-6 representation dated 14.08.2007 refers). It is also not disputed that the applicant had secured only 38 marks but declared pass. Vide para 4 of Annexure A-3, the minimum marks for qualifying in the examination by the general candidates is 40. This goes to show that the applicant has been considered as ST candidate for qualifying in the examination. And, as per the respondents, which cannot be wrong, there are other ST candidates who had passed the examination earlier and who could not be promoted under that category due to non availability of vacancies. In so far as those who had been granted higher pay scale, obviously, in their case, since they had been initially appointed as UDC/Auditor, they are entitled to the grant of second financial upgradation, which is not available to the applicant since he had entered the service as LDC and obtained two promotions. Though a feeble objection had been made in the pleadings by the applicant that of those who have been granted financial upgradation, some of them did not qualify in the examination at the material point of time, the same has to be ignored in view of the fact that the same is not proximately connected with the claim of the applicant."

(Emphasis supplied)

3. The aforesaid judgment of the Allahabad Bench of the Tribunal was upheld in writ proceedings by the High Court of Allahabad. Special Leave Petition, preferred against the said decision, was also dismissed by the Supreme Court, with no caveat.

4. The question that arises is whether the petitioner, could have instituted a fresh OA before the Tribunal, seeking the benefit of second financial upgradation under the MACP[3] Scheme.

<u>Impugned order</u>

[3] Modified Assured Career Progression

5. After the dismissal of the SLP (Civil) No. 7127/2014 by the Supreme Court, as noted aforesaid, the petitioner instituted OA 2224/2014, from the judgment rendered in which the present writ petition emanates. The petitioner sought to contend, in the said petition, that the upgradation of the post of Auditor held by the petitioner to Senior Auditor on 1 April 1987 did not constitute a promotion and that, therefore, the petitioner was entitled to the benefit of the second financial upgradation under the MACP Scheme.

6. Ms. Sumita Hazarika, learned Counsel for the petitioner, submits that this proposition is covered in her favour by several judicial authorities.

7. She also submits that, as the *lis* before the Allahabad Bench of the Tribunal, which her client had approached in the first instance, did not involve the petitioner's entitlement to second financial upgradation under the MACP Scheme, the dismissal of the OA by the Allahabad Bench and the affirmation of the said decision by the Allahabad High Court and the Supreme Court could not stand in the way of the petitioner re-approaching the Tribunal seeking the benefit of second financial upgradation under the MACP Scheme.

8. We understand Ms. Hazarika's concern, but do not find ourselves in a position to come to the aid of her client.

9. The fact of the matter is that, in para 5 of its judgment, reproduced hereinbefore, the Allahabad Bench of the Tribunal held, in so many words, thus:

> ".....In so far as those who had been granted higher pay scale, obviously, in their case, since they had been initially appointed as UDC/Auditor, they are entitled to be grant of second financial upgradation, which is not available to the Applicant since he had entered the service as LDC and obtained two promotions."

10. We are not impressed with Ms. Hazarika's contention that the aforesaid findings of the Tribunal should be regarded as mere observations. The Tribunal has, quite clearly, found that the petitioner was not entitled to the second financial upgradation, as he had obtained two promotions.

11. Ms. Hazarika's contention is that this finding is erroneous as the upgradation of the post of Auditor to Senior Auditor could not be regarded as a promotion.

12. That submission, in our view, was not available anew to the petitioner once the judgment of the Allahabad Bench of the Tribunal had been upheld by the High Court of Allahabad in writ proceedings and SLP against the said decision had also been dismissed by the Supreme Court.

13. The petitioner has neither sought, nor obtained, any order from the High Court of Allahabad or the Supreme Court, entitling her to re-agitate her cause for benefit of second financial upgradation under the MACP Scheme afresh before the Tribunal.

14. In that view of the matter, we find no error in the decision of the Tribunal that the petitioner's case was covered on the anvil of the principles of *res judicata*.

15. Once there was a finding by the Allahabad Bench of the Tribunal that, as the petitioner had obtained two promotions, he was not entitled to second financial upgradation, and the judgment of the Tribunal had been upheld by the High Court of Allahabad and the Supreme Court, the petitioner could not seek to argue afresh before the Tribunal that he had not obtained two promotions as the upgradation of the post of Auditor to Senior Auditor did not constitute a promotion.

16. The merits of that contention, quite clearly, were not open to re-examination by the Tribunal.

17. The impugned judgment of the Tribunal is, therefore, unexceptionable.

18. The writ petition is, accordingly, dismissed with no orders as to costs.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

FEBRUARY 4, 2025/*AS*

Click here to check corrigendum, if any