

Kamini Vadhera Vs Govt. of NCT of Delhi and Another

Court: Delhi High Court

Date of Decision: March 6, 2012

Hon'ble Judges: Rajiv Sahai Endlaw, J

Bench: Single Bench

Advocate: R.K. Saini and Mr. Vikram Saini, for the Appellant; Sumit Chander, for R-1, Mr. Sandeep Sharma and Mr. Anuj Malhotra for R-2, for the Respondent

Final Decision: Dismissed

Judgement

A.K. Sikri, Acting Chief Justice

1. The appellant herein was appointed to the post of Lower Division Clerk (LDC) in the year 1979. Thereafter she was appointed as

Stenographer in the pay-scale of Rs. 330-560 on ad-hoc basis with effect from 11.01.1982 and on regular basis with effect from 01.03.1983. The

dispute now relates to the up-gradation to the next higher level under the Assured Career Progression (ACP) Scheme. The said Scheme was

introduced by the Department of Personnel and Training with effect from 09.08.1999 and as per this Scheme, financial upgradations are granted to

Group B, C and D employees on completion of 12 and 24 years of regular service if they do not get promotion to the next post in the normal

course. To put it otherwise, as per the ACP Scheme, financial upgradations are granted to those employees who are stagnating on their existing

post.

2. The appellant was granted first financial upgradation with effect from 09.08.1999 and according to the appellant, she on 01.03.2007 became

entitled to second financial upgradation, on completion of 24 years of regular service with effect from 01.03.1983. Though on the representation of

the appellant, initial orders were passed to this effect but thereafter the same were kept in abeyance after reconsideration of the matter, when

according to the respondent, it was found that the appellant was not entitled to second financial up-gradation with effect from 01.03.2007.

3. On this juncture, the appellant filed W.P.(C) No.1164/2011 seeking grant of second financial up-gradation which has been dismissed by the

learned Single Judge vide impugned order dated 07.07.2011. Assailing that order, present appeal is filed.

4. The case of the appellant is that she was appointed to the post of Stenographer with effect from 01.03.1983 and it was an appointment to a

different cadre altogether and not a promotion from the post of LDC to UDC. The outcome of this appeal is entirely dependent upon the aforesaid

issue viz. whether the appointment to the post of Stenographer was appointment to a new post or it was by way of promotion from the post of

LDC. If the respondents are correct in their submission that it was promotion, naturally on grant of promotion, in normal course, the appellant

would not be entitled to second up-gradation.

5. When this appeal came up for hearing on 30.01.2012, the learned counsel for the appellant had argued that since the appellant went through the

Limited Departmental Competitive Examination (LDCE), as per clarification issued vide Office Memorandum dated 10.02.2000 by the

Department of Personnel and Training, it would not be treated as promotion. He specifically referred to para 8 of the said Office Memorandum

which reads as under:

8. Appointment on the basis of If the relevant

limited departmental Recruitment Rules

examination by which an provide for filling up of

employee joined a new vacancies of

service should be treated as Stenographers Grade "D"

promotion or not. For / Junior Stenographer by

example, in case of Group-Ddirect recruitment,

employees appointed as induction of LDCs to the

LDCs or Grade-D aforesaid grade through

stenographers appointed Limited Departmental

from amongst LDCs should Competitive Examination

be treated as direct recruits may be treated as direct

or not in the respective higherrecruitment for the

grades. purpose of benefit under

ACPS. However, in such

cases, service rendered in

a lower pay-scale shall

not be counted for the

purpose of benefit under

ACPS. The case of
Grade "D" employees
who become LDCs on
the basis of departmental
examination stand on
different footing. In their
case, relevant

Recruitment Rules

prescribe a promotion
quota to be filled up on
the basis of departmental
examination. Therefore,
such appointments shall
be counted as promotion
for the purpose of ACPS.

In such situations, past
regular service shall also
be counted for further
benefits, if any, under the
Scheme.

6. He had also submitted that as per the Recruitment Rules, the post of Stenographer was to be filled through LDCE and it was a new service and

therefore appointment to the post of Stenographer had to be treated as direct recruitment to a new post for grant of benefit under the ACP

Scheme.

7. Both these contentions are refuted by the learned counsel for the respondent who has produced the record to show that the appointment to the

post of Stenographer was by way of promotion from LDC.

8. After going through the record, following factual position emerges therefrom.

9. The Recruitment Rules indicate that post of Stenographer can be filled either by promotion or on direct recruitment or by deputation.

10. There were two vacant posts of Stenographers (Eng.) in the year 1982 and it was decided to fill one of these posts by resorting to direct

recruitment by holding a test in Steno typing and General English. The appellant, then working as ad-hoc Stenographer requested for being allowed

to appear in the said test for direct recruitment and was so permitted; the appellant so appeared in the test. However, she failed in that test. One

Ms. Jaswinder Kaur was appointed to the post of Stenographer. The office notings show that on appointment of regular candidate to the post of

Stenographer, the appellant was on 30.09.1982 reverted to her own post of LDC.

11. Thereafter the appellant made request dated 05.10.1982 submitting that other post ""should be earmarked in the promotion quota. This will

provide avenue of promotion for departmental candidate to better their prospects."" This request of the appellant was processed. From the original

record, we find that the respondents conceded to the aforesaid request and decided to fill the post by way of promotion. The notings further

disclose that for adjudging the suitability of the appellant for promotion to this post, it was decided to hold qualifying shorthand and typing test, test

for General English followed by interview. A Selection Committee was constituted. The aforesaid tests were held in which the appellant also

appeared. The appellant also faced the interview which was conducted by the Committee constituted for this purpose. It was remarked that the

performance of the appellant in the interview was satisfactory. On this basis, the appellant was on 01.03.1983 appointed to the post of

Stenographer.

12. We have also gone through the relevant Recruitment Rules for the post of Stenographer. As per Rule 7, the Methods of Recruitment is as

under:

7. METHODS OF RECRUITMENT:

1. Recruitment to a post under the Parishad may be made:-

i) by promotion;

ii) by direct recruitment; or

iii) by appointment of a borrowed employee;

2. The Appointing Authority shall lay down the method or methods by which vacancies shall be filled.

3. Notwithstanding that a vacancy is proposed to be filled by direct recruitment, the vacancy may be filled by promotion, if an employee eligible for

promotion in accordance with bye-laws 8 is considered to be more suitable than the candidates for direct recruitment.

13. Thus promotion is one of the methods of recruitment. Rule 8 prescribes the procedure for recruitment by way of promotion and reads as

under:

8. RECRUITMENT BY PROMOTION:

1. Appointment to a post in any grade by promotion shall be made, whether in a substantive or officiating capacity:-

i) from amongst employees serving in posts in the next lower grade; or

ii) from amongst employees of outstanding ability and merit serving in the next lower grade but one.

2. Every appointment by promotion shall be by selection on the basis of merit, with due regard to seniority and on the recommendations of a

Selection Committee. Provided that every appointment to the posts equivalent to Class I & II Govt. of India solely on the basis of merit.

14. It is thus clear that promotion can be made from amongst the employees serving in post in the next lower grade. It is not in dispute that in the

instant case, the LDC was the next lower grade from which post the appellant was promoted to the post of Stenographer by resorting to the

method of promotion. In these circumstances, it cannot be said that the promotion was by way of direct recruitment.

15. These facts would also demonstrate that Para 8 contained in Office Memorandum dated 10.02.2000 (supra) would not be applicable in the

case of the appellant. Neither was the appellant appointed to the post of Stenographer through LDCE nor was she appointed to a new post.

16. We thus do not find any infirmity in the order of the learned Single Judge. The appeal is totally devoid of any merit and is dismissed.