

(2008) 12 DEL CK 0190

Delhi High Court

Case No: Writ Petition (Civil) No. of 7699 of 2008

Harish Chandra

APPELLANT

Vs

Govt. of NCT of Delhi and
Department of Personnel and
Training Ministry of Personnel,
Public Grievances and Pensions
and Training

RESPONDENT

Date of Decision: Dec. 8, 2008

Hon'ble Judges: Suresh Kait, J; Madan B. Lokur, J

Bench: Division Bench

Advocate: Arun Bhardwaj, for the Appellant; Anjum Javed, for the Respondent

Final Decision: Dismissed

Judgement

Suresh Kait, J.

The present writ petition is filed against the Orders dated 20th April, 2005 and dated 4th December, 2006 in O.A. No. 1701/2004 and Review Application No. 187/2005 in O.A. No. 1701/2004 respectively, passed by the Central Administrative Tribunal, Principal Bench, New Delhi.

1. The Petitioner joined service as Radio Operator in the year 1971 and was given first financial upgradation in the pay scale of Rs. 5500-9000 and second financial upgradation in the pay scale of Rs. 6500-10500 under the Assured Career Progression (ACP) Scheme with effect from 9th August, 1999, vide order dated 31st August, 2001. Not satisfied with this, he made a representation on 27th March, 2003, to the Respondents to the effect that he should have been given second financial upgradation in the pay scale of Rs. 8000-13500, but the same was rejected by the respondents vide order dated 28th October, 2003, which was under challenge in the present O.A. before Tribunal. We have observed that the Petitioner had earlier filed OA in the year 1995 wherein the Central Administrative Tribunal directed the Respondents to convene DPC for promotion. The Respondents have taken the stand

that Recruitment Rules are still to be amended and are to be notified. On 9th August, 1999, the Government decided to grant ACP Scheme to its employees for corresponding benefits to those who got no benefit even after 12 years of service and for grant of second promotional benefits after 24 years of service. The Respondents further decided to grant them financial support strictly in hierarchy and all the norms would be followed as in the case of the promotion.

2. Learned Counsel for the Petitioner's arguments were on two limbs. The first limb of the argument is that S/Shri Gurbax Singh and Surjeet Singh, working as Radio Technicians have been given second financial upgradation in the scale of Rs. 8000-13500, attached to the post of Wireless Officer, but the said benefit had been denied to the applicant which was discriminatory. Referring to SI. No. 32 of the Clarificatory OM dated 10th February, 2000, issued by DOPT on the subject of ACP Scheme, the counsel contends that if the cadre/hierarchy was limited to two grades only, then the second upgradation was to be allowed keeping in view the pay scale of an analogous grade of a cadre/post in the same Ministry/Department; however, if no such grade exists in the Ministry/Department concerned, comparison may be made with an analogous grade available in other Ministry/Department. The counsel for the Petitioner further contended that the posts of Assistant Wireless Operator (Operations) and Wireless Officer exist in the hierarchy and therefore, the applicant should have been granted 2nd financial upgradation in the pay scale of Rs. 8000-13500 as had been given to the aforementioned persons.

3. The counsel for the Respondents has contested the case with tooth and nail. Learned Counsel for the Respondent has denied that there is any structured hierarchy for promotion of Radio Operator to the post of Wireless Officer. He submitted that reliance placed by the learned Counsel for the Petitioner was misplaced, as much as, the expert committee had been set up during the year 1983 for reorganization/modernization of communication in Delhi Fire Service under the chairmanship of IG, BSF (Communication). While the recommendations of the committee were accepted by the Municipal Corporation of Delhi, it was wrong to contend that the entire hierarchy recommended therein had been accepted or that R/Rules had been framed for all the categories. According to the counsel for Respondents, Radio Operators/Radio Telephone Operators with 10 years service had been made eligible for promotion to the post of AWO (Operations) but no R/Rules for further promotion from the post of AWO to Wireless Officer has been framed. It has been argued that even in the reply to the W.P.(C) No. 8406/2004, Respondents have only referred to the recommendations of the expert committee, therein, such a hierarchy was in existence and that R/Rules to the post of Wireless Officer and further to that of Communication Officer had been notified.

4. Learned Counsel for the Petitioner, Mr. Arun Bhardwaj, submitted that even the Rules for the post of AWO to Wireless Officer have also not been notified. We reject this contention that he had not taken this plea before Central Administrative

Tribunal and not even argued during the arguments advanced before Tribunal. Therefore, at this stage, we cannot consider this plea in the present writ petition.

5. The counsel for the Petitioner further argued that S/Shri Gurbax Singh and Surjeet Singh working as Radio Technicians had been given 2nd financial upgradation, further submitted that they were initially appointed as Radio Technicians in the pay scale of Rs. 425-700 [4500-7000 (revised)] whereas the Petitioner was appointed as Radio Operator in the lower pay scale of Rs. 380-560 [4000-6000 (revised)]. In the absence of any hierarchal system, while granting the next grade of Rs. 8000-13500 to S/Shri Gurbax Singh and Surjeet Singh, the Petitioner had been given the next grade of Rs. 6500-10500 to which he was entitled.

6. In the absence of new hierarchy, he should have been given the grade/cadre of post available/attached to in other subordinate offices. The counsel for the Petitioner further submitted that the claim of existence of hierarchy and at the same time have to see the benefit of analogous post, if there is no hierarchy. He further argued that since there is no hierarchy, Clarification No. 32 would not be applicable in this case.

7. The Petitioner has placed his main reliance on the recommendations of the Expert Committee which was set-up way back in the year 1983, when Delhi Fire Service were under the control of MCD. Subsequently, they have been brought under the jurisdiction of the Government of National Capital Territory of Delhi. The Central Administrative Tribunal has observed that neither the Petitioner nor the Respondents have produced the relevant Recruitment Rules or the organizational chart to prove that there was a hierarchal pattern with regard to recruitment and promotion in Delhi Fire Service.

8. The Respondents clarified that Recruitment Rules for the promotion, from the post of Radio Operator to AWO (Operations), have been notified during 1968 and have been subsequently amended during the year 2002. However, with regard to the post of Wireless Officer, no Recruitment Rules have yet been notified and the recommendations of the Expert Committee of MCD cannot be made the basis to claim existence of any hierarchy in new set-up.

9. We have observed that the reliance placed by the Petitioner on Clarification No. 32, issued by DOPT on the subject of ACP Scheme, will not render any assistance to him and the same relates to whether limited hierarchy exists, which is not the case before us. We have further observed that the Petitioner, along with two other, working as Radio Operators, had been given the first and second financial upgradation in the scales applicable to the next higher grades, in terms of the ACP Scheme. In the absence of hierarchal pattern, the Petitioner, who was working as Radio Operator in the scale of Rs. 4500-6000, was rightly granted two financial upgradation under the ACP Scheme. Therefore, there was no discrimination against the Petitioner because S/Shri Gurbaksh Singh and Surjeet Singh were already

drawing higher pay scale than that of the Petitioner and thus, they were entitled to next higher scales in the first and second financial upgradation.

10. We are of the view that the two financial upgradation in the pay scale of Rs. 1500-1900 and Rs. 6500-10500 under the Assured Career Progression (ACP Scheme) had already been given to the Petitioner. Therefore, the Petitioner is not entitled to any of the third upgradation as the settled law is that a person can have not more than two upgradation in his service.

11. Keeping the above facts and circumstances into view, we find no merit in the present writ petition and the same is accordingly dismissed. No costs.