

SUPREME COURT OF INDIA

Bindu Sehgal

Vs.

Union of India

C.A.No.5995 of 2004

(Markandey Katju and T.S.Thakur JJ.)

08.04.2010

JUDGEMENT

T.S.Thakur, J.

1. This appeal by special leave calls in question the correctness of an order passed by the High Court of Delhi whereby C.W.P. No.586 of 2001 filed by the appellant for a writ of mandamus directing grant of financial upgradation to her in terms of the Assured Career Progression (ACP) has been dismissed.

2. Pursuant to an advertisement issued by the Union Public Service Commission inviting applications from eligible candidates for direct recruitment to the post of Hindi Officer in the Border Road Development Board, under the Department of Surface Transport, Ministry of Transport, the appellant was selected and appointed against the said post in September, 1986, and confirmed against the same w.e.f. 23rd October, 1988. The appellant's case is that persons similarly situated and possessing similar educational qualifications as the appellant who had been recruited through the U.P.S.C. in the year 1986 and allocated to Central Secretariat Official Language Service had been promoted as Senior Hindi Officers/Varisth Hindi Adhikharis after putting in a service of just about 8 years. Some of them had even been promoted to the post of Joint Director while the appellant continued to stagnate as a Hindi Officer in her department. A representation made by the appellant for grant of promotion appears to have been considered in consultation with the Ministry of Defence (Finance), but the appellant was advised to await the recommendations of the Fifth Central Pay Commission. A work study was also ordered although no such study, according to the appellant, was conducted.

3. The appellant's further case is that even when the Parliamentary Committee on Official language and the Central Hindi Implementation Committee headed by the Prime Minister have time and again recommended that a separate cadre be formed for providing promotional avenues to Hindi Officers working in subordinate offices in various Ministries and undertakings and although the said recommendations were accepted with the modification

that cadres be formed wherever the same were feasible yet the same were ignored by the Border Road Organization, who remained content with the introduction of what is known as ACP Scheme. The scheme, according to the appellant, envisages two financial upgradations the first falling due after completion of 12 and the second after 24 years of regular service in cases of acute stagnation. It is not in dispute that the scheme was made applicable in the case of directly recruited "B" Group Hindi Officers also.

4. Pursuant to the introduction of the scheme aforementioned, the appellant submitted three representations seeking financial upgradation to the pay scale of Rs.10000-15200 in terms of the existing hierarchy prevailing in the Ministry of Defence and in the Department of Official Language (Ministry of Home Affairs). These representations were considered but instead of granting, what according to the appellant was legitimately due to her under the scheme, she was given the pay scale of Rs.8000- 13500 admissible to those working as Assistant Executive Engineers in the BRO.

5. Aggrieved by denial of the higher grade of Rs.10000- 15200 being enjoyed by similarly situated Hindi Officers working in other Departments, the appellant approached the High Court for redressal of her grievance, which writ petition has been dismissed holding that the grant of higher pay scale of Rs.10000-15200 claimed by the appellant was likely to create anomalies in the departmental hierarchy. The High Court was also of the view that the appellant was not entitled to the scale of pay admissible to senior officers of any particular Ministry or Department as that was not the intent and object of the ACP Scheme. She could not, observed the High Court, be allowed to steal a march over persons placed in analogous pay scales in her department.

6. Appearing for the appellant Mrs. Shally Bhasin Maheshwari, strenuously argued that the High Court had failed to correctly appreciate the points urged on behalf of the appellant and the basis of her grievances. She drew our attention to the scheme and the clarifications issued in regard to the same, to buttress her argument that the scheme was intended to give relief against continued stagnation on account of the absence of promotional avenues to the employees serving in different cadres. She also placed reliance upon the orders granting financial up- gradation to officers serving in other Departments and Ministries who are similarly situated and who possess similar qualifications as the appellant. Denial of a similar benefit to the appellant in the light of the said orders argued the learned counsel, was unfair and unjustified.

7. Mr. Ashok Bhan, learned counsel appearing for the respondents, on the other hand, contended that the post held by the appellant was an isolated post to which the financial up-gradation under the scheme was not applicable.

“Alternatively, he contended that the High Court was justified in declining the upgradation claimed by the appellant on the analogy of similar upgradation granted to other officers working in other departments as any such upgradation to the appellant would result in an anomalous situation in as much as the appellant would then draw a

higher salary than those serving in the Engineering Department of the BRO. He further argued that the appellant was not entitled to the benefit claimed by her as she had been granted the benefit of previous service as an L.D.C. apart from two promotions in that cadre.”

8. We have given our careful consideration to the submissions made and perused the record. The order passed by the High Court does not, in our opinion, satisfactorily deal with the following among other questions that arose for consideration in the writ petition filed by the appellant:

“1. Was the appellant directly recruited against the post of Hindi Officer? If so, could she be denied the benefit of the Assured Career Progression Scheme on account of the fact that she had, before her recruitment, held the post of a Lower Division Clerk and had been given two promotions or on account of the fact that she had been granted the benefit of her past service.

2. In case the benefit of Assured Career Progression Scheme could not be denied to the appellant for the reasons indicated in (1) above, was the post held by the appellant an isolated post within the meaning of the Assured Career Progression Scheme?

3. If the answer to (2) above be in affirmative whether the appellant would be entitled to the benefit of the Assured Career Progression Scheme. If so, to what effect?

4. Whether persons similarly situated as the appellant and holding analogous posts in other Departments were enjoying higher pay-scales. If so, whether the appellant could claim financial upgradation under the Assured Career Progression Scheme by reference to the said higher pay-scales?

5. Whether any analogous grades were available in the Border Road Organization, and in particular whether the post of Assistant Executive Engineer in the said Organization could be said to be analogous to the post held by the appellant?”

9. Answer to the above questions holds the key to the grant or refusal of the relief claimed by the appellant in the writ petition filed by her. Since, we do not have the advantage of the opinion of the High Court on the above questions we consider it unnecessary to examine or answer the same in the present appeal. The proper course, in our opinion, is to remit the matter back to the High Court for proper determination of the matters in controversy afresh.

10. In the result we allow this appeal, set aside the order under challenge and remit the matter back to the High Court for a fresh disposal in accordance with law keeping in view the observations made above. The matter being fairly old, we request the High Court to dispose of the same as early as may be practicable. No costs.