

SUPREME COURT OF INDIA

Institute of Chartered Accountants of India

Vs.

J.R.William Singh

C.A.No.200 of 2020

(Ashok Bhushan and M.R.Shah,JJ.,)

24.01.2020

JUDGMENT

M.R.Shah,J.,

1. appellant herein to grant the respondent herein-original appellant Feeling aggrieved and dissatisfied with the impugned judgment and order dated 05.02.2019 passed by the Division Bench of the High Court of Delhi in LPA No. 245 of 2018, by which the Division Bench of the High Court has allowed the said appeal preferred by the respondent herein and has quashed and set aside the judgment and order dated 02.04.2018 passed by the learned ngle Judge of the High Court and consequently has directed the the pay scale and designation of a Section Officer with effect from 05.03.1993 and the pay scale and designation of an Executive Officer with effect from 05.03.2002 under the Time-Bound Promotion Scheme (hereinafter referred to as the TBPS) on notional basis since the respondent had already superannuated, the original respondent- Institute of Chartered Accountants of India (for short "ICAI") has preferred the present appeal. By the impugned judgment and order, the Division Bench of the High Court has also directed the appellant to pay the arrears of salary and emoluments to the respondent, as revised for the aforesaid scales from time to time.

2. The facts leading to the present appeal in nutshell are as follows:

That the respondent herein was appointed as an 'Electrician' on terms and conditions mentioned in the order of appointment/letter dated 26.02.1974. That, by the office memorandum dated 01.05.1976, the respondent was confirmed in the permanent post of 'Electrician' with effect from 16.04.1976. That the respondent was also released the increments from time to time. That a settlement dated 10.01.1984 was reached between the appellant-Institute and its Employees' Association with respect to time bound promotions/change to the next grade. The said settlement was to take effect from 01.01.1984. According to the appellant, the said TBPS was applicable to only two categories of employees, namely, Peons/Chowkidars/Sweepers (Class IV) and LDC to Executive Officers Grade (Class III). In the said settlement, under Clause 1(v) it was further provided that the decision in respect of cases not falling under the two

broad categories referred to hereinabove, e.g. Jamadar, Drivers, Gestetner Operators, Electricians, Electrical Foreman and Library Attendant will be taken up by the President. It appears that thereafter and in light of Clause 1(v) of the memorandum of settlement dated 10.01.1984, a decision was taken by the President of the appellant Institute on 25.02.1984, by which it was provided that Jamadar, Drivers, Gestetner Operators, Electricians etc., as mentioned in Clause 1(v) of the memorandum of settlement dated 10.01.1984 shall only be entitled to get the next grade. That thereafter, vide office memorandum dated 13.03.1984, the respondent was informed that his basic pay was fixed at Rs.370/- with effect from 01.01.1984. He was further informed with respect to the next increment. According to the appellant, as per the settlement dated 10.01.1984 and the subsequent decision of the President dated 25.02.1984, the respondent was given the benefit of enhancement in the salary in the next grade. That thereafter vide office memorandum dated 08.07.1986, the appellant informed the respondent that on his completion of 12 years of service on 04.03.1986, his pay scale has been revised from 330-10-180-EB-12-500-EB-15-560 to the higher scale of 425-15-500-EB-15-560-20-700-EB-25-800 with effect from 05.03.1986 and that his basic pay has been fixed at Rs.425/- in that grade. He was also informed with respect to the next increment to fall due on 05.03.1987. It appears that thereafter upon acceptance of the recommendations of the Fourth Pay Commission and in accordance with the option exercised by the respondent, the pay scale of the respondent was revised to Rs.1200- 30-1560-EB-40-2040 with retrospective effect from 01.01.1986 and that his pay in that grade was fixed at Rs.1320/-. It appears that thereafter in the year 1987-88, the Employees' Association raised certain demands. With respect to the demands raised, a memorandum of settlement dated 02.08.1988 was reached between the appellant Institute and its Employees' Association. It appears that, in terms of the aforesaid settlement dated 02.08.1988, the time span provided in the TBPS as mentioned in the settlement dated 10.01.1984 came to be reduced. It appears that thereafter the Employees' Association raised several demands in the year 1991. With respect to the fresh demands, a memorandum of settlement dated 15.06.1991 was reached. It appears that thereafter the respondent vide his letter dated 12.05.1995 made a request for promotion under the TBPS provided under the settlement dated 02.08.1988 as well as the settlement dated 15.06.1991. According to the respondent, he was entitled to get the promotion after expiry of seven years' period and that his promotion became due on 05.03.1993. Pending such representation, vide office order dated 20.03.1996, the respondent was transferred to Diary/Dispatch Section. He was asked to look after the work of Diary/Dispatch Section. However, his designation came to be continued as Electrician. That vide representation dated 15.11.1999 the respondent requested the Secretary of the appellant Institute for promoting him to the post of Section Officer. It was the case of behalf of the respondent that he was appointed on 05.03.1974 and that he was given the higher pay scale from time to time and that he was also given the pay scale of Assistant and therefore he is entitled to promotion to the next promotional post i.e. Section Officer with retrospective effect from 05.03.1993. Thereafter, a number of representations were made. Thereafter, in the year 2004, the respondent was transferred from the Diary/Dispatch Section (Head Office) to HRD (Noida). In the order dated 28.04.2004 also, the designation of the

respondent was mentioned as Electrician. The prayer of the respondent to promote him to the post of Section Officer under the TBPS came to be rejected on the ground that as per the settlement dated 10.01.1984 and, more particularly, Clause 1(v) read with the decision of the President dated 25.02.1984, the respondent shall not be entitled to the promotion being an Electrician and shall only be entitled to the next grade which has been given to him. That vide office order dated 14.02.2005, the respondent was transferred from Noida Office (Electrician) to Kanpur DCO (Electrician). The said transfer was opposed by the respondent. That thereafter the respondent filed a Writ Petition (C) No. 8681 of 2005 before the High Court of Delhi, inter alia, praying to grant him the higher scale and designation of Section Officer and from Section Officer to the post of an Executive Officer. He also prayed to quash and set aside the transfer orders dated 28.04.2004 and 14.02.2005. That, during pendency of the said petition, the respondent retired on attaining the age of superannuation. That by the judgment and order dated 02.04.2018, the learned Single Judge of the High Court dismissed the aforesaid writ petition. That thereafter the respondent preferred the Letters Patent Appeal before the Division Bench of the High Court and by the impugned judgment and order, the Division Bench of the High Court has allowed the said appeal and has quashed and set aside the judgment and order passed by the learned Single Judge of the High Court and has directed the appellant to grant the respondent the pay scale and designation of Section Officer with effect from 05.03.1993 and the pay scale and designation of an Executive Officer with effect from 05.03.2002 under the TBPS along with the arrears of salary and emoluments, as revised for those scales from time to time.

2.1 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the Division Bench of the High Court, the Institute-ICAI has preferred the present appeal.

3. Learned counsel appearing on behalf of the appellant has vehemently submitted that the High Court has materially erred in directing the appellant to promote the respondent to the post of Section Officer and designation of an Executive Officer under the TBPS. It is further submitted by the learned counsel appearing on behalf of the appellant that the High Court has failed to appreciate and consider the fact that the respondent being Electrician was not entitled to the time-bound promotion in view of the settlement/agreement dated 01.10.1984 and, more particularly, Clause 1(v) and the decision of the President dated 25.02.1984.

3.1 Learned counsel appearing for the appellant has further submitted that in fact in the promotional channel there was no promotion from the post of Electrician to that of the Section Officer and therefore there was no question of granting promotion to the respondent to the post of Section Officer under the TBPS. It is further submitted by the learned counsel appearing on behalf of the appellant that the High Court has materially erred in directing the appellant to promote the respondent to the post of Section Officer under the TBPS relying and/or considering the subsequent settlements dated 02.08.1988 and 15.06.1991. It is further submitted by the learned counsel appearing on behalf of the appellant that the High Court has materially erred in

observing that in the subsequent settlements dated 02.08.1988 and 15.06.1991 there was no specific exclusion, as provided in the earlier settlement dated 10.01.1984. It is submitted that in the settlement dated 02.8.1988 it has been specifically provided that the earlier settlement dated 10.01.1984 shall be continued and/or applicable. It is submitted that, in fact, by the subsequent settlement dated 02.08.1988, only the time gap was reduced. It is submitted that therefore the case of the respondent was specifically covered by the earlier settlement dated 10.01.1984 and the subsequent decision of the President dated 25.02.1984 which was in terms of Clause 1(v) of the said settlement.

3.2 It is further submitted by the learned counsel appearing on behalf of the appellant that, as such, the respondent was entitled to only the next higher scale which was/were being paid to the respondent from time to time.

3.3 It is further submitted by the learned counsel appearing on behalf of the appellant that merely because for some time the respondent was directed to look after the work in Diary/Dispatch Section as a Section Officer, it cannot be said that he was appointed/promoted as Section Officer. It is submitted that all throughout he was continued to be an Electrician and therefore, being an Electrician, he was not entitled to the time-bound promotion.

3.4 It is further submitted by the learned counsel appearing on behalf of the appellant that the High Court has materially erred in not appreciating the fact that there was a clear distinction with regard to the policies applicable to the employees falling in Class-III and Class-IV categories and other employees such as Jamadars, Electricians, Drivers etc. who fall under a special category. It is further submitted that the employees of the aforesaid category, including the Electricians, were squarely excluded from the terms of the agreement dated 10.01.1984. It is submitted that therefore the Division Bench of the High Court has materially erred in allowing the petition and in quashing and setting aside a well-reasoned judgment and order passed by the learned Single Judge.

4. The present appeal is vehemently opposed by Ms. Tamali Wad, learned counsel appearing on behalf of the respondent.

4.1 It is submitted by the learned counsel appearing on behalf of the respondent that, in the facts and circumstances of the case, the Division Bench of the High Court has not committed any error in directing the appellant to grant promotion to the respondent under the TBPS.

4.2 It is further submitted by the learned counsel appearing on behalf of the respondent that, as such, the order of the President dated 25.02.1984 was not communicated to the respondent and therefore the same was not binding to the respondent.

4.3 It is further submitted that, even otherwise, as rightly observed by the Division Bench of the High Court, in the subsequent settlements dated 02.08.1988 and 15.06.1991, there was no specific exclusion with respect to the post of Electrician, from granting the time bound promotions.

4.4 It is further submitted by the learned counsel appearing on behalf of the respondent that, even subsequently, the respondent was appointed as a Section Officer in the Diary/Dispatch Section and therefore it cannot be said that the respondent continued to serve as an Electrician. It is submitted that even the respondent was also given the pay scale of Assistant with effect from 05.03.1996 and therefore was entitled to promotion to the next post of Section Officer under the TBPS.

4.5 It is further submitted by the learned counsel appearing on behalf of the respondent that if the submission/contention on behalf of the appellant is accepted, in that case, there will be stagnation and the respondent would never get any chance of promotion under the TBPS, which shall be against the policy of granting time bound promotion.

4.6 Making the above submissions, it is prayed to dismiss the present appeal.

5. Heard learned counsel appearing for the parties at length.

6. At the outset, it is required to be noted that the dispute is with respect to the promotion under the TBPS. An employee is entitled to the promotion under the TBPS only in accordance with the scheme and the promotion to the next higher post is provided under the TBPS. It is to be noted that, in the present case, the terms and conditions of the service of the employees of the appellant-ICAI were governed by the settlements/agreements arrived at from time to time between ICAI and its Employees' Association. The first settlement/agreement was arrived at on 10.01.1984 which, inter alia, provided for Time-bound promotions/change to the next grade for its Class III and Class IV employees. It provided that if any LDC had already completed five years in the pay-scale of Rs.260-400 he is to be placed in the pay-scale of UDC-Steno Typist i.e. Rs.330-560 and so on. Under Clause 1(v) of the said settlement/agreement, it was specifically provided that in respect of cases not falling under the two broad categories i.e. Clause III and Class IV, the decision was to be taken by the President of ICAI. This included the cases of Jamadar, Driver and Electrician. The respondent was an Electrician and therefore he was governed under Clause 1(v) of the settlement dated 10.01.1984. In terms of Clause 1(v) of the settlement/agreement dated 10.10.1984 which was arrived at between ICAI and its Employees' Association, the President of ICAI took a decision on 25.02.1984, by which it was provided that Jamadars, Drivers, Electricians etc., as mentioned in Clause 1(v) of the memorandum of settlement dated 10.01.1984, shall only be entitled to get the next grade. Accordingly, the respondent herein was put in the pay scale of Rs.330-560 and his basic pay was fixed at Rs.370/- with retrospective effect from 01.01.1984. At this stage, it is required to be noted that the said fixation was in accordance with the decision taken by the President of ICAI dated

25.02.1984. That, thereafter the respondent was granted the next higher pay-scale of the grade of Assistant i.e. Rs.425-800. That, thereafter the next settlement between ICAI and its Employees' Association was arrived at on 02.08.1988 and thereafter in the year 1991. On a bare reading of the subsequent settlements dated 02.08.1988 and 15.06.1991 it appears that only the time gap for promotion under the TBPS came to be reduced. According to the respondent, there was no such clarification/clause like Clause 1(v) of the settlement/agreement dated 10.01.1984 excluding the post of Jamadar, Electrician etc. in the subsequent settlements dated 02.08.1988 and 15.06.1991 and therefore he was entitled to promotion to the post of Assistant and thereafter to the post of Section Officer. The High Court in paragraph 17 has accepted the same and has observed and held that in the subsequent settlements dated 02.08.1988 and 15.06.1991 it was not clarified that such of those who had earlier been covered under Clause 1(v) of the settlement dated 10.01.1984 and who had been granted the scale of an Assistant, would not be entitled to any further time-bound promotion under the settlement dated 02.08.1988, or for that matter, of the further settlement dated 15.06.1991 and therefore in the absence of any exclusion of such of those who had been granted the pay-scale of an Assistant, would be entitled to the next higher pay-scale of the Section Officer on completion of requisite years of service in terms of settlements dated 02.08.1988 and 15.06.1991. However, the High Court has not properly considered the subsequent settlement dated 02.08.1988. The High Court has absolutely mis-read and mis-interpreted the settlement dated 02.08.1988 when it has come to the conclusion, so stated in paragraph 17 of the impugned judgment and order, that in the subsequent settlement dated 02.08.1988 there is no specific exclusion which was there under the special Clause 1(v) of the settlement dated 10.01.1984. In the memorandum of settlement dated 02.08.1988, the only change was with respect to the time gap for promotion under the TBPS as per the earlier settlement dated 10.01.1984 and the period for getting the promotion under the TBPS came to be reduced. That was the only change/modification. In the memorandum of settlement dated 02.08.1988 it has been specifically provided and so stated that except for and subject to the changes made by the said settlement, namely, reduction of time period for getting the promotion under the TBPS, all other terms and conditions relating to the TBPS, as contained in the settlement/agreement dated 10.01.1984, shall remain in force and be applicable during the period of the said agreement. By a subsequent settlement dated 15.06.1991 the period was further reduced. Therefore, whatever was stated/provided in the settlement/agreement dated 10.01.1984, more particularly, Clause 1(v) and the subsequent decision of the President dated 25.02.1984 continued to be in operation. Therefore, those employees like the respondent herein serving as Electricians etc. were not entitled to any promotion under the TBPS, as contained in the settlement/agreement dated 10.01.1984 and/or such subsequent memorandum of settlements dated 02.08.1988 and 15.06.1991. Being an Electrician, the respondent was already given the pay- scale of an Assistant as per the decision of the President dated 25.02.1984, which was as per Clause 1(v) of the memorandum of settlement dated 10.01.1984. Therefore, the High Court has committed a grave error in observing and holding that the respondent shall be entitled to promotion under the TBPS as per the memorandum of settlements dated 02.08.1988 and 15.06.1991. At the cost of repetition, it is to be noted that the employees of ICAI were governed by the memorandum of settlement dated 10.1.1984 so far as the time-bound promotion is concerned and the subsequent settlements dated 02.08.1988 and 15.06.1991 were in continuation of the

same. No new rights of promotion under the TBPS were conferred under the memorandum of settlements dated 02.08.1988 and 15.06.1991.

7. Now, so far as the submission on behalf of the respondent that subsequently even the respondent was working as a Section Officer and, therefore, shall be entitled to promotion under the TBPS to the post of Section Officer is concerned, it is required to be noted that as such there was no specific order of promotion promoting the respondent to the post of Section Officer. For some time, the respondent was directed to look after the work of Diary/Dispatch Section. However, his designation came to be continued as Electrician. Merely because an employee is given a temporary charge to do a particular work of a particular post, it cannot be said that in fact he has been promoted to the said post. At this stage, it is required to be noted that subsequently when the respondent was transferred in the year 2005 from Noida Office (Electrician) to Kanpur DCO (Electrician), the respondent opposed the said transfer contending, inter alia, that there is no post of an Electrician at Kanpur and therefore he should be continued at Noida (Electrician). Therefore, even on 04.03.2005, the respondent himself claimed to be the Electrician. Therefore, now it is not open to the respondent that he was already promoted to the post of Section Officer in the year 1996. Therefore also, the High Court has committed a grave error in directing the appellant to promote the respondent to the post of Section Officer under the TBPS. However, at the same time, the respondent shall be entitled to the same salary of Section Officer for the period during which he worked as a Section Officer either on officiating basis and/or he was given the charge, if not paid so far.

8. Now, so far as the submission on behalf of the respondent that if the respondent is not promoted to the post of Section Officer under the TBPS, in that case, the object and purpose of providing the promotion under the TBPS, namely, to remove the stagnation at the work place shall be frustrated is concerned, it is true that the TBPS is intended to remove the stagnation at the work place. However, at the same time, one cannot lose sight of the fact that the promotion shall be governed as per the promotion scheme only. At no point of time, Clause 1(v) of the main settlement dated 10.01.1984 and the decision of the President dated 25.02.1984 not providing any promotion under the TBPS so far as Electrician etc. are concerned, has been challenged. It is not that there is a complete stagnation so far as the respondent is concerned. He has been granted the next higher grade as per the decision of the President dated 25.02.1984 which was as per Clause 1(v) of the main settlement dated 10.01.1984. It is to be noted that, being an employee and the member of the Employees' Association, the settlement arrived at between the management and its Employees' Association was binding on the respondent.

9. In view of the above and for the reasons stated above, we are of the firm opinion that the impugned judgment and order passed by Division Bench of the High Court directing the appellant to promote the respondent to the post of Assistant and thereafter to the post of Section Officer under the TBPS as per the memorandum of settlements dated 02.08.1988 and 15.06.1991 cannot be sustained and the same deserves to be quashed and set aside. Accordingly, the impugned judgment and order passed by the Division Bench of the High Court is quashed and set aside. However, it is observed and directed that the respondent shall

be entitled to the same salary which was being paid to the Section Officers for the period during which he worked as a Section Officer either on officiating basis and/or he was given the charge and the appellant is directed to pay the same, if not paid so far. The appeal is allowed accordingly. No costs.

Judgment Referred.