

Bindu Sehgal Vs. UOI and Others

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Court : Delhi

Decided On : Nov-19-2015

Judge : S. Ravindra Bhat & the Honourable Ms. Justice Deepa Sharma

Appeal No. : W.P.(C) No. 586 of 2001

Appellant : Bindu Sehgal

Respondent : UOI and Others

Judgement :

S. Ravindra Bhat, J.

1. The writ petitioner seeks directions for appropriate pay fixation and release of Assured Career Progression (ACP) benefits in terms of the scheme formulated by the Central Government in that regard, on 09.08.1999.

2. The undisputed facts are that in response to an advertisement issued by the Union Public Service Commission (UPSC) seeking applications from eligible candidates for direct recruitment to the post of Hindi Officer in the Border Road Development Board, the Ministry of Transport, the Petitioner applied. She was selected and appointed to the said post in September, 1986, and confirmed in the post on 23.10.1988. Her grievance is that those similarly situated and possessing qualifications similar to what are possessed by her but who were recruited through the UPSC in 1986 and allocated to Central Secretariat Official Language Service were promoted as Senior Hindi Officers/Varisth Hindi Adhikharis after about 8

years. Some of them were later promoted to the post of Joint Director. However, the petitioner stagnated as a Hindi Officer in her department. Her representation seeking promotion was considered in consultation with the Ministry of Defence (Finance). She was advised to await the recommendations of the Fifth Central Pay Commission.

3. The Petitioner contends that despite a report of the Parliamentary Committee on Official language and the Central Hindi Implementation Committee headed by the Prime Minister, recommending that a separate cadre be formed for providing promotional avenues to Hindi Officers working in subordinate offices in various Ministries and undertakings- (which were accepted with appropriate directions for cadre formations)- the recommendations were ignored by the BRO, which fell back to the ACP Scheme. The ACP scheme, envisions two financial upgradations: the first after completion of 12 and the second after 24 years of regular service in cases of acute stagnation. The ACP scheme was made applicable in the case of directly recruited "B" Group Hindi Officers as well.

4. After introduction of the ACP scheme aforementioned, the Petitioner made 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). The BRO however granted the petitioner the pay scale of Rs. 8000-13500, admissible to those working as Assistant Executive Engineers in the BRO. Aggrieved by denial of the higher grade of Rs. 10000-15200 being enjoyed by similarly situated Hindi Officers working in other Departments, she approached this Court by filing the present writ petition. At an earlier stage, the petition was dismissed holding that the grant of higher pay scale of Rs. 10000-15200 claimed was likely to create anomalies in the departmental hierarchy. The Court was also of the view that the Petitioner 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.

5. The Petition for special leave preferred by the petitioner against the said order of this court, dismissing the present writ petition was entertained; the appeal was allowed and the writ petition was remitted to this court for a fresh hearing. The

Supreme Court in its judgment dated 08.04.2010 allowed the appeal by special leave and remitted the matter for consideration on the following points:

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? ?
6. Counsel for the petitioner relied on the ACP scheme and the clarifications issued in regard to the same, to say that it was intended to provide relief against continued stagnation on account of the absence of promotional avenues to the employees serving in different cadres. Reliance was also placed upon the orders granting financial upgradation to officers serving in other Departments and Ministries who are similarly situated and who possess similar qualifications as the Petitioner. It was submitted that the denial of a similar benefit to the Petitioner in the light of the said orders, was unfair and unjustified.

7. Learned counsel also relied upon the Office Memorandum dated 10.02.2000, which clarified the provisions of the ACP scheme, particularly queries 31 and 32 and the replies given to them. It was submitted that in terms of these replies, the Central Government was duty-bound to confer ACP benefits in terms of what was sought by the petitioner, given that Annexure I to the ACP scheme itself envisioned two financial upgradations reckoned from the service into which the employee or officer had entered. It was urged that the post of Hindi officer could not be regarded as an isolated post, because it belonged to a cadre with three other posts. That those posts were subordinate to that of Hindi Officer was immaterial. Consequently, the petitioner was clearly entitled to the financial upgradations sought by her. It was lastly submitted that the upgradation of pay-scales in 2003 could not in any manner adversely affect the petitioner's claim, because that was not an ACP upgradation, but replacement of an existing scale.

8. Learned counsel for the respondents, urged that the post of Hindi Officer was an isolated post to which the financial upgradation under the scheme was not applicable. It was submitted that the ACP benefit " if given would result in an anomaly, as the petitioner would draw a higher salary than officers in the Engineering Department of the BRO. It was also argued that the benefit claimed by the petitioner, would be over and above what she had been granted, i.e. reckoning of previous service as an L.D.C. and two promotions in that cadre (i.e. ministerial cadre).

Analysis and Conclusions

9. For a proper understanding of the controversy, which essentially focuses on the petitioner's claim to ACP benefits, it would be necessary to set out the terms of the scheme, found in Annexure I to the Office Memorandum dated 09.08.1999. The same are extracted below:

"1. The ACP Scheme envisages merely placement in the higher pay-scale/grant of financial benefits (through financial upgradation) only to the Government servant concerned on personal basis and shall, therefore, neither amount to functional/regular promotion nor would require creation of new posts for the purpose;

2. The highest pay-scale upto which the financial upgradation under the Scheme shall be available will be Rs.14,300-18,300. Beyond this level, there shall be no financial upgradation and higher posts shall be filled strictly on vacancy based promotions;

3. The financial benefits under the ACP Scheme shall be granted from the date of completion of the eligibility period prescribed under the ACP Scheme or from the date of issue of these instructions whichever is later;

4. The first financial upgradation under the ACP Scheme shall be allowed after 12 years of regular service and the second upgradation after 12 years of regular service from the date of the first financial upgradation subject to fulfillment of prescribed conditions. In other words, if the first upgradation gets postponed on account of the employee not found fit or due to departmental proceedings, etc this would have consequential effect on the second upgradation which would also get deferred accordingly;

5.1 Two financial upgradations under the ACP Scheme in the entire Government service career of an employee shall be counted against regular promotions (including in-situ promotion and fast-track promotion availed through limited departmental competitive examination) availed from the grade in which an employee was appointed as a direct recruit. This shall mean that two financial upgradations under the ACP Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee. If an employee has already got one regular promotion, he shall qualify for the second financial upgradation only on completion of 24 years of regular service under the ACP Scheme. In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him;

5.2 Residency periods (regular service) for grant of benefits under the ACP Scheme shall be counted from the grade in which an employee was appointed as a direct recruit;

6. Fulfillment of normal promotion norms (bench-mark, departmental examination, seniority-cum-fitness in the case of Group Employees, etc.) for grant of financial upgradations, performance of such duties as are entrusted to the employees together with retention of old designations, financial upgradations as personal to the incumbent for the stated purposes and restriction of the ACP Scheme for financial and certain other benefits (House Building Advance, allotment of Government accommodation, advances, etc) only without conferring any privileges related to higher status (e.g. invitation to ceremonial functions, deputation to higher posts, etc) shall be ensured for grant of benefits under the ACP Scheme;

7. Financial upgradation under the Scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts without creating new posts for the purpose. However, in case of isolated posts, in the absence of defined hierarchical grades, financial upgradation shall be given by the Ministries/Departments concerned in the immediately next higher (standard/common) pay-scales as indicated in Annexure-II which is in keeping with Part-A of the First Schedule annexed to the Notification dated September 30, 1997 of the Ministry of Finance (Department of Expenditure). For instance, incumbents of isolated posts in the pay-scale S-4, as indicated in Annexure-II, will be eligible for the proposed two financial upgradations only to the pay-scales S-5 and S-6. Financial upgradation on a dynamic basis (i.e. without having to create posts in the relevant scales of pay) has been recommended by the Fifth Central Pay Commission only for the incumbents of isolated posts which have no avenues of promotion at all. Since financial upgradations under the Scheme shall be personal to the incumbent of the isolated post, the same shall be filled at its original level (pay-scale) when vacated. Posts which are part of a well-defined cadre shall not qualify for the ACP Scheme on dynamic basis. The ACP benefits in their case shall be granted conforming to the existing hierarchical structure only;

8. The financial upgradation under the ACP Scheme shall be purely personal to the employee and shall have no relevance to his seniority position. As such, there shall be no additional financial upgradation for the senior employee on the ground that the junior employee in the grade has got higher pay-scale under the ACP Scheme; ?

10. A joint reading of the ACP scheme and its terms- extracted above would reveal that it was framed to relieve stagnation of employees with relative fewer- or no-promotional avenues. It assures that other things being equal (i.e. qualifying service, eligibility for promotions under the rules, fulfillment of the bench mark criteria, etc) an employee who is denied promotion solely because of limited vacancies would be conferred a financial upgradation, entirely divorced from the consideration of the vacancy position. The upgradation would result only in a financial advantage.

11. The first question formulated by the Supreme Court, is whether the petitioner was directly recruited as Hindi Officer. This court notices that her assertion in this regard has not been denied by the BRO. Moreover, the petitioner has placed on record a copy of the advertisement issued by UPSC calling for applications from suitable candidates, for the post of Hindi Officer. The essential qualification for the post advertised was a Master's Degree in Hindi, and the experience stipulated was 5 years experience of terminological work in Hindi and/or Translation work in Hindi and/or Translation work from English to Hindi or vice versa These qualifications correspond to what is prescribed for direct recruitment for the post of Hindi Officer, in the BRO- furthermore, UPSC has to be consulted for direct recruitment. It is, therefore, held that the petitioner was directly recruited to the post with effect from 09-09-1986, i.e. the date of her appointment letter. She was later admittedly confirmed to the post.

12. The second part of the first issue or question formulated by the Supreme Court, for decision by this court is whether in terms of the ACP scheme the petitioner could be nevertheless denied the benefit under it, by reason of her previous service in the ministerial cadre in the Central Government. As noticed previously, the ACP was meant to relieve stagnation for those who could not be promoted, solely because of lack of requisite vacancies. The tenor and terms of the ACP scheme are such that the employee is entitled to the upgradations reckoned from the date of entry into the regular service. This is evident from Paras 3 and 4 of the Annexure to the ACP scheme, extracted below:

3. The financial benefits under the ACP Scheme shall be granted from the date of completion of the eligibility period prescribed under the ACP Scheme or from the date of issue of these instructions whichever is later;

4. The first financial upgradation under the ACP Scheme shall be allowed after 12 years of regular service and the second upgradation after 12 years of regular service from the date of the first financial upgradation subject to fulfillment of prescribed conditions. In other words, if the first upgradation gets postponed on account of the employee not found fit or due to departmental proceedings, etc this would have consequential effect on the second upgradation which would also get deferred accordingly ?

13. If there were any doubts as to what constitutes regular service and whether previous service in any cadre, other than the one from which an employee claims ACP benefits are to be taken into consideration, those were set at rest in the replies to queries on the OM dated 10.02.2000. In a composite reply to Query Nos. 4, 5 and 6, the Central Government stated that direct recruitment to a new cadre would not disentitle an employee who earns promotions in the previous service, provided the last cadre was not equivalent to the one held by her, from which she claimed ACP benefits. Query No 5 and the composite reply given by the Officer Memorandum, is extracted below:

Sl. No.	Point of Doubt	Clarification
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5.	Whether a Government servant, who is direct recruit in one grade and subsequently joins another post again as direct recruit, is eligible for first financial upgradation under ACPS after completion of 12 years of service counted from the first appointment or from the subsequent second appointment as direct recruit?	As such, if a Government servant has been appointed to another post in the same pay scale either as a direct recruit or on absorption (transfer) basis or first on deputation basis and later on absorbed (on transfer basis), it should not make any difference for the purpose of ACPS so long as he is in the same pay scale. In other words, past promotion as well as past regular service in the same pay scale, even if it was on different posts for which appointment was made by different methods like direct recruitment, absorption (transfer)/ deputation, or at different places should be taken into account for computing the prescribed period of service for the purpose of ACPS. Also, in case of absorption (transfer)/deputation in the aforesaid situations, promotions earned in the previous/present organisations, together with the past regular service shall also count for the purpose of ACPS. However, if the appointment is made to higher pay-scale either as on direct recruitment or on absorption (transfer) basis or first on deputation basis and later on absorbed (on transfer basis), such appointment shall be treated as direct recruitment and
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It is immediately apparent from the highlighted portion that wherever appointment is made to a higher pay scale on direct recruitment, it would be treated as direct recruitment and past service/promotion shall not count for benefits under ACPs ?. In view of this clarification, to the ACP scheme, it is held that the petitioner, a direct recruit cannot be denied the ACP benefits on the basis of her past service and promotions earned prior to her direct recruitment to the post of Hindi Officer.

14. The second and third question that this court has to answer is whether the post of Hindi Officer was an isolated post, in the BRO, and if so whether she could claim ACP benefit. The rules, which existed when the petitioner was inducted as Hindi Officer, showed that the channel of entry was either direct recruitment or deputation/promotion. However, during the pendency of the proceedings, apparently there was a change; the petitioner avers that the cadre of Hindi Officer was augmented and another post of Hindi Officer was added. It is also asserted that a 50% quota for promotees was provided. The respondents have neither confirmed nor denied the assertion.

15. The issue whether the post of Hindi Officer is an isolated post or not is relevant, because of the following stipulation in Annexure I to the ACP scheme:

7. Financial upgradation under the Scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts without creating new posts for the purpose. However, in case of isolated posts, in the absence of defined hierarchical grades, financial upgradation shall be given by the Ministries/Departments concerned in the immediately next higher (standard/common) pay-scales as indicated in Annexure-II which is in keeping with Part-A of the First Schedule annexed to the Notification dated September 30, 1997 of the Ministry of Finance (Department of Expenditure). For instance, incumbents of isolated posts in the pay-scale S-4, as indicated in Annexure-II, will be eligible for the proposed two financial upgradations only to the pay-scales S-5 and S-6. Financial upgradation on a dynamic basis (i.e. without having to create posts in the relevant scales of pay) has been recommended by the Fifth Central Pay Commission only for the incumbents of isolated posts which have no avenues of promotion at all. Since financial upgradations under the Scheme shall be personal

to the incumbent of the isolated post, the same shall be filled at its original level (pay-scale) when vacated. Posts which are part of a well-defined cadre shall not qualify for the ACP Scheme on dynamic basis. The ACP benefits in their case shall be granted conforming to the existing hierarchical structure only. ?

16. Annexure II to the scheme prescribes and sets out the standard common pay scales, with reference to which higher ACP scales are to be given. The said annexure reads as follows:

STANDARD/COMMON PAY-SCALES

As per Part-A of the First Schedule Annexed to the Ministry of Finance

(Department of Expenditure) Gazette Notification dated September 30, 1997

[REFERENCE PARA 7 OF ANNEXURE I OF THIS OFFICE MEMORANDUM]

S.No.	Revised pay-scales (Rs)	
1.	S-1	2550-55-2660-60-3200
2.	S-2	2610-60-3150-65-3540
3.	S-3	2650-65-3300-70-4000
4.	S-4	2750-70-3800-75-4400
5.	S-5	3050-75-3950-80-4590
6.	S-6	3200-85-4900
7.	S-7	4000-100-6000
8.	S-8	4500-125-7000
9.	S-9	5000-150-8000
10.	S-10	5500-175-9000
11.	S-12	6500-200-10500

12.	S-13	7450-225-11500
13.	S-14	7500-250-12000
14.	S-15	8000-275-13500
15.	S-19	10000-325-15200
16.	S-21	12000-375-16500
17.	S-23	12000-375-18000
18.	S-24	14300-400-18300'

As to what is an isolated post in a particular department was spelt out in the clarificatory memorandum of 10.02.2000. The query and reply in this regard was as follows:

31. What is an isolated post for the purpose of the ACP Scheme.	Isolated post is a stand alone post, having neither feeder grade nor promotional grade. As such, a post having no promotional grade but having a feeder grade and vice-versa shall not be treated as isolated post for the purpose of ACPS.
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32. Where the cadres/hierarchy is limited to two grades only, what should be the pay-scale for grant of second upgradation under ACPS?	Such a cadre/hierarchy shall not fall in the isolated category as defined at S.No.31 above. Hence, the standard/common pay-scales mentioned in Annexure-II of the Office Memorandum dated 9.8.1999 shall not be applicable in such cases. Action in such cases may, therefore, be taken as per following clarifications:-(i) If such cadre/hierarchy exists in the Ministry/ Department concerned, the second upgradation may be allowed in keeping with 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 Ministries/Departments. (ii) In the case of attached/subordinate offices, the second upgradation under ACPS may be given in keeping with the pay-scale of an analogous grade of a cadre/post of the concerned office. However, if no such cadre/post exists in the
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17. It is quite clear that query 31 and 32 deal with different situations. Query No. 31 seeks clarity as to what is an isolated post, for the purpose of Para 7 of Annexure I. The clarification is that isolated posts are those for which there is no feeder cadre and which is not a promotional post. In the present case, the petitioner has sought to urge that the post of Hindi Officer is not an isolated post. Here, the argument is that there are other posts, i.e. Junior Hindi Translator and Senior Hindi Translator. The other submission is that the cadre of Hindi Officer was increased by one post, to be filled by promotion. Now, the Rules on the record nowhere indicate that the cadre of Hindi Officer was in fact increased and a new channel of promotion created. If indeed that were the position, the petitioner had to produce a copy of the amendment to the recruitment rules which had stated, from inception that the post of Hindi Officer is to be filled by direct recruitment alone. There is no dispute that there are no promotional avenues for that post. In these circumstances, there is no next hierarchal grade that accords or resembles a promotional grade, superior to that of a Hindi Officer. The question then, is what is meant by hierarchy/grade that finds mention in Query No. 32. In this court's opinion, this has to receive a contextual meaning, viz that hierarchy or grade necessarily alludes to a promotional hierarchy. In the BRO, the rules governing the post of Hindi Officer do not show any defined hierarchy or grade. The Petitioner has relied on the recommendations of the Parliamentary Committee and the Hindi Implementation Committee, which make out a case for cadre expansion and creation of promotional avenues for officers like her. These, in the court's opinion, underline the absence of hierarchy in the cadre and highlight that the post of Hindi Officer is a standalone post. Neither is the post of Senior Translator feeder cadre to it, nor is it (post of Hindi Officer) feeder grade to another higher or promotional post. Consequently, it is held that the cadre of Hindi Officer is an isolated post within the meaning of the ACP Scheme as clarified by the OM dated 10.02.2000.

18. The ACP scheme is meant to relieve stagnation. While it visualizes difficulties in regard to the nature of benefits to be conferred to those holding isolated posts, Para 7 (of Annexure I to the scheme) is clear that the benefits are nonetheless to be worked out. The said Para, inter alia, states:

in case of isolated posts, in the absence of defined hierarchical grades, financial upgradation shall be given by the Ministries/Departments concerned in the immediately next higher (standard/common) pay-scales as indicated in Annexure-II.. ?

19. In the light of the above discussion, it is held that under the ACP scheme, the petitioner is to be treated as occupying an isolated post. She is entitled to the benefits spelt out in Annexure II to the Memorandum dated 09.08.1999. The second and third questions framed by the Supreme Court are decided, accordingly.

20. The fourth and fifth questions formulated for this court's decision are really consequential, i.e. whether analogous grades exist in other departments with higher grades, and the petitioner's entitlements if any, as well as whether analogous grades exist in the BRO to entitle the petitioner to higher grades within the department, with particular reference to the grade of Assistant Executive Engineer.

21. These two questions would have arisen, for examination, if the court were to have concluded that the post of Hindi Officer is not an isolated post, and that it might lack promotional avenues, but is part of a defined cadre. However, this court's opinion is that the said post is an isolated one. The question of seeking out analogous grades in other departments or ministries would not arise. The procedure to be adopted then would be to apply the grade higher to the one the petitioner was in, as spelt out in Para 7 of Annexure I to the ACP scheme. The higher grade would be the immediately next higher (standard/common) pay-scales as indicated in Annexure-II (Ref Para 7).

22. The above conclusions however, are not conclusive as to the petitioners claims in these proceedings. During the hearings, the parties referred to a pay revision order in the GREF/BRO which had the effect of replacing the pay-scale of the petitioner from Rs. 6500-10,500/- to Rs. 7500-12000/- from 1-1-1996 and actually from 11-02-2003 based on a Ministry of Defence letter dated 28.07.2015. Consequential orders were issued in the case of the petitioner, fixing her in the said grade of Rs. 7500-12000/- from 1-1-1996 and actually from 11-02-2003 ?.

Now, this change altered the circumstances somewhat. Precisely how, would be examined hereafter.

23. It is not disputed that the petitioner joined as Hindi Officer in September, 1986. She completed 12 years service in 1998. Consequently, she was entitled to the first ACP when the scheme was formulated on 09.08.1999. At the time, the petitioner was in the grade of Rs. 6500-10500/-. This was “ as noticed in the preceding paragraph- replaced (although financial benefits granted later from 11.02.2003) with the grade Rs. 7500-12000/- from 1-1-1996 ? . Consequently, the petitioner became entitled to the grade of Rs. 8000-13500/- (S-15 grade under Annexure II to the ACP scheme) immediately after coming into force of the ACP scheme. She would have been entitled to the second upgradation under the scheme, only after further 12 years service. However, in 2009, the ACP scheme was replaced by the MACP scheme (although with effect from sometime in 2008). In terms of this scheme upon completion of 10, 20 and 30 years, those not able to secure promotion would be entitled to the next higher grade. The petitioner had completed her 20 years service in 2006. However, the MACP scheme was not in force. Therefore, immediately after its promulgation, she became entitled to the grade higher to Rs. 8000-13500/- as determined by the Sixth Pay Commission, and adopted by the Central Government.

24. In the light of the previous discussion, the respondents are directed to determine the ACPs in pay scales from the date the petitioner was entitled to it (i.e. 01.10.1999) and in accordance with the MACP scheme, with effect from 2008, as she has been held entitled to. This shall be done within 8 weeks; the payment of arrears, if any, shall be disbursed within three months from today. The writ petition is partly allowed to the above extent.