

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 5829-5830 OF 2012**

RAMA NAND AND ORS.

....APPELLANTS

VERSUS

CHIEF SECRETARY, GOVT. OF NCT OF DELHI & ANR.

....RESPONDENTS

J U D G M E N T

SANJAY KISHAN KAUL, J.

1. The appellants were all working as Telephone Operators with the Delhi Fire Service (“DFS”). On account of reorganisation of the wireless communication system, ninety-six posts of Radio Telephone Operators were sought to be created in terms of a letter dated 29.8.1983. Six Radio Operators were already operating as such, while twenty-seven Telephone Operators, in the pay scale of Rs. 260-400 were sought to be deployed as Radio Telephone Operators (“RTOs”) in a higher pay scale. The reorganisation scheme was approved on 10.10.1983 by the Municipal Corporation of Delhi.

2. The Telephone Operators had to go through a training and to be deployed as RTOs, a further condition was imposed of 5 years regular service, though it is alleged by the appellants that the same was not part of the letter dated 29.8.1983. An important development took place on 9.8.1999 whereby the Department of Personnel and Training, Government of India issued an Office Memorandum introducing an Assured Career Progression (“ACP”) Scheme, by which a decision was taken to grant two financial upgradations after completion of 12 and 24 years of regular service respectively. It is the case of the appellants that they were entitled to get their first financial upgradation as on 9.8.1999 or on completion of 12 years of service in the DFS as Telephone Operators/RTOs, but that the same were denied to the appellants since the respondents treated their conversion of the aforesaid posts as a promotion. The limited controversy which arises for adjudication in the present case is whether the deployment of the appellants as RTOs would amount to a promotion or whether it was a mere reorganisation and the appellants were entitled to the ACP separately in terms of the ACP Scheme.

3. The appellants filed OA No. 983/1995 before the Central Administrative Tribunal (“**CAT**”), Principal Bench, New Delhi and succeeded in terms of the judgment dated 6.10.1999 granting them the pay scale of RTOs, i.e., Rs.380-560 on the principle of “equal pay for equal work”.

4. One of the RTOs made a representation on 31.5.2001 on the non-grant of the benefits of the ACP Scheme. Thereafter, the respondents sought a clarification from the Government of India, Department of Personnel and Training as to whether placement/appointment in higher pay scales is a promotion/financial upgradation and is to be offset against the financial upgradations per the ACP Scheme. It is a case of the appellants that the clarification issued in this behalf, through an Office Memorandum dated 18.7.2001, would have no application to the appellants in view of the statutory recruitment rules (though stated to be not notified as per the appellants and thus inapplicable) and on account of the restructuring/reorganisation which had come to prevail.

5. OA No. 1224/2003 was filed in May 2003 before the CAT, Principal Bench, New Delhi seeking relief for the first financial upgradation in terms of the ACP Scheme, which was opposed by the respondents. The Tribunal decided the issue vide judgment dated 29.10.2003 opining that promotion and merger of cadres operated in different spheres and the requirement to be categorised as 'promotion' is that it must specify certain basic qualifications. On the other hand, conversion of the posts was in exercise of the powers of the Government in the given exigencies. Hence, what was granted to the appellants was not a promotion and the Tribunal consequently opined that the appellants were entitled to the benefits of the ACP Scheme.

6. The aforesaid order was assailed by the respondents before the Delhi High Court by filing writ petition being WP (C) No. 8406-07 of 2004. The High Court called for the records and, on the pleadings being completed, passed the impugned judgment dated 8.5.2009 allowing the writ petition filed by the respondents. The gravamen of the reasoning of the High Court is that the conversion of posts of Telephone Operators to RTOs was with a condition of completion of 5 years of regular service, with the benefit of the higher pay scale from Rs. 260-400 to Rs. 380-560 and consequently, was liable to be treated as promotion, thus disentitling the appellants to the benefits of the ACP Scheme.

7. We have considered respective submissions of learned counsel for the parties.

8. On an examination of the Office Memorandum dated 9.8.1999 bringing forth the ACP Scheme, it is apparent that the same was a consequence of the Fifth Central Pay Commission Report recommending such a Scheme for civilian employees, and was to be viewed as a safety net to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. The moot point, thus, which arises for consideration is whether the benefits accruing to the appellants as a consequence of the reorganisation scheme of wireless and communication systems could be said to give them the benefit of a promotion and whether

they were still entitled to a financial upgradation on account of the ACP Scheme.

9. Our attention has been drawn to the circular dated 24.2.1984 that provided for a training to be conducted at the headquarters of DFS for a period of two months. Such training had to be carried in two batches under the supervision of the Wireless Officer. In fact, the reference of the reorganisation of the wireless and communication system in the DFS as per item no. 137 contained in the Commissioner's letter dated 29.8.1983, sets out the reasons for the same as an endeavour to increase the efficiency of the original wireless communication system introduced in 1961 and the requirement of reorganisation in view of the change in the technology itself. It is clearly stated that the existing twenty-seven Telephone Operators would be in the higher pay scale as set out aforesaid "after necessary training of short duration". There was also a requirement of the fulfilment of the essential condition of 5 years of experience in the post of Telephone Operator as even set out in the writ petition filed before the High Court.

10. Mr. Balbir Singh Gupta, learned counsel for the appellant as well as Ms. Madhavi Divan, learned ASG have both relied in support of their respective submissions on the judgment of this Court in *Bharat Sanchar Nigam Limited v. R. Santhakumari Velusamy and Others*.¹

¹ (2011) 9 SCC 510

11. Learned counsel for the appellant sought to refer us to para 29 which sets out the principles as under:

“29. On a careful analysis of the principles relating to promotion and upgradation in the light of the aforesaid decisions, the following principles emerge:

(i) Promotion is an advancement in rank or grade or both and is a step towards advancement to a higher position, grade or honour and dignity. Though in the traditional sense promotion refers to advancement to a higher post, in its wider sense, promotion may include an advancement to a higher pay scale without moving to a different post. But the mere fact that both—that is, advancement to a higher position and advancement to a higher pay scale—are described by the common term “promotion”, does not mean that they are the same. The two types of promotion are distinct and have different connotations and consequences.

(ii) Upgradation merely confers a financial benefit by raising the scale of pay of the post without there being movement from a lower position to a higher position. In an upgradation, the candidate continues to hold the same post without any change in the duties and responsibilities but merely gets a higher pay scale.

(iii) Therefore, when there is an advancement to a higher pay scale without change of post, it may be referred to as upgradation or promotion to a higher pay scale. But there is still difference between the two. Where the advancement to a higher pay scale without change of post is available to everyone who satisfies the eligibility conditions, without undergoing any process of selection, it will be upgradation. But if the advancement to a higher pay scale without change of post is as a result of some process which has elements of selection, then it will be a promotion to a higher pay scale. In other words, upgradation by application of a process of selection, as contrasted from an upgradation simpliciter can be said to be a promotion in its wider sense, that is, advancement to a higher pay scale.

(iv) Generally, upgradation relates to and applies to all positions in a category, who have completed a minimum period of service. Upgradation can also be restricted to a percentage of posts in a cadre with reference to seniority (instead of being made available to all employees in the

category) and it will still be an upgradation simpliciter. But if there is a process of selection or consideration of comparative merit or suitability for granting the upgradation or benefit of advancement to a higher pay scale, it will be a promotion. A mere screening to eliminate such employees whose service records may contain adverse entries or who might have suffered punishment, may not amount to a process of selection leading to promotion and the elimination may still be a part of the process of upgradation simpliciter. Where the upgradation involves a process of selection criteria similar to those applicable to promotion, then it will, in effect, be a promotion, though termed as upgradation.

(v) Where the process is an upgradation simpliciter, there is no need to apply the rules of reservation. But where the upgradation involves a selection process and is therefore a promotion, the rules of reservation will apply.

(vi) Where there is a restructuring of some cadres resulting in creation of additional posts and filling of those vacancies by those who satisfy the conditions of eligibility which includes a minimum period of service, will attract the rules of reservation. On the other hand, where the restructuring of posts does not involve creation of additional posts but merely results in some of the existing posts being placed in a higher grade to provide relief against stagnation, the said process does not invite reservation.”

He submitted that in terms of sub-para (iii) and (iv), when there is an advancement to a higher pay scale without change of post, it may be referred to as upgradation or promotion to a higher pay scale. But there is a difference between the two. In case such change of post is available to everyone who satisfies the eligibility condition without undergoing any process of selection, it will be upgradation. While, if it is a result of some process which has element of selection, then it will be a promotion to the higher pay scale. Sub-para (iv) is stated to further clarify this aspect that if there is process of selection or consideration of comparative merit or

suitability for granting the upgradation or benefit of advancement to a higher pay scale, it will be a promotion.

12. On the other hand, learned ASG submitted that the aforesaid principle have to be read in the context of what has been set out before in paras 27 and 28. The law explaining the difference between upgradation and promotion was set out in *Union of India v. Pushpa Rani*² and those principles have been extracted in para 27, the relevant portion of para 27 reads as under:

“27. In *Union of India v. Pushpa Rani* [(2008) 9 SCC 242 : (2008) 2 SCC (L&S) 851] this Court examined the entire case law and explained the difference between *upgradation* and *promotion* thus: (SCC pp. 244h-245h)

“In legal parlance, upgradation of a post involves transfer of a post from lower to higher grade and placement of the incumbent of that post in the higher grade. *Ordinarily, such placement does not involve selection but in some of the service rules and/or policy framed by the employer for upgradation of posts, provision has been made for denial of higher grade to an employee whose service record may contain adverse entries or who may have suffered punishment.* The word ‘promotion’ means advancement or preferment in honour, dignity, rank, grade. Promotion thus not only covers advancement to higher position or rank but also implies advancement to a higher grade. *In service law, the word ‘promotion’ has been understood in wider sense and it has been held that promotion can be either to a higher pay scale or to a higher post.*”

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2 (2008) 9 SCC 242

13. The posts in the case of *Pushpa Rani* (supra) was held to be promotion for the reasons set out in para 28.

“**28.** In *Pushpa Rani* [(2008) 9 SCC 242 : (2008) 2 SCC (L&S) 851], this Court while considering a scheme contained in the Letter dated 9-10-2003 held that it provided for a restructuring exercise resulting in creation of additional posts in most of the cadres and there was a conscious decision to fill up such posts by promotion from all eligible and suitable employees and, therefore, it was a case of promotion and, consequently, the reservation rules were applicable.”

14. The submission of learned ASG was that the conclusions will have to be read in the aforesaid context. Thus, a promotion is an advancement in rank or grade or both and is a step towards advancement to a higher position, grade or honour and dignity - “in its wider sense, promotion may include an advancement to a higher pay scale without moving to a different post.”

15. Learned counsel in the aforesaid context, while turning to the factual matrix of the present case, submitted that there are three aspects which are material in the present case:

- (i) prequalification of minimum of 5 years of service;
- (ii) higher financial emoluments;
- (iii) rigorous of a specialised training

These make a candidate eligible. It was, thus, a submission that if all these three are considered together, there can be no doubt that the present case is one which should be considered as the promotion for the purpose of ACP Scheme.

16. We have examined the aforesaid contention and we are of the view that the benefits of ACP Scheme cannot be held applicable to the appellants and consequently the High Court was right in interfering with the order of the CAT.

17. The reasons for coming to this conclusion is based on the principles set out in the *BSNL case* (supra). No doubt, sometimes there is a fine distinction which arises in such cases, but, a holistic view has to be taken considering the factual matrix of each case. The consequence of reorganisation of the cadre resulted in not only a mere re-description of the post but also a much higher pay scale being granted to the appellants based on an element of selection criteria. We say so as, at the threshold itself, there is a requirement of a minimum 5 years of service. Thus, all Telephone Operators would not automatically be eligible for the new post. Undoubtedly, the financial emoluments, as stated above, are much higher. The third important aspect is that the appellants had to go through the rigorous of a specialised training. All these cannot be stated to be only an exercise of merely re-description or reorganisation of the cadre. On applying the test in *BSNL case* (supra), as per sub-para (i) of para 29, promotion may include an advancement to a higher pay scale without moving to a different post. In the present case, there is a re-description of the post based on higher pay scale and a specialised training. It is not a case covered by sub-para (iii), as canvassed by learned counsel for the appellants, where the higher pay scale is available to everyone who satisfies the eligibility condition without

undergoing any process of selection. The training and the benchmark of 5 years of service itself involve an element of selection process. Similarly, it is not as if the requirement is only a minimum of 5 years of service by itself, so as to cover it under sub-para (iv).

18. We have already observed that the complete factual contours of the difference between the two posts would have to be examined in the given factual situation and the triple criteria of minimum 5 years of service, a specialised training and much higher financial emoluments leaves us in no manner of doubt. What was done has to be considered as a promotion disentitling the appellants to the benefits of the ACP Scheme. As the very objective of the ACP Scheme, as set out, is “to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues.”

19. Appeals are, accordingly, dismissed leaving the parties to bear their own costs.

.....J.
[SANJAY KISHAN KAUL]

.....J.
[AJAY RASTOGI]

.....J.
[ANIRUDDHA BOSE]

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**NEW DELHI.
AUGUST 06, 2020.**