

* **HIGH COURT OF DELHI : NEW DELHI**

+ **WP(C) No. 10558/2006 & CM No.7988/2006**

% Date of decision: October 31, 2007.

Kendriya Vidyalaya Sangathan, Petitioner

!

Through: Mr. S.Rajappa, Advocate

versus

\$ Sh. Balbir Singh Respondent

^

Through: Mr.Subhash Sharma, Advocate

***CORAM**

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

A.K. SIKRI, J.

:

1. The Kendriya Vidyalaya Sangathan (KVS) adopted the Assured Career Progression Scheme (for short ACP Scheme) of the Government and given the nomenclature as "Career Advancement Scheme" vide memo dated 12.10.2000. The entire ACP scheme was

adopted as it is. The question has arisen as to how this scheme is to be applied in a case where a particular employee refused promotion offered to him in the normal course. We may state the facts of this case before we dwell on this issue.

2. The respondent herein joined the Kendriya Vidyalaya Sangathan as group-D employee on 13.8.1965. On 15.3.1999 he was offered promotion to the post of laboratory attendant which he declined to accept. Another offer for promotion to the same post was given on 7.12.2000 and the respondent again turned down this offer. Before the second offer for promotion was given the Career Advancement Scheme was introduced to take care of acute stagnation in the service career of those who were not able to get promotion though otherwise eligible, by giving them the benefit of higher pay. Two such benefits are provided under this scheme, namely, on the completion of 12 years and 24 years of service respectively. In case an employee gets promotion in normal course before the expiry of 12 years service, he is not entitled to the first benefit of financial upgradation under the said scheme after the expiry of 12 years. In that event he would get only the second upgradation 12 years after the promotion if he does not get any promotion in the meantime though otherwise eligible.

3. When a person is offered promotion and he refuses to accept it, the same would mean that he did not avail of the promotion. What

would be the consequence thereof is provided under the Scheme itself. For this purpose two conditions mentioned in the scheme, which would be relevant for our purpose are condition No.5.1 and condition No.10. We reproduce both these conditions hereunder:

Condition No.5.1

“Two financial upgradation 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 promotion during the prescribed periods (12 and 24 years) have been availed by an employee. If 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 been already been received by an employee, no benefit under the ACP Scheme shall accrue to him.”

Condition No.10

“Grant of higher pay-scale under the ACP Scheme shall be conditional to the fact that an employee, while accepting the said benefit, shall be deemed to have given his unqualified acceptance for regular promotion on occurrence of vacancy subsequently. In case he refuses to accept the higher post on regular promotion subsequently, he shall be subject to normal debarment for regular promotion as prescribed in the general instructions in this regard. However, as and when he accepts regular promotion thereafter, he shall become eligible for the second upgradation under the ACP Scheme only after he completes the required eligibility service period under the ACP Scheme in that higher grade subject to the condition that the period for which he was debarred for regular promotion shall not count for the purpose. For example, if

a person has got one financial upgradation after rendering 12 years of regular service and after 2 years therefrom if he refuses regular promotion and is consequently debarred for one year and subsequently he is promoted to the higher grade on regular basis after completion of 15 years (12+2+1) of regular service, he shall be eligible for consideration for the second upgradation under the ACP Scheme only after rendering 10 more years in addition to two years of service already rendered by him after the first financial upgradation (2+10) in that higher grade i.e. after 25 years (12+2+1+10) of the regular service because the debarment period of one year cannot be taken into account towards the required 12 years of regular service in the higher grade.”

5. The condition stipulated in para 5.1, inter alia, records that the benefit of two financial upgradation under the ACP Scheme shall be available only if no regular promotion during the prescribed periods (12 years and 24 years) have been availed by an employee. It would be clear from the above that in case promotion is offered, a particular employee does not avail the same, it may mean that he is not entitled to the financial upgradation under the ACP Scheme. Consequence of the aforesaid eventuality is specifically provided in condition No.10. As per this condition, in a case where an employee has not been given any promotion for a period of 12 years, while granting him higher payscale under the ACP Scheme, it would be subject to the condition that he gives unqualified acceptance for regular promotion on occurrence of vacancy subsequently. That means that at the time the first ACP benefit on the expiry of 12 years is given to the incumbent.

While taking this benefit the official is to give an undertaking that he would accept the promotion whenever offered to him subsequently. In case he refuses to accept the promotion to the higher post when offered at a future date, this condition further provides that in such a situation he would be debarred from regular promotion as prescribed in general instructions in this regard. Moreover, he will be given second upgradation only if he accepts regular promotion thereafter. As far as first upgradation is concerned, the official keeps on enjoying and the same is not taken away. The adverse effect of not accepting promotion is debarment from promotion for specified period and non-grant of second upgradation till promotion is accepted and deferment of second upgradation by a specified period. This fact is so stated by the Tribunal in para 14 of the impugned judgment which reads as under:

“14. Coming to condition No.10, learned counsel for the applicant has fervently argued that the mischief of this condition would come into play only after the financial upgradation had been granted to an employee and not before that. There seems force in this contention. A careful scrutiny of this condition would show that an employee who had been granted upgradation under the scheme if subsequently refused to accept the higher post on regular promotion, he would render himself ineligible for grant of second financial upgradation until he accepts the regular promotion. He will then become eligible for second financial upgradation on completion of 12 years regular service from the date of first upgradation excluding normal debarment period from counting. The scope and import of this rule have been illustrated in this condition by an example given which need not be elaborated.”

6. The interpretation given above by the Tribunal in our view, is correct in law. In the present case, respondent had joined the services with the petitioner in the year 1965. Therefore, he had completed 24 years of service when memo dated 3.10.2000 promulgating the ACP scheme in KVS was introduced. However, after the expiry of 12 years , but before the expiry of 24 years of service, he was offered promotion on 15.8.1999 which he has refused. As per condition No.10, he became entitled to first upgradation but could not have been given second upgradation as he had refused the said promotion. As per conditions contained in para-10 of the scheme, benefit of second ACP upgradation is to be given only after the concerned employee accepts promotion subsequently offered, even when he had rejected it once. Therefore, according to this condition, benefit of first upgradation under ACP scheme was to be given to the respondent but he was not entitled to the second upgradation as he had refused promotion even on 17.12.2000 i.e after the adoption of the scheme by KVS, when offered to him. Therefore, while the Tribunal is right insofar as grant of first upgradation after 12 years is concerned, the conclusion of the learned Tribunal that declining of benefit of second upgradation to the applicant is not justified, does not appear to be correct.

7. This petition is, therefore, allowed partly. The judgment of the Tribunal is modified. It is ordered that respondent herein shall be

entitled to grant of first financial upgradation as on 12.10.2000 when the scheme came into force, and not to the second financial upgradation.

8. In these circumstances the parties are left to bear their own costs.

A.K. SIKRI, J.

VIPIN SANGHI, J.

October 31, 2007
aj