

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No. 7528/2008**

% **Date of Decision:03.02.2010**

VIJAY LAKSHMI BHALLA Petitioner
Through Mr. H.K. Chaturvedi, Ms. Anjali
Chaturvedi, Advocates.

Versus

UNION OF INDIA & ANOTHER Respondents
Through Mr. R.V. Sinha, Mr. A.S. Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

MOOL CHAND GARG, J.

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1. This writ petition has been filed by the petitioner impugning the order dated 02.05.2008 passed by the Central Administrative Tribunal, Principal Bench (hereinafter referred to as 'the Tribunal') dismissing O.A. No.1234/2007.

2. The said Original Application was filed by the petitioner seeking grant of promotion to the grade of Whole Time Lady Officer (WTLO) and also benefit of second financial upgradation under the Assured Career Progression Scheme (ACP Scheme) which was turned down by the respondents vide order dated 08.09.2004 passed by them. It was the

case of the petitioner that while period of her contractual appointment was counted by the respondents towards pension, the said period was not considered for the grant of benefit under the ACP Scheme as well. It has been submitted that had the period of contractual appointment been considered from 1969, the petitioner would have been entitled for the grant of second financial upgradation.

3. The respondents, while opposing the Application contended that as per the version of the petitioner, she joined the NCC in the grade of Sergeant Major Instructor (SMI) on 26.05.1969 on contractual basis and her services have been regularized only w.e.f. 24.01.1981. As such she was not in regular service from 1969 to 1981 and for that reason she was not qualified for the grant of second ACP benefits.

4. As regards her claim for the grade of WTLO, it was contended that the petitioner in 1996 participated in Limited Departmental Competitive Examination (LDCE) but did not qualify in the examination and, therefore, she was not selected for the post of WTLO. The Tribunal has rejected her claim by observing that as held by the Apex Court in *S.B. Bhattacharjee Vs. S.D. Majumdar* **2008 (1) SCC (L&S) 21**, the right of the petitioner is only of consideration. Once after participating in the LDCE, she was considered but failed to attain the merit to qualify promotion, she would have no right to seek promotion and accordingly she was not entitled to be promoted as WTLO. Insofar as this aspect is

concerned, nothing has been brought to our notice which may assist us in granting relief to the petitioner as claimed by her in this regard.

5. As regards consideration of petitioner for grant of second ACP is concerned, it is an admitted fact that she had been a contract employee for the period from 26.05.1969 to 24.01.1981 and the said period of service cannot be treated as qualifying service, since the ACP is to be granted only on the basis of regular service, the service on contract cannot be considered for that purpose. Admittedly, the petitioner was appointed on regular basis in 1981 but failed to complete 24 years of service before retirement on superannuation and, therefore, she was not entitled to second financial upgradation.

6. In this regard we have also gone through para 4 of the conditions for grant of promotion under the ACP scheme which requires that only regular service can be considered for grant of ACP.

7. At one stage, the petitioner filed an additional affidavit stating therein that she was appointed on regular basis w.e.f. 26.05.1969. However, the said affidavit was not pressed in view of the letter dated 25.04.2000 which shows that the initial appointment of the petitioner was only on contractual basis. The said letter is available at page 272 of the paper book and reads as under:

NCC/GCI/310/UOI
Ms. Vijay Lakshmi Bhalla
5 Delhi Girls Bn NCC
Old Rajdhani College Bldg.
Kirti Nagar, New Delhi-15

To,
The Dy Director General Pers. and Finance,
Director
Ministry of Defence
R.K. Puram, New Delhi-110022
(through proper channel)

Subject: Assured Career Progression Scheme for
Central Government Employees

Respected Sir,

I was appointed as Sergeant Major Instructor on 26th May, 1969 on contractual basis. On the date our cadre was made permanent, i.e. 24th Jan, 1981, I was working as senior grade of under officer instructor in the scale of Rs.1450/- p.m. as Coy Commander.

I request that I may be granted the next due higher grade/under scale of commissioned officer and ACP benefits. Kindly consider the same.

Thanking You.

Dated:25 Apr 2000.

Yours Faithfully

sd/-
(V.L. Bhalla)
NCC/GCI/310 UOI

8. This letter clearly shows that the petitioner's initial appointment was on contractual basis. In fact, when she considered that some action can be taken against her for filing a wrong affidavit, the petitioner conceded her mistake and filed an unconditional affidavit of apology dated 14th December, 2009.

9. Learned counsel for the petitioner also wanted to rely upon a judgment delivered by a Division Bench of this Court in the case of UOI Through the Secretary, Ministry of Defence, New Delhi

Vs. Vimla Ghosh, W.P.(C)9181/2007 decided on 15.05.2009. In that case, since the respondents failed to show that the applicant was appointed initially on contractual basis which is not the case before us, some relief was granted to her but the facts of that case are different from the case before us.

10. Accordingly, the petitioner is not entitled to take benefit of that judgment. Consequently, we find no occasion to interfere into the order passed by the Tribunal while exercising our jurisdiction under Article 226 of the Constitution of India. Accordingly, the petition is dismissed.

MOOL CHAND GARG, J.

FEBRUARY 03, 2010

'anb'

ANIL KUMAR, J.