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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1698/2002

New Delhi, dated 18th day of February, 2003

Hon'ble Shri Justice V.S.Aggarwal, Chairman  
Hon'ble Shri A.P. Nagrath, Member(A)

A.K. Malhotra  
PD-28C, LIG Flats  
Vishaka Enclave, Pitam Pura  
Delhi-11008

.. Applicant

(Shri S.M.Rattan Paul, Advocate)

versus

Union of India, through

1. Secretary  
Ministry of Textiles  
Udyog Bhawan, New Delhi
2. Development Commissioner(Handicrafts)  
West Block No.7, R.K.Puram  
New Delhi
3. Addl. Development Commissioner(Handicrafts)  
West Block No.7, R.K.Puram  
New Delhi
4. Director (Establishment)  
Ministry of Personnel  
North Block, New Delhi
5. Ashok Shah  
Deputy Director(Vig)  
Office of Dev. Commissioner (Handicrafts)  
West Block No.7, R.K.Puram  
New Delhi

.. Respondents

(Shri Rajeev Bansal, Respondents)

ORDER(oral)

Shri Justice V.S.Aggarwal

By virtue of the present application, applicant seeks quashing of the order dated 7.6.2002 passed by the respondents and to declare that the applicant is entitled to second financial upgradation in the pay scale of Rs.10500-15200 under the Assured Career Progression (ACP, for short) Scheme due to him on 18.12.1999 on the basis of completion of 24 years of regular service with consequential monetary benefits.

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2. Applicant had joined as LDC in the Ministry of Industrial Development in 1967. On 18.12.1975 he was appointed as Junior Field Officer in the then All India Handicrafts Board under the Ministry of Commerce in an open selection at Carpet Weaving Training Centre, Mariahun, Dt. Jaunpur. Applicant was appointed as Assistant Director(Admn.) on 31.5.1980. He claims that he has completed 24 years of regular service on 18.12.1999 and therefore he is entitled to second financial upgradation in the pay scale of Rs.10500-15200.

3. Earlier, applicant had preferred OA No.913/2002 which was decided by this Tribunal on 3.4.2002. This Tribunal has directed the respondents to consider the representation of the applicant and to pass a speaking and reasoned order as to why the benefit of ACP Scheme cannot be awarded to the applicant.

4. On 7.2.2002 respondents have rejected the representation and the reasons given are:

Point No.1 raised by him above has been examined in light of para 8 of Annexure 1 to the said OM, which runs as follows:-

"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".

In view of this para, the point raised by Shri A.K.Malhotra is found to have no merit.

Further, on point 2 above, the relevant provisions are contained in para 11 of Annexure 1 to the OM under reference which states as under:-



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"In the matter of disciplinary/pending proceedings, grant of benefit under the ACP Scheme shall be subject to rules governing normal promotion. Such cases shall, therefore, be regulated under the provisions of relevant CCS(CCA) Rules, 1965 and instructions thereunder."

Since the disciplinary proceedings against Shri A.K.Malhotra, AD(A&C) (under suspension) was contemplated for the misconduct committed by him, while he was working as In-charge Asstt. Director, CWTSC, Allahabad during the year 1990-91 which predates December, 1999, he is not clear from Vigilance angle for consideration of the benefit of financial upgradation under ACP Scheme as provided under rules.

In view of the above, the requests made by Shri A.K.Malhotra, AD(A&C) (under suspension) vide his representations dated 5.9.2000 and 15.5.2001 cannot be acceded to. The representations are accordingly disposed of.

5. It is clear that the benefit had been denied to the applicant because of pending disciplinary proceedings against him.

6. Needless to state that respondents have contested the application.

7. During the course of submissions, it was not disputed at either end that disciplinary proceedings had continued and had not been concluded. Applicant had preferred OA No.199/2002 which was decided by this Tribunal on 30.12.2002. Keeping in view the inordinate delay in initiation of disciplinary proceedings which continued for 12 years, the same was quashed. The plea as to why the benefit was refused, thus has ceased to exist during the pendency of the present application.

8. Learned counsel for respondents has drawn our attention to the conditions for grant of second financial upgradation under the said Scheme, particularly to para

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11. He contends that the benefit of the scheme would be subject to the rules governing normal promotion, which reads as under:

"11. In the matter of disciplinary/penalty proceedings, grant of benefits under the ACP Scheme shall be subject to rules governing normal promotion. Such cases shall, therefore, be regulated under the provision of relevant CCS(CCA) Rules, 1965 and instructions thereunder."

9. Indeed, if that was so, applicant would not be eligible to the said benefit. However the position herein is different. The benefit of the scheme was denied to the applicant because of pendency of disciplinary proceedings as contended by respondents' counsel. Since the same have been quashed, for the purpose of present application, the said contention necessarily must be rejected.

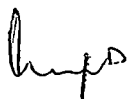
10. Another plea offered on behalf of respondents was that applicant is being tried in criminal proceedings before the court of law with respect to offences punishable under sections 323/504/506 of Indian Penal Code read with Section 3 of Prevention and Atrocities on SC/ST Act, 1989. According to respondents' counsel the said case is still pending.

11. In reply, applicant's counsel has submitted that there is no order holding the applicant guilty of offences. Applicant is to be treated as not guilty till it is proved otherwise. Therefore pendency of the said case would not debar the applicant from getting the benefit of second financial upgradation.



12. For the purpose of present application, it becomes unnecessary to ponder over this controversy. The sole controversy is that the benefit had been denied to the applicant due to pendency of disciplinary proceedings. We have already pointed out that, which is mentioned again at the risk of repetition, that this Tribunal had earlier directed respondents to pass a reasoned and detailed order as to why the benefit of ACP Scheme cannot be granted to the applicant and his representation be disposed of. It is not the case of respondents in the impugned order that because of pendency of criminal case, the said benefit had been denied. Necessarily therefore it becomes necessary for this Tribunal to dispose of the present application as to why the department has not considered the claim of the benefit.

13. Resultantly, we allow the present application and quash the impugned order dated 7.6.2002. It is directed that applicant should be considered for grant of second financial upgradation in the pay scale of Rs.10500-152000 with effect from 18.12.1999 in accordance with rules and consequential benefits, if any, should be accorded to him accordingly.



(A.P. Nagrath)  
Member(A)



(V.S. Aggarwal)  
Chairman

/gtv/