

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

Dated Wednesday the 3rd day of June Two Thousand And Twenty

PRESENT:

THE HON'BLE MR. P. MADHAVAN, MEMBER(J)

THE HON'BLE MR. T. JACOB, MEMBER(A)

O.A.310/904/2016

J. Angela,
W/o. G. Rajan,
No.15/1, New No.17,
Kalikundram Main Road,
Angel House,
TTTI Post,
Chennai-600 113.Applicant

(By Advocate: M/s. P. Ulaganathan)

Vs.

1. Union of India Rep. by
The Secretary,
Ministry of Commerce and Industry,
Department of Industrial Policy & Promotion,
(Salt Section) Udyog Bhavan,
New Delhi- 110 001;
2. The Salt Commissioner,
Office of the Salt Commissioner,
Lavan Bhawan,
2-A, Lavan Marg,
Jhalana Doongri,
Jaipur-302 004;
3. The Deputy Salt Commissioner,
26, Haddows Road, Shastri Bhawan,
Chennai-600 006.

.....Respondents.

(By Advocate: Mr. G. Dhamodharan)

ORDER

(Pronounced by Hon'ble Mr. P. Madhavan, Member(J))

This is an OA filed seeking the following relief:-

“(i) to call for the records on the file of the 3rd Respondent in his proceedings bearing C.No.25020(8)/Ad/MACP/2009/VOL.i/1572-73 dated 14.03.2016 rejecting the claim of the applicant for financial upgradation under ACP/MACP Scheme and quash the same as illegal;

(ii) to direct the respondents to consider the claim of the applicant for granting of second financial upgradation under the Assured Career Progression Scheme (ACPS) in the pre-revised scale of Rs. 4500-125-7000 with effect from 09.08.1999 instead of 03.12.1999 and for granting third financial upgradation in PB-II of Rs. 9300-34800 Plus Grade Pay of Rs. 4600/- under Modified Assured Career Progression Scheme with effect from 01.09.2008 for having completed 30 years of service on 03.12.2003 ignoring her refusal of promotion before the introduction of the ACP/MACP Scheme.

(iii) to grant all consequential benefits including the pensionary benefits and

(iv) to pass any other order, direction or grant any other relief as deemed fit in the circumstances of the case and thus render justice.”

2. The short point to be decided in this case is whether the applicant who had declined promotion prior to the introduction of ACP Scheme is entitled to get ACP financial upgradation.

3. The facts leading to this case is as follows:

The applicant entered into service as Lower Division Clerk (LDC) on 03.12.1973. She was offered promotion to the post of Upper Division Clerk (UDC) in 1989 and 1991. But she declined the above promotion. Thereafter she became U.D. Clerk in the year 1997 i.e. on 14.10.1997. The applicant was granted 2nd upgradation with effect from 3.12.1999 i.e. after two years due to declining of promotion. According to the applicant, the respondents ought to have granted 2nd financial upgradation on completion of 24 years i.e. 3.12.1997 instead of 3.12.1999. The declining of promotions before the introduction of ACP scheme should not have been considered by the respondents in view of the various decisions of the Bench in OA 162/2007, OA 91/2011 of Bombay Bench and OA 148-CH-2010. On 1.9.2008, Modified Assured Career Progression (MACP) was introduced. As per scheme, financial upgradation has to be given at 10 years, 20 years & 30 years. The applicant completed 30 years of regular service on 3.12.2006. She was denied the 3rd financial upgradation before her retirement on 30.06.2011. Eventhough

she gave a representation to grant it, the respondent rejected the same as per impugned order dated 14.03.2016.

4. The respondents filed reply and submits that the applicant was offered promotion in 1989 & 1991. According to them ACP & MACP scheme were introduced to mitigate the hardship of lack promotion. As per clarification of DOP&T OM No. 35034/1/97-Estt(D) dated 18/7/2001

"The ACP Scheme has been introduced to provide relief in cases of actual stagnation where the employees despite being eligible for promotion in all respects are deprived of regular promotion for a long period due to non-availability of vacancies in the higher grade. Cases of holder of isolated posts have been covered under ACP's as they do not have any promotional avenue. However, where a promotion has been offered before the employees could be considered for grant of benefit under ACP's but he refuses to accept such promotion, he/she cannot be said to be stagnating as he has opted to remain in the existing grade on his own volition. As such there is no case for grant of ACP's in such cases. The official can be considered for regular promotion again after necessary debarment period."

So, according to the respondent, the IInd Financial Upgradation was granted w.e.f. 3.12.1999 after counting the debarment period. According to the respondents, the applicant has declined promotion on three occasions before 01.09.2008. The applicant

had earlier declined promotions in 2003 & 2006 and thereafter on 15.06.2007 as Assistant. The respondents relied on para 25 of MACP Scheme for denying the 3rd Financial Upgradation:-

"If a regular promotion has been offered but was refused by the employee before becoming entitled to a financial upgradation, no financial upgradation shall be allowed as such the employee has not been stagnated due to lack of opportunities. If, however, financial upgradation has been allowed due to stagnation and the employees subsequently refuse the promotion it shall not be a ground to withdraw the financial upgradation. He shall, however, not be eligible to be considered for further financial upgradation till he agrees to be considered for promotion again and the second the next financial upgradation shall also be deferred to the extent of period of debarment due to the refusal."

So, according to the respondents, the applicant is not entitled to get the 3rd financial upgradation as well as re-fixation sought by her.

5. The counsel for the applicant would contend that the declining of promotions in the year 1989 & 91 was prior to the introduction of ACP Scheme. The terms and conditions restricting the grant can only be prospective as the applicant was unaware of the implementation of the ACP scheme when she had declined the promotion. The counsel mainly relied upon the decisions of this Bench in *Mrs. P.C. Revathy & 3 Ors vs. Union of India & Ors*

(OA 162/2007 dated 26.10.2007), order of co-ordinate Bench Mumbai in OA 129/2003 wherein it was held that "*if promotion is made prior to the date of introduction of ACP Scheme, the same shall not stand in the way of granting benefit of ACP scheme after introduction.*" The decision in Mrs. P.C Revathy's case was confirmed by the Hon'ble High Court in W.P. No. 35/2008 dated 3.1.2008. The SLP filed against the said decision was dismissed by the Supreme Court in Special Leave to Appeal (Civil) No. 21475/2008 dated 06.03.2009. The MACPS came only in the year 19.05.2009 and it was implemented w.e.f. 1.9.2008. The denial of MACPS on the basis of Para 25 of the scheme also is not proper. The declining of promotion before the coming of the scheme and denying the benefits on the ground is also illegal on the same principle. So, according to the counsel for the applicant the matter is squarely covered by the decisions of this Bench. Applicant is entitled to get the benefits prayed for.

6. The counsel for the respondents argued in accordance with the pleadings.

7. We had gone through the pleadings and judgments in OA 162/2007 and case of Mr. Ganesh Bhavrao Shrote v. Union of

India (OA 91/2011) and Mr. Suresh Kumar v. Union of India (OA 148-CH-2010).

8. We find that the denial of promotions had taken place prior to the introduction of ACP & MACPS. So as per the principles laid down in the above OAs, it can be seen that denial of promotion before the coming of the schemes cannot be considered for denial of benefits under a scheme. The facts of this case is very much similar to the earlier decision of this Tribunal and they apply to the present case also. So, we find that the applicant is entitled to get her II ACP with effect from 03.12.1997 and her MACP on completion of 30 years on 03.12.2003.

9. The respondents are directed to consider the re-fixation of his II ACP w.e.f. 03.12.1997 and granting of MACP on completion of 30 years as per rules in the light of the discussion above within a period of six months from the date of receipt copy of this order with consequential benefits. No costs.

(T. JACOB)
MEMBER(A)

(P. MADHAVAN)
MEMBER(J)

03.06.2020

Asvs