

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 1115 of 2012

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

1. Fardinand Tirkey, aged about 58 years, S/o Late Remish Tirkey
2. Basanta Kumar Panda, aged about 54 years, S/o Late Bamadev Panda
3. A.Janaki Ram, aged about 54 years, S/o Late A.Narasingha Rao
4. Aswini Kumar Rout, aged about 53 years, S/o Late Gopinath Rout
5. Trilochan Biswal, aged about 54 years, S/o Late K.C.Biswal
6. Pabitra Mohan Mohanty, aged about 48 years, S/o Late N.C.Mohanty
7. Chitta Ranjan Patra, aged about 50 years, S/o Kasinath Patra
8. Prabir Kumar Samal, aged about 49 years, S/o Khageswar Samal
9. Basanta Kumar Parida, aged about 50 years, S/o Biodyadhar Parida
10. Paramananda Samal, aged about 52 years, S/o Late Sriram Samal
11. Sarat Ch.Sahoo, aged about 50 years, S/o Anam Charan Sahoo
12. Manoranjan Panigrahi, aged about 47 years, S/o Sanatan Panigrahi
13. Kirtan Dash, aged about 49 years, S/o Late Satyabadi Dash
14. Vijay Ku.Moharana, aged about 51 years, S/o Purna Chandra Moharana
15. Santosh Kumar Mallick, aged about 49 years, S/o Late Sandhu Charan Mallick
16. Prafulla Chandra Mohapatra, aged about 52 years, S/o Late Brundaban Barik
17. Srikanta Khuntia, aged about 49 years, S/o Lambodar khuntia
18. Saroj Kumar Behera, aged about 47 years, S/o Govinda Chandra Behera, At/PO-Daleiput, Dist-Kharda
19. Niranjan Sahoo, aged about 51 years, S/o Jadunath Sahoo
20. Durga Charan Sahoo, aged about 51 years, S/o Sridhar Sahoo
21. Sangram Keshari Samantaray, aged about 49 years, S/o Manmohan Samantaray
22. Dasarath Mohanty, aged about 50 years, S/o Late Sridhar Mohanty
23. Umakanta Mahasuar, aged about 47 years, S/o Late Balakrushna Mahasuar
24. Gopal Chandra Mishra, aged about 50 years, S/o Achyutananda Mishra
25. Jagannath Das, aged about 51 years, S/o Late Chakradhar Das
26. Susanta Kumar Sahoo, aged about 51 years, S/o Hadibandhu Sahoo
27. Binod Chandra Padhi, aged about 51 years, S/o Hadibandhu Padhi
28. Pradeep Kumar Sethi, aged about 47 years, S/o Nath Sethi
29. Niranjan Senapati, aged about 49 years, S/o Dhaneswar Senapati
30. Bidyadhar Nayak, aged about 51 years, S/o Iswar Chandra Nayak
31. Prabhat Kumar Satpathy, aged about 52 years, S/o Late Ramnath Satpathy
32. Panchanana Panda, aged about 50 years, S/o Ratnakar Panda
33. Soumendra Prasad Mohanty, aged about 49 years, S/o Mahendra Prasad Mohanty
34. Gadadhar Sahu, aged about 50 years, S/o Bhikari Charan Sahu
35. Prasanta Mallick, aged about 49 years, S/o Sridhar Mallick
36. Abu Talib Khan, aged about 49 years, S/o Abdul Habib Khan

37.Kalyan Kumar panda, aged about 48 years, S/o Late Narahari Panda
38.P.V.Candiprava, aged about 50 years, S/o P.Venkateswarlu

All are working as A.A.O. at office of the Principal Accountant General (A&E) Odisha, Bhubaneswar, Dist-Khurda.

.....Applicant

VERSUS

1. Union of India, represented by the Secretary, Ministry of Personnel, Public Grievances and Pensions, Dept. of Personnel & Training, North Block, New Delhi.
2. The Comptroller and Auditor General of India, Pocket-09, Deendayal Upadhyaya Marg, New Delhi.
3. Principal Accountant General (A&E), Odisha, Bhubaneswar, Dist-Khurda.

.....Respondents

For the applicant : Mr.P.K.Behera, counsel

For the respondents: Mr.S.K.Patra, counsellor

Heard & reserved on : 9.12.2019 Order on : 02.01.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

In this OA the applicant has prayed for the following reliefs :

- “(a) Direct the Respondents to treat applicants appointment as Accountant as the direct entry grade by quashing the rejection order in Annexures-A/8 and A/9 series.
- (b) Direct the Respondents to grant the 3rd financial upgradation to those applicants who have completed 10 years as A.A.O. and to others on completion of 10 years.
- (c) To pass any other order or direction which would afford complete relief to the applicants in the facts and circumstances of the case.”

2. The facts of this case are that the applicants were initially appointed as Clerk under the respondents during the year ranging from 1981 to 1986. They were subsequently appointed as Accountant in 1986-87 and as Sr. Accountant during the year 1992-94. They were also promoted to the grade of Assistant Accounts Officer subsequently.

3. It is the case of the applicants that 28 persons who were also appointed as Clerks, were appointed as Accountant in the similar manner as the applicants vide order dated 30.3.1992 (Annexure A/2) and they have been shown alongwith the applicants in the gradation list at Annexure A/4. After introduction of Modified Assured Career Progression (in short MACP) Scheme w.e.f. 1.9.2008 by the Government, the dispute arose in respect of sanction of 3rd financial upgradation under MACP in favour of the applicants.

4. Under MACP Scheme, if an employee has not availed at least for 3 promotions or upgradations in 30 years or if he continues in one grade pay for more than 10 years, then he will be entitled for financial upgradation to the next higher grade pay if he has not availed at least three promotions or upgradations already. The applicants are aggrieved in this case since their case for sanction of 3rd financial upgradation was rejected by the respondents, whereas for 28 persons as per the order at Annexure A/2, they were allowed benefit of 3rd financial upgradation. This was on the ground that the appointment of 28 persons as Accountant as per order at Annexure A/2 was treated as direct recruitment, whereas in case of the applicants the appointment as Accountant was considered as promotion. Since the applicants have already availed three promotions, they were considered to be ineligible for 3rd financial upgradation under MACP Scheme. But 28 persons as in Annexure A/2 did not avail three promotions for which 3rd MACP was allowed in their favour.

5. Being aggrieved, the applicants had filed OA No.370/2011 which was disposed of vide order dated 9.6.2011 (Annexure A/7 series) with a direction to the respondents No. 2 & 3 to consider and dispose of the pending representation of the applicants and communicate the speaking order. Accordingly the respondents have passed the order dated 14.11.2011 (Annexure A/8) in respect of applicant No.18 rejecting his case treating his appointment as Accountant as promotion. On a similar ground the order dated 21.12.2011 (Annexure A/9 series) have been passed by the respondents rejecting the claim of the other applicants. It is stated in the OA that the posting of the applicants as Assistant Accounts Officer was considered as 3rd promotion, whereas it was considered as 2nd promotion for 28 persons as per Annexure A/2, which is stated to be discriminatory.

6. The respondents have filed counter stating as under :

“That, in reply to the averments made in Para-4(v) of the Original Application, it is humbly submitted that the facts mentioned in this para are incomplete and therefore they are misleading. The selection of other 28 graduate Clerks as Accountants with effect from 31.1.92 was done as per Comptroller & Auditor General of India’s office letter No. 31-N.2/4-91 dated 14.1.92, which is self explanatory. Copy of the letter dated 14.1.1992 is enclosed herewith as **Annexure R/1** for kind appreciation of this Hon’ble Tribunal.

Selection of those 28 graduate clerks (awaiting promotion under examination quota) was treated as fresh recruits (as stated in the letter dated 14.1.1992) as they were selected against the direct recruitment vacancies for the panel year 1991, for which no candidate were sponsored by Staff Selection Commission by 31.12.1991. Whereas the appointment of Applicants at Sl.No.1 to 38 were already (by 31.12.91) promoted as Accountants based on the vacancies available for promotion on seniority quota, exam quota and therefore the Applicants at Sl.No.1 to 38 cannot be treated as fresh recruits at par with other 28 candidates.”

It is averred in the counter that the 38 applicants have already availed three financial upgradations/promotions for which they will not be entitled as per rules pertaining to MACP and 28 persons in Annexure A/2 who have been given 3rd financial upgradation/MACP benefit, it is personal to them and will have no relevance to the seniority position.

7. No rejoinder has been filed by the applicants.
8. The matter was heard. Learned counsel for the applicant reiterated the contentions in the OA and submitted that as per the rules for appointment of Accountant, 1/3rd of the vacancies to be filled up by promotion on the basis of seniority, 1/3rd of the vacancies are to be filled up by promotion through examination from the eligible departmental candidates and remaining 1/3rd of the vacancies are to be filled p by direct recruitment. Although 28 employees as per Annexure A/2 were appointed as Accountant under direct recruitment quota in relaxation of Recruitment Rules and thereafter benefit of 3rd MACP were given, the applicants being senior to those persons were not given the similar benefits.
9. Learned counsel for the respondents submitted that as explained in para 9 of the counter specific approval of the competent authority was taken for relaxation of Recruitment Rules in respect of 28 persons vide order at Annexure A/2. Hence the benefit of 3rd MACP will be given to those 28 persons because of the fact that their appointment as Accountant was considered to be under direct recruitment quota instead of promotion in relaxation of Recruitment Rules by the competent authority, whereas in case of the applicant it was treated as a promotion. He submitted that as per the order dated 14.1.1992 of C.A.G. (Annexure R/1), the clerks who are eligible as per the said letter are to be appointed as Accountant against direct recruitment quota. Accordingly, order at Annexure A/2 was passed appointing 28 persons as Accountant.
10. Having regard to the submissions by both the parties, it is clear that 28 employees were selected under direct recruitment quota vide order at Annexure A/2 in relaxation of Recruitment Rules with approval of the competent authority. As per the letter dated 14.1.1992 (Annexure R/1) the graduate clerks who have passed the departmental examination and are awaiting promotion, are to be appointed as Accountant against direct recruitment quota. Accordingly, the order at Annexure A/2 was passed on 30.3.1992 selecting 28 employees. There has not been any challenge to the said order by the applicants after 30.3.1992. This implies that even if the selection to these 28

persons was accepted by the applicant and the issue was not agitated by other employees claiming such benefit of direct recruitment quota for appointment as an Accountant. The applicants have accepted the fact that those 28 employees were appointed as Accountant again st direct recruitment quota in relaxation of the recruitment rules. It is also noticed that said order at Annexure A/2 has not been challenged in this OA. Hence, the order dated 30.3.1992 (Annexure A/2) has attained finality.

11. As per the guidelines of MACP, the appointment of 28 employees as Accountant as per the order at Annexure A/2 is to be treated as direct recruitment. Hence their previous appointment as Clerk would be ignored for the purpose of granting benefit under MACP scheme for which, their initial appointment will be deemed to be Accountant. In that case, as stated in para 4(xiv) of the OA, their first promotion will be Sr. Accountant and 2nd promotion will be Assistant Accounts Officer. Since they have availed two promotions only, they will be eligible for consideration for 3rd financial upgradation under MACP. Similar benefit will not be available to the applicants as per MACP guidelines since in their case, their appointment as Accountant from Clerk is considered as first promotion and thereafter, they have availed two more promotions. Thus they have availed three promotions as against two promotions in case of 28 employees at Annexure A/2. Since the applicants had not challenged the appointment of 28 employees under direct recruitment quota as per the order at Annexure A/2 in relaxation of the Recruitment Rules or have not claimed similar benefit on the ground that they are senior, such benefits cannot be claimed now for the purpose of MACP Scheme after a long lapse of time. Hence, the benefits allowed to 28 employees by treating their appointment as direct recruitment as per order at Annexure A/2 will not be available to the applicants for the purpose of grant of 3rd MACP.

12. In view of the above the OA has no merit and is liable to be dismissed. Accordingly it is dismissed. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

