

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/260/698/2017

Date of Reserve:09.01.2020
Date of Order:12.02.2020

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

1. Pravash Kumar Sahoo, aged about 60 years, Son of Late Baikuntha Nath Sahoo, resident of plot No. 882/1423/2396, BhagabatSandhana, Cannal Road, GGP, Bhubaneswar-751025, Dist-Khurdha, Odisha.
2. Smt. SanghamitraPattnaik, aged about 58 Years, Wife of Dusmanta Das, resident of Plot No. 184/2643, Jagamara, Khandagiri, Bhubaneswarr-751030, Dist.-Khurdha, Odisha.
3. Om Prakash Rath, aged about 59 Years, Son of Late Srivatsa Rath, resident of Vill/P.O.-Asureswar, Dist.-Cuttack-754209, Odisha.
4. Pradeep Kumar Sahu, aged about 58 Years, Son of Late Raghunath Sahu, resident of Plot No. 618, Aerodrum Area, lane-10, Bhubaneswar-20, Dist.-Khurdha, Odisha.
5. Smt. Manjula Kunar, aged about 60 Years, D/O.- Late Chakradhar Kunar, resident of Quarter No. Type-II/54, Census Colony, Baramunda, Bhubaneswar-751003, Dist.-Khurdha, Odisha.
6. Suresh Chandra Sahoo, aged 59 years, S/O. Late Benudhar Sahoo, resident of Type-II-10, Census Staff Quarters, Barmunda, Bhubaneswar-3, Dist. Khordha, Odisha.
7. Pramod Kumar Panda, aged about 59 Years, Son of Late Bhramarbara Panda, resident of Quarter No. L/43, GGP Colony, Rasulgarh, Bhubaneswar-751025, Dist.-Khurdha, Odisha.
8. PadmanavSahu, aged about 59 Years, Son of Late AbhimanueSahu, resident of Quarter No. Type-III/8, Census Colony, Baramunda, Bhubaneswar-3, Dist.-Khurdha, Odisha.
9. Ajaya Kumar Mohapatra, aged about 61 Years, Son of Late Radheshyam Mohapatra, resident of Quarter No.11/10, Census Colony, Baramunda, Bhubaneswar-3, Dist.-Khurdha, Odisha.
10. Dilip Kumar Mohapatra, aged about 61 Years, Son of Chintamani Mohapatra, Resident of LIG-63, K6(A), Kalinga Vihar, Bhubaneswar-751019, Dist.-Khurdha, Odisha.

11. Sasanka Sekhar Pattnaik, aged about 64 Years, Son of Jagabandhu Pattnaik, resident of Gayatri-6, VastuVihar, Bhubaneswar, Dist.-Khurda, Odisha.
12. Akhila Chandra Sahoo, aged about 62 Years, Son of Late Bansidhar Sahoo, resident of Manchanath Enclave, P.O.- Mancheswar, Plot No. 2357, Flat No. 305, Bhubaneswar-751017, Dist.-Khurda, Odisha.
13. Jasobanta Sahoo, aged about 59 Years, Son of Late Ramesh Chandra Sahoo, resident of Plot No. L/13, Phase-I, Dumduma H.B. Colony, Bhubaneswar-751019, Dist.-Khurda, Odisha.
14. Rabindra Kumar Sethy, aged about 59 years, Son of Late Purna Chandra Sethy, resident of Quarter No. Type-3/2, Census Staff Colony, Baramunda, Bhubaneswar-3, Dist.-Khurda, Odisha.
15. Smt. Subhashree Mishra, aged about 57 Years, D/O- Late Sukanta Kumar Mishra, resident of Srikunj, Sriram City, Plot No. 981/2041, Canal Road, GGP, Bhubaneswar-25, Dist.-Khurda, Odisha.

The Applicants No. 1 to 8 are at present working as DEO, Grade-B, Applicants No. 9 to 12 are Retd. DEO, Grade-B and Applicants No. 13 to 15 are Senior Supervisors, Office of Director, Census Operation of Odisha, Unit-IX, Bhubaneswar, Odisha.

...Applicants

By the Advocate(s)-M/s.N.R.Routray
 T.K.Choudhury
 S.K.Mohanty
 Smt.J.Pradhan

-VERSUS-

Union of India represented through:

1. The Registrar General of India & Census Commissioner, 2/A, Mansingh Road, New Delhi – 11.
2. Under Secretary, Office of the Registrar General of India, 2/A, Mansingh Road, New Delhi-11.
3. Director, Census Operations of Odisha, Unit-IX, Janpath, Bhubaneswar-751022, Dist. Khordha.
4. Assistant Director, Office of Registrar General of India, 2/A, Mansingh Road, New Delhi – 11.
5. Secretary, Ministry of Personnel, Public Grievance and Pension, Department of Personnel & Training, North Block, New Delhi – 110001.

...Respondents

By the Advocate(s)-Mr.D.K.Mallick

ORDER
PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the A.T.Act, 1985, the applicants have sought for the following reliefs:

- i) To quash the letter dated 29.04.2015 under Annexure-A/9.
- ii) And to quash the order of rejection dated 02.09.2016 under Annexure-A/13.
- iii) And to direct the Respondents to grant 2nd financial upgradation under ACP Scheme to the applicants in PB-2 with GP of Rs.5400/- from the date of entitlement at par with beneficiaries under Annexure-A/10 dated 18.01.2016.
- iv) And to direct the Respondents to pay the differential arrear salary from the date of entitlement to till the date of actual payment/

And pass any other order as this Hon'ble Tribunal deems fit and proper in the interest of justice.

2. The relevant facts for determination of this matter are that in order to fill up the post of Direct Date Entry Operator, Grade-B, the Employment Exchange had sponsored their names and in due course of time, they have been selected for the post in question, were appointed as Operators of DDE Units on adhoc basis with effect from 01.06.1982, 07.05.1984 and 11.05.1984. While continuing as such, vide order dated 22.08.1985, the applicants' service as Operators were regularized from date (s), they had been appointed on ad hoc basis. After coming into force the Assured Progression Scheme (in short ACP), the applicants, on completion of 12 years' service, were granted the 1st financial upgradation with effect from 09.08.1999, being placed in the scale of Rs.5000-8000/-. Grievance of the applicants is that although they are entitled to get 2nd financial upgradaton on completion of 24 years' service in Grade Pay of Rs.5400/-, they are not being granted so on the ground that the benefit of

ACP being granted against the promotional hierarchy, the applicants ought to have fulfilled the educational qualification prescribed for that post and since, they do not possess the required educational qualification, in view of instructions issued by the DOP&T, they are not entitled to the 2nd ACP. For the sake of clarity, the circular dated 09.09.2016 (A/13), which is impugned herein, is extracted hereunder:

Sub: Regarding forwarding of applications for granting of 2nd ACP in PB-3 Grade Pay Rs.5400/- to Senior Supervisors/DEOs who do not prescribe degree as per the RRs for the post of Assistant Director (Data Centre)- reg:

"It is come to notice that many of DCOs such as DCO Maharashtra vide their letter no. A32015/01/2015-16/ACP(dde)/622 (2) dated 12/08/2016 & DCO-West Bengal vide their letter no. A.12120/Estt./2013/1005 dt. 22/08/2016 have been forwarding the applications/representations of DEOs/Supervisors who do not possessed degree as prescribed in recruitment rules for the post of Assistant Director (Data Centre) and have completed 24 years regular service before 01.01.2006 for granting 2nd financial up-gradation under ACP Scheme in Grade Pay Rs. 5400/-

2. It is to informed that the matter related to grant of relaxation in Recruitment Rules of Assistant Director (Data Centre) in the column of qualification for grant of 2nd financial up-gradation under ACP Scheme in that Grade Pay to the DEO Grade B/Senior Supervisors who have completed 24 years of regular services in the grade and do not possesses the requisite qualifications, was referred to DoP&T for approval. As per Para-6 of Annexure-1 annexed to DoP&T's O.M. dated 09.08.1999 vide which the ACP Scheme was introduced states that financial upgradation under the ACP Scheme may be granted to those employees who fulfil all the promotional norms of the hierarchy posts in which the financial upgradation under the ACP Scheme may be granted to those employees who fulfil all the promotional norms of the hierarchy posts in which the financial upgradation is to be granted. While referring the file to DoP&T, all the facts concerned to the matter such as appointment of DEO Grade-B with relaxation in Educational Qualification, Hon'ble Supreme Court of

India's judgment dated 11.11.2005 in Civil appeal No. 2708, 2709 of 2002 in the matter of Shri Jagdish Kumar & other versus State of Himachal Pradesh & other case was also referred along with Hon'ble CAT, New Delhi dated 10.10.2012 in O.A. No. 366/2012 filed by Shri A. K. Malhotra against Ministry of Textiles & The Development Commissioner (Handicraft) were also referred along with the case for granting the relaxation in educational qualification in particular subjects as mentioned in recruitment rules of Assistant Director (Data Centre).

3. Although, all the essential facts explained for getting approval of DoP&T, but DoP&T, but DoP&T does not extend any relaxation in the criteria pertaining to Educational Qualification for promotion and stipulated that "As per policy, for grant of ACP, all the promotional norms including the Educational Qualification for promotional post have to be fulfilled. There is no provision in ACP Scheme for relaxation of any aspect of ACP policy. Therefore, this Department does not agree for relaxation of Educational Qualification for ACP benefits". Further DoP&T advised the Departmental to consider their cases as per MACP Scheme where the requirement of fulfilment of promotional norms is not necessary except the criteria of 'Benchmark' in the ACRs/APARs.
4. In view of DoP&T guidelines mentioned in the Para 5 above, Shri R P Arya, General Secretary, AICEDPSA (Recognized) was also informed about vide this office even no. letter dated 06/07/2016 and now all the DCOs are requested to dispose of representations/applications made by DEO Gr.B/Sr. Supervisors who do not conformed Educational Qualifications as prescribed in recruitment rules of Assistant Director (Data Centre), at their level by taking reference of this letter. And it is also requested that the cases related to stepping up the pay of DEO Gr. B/Sr. Supervisors in Grade Pay Rs. 54000/- may be forwarded directly to Administration Section-IV or ORGI as this matter is being dealt by Ad.IV section not by Administration Section-III".

3. The grounds on which the applicants have based their claims are that ACP Scheme is to mitigate the hardships caused for want of regular promotion and in the above background, the Scheme provides that those who have worked for 12/24 years in a particular post without having any regular

promotion, are entitled to 1st and 2nd financial upgradation. It is the case of the applicants that since they have completed 24 years service without availing of any promotion, they are entitled to 2nd financial upgradation under the ACP Scheme on completion of 24 years' service, regardless of any educational qualification in the promotional hierarchy, i.e., Assistant Director.

4. Respondents have filed a detailed counter opposing the prayer of the applicants. According to Respondents, in the matter of grant of financial upgradation under the ACP Scheme, an official has to fulfil all the promotional norms. Complying with this provisional, 2nd financial upgradation under the ACP Scheme has been granted to those DEOs, Gr.B/Sr. Supervisors, who had fulfilled the promotional norms in the promotional post of Assistant Director (DC). Respondents have pointed out that as per the Recruitment Rules, for promotion to the post of Assistant Director (DC), an employee has to have graduation degree in the subject of Mathematics/Commerce/Statics/Economics/Operation Research/Physics/Computer Application, whereas the applicants do not have such prescribed educational qualifications. This the genesis on which the applicants have not been granted the 2nd financial upgradation under the ACP Scheme in the Grade Pay of Rs.5400/- on completion of 24 years' service.

5. Applicants have filed rejoinder to the counter more or less reiterating the same facts as in the O.A.

6. We have heard the learned counsels for both the sides and perused the records. We have also gone through the written notes of submission, wherein the applicants have relied on the following:

- i) Order dated 04.03.2011 passed in C.W.P. No.5683/2010 by the Hon'ble High Court of Himachal Pradesh.

- ii) Order dated 10.10.2013 passed in O.A.No.366/2012 by the CAT, Principal Bench, New Delhi.
- iii) Order dated 06.05.2016 passed in O.A.No.132/2014 of CAT, Chandigarh Bench.

7. In CWP No.5683/2010, the point that was considered by the Hon'ble High Court of Himachal Pradesh, Shimla that whether dismissal of a Special Leave Petition by the Hon'ble Supreme Court amounts to merger of order/decree passed by the Hon'ble High Court. The conspectus of facts leading to decision in CWP No.5683/2010 is that the point discernible before the CAT, Chandigarh Bench in O.A.No.1062/HP/2001 was whether the applicant therein could be denied the benefit of Assured Career Progression Scheme on the ground that he did not have the prescribed qualification for the post. The Chandigarh Bench decided the matter in favour of the applicant with a direction that irrespective of the educational qualification under the Assured career Progression Scheme, the benefit is to be granted. The order having been challenged by the Union of India in C.W.P.No.349 of 2003 and by judgment dated 02.07.2008, the Hon'ble High Court of Himachal Pradesh, Shimla upheld the orders of the Tribunal by holding that it was not necessary to posses the prescribed educational qualification for grant of ACP. Being dissatisfied, the Union of India approached the Hon'ble Supreme Court in SLP(Civil) No.17131-17132 of 2008. Vide order dated 06.01.2009, the Hon'ble Supreme Court dismissed the SLP as follows:

"Delay Condoned.
The Special Leave Petition is dismissed.
However, this order may not be treated as a precedent".

8. Thereafter, the applicant having been denied the benefit of 2nd financial upgradation under the ASP Scheme on completion of 24 years, approached the CAT, Chandigarh Bench in O.A.No.638 of 2009. The said O.A. was

dismissed vide order dated 21.07.2010 in view of a subsequent decision taken by the Full Bench that the incumbent should possess the prescribed educational qualification, the same being eligibility criteria for grant of 2nd ACP. It was also held by the Tribunal that the finding of the Hon'ble High Court stood merged in the order of the Hon'ble Supreme Court. It was also held that the earlier view of the Tribunal taken by a Coram of two Members stood overruled by the subsequent view taken by the Full Bench of the Tribunal. This gave rise to CWP No.6583/2010 before the Hon'ble High Court of Himachal Pradesh. In the fitness of things, the relevant part of judgment dated 04.03.2011 in the above mentioned CWP is quoted herein below:

"11. Back to the facts of the case, the Tribunal has taken the view that its earlier decision as upheld by the High Court has merged with the order passed by the Supreme Court. But, as can be seen from the order passed by the Supreme Court, it is clear that the Apex Court has already made it clear that the order will not be a precedent. The Supreme Court has not interfered with the judgment of the High Court. In other words, the judgment of the High Court in C.W.P.No.349 of 2003 (Annexure-A/3), is still a binding decision between the parties on the issue in principle also. Its precedential value alone has been taken away. The binding value of the judgment of the High Court cannot be ignored by the Tribunal on the ground that a Full Bench of the Tribunal has since taken a contrary view. The judgment of the High Court cannot be ignored by the Central Administrative Tribunal. The Tribunal may over rule its intra Tribunal decision by a larger Coram. But, the judgment of the High Court, be it a decision rendered on the challenge of a decision by one Member or two Members is binding on the Central Administrative Tribunal; the Coram of the Tribunal is wholly irrelevant, whether it is Division Bench or Larger Bench. Such a scheme of functioning is part of the basic structure of the Constitution of India as held in the celebrated decision of the apex court in L.Chandra Kumar vs. Union of India and Others (1997) 3 Supreme Court Cased 261.e, Annexure-P-3, order dated 21.07.2010, passed by the Central Administrative Tribunal is set aside".

9. From the above, it is clear that the context in which the Hon'ble High Court of Himachal Pradesh directed that the binding value of the judgment cannot be ignored and conversely, the decision rendered in C.W.P.No.349/2003 was binding between the parties, which means, the applicability of the said decision is not in rem, inasmuch as its precedential value has been done away with by the Hon'ble Apex Court. In view of this, the reliance placed by the applicants in the instant O.A. on this decision is of no assistance.

10. Coming to the decision of CAT, Principal Bench in O.A.No.366/2012 (A.K.Mehrotra vs. UOI) decided on 18.10.2012, it is to be noted that in the said O.A. the dispute was regarding denial of 1st and 2nd financial benefits under the ACP Scheme possession of educational qualification by the applicant in order to get the benefits under the ACP Scheme in the scale of Rs.6500-10500/- as because, the applicant had not possessed the required prescribed educational qualification in the promotional hierarchy. For the sake of clarity, Paragraph-3.1 reads as follows:

"3.1. It has been submitted by the respondents in their counter-reply that the posts of Technical Assistant (Metal) were in feeder cadre for promotion to the post of Assistant development Officer as per the Recruitment Rules, 1982. The RRs were revised in the year 1990. As per the revised Rules, the posts of Technical Assistant (Metal) were placed in one of the feeder cadres for promotion to the post of Handicrafts Promotion Officer. Copies of these RRs have been enclosed along with the OA as Annexures – R/1 and R/2. As per both the RRs, the minimum educational eligibility condition for promotion was at least a Bachelors degree. The next post in the hierarchy is that of Assistant Director".

.....

11. In Paragraph-8.1., the Tribunal has noted as follows:

"However, there is another dimension pertinent to the issue at hand and that is revealed from the order

passed by the Tribunal in Yash Pal Vermas case. The rationale for granting the benefits of the promotional post was that even for the post of Technical Assistant (Metal) graduation was an essential qualification, and the same had been relaxed while appointing the applicant therein. The view taken by the Tribunal was that once a relaxation had been granted at the initial state, the same would hold good forever and cannot be raised as a ground for denial of subsequent promotions. The relevant extracts from the order of the Ld. Coordinate Bench are reproduced as hereunder:

“5. Without going into the controversy as to whether the post of ADO or HPO as a feeder category is a promotional post of TAM, yet when relaxation has been accorded to the applicant at the initial level on being appointed a TAM, the relaxation will hold good forever, as ruled by the Apex Court in Jadish Kumar vs. State of H.P. &Ors. 2006 (1) SLJ SC 54. Accordingly, at one level, the educational qualification is once relaxed, one cannot be denied progression in service jurisprudence, which is by way of promotion is a constitutional guaranteed right, to approbate and reprobate simultaneously is not in good administration. Insisting upon the qualification, i.e., graduation, which has once been relaxed is unfair and unreasonable in the circumstances. This very view had been upheld by the Hon’ble High Court when, on the decision of the Tribunal being challenged by the respondents in WP(C)No.9330/2009. Endorsing the view taken by the Tribunal, the following observations were made by the Hon’ble High Court:

.....

12. In the case in hand, there is no such relaxation in the matter of educational qualification in the initial entry grade of the applicants as DEOs. The facts of the above mentioned decision by CAT, Principal Bench being different and distinct from the facts herein, the decision so relied upon by the applicants is of no help.

13. In O.A.No.063/00132/2014 (Besar Dutt vs. UOI) decided by CAT, Chandigarh Bench on 6.5.2016, the relevant Paragraphs read as follows:

“5. For appropriate appreciation of this case and the eligibility for the purpose of grant of ACP, it must be understood that the Scheme of ACP is essentially to address the stagnation of government employee on

account of lack of promotional avenues. In the normal circumstances, if the promotional avenues are adequate, the employees would have a smooth career progression. However, such is not the case in many government departments, therefore, this scheme was launched following the recommendations of 5th Pay Commission. It also must be understood that the Scheme while granting higher pay scale does not endow upon the employee higher responsibilities. To illustrate, in the instant case, the applicant who was appointed as Fieldman even today continues to do work of Fieldman even though after the grant of 1st ACP, he is enjoying the pay scale of Deputy Ranger and if 11Ind ACP were to be granted, he would continue to work as Fieldman only.

6. In view of this fact, the requirement of essential qualification for promotional post loses relevance. If the applicant were to continue to discharge the work and responsibilities of Fieldman, even though he is getting the pay-scale of Junior Technical Assistant, the necessity of his being a Matriculate does not come in the way of discharging his duties as Fieldman. The requirement of higher educational qualification, i.e., Matric for the post of Junior Technical Assistant is because Junior Technical Assistant carries out and discharges functions that are larger and higher in scope and nature than the Fieldman and, therefore, his possessing Matriculation qualification is necessary. But if he were to discharge the functions of Fieldman, then passing this higher qualification becomes irrelevant.

.....

In the circumstances mentioned above, we are convinced that the ACP has to be given effect to in all cases of Group 'D' employees if their services have been satisfactory, after completion of 12 years. However, in the present case, the employees had been completed more than 12 years before the Scheme was introduced and they had in fact put in more than 20 years of service before the scheme was given effect to. Be that as it may, they shall be entitled to the benefit of the first financial upgradation only immediately after the scheme came into effect, if their service record was otherwise found satisfactory.

14. Perusal of the above decision makes it clear that the context in which such decision has been taken is not applicable to the case in hand in view of

the background and facts and circumstances herein, and therefore, the ratio decided therein cannot be made applicable to this OA.

15. At this juncture, we would like to note that we have also gone through the decision of CAT, Patna Bench in O.A.No.456 of 2013 (Amrendra Kumar Sinha & Ors. vs. UOI) decided on 23.02.2017. In that O.A. initially there were 34 applicants, of which 25 having been granted the 2nd ACP in the scale of Rs.15600-39100 with GP Rs.5400/- as they fulfilled the required qualification for the post of Assistant Directors in the Director of Census Operations, Bihar, the grievance regarding grant of 2nd APC in favour of the rest of the applicants had been decided. In that O.A. the CAT, Patna Bench decided the following issues:

- i) Whether an employee has a right for promotion to a post which prescribed certain qualification, even though he does not fulfil the qualification.
- ii) Whether the applicants in present case had a right to get ACP in the pay scale for the post of Assistant Director.

16. The CAT, Patna Bench having discussed the matter in great detail, held as follows:

"23. Thus, the Government's policy is very clear that for ACP the eligibility criteria is same norms as promotions, which was relaxed for MACP. The intent and reasoning why it was so has been explained the aforesaid discussion.

24. It is trite that the first principle of interpretation of a statute (or a scheme) is that it has to be read for its literal or common sense meaning. It has been held by the Hon'ble Supreme Court in the matter of Jagdish Ch. Patnaik & ors. vs. State of Orissa & Ors. [(1998) 4 SCC 456] that "when the language used in the statute is unambiguous and on a plain grammatical meaning being given to the words in the statute, the end result is neither arbitrary, nor irrational nor contrary to the object of a statute, then, it is the duty of the court to give effect to the words used in the statute because

the words declare the intention of the law making authority". Similar view has been held in numerous other judgments.

25. In the present case, there is no ambiguity in the ACP Scheme that an employee has to fulfil all the norms of promotion for getting ACP. The ACP does away with the need of having regular posts, but it does not do away with the requirement of fulfilling the promotion norms.
26. The Respondents' letter dated 15.4.2015 (Annexure-21) only clarifies the manner in which cases becoming due for ACP between 01.01.2005 to 31.08.2008 have to be dealt with in terms of DOP& Circulars. The need for this clarification arise because the 6th CPC orders were issued on 31.08.2008/01.09.2008 giving it effect from 01.01.2006, thus creating interregnum between 01.01.2006 and 31.08.2008. This does not change the eligibility conditions for grant of ACP.
27. The OA is accordingly, dismissed. No order as to costs".

17. From the above, it is clear that the point to be decided in this O.A. is no longer res integra. Since the CAT, Patna Bench has already decided the matter regarding entitlement of the applicants to 2nd ACP in the scale of Rs.15650-39100 with GP Rs.5400/- having interpreted the circular dated 15.04.2015 issued by the Registrar General of India & Census Commissioner, which is the subject matter of consideration herein, in our considered view, the applicants having not possessed the prescribed educational qualification for the post of Assistant Director, are not entitled to get the benefit of 2nd ACP which is granted against the promotional post in the hierarchy.

18. For the reasons discussed above, the O.A. being devoid of merit is dismissed, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)