

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Applications Nos.200/42 & 360/2014

Jabalpur, this Wednesday, the 01st day of January, 2020

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

A.M. Sanyal, Son of Late Shri U.P. Sanyal, aged about 58 years, working as CH/Man (N.T.)/E.M.G. Fire Brigade Section Vehicle Factory Jabalpur PIN 482009 R/o H.No.1650 Narsingh Nagar Opposite Gupta Kirana Ranjhi Jabalpur (M.P.) PIN 482005

-Applicant in O.A. No.200/42/2014

Mangal Prasad, Son of Late Bharosi Prasad, aged about 58 years, presently working as Office Superintendent, C.M.M. Section, Vehicle Factory Jabalpur, 482009 Presently residing of 2423 Maharishi Sudarshan Ward, Nai Basti Ranjhi Jabalpur (M.P.) PIN 482005

-Applicant in O.A. No.200/360/2014

(By Advocate –**Shri Sudarshan Chakravorty in all O.As**)

V e r s u s

1. Union of India, Through the Secretary, Ministry of Defence Production, South Block New Delhi PIN 110011

2. Chairman/DGOF Ordnance Factory Board, Khudiram Bose Marg, Kolkatta PIN 700001

3. General Manager, Vehicle Factory Jabalpur (M.P.) PIN 482009
-Common respondents No.1 to 3 in both O.As

4. B. Banerjee UDC/LMM Section Vehicle Factory Jabalpur (M.P.) PIN 482009

- Respondent No.4 in O.A. No.200/42/2014

4. P.N. Pandey UDC/LMM Section Vehicle Factory, Jabalpur (M.P.) PIN 482009

- Respondent No.4 in O.A. No.200/360/2014

(By Advocate –**Shri D.S.Baghel**)

COMMON ORDER (Oral)

By Navin Tandon, AM:-

Since the issue involved in both these Original Applications is similar, they are being adjudicated through a common order. The facts, stated in Original Application No. 200/42/2014 are being mentioned here.

2. The applicant has made the following submissions:

2.1 He was initially appointed as Messenger boy with effect from 11.10.1971 under the control of respondent No.3. Thereafter he was appointed as Checker (Grade 'D') with effect from 23.05.1976. The appointment order is annexed as Annexure A-2.

2.2 The post of Checker was abolished vide order dated 05.03.1980 (Annexure A-3) and accordingly was merged to the post of LDC with effect from 01.06.1980. Thereafter the applicant was promoted to the post of UDC with effect from 01.06.2004 vide promotion order dated 27.05.2004 (Annexure A-4). This was his first promotion after completion of more than 33 years of regular service.

2.3 After introduction of Assured Career Progression ('ACP') scheme with effect from 09.08.1999 he was entitled to first up-gradation of Rs. 4000-6000 after 12 years and

5000-8000 after 24 years of regular service from the initial date of appointment.

2.4 Private respondent No.4 Shri B. Banerjee who is junior to the applicant was granted the benefit of first ACP of 4000-6000 with effect from 09.08.1999 and 2nd ACP of 5000-8000 with effect from 26.03.2005.

2.5 He has made representations to the respondents for grant of ACP/MACP as given to his junior Shri B. Banerjee (respondent No.4) on 07.06.2012 followed by reminder dated 04.12.2013 collectively filed as Annexure A-10. The respondents vide their letter dated 16/23.12.2013 (Annexure A-1) have rejected the same.

3. He has prayed for the following relief in this Original Application:

8. Relief sought:

8(i) Call for the entire material record pertaining to the instant controversy.

8(ii) Quash the impugned letter/order dated 23.12.2013 (Annexure A-1) and direct the respondents to grant the benefit of Ist ACP of Rs. 4000-6000 and IInd ACP of Rs. 5000-8000 w.e.f 09-08-1999, as the applicant has not received any promotion for the past 24 years of regular service.

8(iii) To direct the respondents to re-fix the pay in P.B. II of Rs. 9300-34,800 + G.P. of Rs. 4200/- w.e.f. 01.01.2006, after implementation of 6th Central Pay Commission and

Grade Pay of Rs. 4600/- w.e.f. 01.09.2008 after 30 years of regular service under MACP Scheme.

8(iv) Pay the arrears and interest @ 14%.

8(v) Grant any other relief, which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case to the applicant.

8(vi) Award the cost of the instant lies to applicant."

4. The respondents have filed their reply in which following has been stated:

4.1 That the applicant was appointed as Messenger boy with effect from 11.10.1971. He was appointed as checker with effect from 23.05.1976 in the higher post holding higher responsibility and higher pay scale of 225-308. He was then granted first promotion departmentally to the higher pay scale of 260-400 with effect from 01.04.1980.

4.2 As per existing rule of ACP, employees who have given written examination with the outsiders, they will be treated Direct appointment and for granting of ACP their services will be counted from that date of becoming LDC.

4.3 However, as per existing rule of ACP, if an employee is promoted from Checker to LDC his services for granting of ACP will be treated as first promotion. Since, the applicant was promoted from checker to LDC (Promotion

order dated 28.05.1980 (Annexure R-2) it was treated as first promotion and again he received 2nd promotion as UDC with effect from 01.06.2004, hence he was not given financial up-gradation under ACP. On the introduction of MACP by the 6th Pay Commission he was granted the benefit of financial up-gradation of 3rd MACP with effect from 01.09.2008

4.4 Regarding comparison to Shri B. Banerjee (respondent No.4) it is clarified that Shri Banerjee was appointed under direct recruitment to the post of LDC with effect from 26.03.1981 and therefore he was granted 1st ACP with effect from 09.08.1999. Since he was not granted promotion to the next higher post i.e. UDC he was granted the benefit of second ACP in accordance with the existing rules.

4.5 Regarding the matter pertaining to the merger of checker with LDC is concerned, other similarly placed persons had approached this Tribunal in Original Application No. 791/2006 (**Shri Deepak Kumar Das and others vs. Union of India**) but the same was dismissed on 21.10.2008 (Annexure R-1). The applicants therein had approached the Hon'ble High Court of Madhya Pradesh in Writ Petition No. 4992/2009 (s), which is still pending.

5. The applicant has filed the rejoinder in which they placed reliance on the decision of this Tribunal in the matters of **M.L. Yadav vs. Union of India & Ors.**, in Original Application No. 424/2007 vide order dated 27.05.2009 (Annexure RJ-2) which has also been confirmed by Hon'ble High Court of Madhya Pradesh in Writ Petition No. 12520/2009 vide order dated 24.04.2012 (Annexure RJ-3).

6. We have heard the arguments of learned counsel for both the parties.

7. The main arguments from the side of learned counsel for the applicant was that in terms of order dated 05.03.1980 (Annexure A-3), the post of checker was merged with LDC and therefore his movement to LDC was not a matter of promotion. Consequently, it should not be treated as first promotion for the purpose of ACP.

7.1 He further places reliance on the order of Hon'ble High Court of M.P. in **D.K.Ganguly vs. Union of India & Ors.**, Writ Petition No. 3490/2009(S) (Annexure A-11) wherein service of messenger boy was also counted for the purpose of ACP. He has also highlighted the fact that the respondents therein had approached the Hon'ble Supreme Court, which has dismissed the petition on 08.07.2013 (Annexure RJ-1).

8. Learned counsel for the respondents brought our attention to office order dated 28.05.1980 (Annexure R-2) wherein the applicant has been promoted through checker to LDC with effect from 01.06.1980. The said office order also mentioned that the above individuals will be on probation for a period of two years from the date of their promotion i.e. 01.06.1980.

8.1 Learned counsel for the respondents emphasized that it is very clearly mentioned in Annexure R-2 that this is a case of promotion from Checker to LDC as mentioned in the office order and therefore has to be counted for the purpose of ACP.

8.2 He further brought our attention to the orders of this Tribunal in Original Application No.791/2006 (**Deepak Kumar Das and others vs. UOI**) and 301/2007 (**Ramesh Chandra Yadav and others vs. UOI**) passed on 21.10.2008 (Annexure R-1) wherein this Tribunal has not agreed to the contention of the applicants that Checker to LDC is not a promotion. He further submits that Writ Petition No.4992/2009 (s) filed by the applicants therein is still pending before the Hon'ble High Court of M.P.

FINDINGS

9. We have considered the matter.

10. The basic issue is whether the posting of the applicant from Checker to LDC is to be counted as promotion or otherwise.

10.1 The office order dated 05.03.1980 (Annexure A-3) reads as under:

The Ordnance Factory Board has decided that the posts of Checker in Ordnance and Ordnance Factories will be abolished in a phased manner. Consequent upon this decision the existing 1861 posts of Checker will be upgraded/downgraded/surrendered as follows:-

Post of Checker to be upgraded as:-

1.	O.S. Grade-I			17 Nos.
2.	O.S. Grade-II			70 Nos.
3.	U.D.C.			405 Nos.
4.	L.D.C.			811 Nos.
5.	Supervisor 'B' (NT/Stores)			45 Nos.
6.	A.S.K.			88 Nos.

Total	1436 Nos.
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Posts of Checker to be
Down/graded as :-

Group 'D' posts	... 76 Nos.
Total	1512 Nos.
Posts of Checker to be Surrendered:-	 349 Nos.

Grand Total	1861 Nos.
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10.2 A perusal of the above order clearly indicates that this is not a case of merger of Checker with LDC. This is a scheme wherein the existing 1861 post of Checker will be up-graded/down-graded/ surrendered in a phased manner. Pursuant to the same scheme, the applicant has been promoted vide order dated 28.05.1980 (Annexure R-2) which clearly mentioned the word promotion.

10.3 The issue of not treating Checker to LDC as a promotion has already been decided by this Tribunal in Original Application No. 791/2006 (Annexure R-1).

10.4 Since the issue of movement from checker to the post of LDC has already been adjudicated in O.A. No. 791/2006 which inter-alia also took the decision of Hon'ble High Court of Madras, the issue is no more res-judicata.

10.5 The cases relied by learned counsel for the applicant in **D.K.Ganguly** (Supra) is easily distinguished as in that case the service of the applicant as a messenger boy was not counted for the purpose of ACP. However, this is not a case in the present Original Application.

10.6 Further in case of **M.L. Yadav** (Supra) the case is of transfer on compassionate grounds from one Ordnance Factory to another by going on a lower grade. In such a case the Tribunal has ordered for grant of ACP. In the present O.A. this is not the case as no lowering of grade has taken place on the own request of the applicant.

11. From the above, it is very clear that his movement from Checker to LDC is a case of promotion and will have to be considered as such for the purpose of A.C.P. Accordingly, we do

not find any merit in this case and the Original Application is dismissed.

12. Since the issue involved in Original application No. 360/2014 is also on similar lines, this Original Application is also dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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