

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/021/00008/2015

Date of CAV : 02.02.2021

Date of Pronouncement : 25.02.2021.



Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

M.Y.Kaushalya,
W/o Late Sri M.Yadeswar Rao,
Aged about 61 years,
Occ : Ex.UDC, Films Division,
Kendriya Sadan, Sultan Bazar,
Min. of Information & Broadcasting,
Hyderabad-500 095.
R/o Plot No.12, Ashokmanipuri Colony,
ECIL Post, Hyderabad - 62.

...Applicant

(By Advocate : Mr. K. Ram Murthy)

Vs.

1.Union of India,
Represented by its Director General,
Films Division,
Min. of Information & Broadcasting,
Government of India, 23-Dr.Gopalrao
Deshmukh Marg, Mumbai-400 026.

2.Senior Branch Manager,
Films Division, Government of India,
Min. of Information & Broadcasting,
Kendriya Sadan, Sultan Bazar,
Hyderabad – 500 095.

....Respondents

(By Advocate : Mrs. K.Rajitha, Sr. CGSC)

ORAL ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:



2. The OA is filed for a direction to the respondents to consider the case of the applicant for promotion as UDC against the vacancy of SC or UR from the date of vacancy i.e. 01.09.1995 by conducting a special review DPC and grant all consequential benefits, including ACP/ MACP benefits as granted to similarly situated persons in the respondent organization.

3. Brief facts of the case are that the applicant was recruited under SC quota as LDC on 1.11.1980 and was due for promotion on 1.9.1995 as UDC but not granted by irregularly considering Smt. M. Nageswari, an UR candidate, for an SC vacancy. The first financial up-gradation under ACP scheme was granted on 9.8.1999 and the 2nd financial up gradation under the said scheme was given w.e.f. 1.11.2004 vide order dated 17.3.2005 and withdrawn on 23.5.2006 on the ground that the applicant has not accepted the promotion offered. With the introduction of the MACP scheme, applicant was granted grade pay of Rs.4600 instead of Rs.4800 as 3rd MACP benefit. Several representations were submitted to grant the 2nd and 3rd financial up-gradations under ACP/MACP Scheme respectively but of no avail and hence the OA.

4. The contentions of the applicant are that similarly situated employees have been granted the benefit though they have declined. Withdrawing the 2nd ACP on grounds that the applicant has not rendered the qualifying service is illegal and arbitrary. Filling up the SC post of UDC by a general

candidate is violative of the rule of reservation. Respondents have been silent on enforcing the promotion if the same has not been accepted by the employee. Rule of reservation was violated by not promoting the applicant as UDC against SC vacancy in 1995.



5. Respondents in their reply statement state that in 1995 there were 8 vacancies in UDC cadre, of which one vacancy was for SC category and an SC candidate Smt. R.H. Gaikwad, senior to the applicant was promoted in the said vacancy, whereas Smt. M. Nageshwari, an UR candidate was selected against UR vacancy. Applicant was offered UDC promotion in 1997, 2001, 2003, 2005, 2006 and 2008 by posting her to places than her present place of posting, which she declined. Only when she was offered promotion in the present place of posting, she accepted the promotion and joined on 16.2.2009. Various representations submitted by the applicant were replied on 24.11.2011. The 2nd financial upgradation was granted by mistake on 17.3.2005 without considering her refusal of promotion to UDC cadre and hence, withdrawn on 23.5.2006. Applicant was granted 2nd financial up gradation w.e.f. 16.2.2009 vide order dated 29.9.2011. Action of the respondents in granting financial up-gradation was as per rules. In fact, applicant filed OA 1239/2011 which was disposed to grant financial upgradation as per rules and again the instant OA has been filed for the same relief.

6. Heard both the counsel and perused the pleadings on record.

7(I) The dispute is about non grant of 2nd and 3rd financial up gradations under ACP/ MACP scheme. The facts on record indicate that the applicant was granted the first financial upgradation under ACP scheme on 9.8.1999.

Applicant claims that she is due for 2nd financial up-gradation on 1.11.2004 which was granted by mistake vide letter dated 17.3.2005 without keeping in view that the applicant has declined promotion to the post of UDC. The 2nd ACP was withdrawn after review by the screening committee on 23.5.2006. Respondents have offered promotion to the post of UDC on 6 occasions from 1997 to 2008 by posting her to different locations in the country and the same were not accepted. Only in 2009, when she was promoted in the same office where she was working promotion to the post of UDC was accepted. The purpose of the ACP scheme is to grant promotion when there is stagnation in the career without promotion for 12/24 years. In the instant case, applicant has declined the promotion on several occasions though offered. The table given hereunder elaborates the facts regarding the declination of the promotion to the post of UDC.



Sl. No.	Date of Offer	Date cancellation	Remarks
1.	04.11.1997 posting at Vijayawada	29.01.1997	Declined
2.	02.05.2001 at Madurai	Order cancelled	No reply received hence order cancelled
3.	22.01.2003 at Mumbai	Order cancelled 24.02.2003	On refusal she was debarred for period from 24.02.2003 to 23.02.2004
4.	11.05.2005 at Mumbai, New Delhi or Madurai	Order cancelled vide order dated 10.06.2005	Debarred for one year from 11.05.2005 to 11.05.2006
5.	Offer dated 10.11.2006 at Mumbai Branch	Order cancelled dated 27.12.2006	Debarred upto 20.11.2007
6.	Offer dated 06.02.2008 at Chennai	Order cancelled 06.02.2008	Debarred from 14.02.2008 to 13.02.2009

II. As per clarification number 22 & 36 of the ACP Scheme, the employee who completes 24 years of regular service unless they accept the 1st regular promotion offered, is not entitled for 2nd financial up gradation under ACP scheme. They will be granted after acceptance of the regular promotion and after the prescribed period of debarment. Hence applicant was informed on 24.11.2011 in response to her representation dated 13.07.2011 that she is not eligible as per condition No.10 of the ACP Scheme 09.08.1999 and clarification No.38 of DOPT memo dated 18.07.2001. Condition No.10 of the Annexure I of the ACP Scheme vide DOPT memo dt. 09.08.1999 is as under:



“10. Grant of higher pay-scale under the ACP Scheme shall be conditional to the fact that an employee, while accepting the said benefit, shall be deemed to have given his unqualified acceptance for regular promotion on occurrence of vacancy subsequently. In case he refuses to accept the higher post on regular promotion subsequently, he shall be subject to normal debarment for regular promotion as prescribed in the general instructions in this regard. However, as and when he accepts regular promotion thereafter, he shall become eligible for the second upgradation under the ACP Scheme only after he completes the required eligibility service/period under the ACP Scheme in that higher grade subject to the condition that the period for which he was debarred for regular promotion shall not count for the purpose. For example, if a person has got one financial upgradation after rendering 12 years of regular service and after 2 years therefrom if he refuses regular promotion and is consequently debarred for one year and subsequently he is promoted to the higher grade on regular basis after completion of 15 years (12+2+1) of regular service, he shall be eligible for consideration for the second upgradation under the ACP Scheme only after rendering ten more years in addition to two years of service already rendered by him after the first financial upgradation (2+10) in that higher grade i.e. after 25 years (12+2+1+10) of regular service because the debarment period of one year cannot be taken into account towards the required 12 years of regular service in that higher grade;”

III. Clarification Nos. 22 given vide OM dt. 10.02.2000 is as follows:



22.	<p>(a)Annexure-I of ACPS stipulates that if the first upgradation gets postponed on account of the employee not found fit or due to <u>departmental proceedings</u>, etc, this would have consequential effect on the second upgradation which would also get deferred accordingly. In other words, the employee who has been denied the first financial upgradation (meaning withholding of this benefit) would again be penalised even after having completed 24 years of regular service. This certainly is a case of double jeopardy and should not be inflicted.</p> <p>(b)Annexure-I of ACPS unnecessarily provides for deferment of second financial upgradation by the period for which an employee is <u>debarred from regular promotion</u> in the higher grade. In other words, it connects the second upgradation under ACPS with regular promotion to the 1st ACP grade. This is quite unwarranted as the schemes of ACP and regular promotions are to run concurrently and parallel to each other and should, therefore, not be connected in the manner it has been done. This condition may, therefore, be withdrawn.</p>	<p><i>In regard to deferment of grant of ACP benefits on account of disciplinary proceedings or refusal of promotion, it is mentioned that the ACPS in the matter has to follow the same pattern as that obtains in the case of regular promotion. The basic idea behind making this provision is that there shall be uniformity of treatment both in the case of ACPS and regular promotions. Moreover, the Government has already modified/ moderated the Fifth Central Pay Commission recommendation that <u>in case of refusal to accept regular promotion subsequently, the employee concerned should be reverted from the higher grade granted under ACPS</u>. The Scheme adopted by the Government, as such, guards against this adverse effect and thereby has already brought about an improvement upon the Pay Commission recommendation in this regard.</i></p>
-----	--	--

IV. Clarifications issued at Sl. No. 38 of the Annexure to the DOPT OM dt. 18.07.2001 are as under:



38.	<p><i>A person has refused a vacancy-based promotion offered to him prior to his becoming eligible for financial upgradation under ACPS, on personal grounds. Will he be eligible for financial upgradation under ACPS?</i></p> <p><i>A person had refused a regular promotion for personal reasons. He has since completed 24 years' of service. Will he be entitled for 2nd financial upgradation?</i></p>	<p><i>The ACP Scheme has been introduced to provide relief in cases of acute stagnation where the employees, despite being eligible for promotion in all respects, are deprived of regular promotion for long periods due to non-availability of vacancies in the higher grade. Cases of holders of isolated posts have also been covered under ACPS, as they do not have any promotional avenues. However, where a promotion has been offered before the employee could be considered for grant of benefit under ACPS but he refuses to accept such promotion, then he 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 ACPS in such cases. The official can be considered for regular promotion again after the necessary debarment period.</i></p> <p><i>In the second case also, since in terms of condition No. 10 of the ACPS, on grant of ACPS, the employee shall be deemed to have given his unqualified acceptance for regular promotion on occurrence of vacancy, the officer will have to give in writing his acceptance of the regular promotion when offered again after the debarment period before he can be considered for grant of second financial upgradation under ACPS.</i></p>
-----	--	--

Hence, it is clear that the applicant is not eligible for the 2nd ACP on 1.11.2004 as per rules cited supra. However, applicant was granted 2nd financial up gradation under MACP vide memo dated 29.9.2011 with effect from 16.2.2009 after the grant of 1st ACP in 1999. By the time, applicant was eligible for 2nd financial upgradation, the MACP came into vogue and hence the 2nd financial upgradation under MACP. The other similarly situated employees named by the applicant in the OA have completed 24 years of service between the period 1.10.2004 & 31.3.2005, as stated in the reply statement, and hence were granted the 2nd ACP which cannot be

found fault with. The case of the applicant is afflicted by the declination of promotion. Applicant has not produced any document to establish that the others have also declined the promotions like her nor denied the same by way of filing of rejoinder. Therefore, comparing herself with others who are dissimilarly placed would not stand to her benefit.



V. The learned counsel for the applicant submitted the following verdicts in support of his contentions:

(a) Hon'ble Madras Bench of this Tribunal order in OA Nos. 609/2014 to 613/2014 dt. 28.09.2018

(b) Hon'ble Ernakulam Bench of this Tribunal in RA No. 36/2012 in OA 499/2010 on 10.09.2012

(C) Hon'ble High Court of Judicature at Bombay in WP No. 10095/2014 on 16.04.2018

We have gone through the above judgments cited by the learned counsel for the applicant. In the instant case, the applicant had been continuously denying promotion before the advent of ACP and continued the declination even after the introduction of ACP Scheme. Therefore, the present case is different from those relied upon by the applicant. Hence, the cited judgments are not of any assistance to the applicant.

VI. In regard to promotion to the post of UDC in 1995, Smt. Nageswari, an UR candidate, was promoted as UDC against the UR vacancy and not against SC vacancy. In fact, an SC candidate, Smt. R.H.Gaikwad, who is senior to the applicant was promoted against the SC

vacancy in 1995. Therefore, it is incorrect on part of the applicant to state that the UR candidate Smt. Nageswari was promoted against SC vacancy in 1995. Applicant has not submitted any document to prove her contention and hence the same is untenable.



VII. Thus, viewed from any angle, there is no merit in the OA and hence the same is dismissed with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

evr