Central Administrative Tribunal
Principal Bench

OA No.2839/2004

New Delhi this the 8th day of June, 2006.

Hon'ble Mr. Shanker Raju, Member (J)
Hon'ble Mrs. Chitra Chopra, Member (A)

Kanta Suri -Applicant

(By Advocate Shri G.D. Bhandari)

-Versus-

Union of India & Others -Respondents

1. To be referred to the Reporters or not? Yes

2. To be circulated to outlying Benches or not? Yes

S. Raju
(Shanker Raju)
Member (J)

Central Administrative Tribunal
Principal Bench

O.A.No.2839/2004

New Delhi, this the 8th day of June 2006

Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Smt. Chitra Chopra, Member (A)

Kanta Suri
PA No.30647
Senior Translator (H)
7, Wing, Air Force Station
Ambala Cantt.

..Applicant

(By Advocate: Shri GD Bhandari)

Versus

Union of India through

1. The Secretary
Ministry of Defence
Govt. of India
New Delhi

2. The Air Officer I/c Pers.
Air Headquarters
Vayu Bhawan
New Delhi

3. The Air Officer Commanding
7 Wing, Air Force Station
Ambala Cantt.

..Respondents

(By Advocate: Smt. Meenu Mainee)

O R D E R

Shri Shanker Raju, Member (J):

By virtue of this OA, a show cause notice dated 17.4.2002, order dated 19.12.2002 and order dated 7.3.2003 are being assailed whereby the financial upgradation granted to the applicant under Assured Career Progression (ACP) Scheme has been, on cancellation, withdrawn with consequential recovery. Applicant seeks quashing of the orders and declaration of DOPT OM dated 18.7.2001 as *ultra vires*.

30

2. Applicant was appointed as Education Instructor on 14.10.1980 on ad hoc basis and was further appointed as Senior Translator (Hindi) w.e.f. 30.11.1982, on which post she was regularized. Applicant on 29.12.1988 was offered vacancy-based promotion as Translation Officer (Hindi), which she refused on personal grounds. The refusal of the applicant was accepted by the competent authority and on promulgation of DOPT OM dated 9.8.1999 regarding ACP, she was granted first financial upgradation on 15.11.1999 w.e.f. 9.8.1999.

3. A clarification was issued by the DOPT on 18.7.2001 wherein it is laid down that one, who refused vacancy-based promotion, is not eligible for financial upgradation under ACP Scheme. Accordingly, a show cause notice was issued to the applicant on 17.4.2002 for withdrawal of ACP, which was responded to. Ultimately an order passed on 19.12.2002 whereby the respondents withdrew the ACP scheme and she was brought to her erstwhile pay scale of Rs.5500-9000/-.

4. Shri G.D. Bhandari, learned counsel for applicant by placing reliance on a decision of the Mumbai Bench of the Tribunal in **V.R. Patil & others** v. **Union of India & others** (OA-129/2003) decided on 20.6.2003, contended that if an employee has refused the promotion before the enforcement of the same, he remains on the same pay scale and still stagnating. One is not stated to have availed of the promotion. As such, withdrawal of ACP scheme is an illegal exercise.

5. Learned counsel would contend that the ACP Scheme being an administrative instruction issued on 9.8.1999 would be applied prospectively. As such, promotion refused earlier to 9.8.1999 would not be an impediment.

7. Learned counsel would further contend that the clarification dated 18.7.2001 of the DOPT is supplanted the original scheme. It is a new condition imposed and being in conflict with the original scheme, cannot override and would not be applied retrospectively.

8. Learned counsel further contended that the scheme does not stipulate as to denial of ACP on refusal of promotion and stated that once the position, which has been consistently in existence for a long time, need not be interfered on the basis of the decision of Apex Court in **Govt. of A.P.** v. **Md. Ghouse & others,** 2001 (8) SCC 425. Learned counsel stated that Apex Court in **State of T.N.** v. **Arojan Sugar Limited,** 1997 (1) SCC 326 ruled that obliterating something retrospectively to remove a defect is illegal.

9. Learned counsel also placed reliance on the decision of Apex Court in **Satish Ram** v. **State of Haryana,** JT 1995 (1) SC 24, wherein it has been held that when a mistake is not attributed to a government servant or based on fraud or misrepresentation, recovery cannot be effected.

10. On the other hand, Smt. Meenu Mainee, learned counsel for respondents places reliance on a decision in OA-2873/2002 in **Suman**

Lata Bhatia v. **Union of India & others** wherein refusal of promotion has been held to be an impediment for grant of ACP scheme but recovery has been dispensed with. In this view of the matter by relying upon the clarification No.34 of DOPT, it is stated that the applicant, who refused promotion, has suffered a bar for one promotion and was awarded penalty of censure for not accepting the promotion. The DOPT OM dated 7.9.2000 clearly rules that as a safety measure to remove stagnation is the object of ACP Scheme and one who refuses the promotion in his own volition, there cannot be any complaint of stagnation in such a case. As per condition 10 of the Scheme, the employee shall be deemed to have given his unqualified acceptance for regular promotion on occurrence of vacancy. As to acceptance of promotion after debarment period, he can be considered for grant of second financial upgradation.

11. Learned counsel would contend that as the issue in all fairness is covered, their decision taken on show cause notice withdrawing the ACP benefits, does not suffer from any legal infirmity.

12. We have carefully considered the rival contentions of the parties and perused the material placed on record.

13. Doctrine of precedent provides following of the ratio deci dendi delivered by a coordinate Bench. In case of disagreement, the course left open to refer the matter to a Full Bench for adjudication. The importance of this doctrine is very well explained by the Apex Court, in a matter dealt with by the Tribunal, in **S.I. Rooplal & others** v. **Lt.**

Governor through Chief Secretary, Delhi & others, (2000) 1 SCC 644. However, sometimes decisions rendered in ignorance of the statutory rules and binding decisions are not reckoned as binding precedents and rendered *per incuriam*. The principle of *per incuriam* is explained by the Apex Court in **State of Bihar** v. **Kalika Kuer @ Kalika Singh & others,** (2003) 5 SCC 448 with the following observations:

> "6. In a decision of this Court reported in Govt. of A.P. v. B. Satyanarayana Rao it has been held as follows: (SCC pp.264-65, para 8)
>
> > "The rule of per incuriam can be applied where a court omits to consider a binding precedent of the same court or the superior court rendered on the same issue or where a court omits to consider any statute while deciding that issue. .... We, therefore, find that the rule of per incuriam cannot be invoked in the present case. Moreover, a case cannot be referred to a larger Bench on mere asking of a party. A decision by two Judges has a binding effect on another coordinate Bench of two Judges, unless it is demonstrated that the said decision by any subsequent change in law or decision ceases to laying down a correct law."
>
> 7. According to the above decision, a decision of the coordinate Bench may be said to have ceased to be good law only if it is shown that it is due to any subsequent change in law.
>
> 8. In State of U.P. v. Synthetics and Chemicals Ltd. this Court observed: (SCC pp.162-63, para 40)
>
> > "40. 'Incuria' literally means 'carelessness'. In practice per incuriam appears to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, 'in ignoratium of a statute or other binding authority' (Young v. Bristol Aeroplane Co. Ltd.) Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law."
>
> 9. In Fuerst Day Lawson Ltd. v. Jindal Exports Ltd. this Court observed: (SCC pp. 367 & 368, paras 19 & 23)

> A prior decision of the Supreme Court on identical facts and law binds the Court on the same points of law in a later case. In exceptional instances, where by obvious inadvertence or oversight a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, the principle of per incuriam may apply. Unless it is a glaring case of obtrusive omission, it is not desirable to depend on the principle of judgment 'per incuriam'. It has to be shown that some part of the decision was based on a reasoning which was demonstrably wrong, for applying the principle of per incuriam.
>
> 10. Looking at the matter, in view of what has been held to mean by per incuriam, we find that such element of rendering a decision in ignorance of any provision of the statute or the judicial authority of binding nature, is not the reason indicated by the Full Bench in the impugned judgment, while saying that the decision in the case of Ramkrit Singh was rendered per incuriam. On the other hand, it was observed that in the case of Ramkrit Singh the Court did not consider the question as to whether the Consolidation Authorities are courts of limited jurisdiction or not. In connection with this observation, we would like to say that an earlier decision may seem to be incorrect to a Bench of a coordinate jurisdiction considering the question later, on the ground that a possible aspect of the matter was not considered or not raised before the court or more aspects should have been gone into by the court deciding the matter earlier but it would not be a reason to say that the decision was rendered per incuriam and liable to be ignored. The earlier judgment may seem to be not correct yet it will have the binding effect on the later Bench of coordinate jurisdiction. Easy course of saying that earlier decision was rendered per incuriam is not permissible and the matter will have to be resolved only in two ways – either to follow the earlier decision or refer the matter to a larger Bench to examine the issue, in case it is felt that earlier decision is not correct on merits. Though hardly necessary, we may however, refer to a few decisions on the above proposition."

14. In the light of above, the decision of the Tribunal in **Suman Lata Bhatia's case** (supra) where on refusal of promotion, relying upon DOPT OM as a clarification dated 9.5.2001, the claim was turned down. The aforesaid decision is *per incuriam* of the provisions of DOPT OM dated 9.8.1999 promulgating ACP Scheme with conditions attached. A

Full Bench of this Tribunal in **Shri Parkash Chand and seven others** v. **Union of India & others**, 2005 (2) ATJ 617 ruled as follows:-

> "12. The ACP Scheme is not statutory in nature but it is a beneficial Scheme. Certain rights have been created on its implementation and granting of the benefit thereto. Necessarily, once such a benefit has been accorded, by clarifications it cannot be withdrawn. We hasten to add that by no stretch of imagination we are putting on end to the right of the State to amend the Scheme, if deemed appropriate in accordance with law. In the present case before us, there is no amendment of the Scheme, but, as already referred to above, by an administrative order, an attempt is made to do so."

15. If one has regard to the above, what has been promulgated as ACP is a beneficial scheme and once the benefit is accorded therein, a clarification, which has the overriding effect or supplanting it, cannot be countenanced in law.

16. In the above backdrop, in case of refusal of promotion, the DPC guidelines promulgated by DOPT OM dated 9.4.1996 provides in para 17.12 as under:-

> "17.12 When a Government employee does not want to accept a promotion which is offered to him, he may make a written request that he may not be promoted and the request will be considered by the appointing authority, taking relevant aspects into consideration. If the reasons adduced for refusal of promotion are acceptable to the appointing authority, the next person in the select list may be promoted. However, since it may not be administratively possible or desirable to offer appointment to the persons who initially refused promotion, on every occasion on which a vacancy arises, during the period of validity of the panel, no fresh offer of appointment on promotion shall be made in such cases for a period of one year from the date of refusal of first promotion or till a next vacancy arises, whichever is later. On the eventual promotion to the higher grade, such Government servant will lose seniority vis-à-vis his juniors promoted to the higher grade earlier irrespective of the fact whether the posts in question are filled by selection or

otherwise. The above-mentioned policy will not apply where ad hoc promotions against short-term vacancies are refused.

[In the cases where the reasons adduced by the officer for his refusal for promotion are not acceptable to the appointing authority, then he should enforce the promotion of the officer and in case the officer still refuses to be promoted, then even disciplinary action can be taken against him for refusing to obey his order.]"

17. In the light of the above, refusal of promotion debars the person for consideration for promotion by one year.

18. Another Bench of the Tribunal at Mumbai in **V.R. Patil's case** (supra) while dealing with the aforesaid issue observed as under:-

"Reading of this paragraph clinch the issue raised by both the parties. Intention is to give financial relief to a Government employee who might have stagnated either in the same cadre or in the cadre at the level of scale of pay in which he cannot go any further unless actually promoted. It has to be viewed from the angle that if the employee either does not have an avenue of promotion or, even if there be a promotion does not get actual promotion he has to be given the benefit under ACP scheme. Stress is on availing the promotion during the period firstly 12 years then in total service on completing 24 years. If an employee has refused the promotion before the enforcement of the same, the facts would remain that he has actually not been given any financial upgradation which he could have been, by a regular promotion. On refusal of promotion, he remains on the same scale of pay, still stagnated. If interpretation put by Respondents could be accepted the very motive, intention and purpose of ACP scheme would be lost for such employee who, may be because of domestic reasons or because of geographical reasons, have refused regular promotion. At the cost of repetition it is mentioned that Government itself has stressed that its benefit has to be given if regular promotion has not been availed by employee as mentioned in Para. 5.1 reproduced above. In view of the clear language of the scheme itself, we cannot accept the clarification given by the authority at the local level, other than DoP&T.

In these circumstances, the action taken by the respondents declared to be illegal. The impugned orders, dated 16.12.2002, 28.8.2002 and 8.1.2003 so far as these relate, to the Applicants before us, are quashed and set aside. The Respondents are directed to restore the benefits of ACP with effect from 9.8.1999, which was earlier granted to them with all consequential

benefits. If any recovery has been made from any one of the Applicants, the same shall be refunded back to him within a period of 2 months from the date of receipt of copy of this order. Respondents shall also comply with above directions within a period stipulated above. OA is thus allowed. No costs."

19. If one has regard to the above, though the aforesaid decision has not taken into consideration the clarification, yet on the aspect of the clarification issued under the ACP, which supplant and is in conflict with the provisions of the scheme, Full Bench in **Parkash Chand's case** (supra) at clarification No.56 by placing reliance on catena of decisions of the Apex court, observed as under:-

"19. In the first instance, it must be stated that the clarification, in this process, supplants the ACP Scheme. We have already referred to above that the State is at liberty to amend the same in accordance with law, but by clarification, the amendment cannot be effected. The clarification, by no stretch of imagination, is clarifying any ambiguity because we have already referred to above that the language is plain and clear of the Scheme and the clarification are modifying the Scheme and supplanting something new, that is not permissible in law.

20. In this regard, we refer with advantage to the decision of the Apex Court in the case of *Director General of Posts & Others vs. B. Ravindran & Anr.*, (1997)1 SCC 641. In somewhat a similar situation, the Supreme Court held:

"14. It is not in dispute that the original order for fixation of pay of re-employed pensioners was contained in OM dated 25.11.1958. In the matter of fixation of pay of such re-employed pensioners the first step required to be taken was to fix his initial pay at the minimum stage of scale of pay prescribed for the post on which he was re-employed. The next step to be taken was to find out whether his pay thus fixed plus pension (including other pensionary benefits) exceeded the pay which he drew before his retirement or Rs. 3000. If it exceeded either of those limits then necessary adjustment was to be made in the pay by reducing it below the minimum stage

so as to ensure that the total pay including pension was within the prescribed limits. If the initial pay plus the pension was found to be less, then it was to be regarded as a case of undue hardship and his pay was required to be fixed at higher stage by allowing one increment for each year of service which the officer had rendered before retirement in a post not lower than in which he was re-employed. However, when it was noticed that this formula was not fair and just in cases of pensioners who retired at an early age that is before 55 years, the Government in relaxation of the policy contained in the 1958 order decided to grant some benefits to such re-employed pensioners and issued an order directing that civil pension up to Rs. 10 per month and military pension up to Rs. 15 per month should be ignored in fixing pay on re-employment. Thus while totaling up the initial pay and the pension for the purpose of finding out whether the pensioner on re-employment was likely to get more or less than what he was getting earlier, Rs. 10 in case of civil pensioners and Rs. 15 in case of military pensioners, were to be ignored. In other words the amount of pension to be added to the initial pay was to be reduced to that extent. Thereafter his pay was to be adjusted depending upon whether the pensioner would thus get more or less on his re-employment. This relaxation was obviously in the nature of a modification of the earlier policy. As narrated above the said limits to be ignored were increased from time to time and by the OM dated 8.2.1983 in case of ex-servicemen, the limit was raised to Rs. 250 in case of service officers and in case of personnel belonging to (sic below) Commissioned Officer ranks the entire pensionary benefits were to be ignored. Though in the beginning, according to the original policy contained in the 1958 order, the entire pension was to be added to the initial pay to find out whether it gave unintended advantage or caused undue hardship to the re-employed pensioner, the position did not remain the same after the passing of the orders in 1963 and 1964 and thereafter. The modifications thus made by the 1963 and 1964 orders were given legal status by amending Articles 521 and 526 of the Civil Service Regulations accordingly."

Thereupon it was finally held:

> "16. The subsequent orders issued in 1978 and 1983 were supplementary in nature and did have a binding force. Under these circumstances, the Government could not have, under the guise of a clarificatory order, taken away the right which had accrued to such re-employed pensioners with retrospective effect by declaring that while considering hardship the last pay drawn at the time of retirement was to be compared with the initial pay plus pension whether ignorable or not. The 1985 clarificatory instructions were not only inconsistent with the relevant provisions of the Civil Service Regulations and the 1978 and 1983 orders but its effect was to supersede the said provision and the orders. The Tribunal was, therefore, right in holding the said instructions insofar as they directed to take into consideration the ignorable part of the pension also while considering hardship invalid and without any authority of law...."

21. Identical is the position herein.

22. In fact, in the matter of *Bhagwati Prasad & Ors. vs. Union of India & Ors.* (OA 2380/03 decided on 20.4.2004), a similar view had been taken by the Principal Bench holding that the said instructions are supplanting the ACP Scheme rather than supplementing the same by so-called clarification. The union of India had filed a Writ Petition (Civil) No. 297/2005 in the Delhi High Court. The Delhi High Court rejected the same holding:

> "We have perused the order passed by the Central Administrative Tribunal. Learned counsel for the petitioner has contended that in view of the subsequent office order, the Assured Career Scheme could not have been implemented. We are in agreement with the findings of the C.A.T. that when the Assured Career Scheme is clear and unambiguous, any clarification or office order cannot supplant the same. If the petitioner does not want to implement the Assured Career Scheme in letter and spirit, then remedy with them lies in amending the Scheme and not whittling down the Scheme on the ground of exigency of administrative difficulties. We find no merit in the petition. Dismissed."

23. Resultantly, the position is clear and beyond any pale of controversy that the clarification, that has been issued, must be held to be one which is modifying the Scheme and by virtue of a clarification, it could not have been so done.

23. Resultantly, for these reasons, we answer the reference as under:-

> "Clarification No. 56 issued by the Department of Personnel & Training on 18.07.2001 will have the effect of rendering condition no. 7 of the ACP Scheme as redundant. It cannot take away the right that has accrued to the Government servant in his existing hierarchy with respect to the grant of the scale to be granted by way of financial upgradation."

20. What has been discerned as a binding precedent from the above is that although an amendment in the Scheme is the prerogative of the Government but clarification, which does not clear any ambiguity rather overrides the provisions of the scheme, cannot be sustained in law.

21. The brief history of the promulgation of ACP transpires that the 5th CPC, in its recommendations, suggested for a safety net to work on genuine stagnation and hardship faced by the government employees due to lack of adequate promotional avenues. Accordingly, debarring Group 'A' officers, the scheme was introduced, which guarantees two financial upgradations in order to mitigate the hardship in acute stagnation by according on the same criteria as of regular DPC financial upgradation, which on eligibility of 12 – 24 years respectively. Clause 34 of the Scheme provides that on introduction of the ACP Scheme, there would be no effect on regular promotion, which is

vacancy based, as these are distinct from financial upgradation and would continue to be granted after due scrutiny by the DPC.

22. Clause 11 of the Scheme permits DOPT in the matter of interpretation of any provision to issue clarification as to doubt on the scope and meaning of the ACP. Conditions attached to the grant of benefits under ACP Scheme envisage that the ACP would be a placement in the higher pay scale on finding upgradation on personal basis and would not require creation of new posts. These benefits would be accorded from the date of completion of eligibility period prescribed or from the date of the instructions. First financial upgradation would be allowed after 12 years of regular service and second after 12 years from the date of first financial upgradation. These two financial upgradations shall have to be counted against regular promotion availed from the grade in which the employee was appointed as a direct recruit. Accordingly, clause 5.1 of the scheme provides as under:-

> "5.1. Two financial upgradations under the ACP Scheme in the entire Government service career of an employee shall be counted against regular promotions (including in situ promotion and fast track promotion availed through limited departmental competitive examination) availed from the grade in which an employee was appointed as a direct recruit. This shall mean that two financial upgradations under the ACP Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee. If an employee has already got one regular promotion, he shall qualify for the second financial upgradation only on completion of 24 years of regular service under the ACP Scheme. In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him"

23. If one has regard to the above, what has been an impediment for grant of ACP is that one could not have availed regular promotion before he is entitled for grant of ACP benefits. Accordingly, one, who has got one regular promotion, shall be qualified only for second financial upgradation. Accordingly, what has to be stressed is that one should not be actually promoted if he is to get the benefits of ACP. This Scheme does not prescribe that the promotion as an impediment would count as a debarment for ACP if offered and refused. What is provided is actual promotion. Clause 10 of the conditions is reproduced 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 refused 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 Schemein 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"

24. If one has regard to the above, the ACP Scheme is conditional as on accepting the benefit, there would have to be deemed unqualified acceptance for regular promotion and in case one refuses higher post on regular promotion, normally debarred for normal promotion. An example quoted clearly shows that the debarment period would have to be excluded and that year would be added to the eligibility period. It clearly indicates that in case of refusal of promotion, the only effect of debarment is extension of the period of eligibility but no denial of ACP, as the denial of promotion is at best can be nomenclature as a refusal of promotion but cannot be treated at par with a situation where it is to be treated as availing the promotion in actual to deprive the benefit of ACP.

25. The above aspect of the matter of the provisions of ACP contained in para 5.1 and the effect that the clarification is in conflict with these provisions having not been taken into consideration by a co-ordinate Bench in **Suman Lata Bhatia's case** (supra) renders it as *per incuriam* and has no precedent value.

26. Moreover, once the Full Bench decision is on the subject, which is binding on a Division Bench as well, now referring the matter to a Full Bench would be a mere formality, which not only waste the precious time of the Court but also a loss to the public exchequer. The aforesaid decision has no applicability accordingly.

27. The reasoning assigned by the Mumbai Bench is inconsonance with the subsequent Full Bench decision, which is the correct position of law and we follow the same.

28. The thrust of the respondents is on the clarification No.34, which has a point of doubt as to eligibility and entitlement of ACP Scheme to those, who have refused regular promotion on personal reasons. A clarification to the effect that when promotion is refused, one is not said to be stagnating and condition No.10, which says that after the debarment period, one has to be considered for promotion, has been taken to be a thumb rule for disentitlement of ACP to those who refused promotion. OM has clearly ruled that once the main Scheme is clear seeks no clarification as to the doubt, a clarification issued would not override the provisions of the Scheme. Para 5.1 of the Scheme is clear to the effect that the only impediment for entitlement of benefits of ACP is when one is promoted. Mere offer of promotion and refusal, which has an implication of debarment of one year, thereupon the right of promotion is opened, would by no stretch is a reasonable and rational interpretation as to the government servant having availed promotion as actual promotion cannot be availed unless one assumes the charge of the promoted post. If such a clarification is allowed to stand, it offends and would in conflict with the provisions of the scheme, which is allowed to the government servant with an object to mitigate the hardship in stagnation. Once there has been a right of refusal of promotion with implication, one cannot be subjected to double jeopardy by denial of ACP as well.

29. In such view of the matter, it is clear from the present case that refusal of promotion was allowed to the applicant and later on this has acted as a double edged weapon for the applicant as she is yet to get regular promotion and also the benefits by financial upgradation in ACP had been denied to her. This has greatly prejudiced the applicant.

30. Government while issuing administrative instructions is bound by doctrine of justice and rule of law. Moreover, as a model employer, once the person on refusal of promotion is suitably reprimanded for debarment of one year, for want of promotion in actual, he would be stagnating.

31. Another aspect of the matter, which requires consideration, is that an administrative instruction cannot act retrospectively. Once the Scheme promulgated on 9.8.1999 is in effect from the date of issue, any refusal of promotion though ACP cannot be denied on it, would have to be in effect prospectively, i.e., after coming into operation the ACP Scheme. If one refuses promotion, the clarification, though not legal, would come in operation for the sake of arguments. This would not relate back to an event of promotion pre- 9.8.1999. Although reckoning eligibility for ACP is retrospective, as an object sought to be achieved, as to compute number of years the eligibility would relate back to the post but for implication operation of the rule, as it is clear that ACP Scheme would be from 12 years or from 9.8.1999, whichever is later, also makes the effect of the Scheme as prospective in nature.

32. In the result, for the foregoing reasons, OA is allowed. Impugned orders are set aside. Respondents are directed to restore back to the applicant the benefits of ACP Scheme already granted to her. Any recovery effected from the applicant, shall be restored back to her with all consequential benefits. This shall be done within a period of two months from the date of receipt of a copy of this order. No costs.

(Chitra Chopra)
Member (A)

(Shanker Raju)
Member (J)

/sunil/