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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA NO. 2882/2004

New Delhi, this the 12th day of April, 2005

**HON'BLE MR. JUSTICE M.A. KHAN, VICE CHAIRMAN (J)
HON'BLE MR. S.K. NAIK, MEMBER (A)**

Rajender Chauhan,
S/o Late B.S. Chauhan,
R/o B-323, Saraswati Vihar,
Delhi – 110 034.

...Applicant

(By Advocate: Shri Sumit Kumar)

-versus-

1. National Council of Educational Research and Training (NCERT), Through The Director, Sri Aurobindo Marg, New Delhi – 110 016. ..Respondent

(By Advocate: Ms. Deepa Rai)

ORDER (ORAL)

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

Applicant is seeking a direction to the respondent to grant him first financial up-gradation w.e.f. 6.7.2002 under the Assured Career Progression Scheme (ACP Scheme).

2. Applicant joined on 30.5.1985 in the Publication Department of National Council of Education Research and Training respondent as Production Assistant on temporary basis for a period of one year on the initial pay of Rs.550/- p.m. in the pay scale of Rs.550-900 plus usual allowances. After one year's probation period was over, the applicant continued to work without any break. The respondent regularized his service from 5.6.90 in the pay scale of Rs.1640-2900. On completion of

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12 years of regular service, he became entitled to the grant of first financial upgradation in accordance with the ACP Scheme introduced by the Government vide memo dated 3.8.99. On 20-22.6.2000 applicant was promoted to the post of Assistant Production Officer and was transferred to RPDC, Calcutta. Applicant conveyed his acceptance but requested the respondent to retain him on the promoted post at the Headquarters in New Delhi, if possible, on account of some personal problems. Instead of acceding to his request the respondent by order dated 24.7.2000 debarred him from promotion for a period of one year, from 22.6.2000 to 22.6.2001. Applicant made a representation on 21.6.2001 for grant of benefit of ACP scheme to him, which was rejected by the respondent vide letter dated 19.8.2002 but it was stated that he was entitled to the benefit of ACP Scheme w.e.f. 6.7.2002. In the meantime, Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training issued certain clarifications vide OM dated 18.7.2001. Clarification No.38 related to the grant of financial upgradation under ACP Scheme to the persons, who had refused promotion. Applicant filed OA No.2218/2003 for quashing of the order of the respondent dated 19.8.2000 and for declaring that the applicant's service had been regularized from 30.5.1985 and he had become entitled to the grant of financial upgradation under the ACP scheme from 17.11.2000. OA was dismissed but the respondents were directed to consider the grant of regular promotion to the applicant after the period of debarment was over and if promotion was not given, the applicant should be considered for grant of benefit of the ACP scheme. Applicant, thereafter, made three representations to the respondent between 24.3.2004 and 1.7.2004 for either promoting him or granting him financial upgradation under the ACP scheme. The respondent, vide

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its order dated 9.7.2004, has rejected the representation of the applicant and has neither promoted him nor has granted financial upgradation under the ACP scheme. Applicant had filed CP No. 267/2004, which had been dismissed on 28.9.2004, granting liberty to the applicant to seek other available legal remedy.

3. The respondent contested the OA and pleaded that the DPC in its meeting held on 29.5.2000 had recommended the applicant for regular promotion to the post of Assistant Production Officer and the applicant, as a matter of fact, was promoted and posted at RPDC, Calcutta vide office order dated 20-22.6.2000 but the applicant had refused the said promotion and opted to stay and work in Delhi against the post of Production Assistant. As a result, applicant was not entitled to the grant of financial upgradation under the ACP scheme as he had refused the promotion offered to him. The purpose of the ACP scheme was to provide relief in case of acute stagnation where the employees, despite being eligible for promotion in all respect, was deprived of regular promotion for long period due to non-availability of vacancies in the higher grade. As per the Scheme, where a promotion has already been offered and the employee has refused to accept such promotion, then he cannot be said to be stagnating for promotion. As the applicant had opted to remain in the grade of Production Assistant, on his own volition, he could only be considered for regular promotion after the expiry of debarment period of one year subject to availability of vacancy. Therefore, there is no stagnation in the case of applicant and the OA is liable to be rejected. It was further stated that in OA-2218/2003 the Tribunal, by order dated 26.2.2004, had already rejected the case of the

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applicant for promotion under the ACP scheme, therefore, the present Original Application is barred by principle of res judicata.

4. In the rejoinder applicant has reiterated his case and controverted the allegations of the respondent.

5. We have heard the arguments of the learned counsel for the parties and have also perused the relevant record.

6. Material facts are not in dispute. Applicant was promoted to the post of Assistant Production Officer Vide Office Order dated 20-22.6.2000 but he refused the promotion and opted to stay and work in Delhi against the post of the Production Assistant. As a result, the applicant will be considered for regular promotion to the post of Assistant Production Officer again only after expiry of debarment period of one year subject to availability of vacancy. In the order dated 9.7.2004, which is impugned, it has been clearly stated that the applicant will be considered for regular promotion only after completion of the necessary debarment period, subject to availability of the post.

7. The grievance in the present OA is not against his non-consideration for promotion to the post of Assistant Production Officer but it is against the refusal to grant the first financial upgradation under the ACP scheme. In terms of the ACP Scheme, the applicant would have become entitled to the grant of first financial upgradation after 12 years of regular service in case he was not promoted. He had completed 12 years of regular service, a condition precedent, to the grant of benefit under ACP scheme, after he was promoted to the post of Assistant Production Officer in June 2000. Before the applicant became entitled to benefit under ACP Scheme, he got regular promotion to the post of

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Assistant Production Officer and was posted in Calcutta. Though the applicant had disputed that he had refused the promotion but since an OA has already been dismissed in this regard, he has not pressed this contention any further. Contrarily, it is argued that the debarment period of one year is already over in June 2001, therefore, it should not come in the way of the grant of the benefit of first financial upgradation under the ACP Scheme. The learned counsel for the applicant has filed the copy of the Clarification No.38 of the DOP&T issued by OM F3504/1/97-Estt. (D) (Vol. IV) dated 18.7.2001 which, being relevant, is reproduced below:-

Sl. No.	Point of doubt	Clarification
38.	<p>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?</p> <p>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?</p>	<p>The ACP Scheme has been introduced to prove 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.</p> <p>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.</p>

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8. The respondent had earlier rejected the representation of the applicant for grant of benefit under ACP scheme vide letter dated 19.8.2002, oblivious of the above said clarification, stating that the applicant would become entitled to the grant of financial upgradation under the ACP scheme w.e.f. 6.7.2002 but now in the OA, reliance has been placed on this Clarification of the Government which, on all force, applies to the case of the applicant. ACP Scheme was devised to provide relief in case of acute stagnation where the employees, though eligible for promotion, were deprived of regular promotion for long as no vacancy was available in the higher grade. Applicant in the instant case was promoted to the higher grade before he could complete 12 years of regular service and was considered for first financial upgradation under the Scheme. He refused to accept the promotion, as such, he could not be said to be stagnating and if he was stagnating it was on his own volition and the Scheme was not meant to provide relief in such cases.

9. However, his contention is that in the previous OA 2218/2003 the Tribunal, while dismissing the OA on 26.2.2004, had directed the respondent to consider the applicant for regular promotion after the debarment period was over and in case he could still not be promoted he should be considered for grant of financial upgradation under the ACP Scheme. Learned counsel has submitted that Clarification No.38, to which we have referred to above, was considered by the Tribunal before giving the above direction but the said direction has not been implemented by the respondent. We have perused the order of the Tribunal, which is Annexure P-11 to the OA. We do not find that the Tribunal had directly or impliedly held that the applicant would be

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entitled to the grant of financial upgradation under the ACP scheme in case he was not promoted after the debarment period was over. Rather in Para 11 of the order, the Tribunal made the following observation:-

“11. We have gone through a letter written at annexure A-12 filed along with the rejoinder. On this aspect aspects, we may also refer to the OM dated 18.7.2000 issued by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) which is the ACP Scheme wherein it is mentioned that if a person refused promotion, he cannot be extended the benefit of the said Scheme. In this case applicant seems to have refused to go to the Calcutta on promotion because of his personal reasons. As clarified by the DOPT, the applicant is not entitled to the benefits of the ACP Scheme, as the applicant was offered for promotion before completion of 12 years and he had refused to join because of his personal reasons, he cannot be said to be stagnating as he has opted to remain in the existing grade on his own volition.”

10. Since the Tribunal had not decided that clarification No.38, aforementioned, would become inapplicable in case the applicant was not promoted after the debarment period was over, there is no force in the argument of the counsel for the applicant that the respondent should have granted the benefit of ACP Scheme to the applicant in pursuance to the above order. It is also pertinent to note that the Tribunal, finding that there was no merit in the case of the applicant, had dismissed the OA but had also asked the respondent to consider the case of the applicant for promotion after debarment period was over and also consider for grant of financial upgradation in case the applicant was still not promoted. The consideration of the applicant either for promotion or for financial upgradation under the ACP scheme was to be in terms of the Scheme, the extant rules and Government instructions and it could not have been de hors the same. The respondent, in compliance with

the directions, has considered the case of the applicant both for promotion as well as for grant of financial upgradation and has rejected it vide order dated 9.7.2002, which is Annexure A-1 and is impugned in this OA.

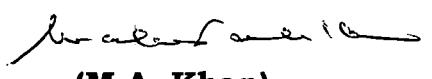
11. As a result, we do not find merit in the contention of the applicant that he was entitled to the grant of financial upgradation under the ACP scheme.

12. Learned counsel for respondent had also argued that the present OA is barred by the principle of res judicata as this Tribunal, vide its order dated 26.2.2004, has already dismissed a similar case filed by the applicant. The order dated 26.02.2004 shows that earlier OA No.2218/2003 filed by the applicant was also for grant of benefit of ACP scheme, which was refused by the respondent vide order dated 19.8.2002. By virtue of the present OA also, the applicant is seeking the same relief but impugning another order of the respondent dated 9.7.2004, which was made pursuant to the order passed by this Tribunal in the earlier OA. The question involved, however, remained the same, i.e., whether the applicant was entitled to the benefit under ACP scheme after he refused the regular promotion granted to him? Exactly, the same question arose for decision in the present case. Therefore, there is ample force in the contention of the respondent that the present OA is barred by principle of res judicata.

13. In the result, the OA is dismissed but without costs, in the facts and circumstances of the case.


(S.K.Naik)
 Member (A)

/Sd/


(M.A. Khan)
 Vice Chairman(J)