

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA**



Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. N. Chatterjee, Administrative Member

O.A./350/1444/ 2016 SYAMAL BHATTACHARYYA & OTHERS

WITH

O.A./350/742/2017	NITYA GOPAL ROY KARMAKAR
O.A./350/743/2017	SANTA CHATTERJEE
O.A./350/744/2017	BIDYUT BASU ROY
O.A./350/745/2017	SUBHENDU BIKASH NASKAR
O.A./350/746/2017	ANITA DAS
O.A./350/747/2017	ASIT KUMAR SAHA
O.A./350/748/2017	KAMAL KUMAR
O.A./350/749/2017	SHIPRA ROY CHOWDHURY
O.A./350/750/2017	DIPHIKA GAIN
O.A./350/783/2017	PRAKASH CHANDRA DAS
O.A./350/784/2017	SWAPAN DAS
O.A./350/785/2017	ARUN PRAKASH PAL
O.A./350/786/2017	PRADIP KUMAR ROY
O.A./350/787/2017	DILIP KUMAR MAJUMDER
O.A./350/793/2017	ANIMA KARMAKAR
O.A./350/794/2017	UMA ROY
O.A./350/795/2017	CHANDRABATI BASU
O.A./350/796/2017	SHOVA GHOSH
O.A./350/797/2017	RUPALI DUTTA

O.A./350/803/2017	RAMEN CHANDRA NASKAR
O.A./350/804/2017	ANANTA KUMAR MONDAL
O.A./350/805/2017	KUMAR MITRA
O.A./350/806/2017	PRADIP KUMAR BHOWMIK



..... Applicants.

Versus

1. The Union of India,
represented by the Secretary,
Ministry of Communications and
I.T. Department of Posts,
Dak Bhawan, New Delhi – 110 001.
2. The Secretary,
Ministry of Communication and
I.T. Department of Posts,
Dak Bhawan, New Delhi – 110 001.
3. The Director General, Posts,
Department of Posts, India,
Dak Bhawan, New Delhi – 110 001.
4. The General Manager
(Postal Accounts & Finance)
Department of Posts,
West Bengal Postal Circle,
Kolkata, P-36, C.R. Avenue Yogayog Bhawan,
Kolkata – 700 012.
5. The Chief Post Master General,
Office of the Chief Post Master General,
West Bengal Circle, Yogayog Bhawan,
P-36, C.R. Avenue, Kolkata – 700 012.
6. The Director Accounts (Postal)
Kolkata Office of the General Manager,
(Postal Accounts & Finance)
West Bengal Postal Circle,
Kolkata,
P-36, C.R. Avenue Yogayog Bhawan,
Kolkata – 700 012.

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7. Tarun Kanti Ghosh,
 Senior Accountant,
 Working for gain in the office of
 The General Manager
 (Postal Accounts & Finance)
 West Bengal Postal Circle,
 Kolkata,
 P-36, C.R. Avenue "Yogayog Bhawan,"
 Kolkata - 700 012.



..... Respondents.

For the applicant : None

For the respondents : Ms. P. Goswami, Counsel
 Mr. R. Halder, Counsel

Date of Order : 25.3.2021

ORDER

Per : Bidisha Banerjee, Judicial Member

Ld. Counsels for respondents was heard. None appeared for applicant despite repeated calls. Hence Rule 15(1) of CAT Procedure Rules is invoked.

Since these matters are identical, all the O.A.s are taken up analogously to be dismissed of by this common order. For the sake of brevity facts of O.A. 1444 of 2016 delineated and discussed hereunder.

2. This application has been preferred to seek the following reliefs:

"8.i) To set-aside the order dated 22.06.2016 passed by the Competent Authority being Annexure "A-6" to this application;

ii) An order do issue directing the respondents not to include the Promoted Post of Junior Accountant for counting upgradation in the ACP and MACP Scheme and to re-fix the pay of the applicants in the Higher Posts and also pay the arrears including the revision of Pension to the applicants who got Promotion to the Cadre of Assistant Accounts Officer who are also come under this perview.



iii) The applicants further pray that the Financial benefits with three(3) Financial Upgradations during their service period from the Post of Junior Accountants should be counted excluding the term promotions from the Post of L.C.C. to JA (Junior Account).

iv) Leave may be granted to add the applicants in the O.A. Jointly under Rule-4(5)(a) of the C.A.T. procedure Rules, 1987 and allow the applicants to move this application jointly."

3. It transpired at hearing that the issue hinges on whether promotion to the post of Junior Accountant be treated as direct entry and to that of Senior Accountant be treated not as "promotion" but as "upgradation" for the purpose of MACP.

4. The service parameters of the applicant in O.A. 1444 of 2016 is noted as under:

Dt.Year	Post and Scale	Remarks	Treatment
26.12.1980	Entry as LDC		
7.6.1983	Jr. Accountant (4500-7000/-)	Promoted through Departmental Exam.	A promotion adjusted against 1 st ACP
1.4.1987	Sr. Accountant Cadre (5500-9000/-)	upon promotion (80% of Jr. Accountants got upgraded upon promotion)	A promotion adjusted against 2 nd ACP
1.9.2008	At (Grade pay 4600/-)	1 st MACP	A financial upgradation

The applicant in this O.A. has sought for three financial upgradations as under:

Entry Cadre	Excluding ACP-1 Promotion	Promotion-I/ ACP-1	Promotion-II/ ACP-II	Promotion-III/ MACP-III
L D C (Qualified Departmental Exam. Promottee candidate.)	Junior Accountant (4500-125-7000/- Grade Pay Rs. 2800) (If not taken into account for ACP-I Promotion)	Senior Accountant (5500-175-9000) Grade Pay Rs. 4200) ACP-I on 1.4.1987.	ACP-II (6500-200-10500/-) Grade Pay Rs. 4800/- on 1.4.1999 but effective date should be from 9.8.1999 since inception of ACP	MACP-III Grade Pay Rs. 5400/- on 1.4.2009 (after completion of 10 years Service)

5. The applicant would contend that promotion to the grade of Junior Accountant (JA in short), through departmental competitive examination, cannot

be treated as a "promotion" for the purpose of ACP/MACP and that the applicant who earned promotion through a departmental competitive examination cannot be treated as regular promotee but as a direct recruit in the said cadre of Junior Accountant, as in view of the decision of Hon'ble Central Administrative Tribunal, Madras Bench in O.A. No. 1088 of 2011 and upheld in Madras High Court in W.P. No. 30629 of 2014. That the Hon'ble Calcutta High Court in W.P.C.T. No. 63 of 2013 in the matter of Union of India – Versus- Uttam Bhattacharyya and others held that upgradation is not the same as promotion that,

"It is now well settled that upgradation is not the same as promotion and, therefore, the petitioners cannot equate the two in order to deprive the Respondents of the benefits of the Modified Assured Career Progression Scheme.

Petition is dismissed."

Applicant in the O.A. has cited the case of respondent No. 7, a junior who has stolen a march over and above him by virtue of conferment of 3rd MACP the applicant has thus attempted to justify his claim. However, such contention is missing in his written arguments.

6. Per contra the respondents would plead as under:

"The applicant was recruited as Lower Divisional Clerk (LDC). Subsequently after qualifying the departmental examination for promotion to Junior Accountant cadre from LDC cadre, he was promoted to the posts of Junior Accountant according to his seniority.

The Postal Directorate notified that 80% posts of Junior Accountant cadre would be upgraded to the posts of Senior Accountant cadre and the upgraded posts of Senior Accountant may be filled by way of promotion of eligible persons.

Thereafter Government of India introduced Assured Career Progression (ACP) Scheme dated 09.08.1999 further customized for Postal Accounts vide letter dated 08.02.2000.

That first financial up-gradation under ACP scheme shall be allowed after 12 years of regular service and the second ACP after 24 years of regular service from the date of initial appointment in Government service subject to fulfilment of prescribed conditions and that two financial upgradation under the ACP scheme in the entire Government service career of an employ shall be counted against regular promotions availed from the grade in which the employee was appointed as direct recruit and that two financial upgradation under ACP scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by the employee.

Thus if an employee has already got one regular promotion, he shall qualify for the second financial upgradation only on completion 24 years of regular service under the ACP scheme.

Since the applicants of the instant OA had already got two regular promotions in Junior Accountant cadre from LDC cadre and in Senior Accountant cadre from Jr. Accountant cadre, he was not eligible to be granted the benefits of financial upgradation under ACP scheme.

Further, as categorically mentioned at Point No. 8 of Annexure-I appended with DOP&T OM dated 09.08.1999 that the financial up-gradation under ACP scheme shall be purely personal to the employee and shall have no relevance to his seniority position. There shall be no additional financial upgradation for the senior employee on the ground that the junior employee in the grade has got

higher pay-scale under the ACP scheme. As such the contention of the applicants citing reference to their junior in the grade for grant of benefits of ACP scheme is against the intent and purport of the ACP scheme introduced by Government of India."



In regard to the applicability of the ratio in judgement dated 26.09.2012 in O.A. No. 1152 of 2011 in the mater Uttam Bhattacharya & Others, the respondents have specifically denied any similarity between the two sets of applicants.

Further their categorical assertion is that the dissimilarity between the applicant of the present OA and the petitioners of O.A. No. 1152 of 2011 was intimated in detail vide Postal Accounts Office, Kolkata letter dated 22.06.2016 to the applicants individually.

The respondents have alluded that the applicant has circumvented the facts to his own advantage, that the post was financially upgraded to Senior Accountant is partially correct as per Directorate (PA Wing) letter No. 37(4)/88/PA/Admn.I/718 to 747 dated 23.03.1990 (**Annexure R-1**) 80% of Jr. Accountant posts were upgraded as Sr. Accountant with effect from 01.04.1987 with the clear guideline at point No. 3 of the aforesaid letter that the upgraded posts of Sr. Accountant were to be filled by promotion of eligible persons. Thus there remained a separate and distinct cadre of Junior Accountant and it still exists today.

Therefore 80% of the senior most Junior Accountants were promoted as Sr. Accountants on 01.04.1987 subject to fulfilment of eligibility criteria of promotion as defined in the recruitment rules of Sr. Accountant (**Annexure R-2**). That two

b

separate list of seniority for Jr. Accountant and Sr. Accountant exists in the office and hence the contention of the applicant that a common seniority list has been prepared is not correct.

Further that the contention of the applicant that as he has been promoted to the Jr. Accountant cadre prior to the restructure of the cadre by passing the Departmental Examination, their promotion to the Jr. Accountant cadre cannot be treated as normal promotion but should be treated as appointment to the post of Junior Account as direct recruit does not carry any weight.

That the ACP Scheme of 9.8.99 was further customized by Postal Accounts Wing of Postal Directorate under letter dated 08.02.2000 (Annexure R-6). The applicant was not given any financial upgradation under ACP since they earned two promotions in the Jr. Accountant and the Sr. Accountant cadres, while Respondent No. 7 Shri Tarun Kanti Ghosh got 2nd financial upgradation under ACP scheme in terms of the DOPT OM dated 09.08.1999 and Postal Directorate letter dated 08.02.2000, and a 3rd financial upgradation on 06.02.2014 under MACP scheme as per DOPT OM dated 19.05.2009.

7. The rival contentions were noted, records and written arguments were perused.

We failed to decipher any similarity of the present grievance with that of the applicants in O.A. 1152 of 2011 due to the reason as enumerated here under:

*The petitioners in the said O.A., while serving as Lower Division Clerk in Circle Office, were promoted to the post of Upper Division Clerk in due course of time through different competitive examination at different stages as per their seniority-cum-fitness.

The TBOP & BCR Schemes were introduced in Circle Office w.e.f. 26.06.1993 and after introduction of TBOP & BCR Scheme the two cadres of LDC and UDC merged in a single unified cadre of PACO and ACP Scheme was not introduced for PACO of Circle Office.

The petitioners in the said O.A. were granted TBOP/BCR after completion of 16/26 years of service and no ACP.

Subsequently, the TBOP & BCR Schemes were replaced by MACP Scheme in Circle Office w.e.f. 01.09.2008 granting 3 (three) financial upgradations upon completion of 10 years, 20 years & 30 years of Govt. Service, or 10 years in the same grade pay subject to the condition that no promotion was earned by the official during such period.

The junior PA (Postal Assistant) or only LDCs were given TBOP & BCR & after the advent of MACP Scheme a 3rd financial upgradation in the Grade Pay of Rs. 4600/-.

Petitioners in the said O.A. were denied 3rd financial upgradation in the Grade Pay of Rs. 4600/- as they had already earned 3 (three) promotions i.e. promotion from LDC to UDC on passing departmental competitive exam followed by the TBOP & BCR.

They sought for directions to ignore their promotion from LDC to UDC as the two cadres were merged to form a single unified cadre of PACO, and grant of 3rd MACP.

The Hon'ble Court upheld the contention of the petitioners and directed grant of MACP in the grade and from the date their juniors were granted MACP.

The Order was given altogether on a different premise, and hence not to apply here.

8. In the instant O.A.s the applicants have claimed that their promotion to JA should be treated as "direct entry" and promotion to Senior Accountant as an "upgradation". Therefore in their service tenure they would be entitled to 2 ACPs upon completion of 12 and 24 years of regular service from the date of entry into JA cadre i.e. from 9.8.99. We would refer to the following orders which reinforce the stand of the respondents that their movement to JA cadre and SA cadre were promotion. The orders are as under:

(i) Recruitment Rules for the post of Sr. Accountant noted as under:

"G.S.R. 88.- In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby makes the following rules regulating the method of recruitment to the posts of Senior Accountants in the Circle Postal Accounts Offices of the Department of Posts, namely :-

1. Short title and commencement :- (i) These rules may be called the Circle Postal Accounts Offices (Senior Accountants) Recruitment Rules, 1988.

X

X

X

Name of Post	Number of Posts	Classification	Scale of Pay	Whether selection post or non-selection
1	2	3	4	5
Senior Accountant	4251 (Subject to variation depending on workload)	Group 'C' Non Gazetted Ministerial	1400-40-1600-50-2300-EB-60-Rs. 600	Non-Selection
Age limit for direct recruits.	Educational/other qualifications required for direct recruits	Whether age and educational qualifications prescribed for direct recruits will apply in the case of promotees.		Period of probation if any
6	7	8		9
Not applicable	Not applicable	Not applicable		2 years
	In case of recruitment by promotions deputation transfer grades from which promotion deputation/transfer to be made	If D.P.C. exists what is its composition.		Circumstances in which UPSC is to be consulted in making recruitment.

10	11	12	13	
100% by promotion of the basis of seniority-cum-fitness	Junior Accountants of Circle Postal Accounts Offices with 3 years of regular service who have completed satisfactorily the period of probation and have passed the Departmental/Confirmatory Examination/Departmental Examination for promotion of Lower Division Clerks as Junior Accountants.			

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The Recruitment Rule explicitly establishes that the ~~next~~ of Senior Accountant is to be filled up by way of promotion from JAS.

(ii) To

All Heads of Postal Circles,
All Directors/Dy. Directors of
Accounts (Postal),

Sub:- Upgradation of Posts of Jr. Accts./ J.A.Os to the higher functional grades of Sr. Accts./ A.A.Os.

Sir,

Consequent on the creation of 11 (eleven) temporary posts of Jr. Accounts Officers and 218 temporary posts of Jr. Accountants as conveyed in our letter No. 220(1)/88/PA/Admn.II/KW/390 dated 12.1.90, sanction of the D.G. (Posts) is hereby conveyed for the upgradation of 174 more posts of Jr. Accountants to the higher functional grade of Sr. Accountants and ten more post/ of Jr. Accounts Officer to the higher functional grade of Asstt. Accounts Officer with immediate effect. The advised sanctioned strength for each Postal Accounts Office is given in cols. 6&9 of the Annexure 'A' and 'B'.

2. The expenditure involved is debitible to the Head of Account 3201-Postal Services -04 Accounts and Audit – 102 Account or other relevant heads and should be met from the sanctioned grant for the current financial year and 1990-91.

3. The upgraded posts of Sr. Accountant, may be filled by promotion of eligible persons, if any, already available in the panel for the current year 89-90. Instructions regarding reservation for SC/ST, identification of higher functional posts and also the implementation of the instructions regarding filling up of posts of Jr. Accountants with reference to 20 point roster should also be followed strictly.

This sanction issued in exercise of the delegated powers in consultation with the Integrated Financial Advice vide their Dy. No. 748/FA/90 dated 26.2.90.

(iii) Stipulation in ACP Scheme as under:

"3. The financial benefits under the ACP Scheme shall be granted from the date of completion of the eligibility period prescribed under the ACP Scheme or from the date of issue of these instructions whichever is later;

4. The first financial upgradation under the ACP Scheme shall be allowed after 12 years of regular service and the second upgradation after 12 years of regular service from the date of the first financial upgradation subject to fulfilment to prescribed conditions. In other words, if the first upgradation gets postponed on account of the employee not found fit or due to departmental proceedings, etc. this would have consequential effect on the second upgradation which would also get deferred accordingly;

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;

5.2. Residency periods (regular service) for grant of benefits under the ACP Scheme shall be counted from the grade in which an employee was appointed as a direct recruit;

x x x

8. The financial upgradation under the ACP Scheme shall be purely personal to the employee and shall have no relevance to his seniority position. As such, there shall be no additional financial upgradation for the senior employee on the ground that the junior employee in the grade has got higher pay-scale under the ACP Scheme.

x x x

13. Existing time-bound promotion schemes, including in-situ promotion scheme, in a various Ministries/ Departments may, as per choice, continue to be operational for the concerned categories of employees. However, these schemes, shall not run concurrently with the ACP Scheme. The Administrative Ministry/Department – not the employees – shall have the option in the matter to choose between the two schemes, i.e. existing time-bound promotion scheme or the ACP Scheme, for various categories of employees. However, in case of switch-over from the existing time-bound promotion scheme to the ACP Scheme, all stipulations (viz. For promotion, redistribution of posts, upgradation involving higher functional duties, etc.) made under the former (existing) scheme would cease to be operative. The ACP Scheme shall have to be adopted in its totality;"

(iv) We would note that the DOP letter dt. 8.2.2000 explicitly specifies as under:

"III Direct Recruit Lower Division Clerks.

- (a) Direct recruit LDCs in the scale Rs. 350-75-3950-80-4590 after completion of 12 years of regular service are eligible for first financial upgradation in the scale of Rs. 4000-100-6000.
- (b) Since these would be only financial upgradation, LDCs who earn the first financial upgradation on completion of 12 years of regular service in terms of (a) above will not be eligible for promotion to Sr. Accountant grade under 80:20 scheme. However, such officials and also those promoted from LDC to JA under the existing provisions of Recruitment rules will also become eligible for the second

financial upgradation in the scale of Rs. 5000-150-8000 on completion of 24 years of regular service.

IV Direct Recruit Junior Accountants:-

(a) For the present Junior Accountants earn their first promotion as Senior Accountants on completion of three years of regular service under 80:20 scheme. This promotion is however, available to the 80% of the total sanctioned strength of Junior Accountants. Such Officials who already got this promotion of Senior Accountants or to any higher cadre, will not be eligible for first financial upgradation. However, these direct recruit Junior Accountants, who could not be promoted to senior Accountant/higher grade within 12 years of their appointment will be eligible for first financial upgradation in the scale of Rs. 5000-150-8000 after completion of 12 years of regular service.

(b) For the second financial upgradation to the scale of Junior Accounts Officer i.e. Rs. 5500-175-9000, qualifying JAO examination is a pre-requisite condition as per the provisions of the Recruitment Rules. Thus the second financial upgradation in the scale of Rs. 5500-175-9000 will be available only to those direct recruit Junior Accountants who have rendered 24 years of regular service and have qualified JAO examination, but are awaiting promotion as Junior Accounts Officer."

A bare perusal of the DOP letter would exemplify and demonstrate that a specific order exists in the field which clarifies, without any ambiguity or ambivalence, that the movement of a direct recruit LDC to JA grade would offset one ACP and such LDC will be eligible only for the 2nd ACP upon completion of 24 years while movement of a JA to Sr. Accountant is a promotion to offset one ACP.

9. In the aforesaid backdrop, having noted the specific DOP letter dated 8.2.2000 supra on the subject clarifying that the movements from LDC to JA grade and Junior Accountant (JA) to Senior Accountant (SA) grade have to be treated as promotion, and having failed to notice any challenge to the same, we are of the considered opinion that the applicant has failed to substantiate his right to 2nd ACP and 3rd MACP treating his promotion from LDC to Jr. Accountant in 1983 as direct entry into Junior Accountant cadre to entitle him 2nd ACP w.e.f 9.8.99, (upon completion of 12 years of his movement to Sr. Accountant Cadre in 1987 in the meantime, treating the same as 1st promotion), and a third MACP w.e.f. 1.4.09 (10 years from second ACP) since in terms of DOP letter dated 8.2.2000 order, enumerated above, he has already earned two financial upgradations

(promotions) in his service career upon his movement to Jr. Accountant and Sr. Accountant Cadres in 1983 and 1987 respectively. However the applicant may be eligible for a 3rd MACP from the due date which also appears to have been allowed in 2008.

10. The claim of the applicant as in the present O.A. 1444 of 2016 fails and is dismissed. Claim of applicants in all other O.A.s being admittedly similar, their claim fails too. All the O.A.s therefore stand dismissed with liberty to agitate if 3rd MACP has not been granted already. No costs.

(Dr. N. Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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