

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

**HON'BLE MR.SANJEEV KAUSHIK , MEMBER (J).
HON'BLE MS. JAYATI CHANDRA, MEMBER (A).**

Original Application Number. 79 OF 2007.

ALLAHABAD this the 27 day of April, 2012.

Prabhakar Nath Pandey, son of late S.P. Pandey, resident of Jawahar Navodaya Vidhyalaya, Gyanpur, Bhadohi, District- Sant Ravi Das Nagar.

.....Applicant.

VERSUS

1. Union of India through Secretary, Ministry of Human Resources Development (Education Development) Government of India, New Delhi.
2. The Deputy Commissioner, Navodya Vidhyalaya Samiti, Lucknow (U.P).
3. Dr. Mohd. Kaleem (The then Principal, J.N.V, Meza Khas, Allahabad), presently posted as Assistant Commissioner at Bhopal (M.P).

.....Respondents

Advocate for the applicant: Sri Vinod Kumar
Advocate for the Respondents : Sri N.P. Singh

ORDER

BY HON'BLE MR. SANJEEV KAUSHIK, J.M.

By means of the present original application filed under section 19 of Administrative Tribunals Act 1985, the applicant has impugned the order dated 14.03.2006, with further prayer to direct the respondents to allow him the benefit of A.C.P. w.e.f. 05.04.2005 with all consequential benefits.

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2. The facts of the case are that the applicant initially appointed as Store Keeper on 14.11.1992 at Jawahar Navodaya Vidyalaya, Meza Khas, Allahabad. He was transferred to Jawahar Navodaya Vidyalaya Gyanpur Bhadohi. Where he was served with memorandum of charge on 06.12.2001 for certain irregularities for the period 01.04.1992 to 30.07.1995 while he was posted at Jawahar Navodaya Vidyalaya, Meza Khas. The applicant denied the charges by filing his reply. Ultimately after conducting the inquiry the penalty of stoppage of one increment with cumulative effect was imposed vide order dated 05.04.2004 (Annexure A-2). The applicant did not file any appeal. By order dated 04.04.5005 passed by the Deputy Director, Navodaya Vidyalaya Samiti, Lucknow the applicant was granted financial up-gradation under A.C.P. Scheme on the basis of recommendation of screening committee dated 07.03.2005 (Annexure A-3). By impugned order dated 14.03.2006 the respondents withdrew the benefit of A.C.P, which was granted to him by order dated 04.04.2005 (Annexure A-1), hence the O.A.

3. Pursuance to the notice the respondents appeared and filed detailed Counter Affidavit by taking preliminary objection that against the impugned order dated 14.03.2006 appeal is maintainable, as the applicant did not availed ~~ed~~ remedy of statutory appeal , therefore, the O.A be dismissed for want of alternative remedy.

4. On merits, it is submitted that the applicant was wrongly granted the benefit of up-gradation under Assured Career Progression Scheme (in short 'ACP Scheme') as he was not having regular satisfactory service as the applicant was inflicted the punishment of stoppage of one increment with cumulative effect on 05.04.2004, therefore, the same was

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withdrawn by the impugned order. In para 13 reply to the 4.8 and 4.9 of the O.A, the respondents have stated as under: -

“.....It is submitted that as per rule the withholding the increment is deemed to have been affected when the applicant gets the next increment in the time scale of pay, therefore, the currency and period of penalty shall be deemed from the date the increment was due after the issue of penalty order dated 05.04.2004 which falls on 1.9.2005. In this connection, it is submitted that the applicant's next date of increment has been postponed in view of the imposition of a major penalty after excluding the suspension period which has not been treated to be duty in terms of FR 54(B) (v).”.

5. The applicant has filed Rejoinder Affidavit.
6. We have heard Shri Vinod Kumar, learned counsel for the applicant and Shri N.P. Singh, learned counsel for the respondents.
7. Learned counsel for the applicant vehemently argued that the impugned order is in violation of principles of natural justice as before passing the impugned order dated 14.03.2006 no show cause notice or opportunity of hearing was afforded to the applicant and straight way the impugned order withdrawing the benefit of A.C.P has been passed, therefore, the same is liable to be set aside only on this score. In support of his contention learned counsel for the applicant has placed reliance upon the judgment of Hon'ble Supreme Court reported in **1991 (Suppl.) (1) Supreme Court Cases 330 – Shrawan Kumar Jha and others Vs. State of Bihar and others and 1998 (8) S.C.C 378 – Gajanan L. Pernekar Vs. State of Goa and another.** He further argued that

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authority who granted the benefit of ACP cannot withdraw the same benefit. Lastly he argued that the applicant has been discriminated vis-à-vis other employees to whom the punishment was inflicted but subsequently they have ^{been} promoted, therefore, the impugned order is liable to be set aside being violative of article of 14 and 16 of the Constitution of India. He placed reliance upon **State of U.P. Vs. Raj Pal Singh reported in 2010 (5) SCC 783.**

8. On the other hand Shri N.P. Singh, learned counsel for the respondents argued that the applicant was wrongly granted the benefit for which he was not legally entitled , therefore, by rectifying their mistake the respondents have only withdrawn the benefit of financial up-gradation by the impugned order, therefore, there is no need to comply with the principle of natural justice. He referred to the scheme of ACP applicable to respondents' department dated 09.04.2002 particularly clause 10 and submitted that in view of this the benefit, which was wrongly granted to the applicant, was withdrawn by the impugned order. He argued that since the applicant did not have 12 years regular service , therefore, he is not entitled for financial up-gradation because period of suspension of the applicant was not treated as on duty and even the applicant was inflicted with the punishment of stoppage of increment , therefore, till completion of currency of punishment period he cannot be considered for the benefit of ACP. Lastly he argued that that the O.A be dismissed for want of alternative remedy as the applicant has not exhausted the remedy of appeal against the impugned order.

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9. We have considered the rival submissions and have gone through the record as well as the judgment cited by the respective parties.

10. It is law of land that any order, which have civil consequence and detrimental to the interest of an employee, have to be passed after affording opportunity of hearing. The impugned order in the case in hand is dated 14.03.2006 by which the benefit of ACP, which was granted to the applicant, has been withdrawn till further orders on the ground that the applicant was awarded punishment under rule 14 of CCS (CCA) Rules 1965 on 05.05.2004 i.e. stoppage of one increment with cumulative effect, therefore, he is not having 12 years regular service, which is pre-condition for grant of financial up-gradation under ACP. It is true that the principle of natural justice cannot be put in straightjacket. It has to be ^{apply} ~~seen~~ to the facts of the each case. The impugned order withdrawing A.C.P benefit without notice is in violation of principle of natural justice as it adversely affects the applicant in monetary term. Though we can set aside the order and remand the matter to the respondents to pass a fresh order after affording an opportunity but since the pleadings are complete and the respondents have already given the reason for withdrawing the benefit, therefore, we are not inclined to remand this mater at this stage to pass a fresh order. Even we are not inclined to dismiss the matter to firstly avail the remedy of appeal at this stage, therefore, we decide to proceed with the matter on merits.

11. Undisputedly the punishment of withholding one increment with cumulative effect was inflicted upon the applicant on 05.04.2004. The Committee recommended the case but subject to fulfillment of other

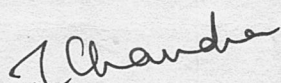
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conditions i.e. no vigilance case / disciplinary proceeding is pending or contemplated. Since on the date of passing of the order the applicant did not have 12 years regular service , therefore, the benefit has rightly been rejected by the respondents. More particularly when Clause 10 of Circular dated 09.04.2022 says that the ACP benefit is also to be granted subject to rules governing norms of promotion. The clause 10 reads as under :

“10. In the matter of disciplinary/penalty proceedings, grant of benefits under the ACP Scheme shall be subject to rules governing normal promotion. Such cases shall , therefore, be regulated under the provisions of relevant CCS (CCA) Rules, 1965 and instructions thereunder.”.

12. It is not that only on completion of 12 years the benefit of financial up-gradation under ACP Scheme is to be extended. It is as per the rules governing normal promotion, the case is to be considered for grant of financial up-gradation under ACP Scheme i.e. the other condition laid down in relevant CCS (CCA) Rules 1965 also to be taken into consideration. Therefore, we find no reason to interfere with the impugned order particularly when the order is withdrawn as the applicant is not having regular satisfactory service of 12 years on the date of passing of the order. For the reasons above the O.A deserves to be dismissed.

13. Accordingly, the O.A is dismissed being devoid of merits. No costs.


MEMBER- A.


MEMBER- J.

/Anand/