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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH

O.A NO. 434 OF 2001

Cuttack, this the 12<sup>th</sup> day of February, 2004

Rabinarayan Singh ..... Applicant


Vrs.

Union of India and others ..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? No
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? Yes

  
(M.R. MOHANTY)  
MEMBER(JUDICIAL)

  
(B.N. SOM)  
VICE-CHAIRMAN

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CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN  
AND

HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDICIAL)

.....

Shri Rabinarayan Singh, aged about 42 years, son of Shri Arjun Charan Singh, a permanent resident of Village/Post/PS Niali, Dist. Singh  
At present working as Upper Division Clerk, in the office of the Central Administrative Tribunal, Cuttack Bench, Cuttack

..... Applicant

1. Union of India, represented through its Secretary, Government of India, Ministry of Personnel, Public Grievances and Pensions, North Block, New Delhi 110 001.
2. Registrar, Central Administrative Tribunal, Principal Bench, Faridkot House, Copernicus Marg, New Delhi 1.
3. Registrar, Central Administrative Tribunal, Cuttack Bench, 4<sup>th</sup> Floor, Rajaswa Bhawan, Cuttack 753002

..... Respondents

Advocates for the applicant - M/s J. Sengupta, D.K. Panda,  
P.R.J. Dash and G. Sinha  
Advocate for the respondents - Mr. A.K. Bose, Sr. CGSC.

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ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

Shri Rabinarayan Singh has filed this Original Application, being aggrieved by the decision of Respondent No.2 to reject his representation for granting him benefit of financial upgradation under the Assured Career Progression Scheme (hereinafter referred to 'ACP Scheme') with effect from

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9,8,1999. He has accordingly prayed for quashing the orders at Annexures 5 and 7 and to direct the Respondents to grant him the benefit of ACP Scheme with effect from 9.8.1999 taking into account his past service in the Postal Department.

2. The facts of the case in brief are that the applicant, who was recruited as Postal Assistant in the Department of Posts with effect from 8.4.1981 in the pay scale of Rs.260-480/-, later on revised to Rs.975-1660/- by the Fourth Pay Commission, came on deputation to Central Administrative Tribunal, Cuttack Bench, as Lower Division Clerk (in short, 'LDC') in the pay scale of Rs.950-1500/- with effect from 13.12.1986. Although he came on deputation to a lower post, he was allowed to draw the pay of his substantive post (i.e., Rs.975-1660/-) plus deputation allowance. Thereafter he was given ad hoc promotion to the grade of UDC in the pay scale of Rs.1200-2040/-. Soon thereafter on 1.11.1989 he was absorbed on transfer basis in the Respondent-organisation as UDC in the pay scale of Rs.1200-2040/-. He has not been given the benefit of ACP Scheme, i.e., one financial upgradation after twelve years of service on regular basis, although the same is due to him from 1999, i.e., immediately after the said Scheme was promulgated by the Government of India with effect from 9.8.1999. He had, therefore, made repeated representations to Respondent Nos. 2 and 3, but to no effect. In his representation he has urged that as he had rendered service as Postal Assistant from 1.7.1983 to 12.12.1986, that period cannot be ignored and as his regular service in Government service is reckoned from 1.7.1983, he

should have been given first financial upgradation from the very first year of inception of the ACP Scheme, i.e., 1999. In making his claim for ACP benefit from 1999, he has relied on the clarification given by the Ministry of Personnel, Public Grievances and Pensions at Annexure 2 at serial nos.4,5 and 6. He is also aggrieved not only that he has not been given benefit of A.C.P.Scheme in terms of the clarification stated above, but his representation has been turned down by Respondent No.2 without referring the matter to Respondent No.1 who alone is competent to issue clarification on the issue raised by him.

3. The Respondents have contested the Original Application by filing detailed reply in counter. They have stated that as the applicant was absorbed in the post of UDC in the Respondent-organisation with effect from 1.11.1989, his career prospects in his present service will be considered only with reference to the date of his absorption, i.e., 1.11.1989 and all that happened in his parent Department before 1.11.1989 has no relevance to his career prospects. They have also submitted that as the applicant has completed 12 years of regular service in the grade of UDC on 1.11.2001, he cannot claim the benefit of ACP Scheme prior to that date and that his case for grant of benefit under the said Scheme is already being processed by the Respondents along with similarly placed other employees.

4. We have heard the learned counsel for both the parties and perused the records placed before us. The applicant had filed a rejoinder to the counter and also a written note of argument.

5. We have considered the arguments of both the parties very carefully. The issue involved in this Original Application revolves round the point whether 12 years of regular service for the purpose of grant of financial benefit under the ACP Scheme should count from the date of initial appointment in the Department of Posts or from the date he was appointed as UDC on transfer (absorption basis) as a direct recruit. The plea of the applicant is that for counting 12 years regular service should relate back to his initial appointment in Central Government (Postal Department) when he was confirmed there, i.e., from 1.7.1983. He has further submitted that his claim is supported by the clarification issued by the Ministry of Personnel, Public Grievances & Pensions, vide points of doubt raised at serial Nos.4, 5 and 6 of the Annexure to the letter dated 10.2.2000 (Annexure 2). The applicant has both in the O.A. as also during oral arguments tried to rely on the clarification on the point of doubt at Serial No.1 in that letter referred to earlier. But as the points of doubt raised at serial nos.4, 5 and 6 directly relate to his case, we would mainly concentrate on these points and with regard to point of doubt at Serial No.1 we would like to observe that his case is not covered by this point because he was taken on deputation to the post of LDC with effect from 13.12.1986 and was promoted to the post of UDC with effect from 18.3.1988 on ad hoc basis and not that he moved from the pay scale of Rs.1200-2040/- to that of Rs.1320-2040/-.

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6. For the sake of clarity, we would quote here-in-below the points of doubt and clarification at serial nos.4, 5 and 6 contained in the letter dated 10.2.2000 (Annexure 2):

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| <p>4. In a case where a person is appointed to a post on transfer (absorption) basis from another post, whether 12 years and 24 years of service for the purpose of ACPS will count from the initial appointment or otherwise.</p> <p>5. Whether a Government servant, who is direct recruit in one grade and subsequently joins another post again as direct recruit, is eligible for first financial upgradation under ACPS after completion of 12 years of service counted from the first appointment or from the subsequent second appointment as direct recruit?</p> <p>6. An employee appointed initially on deputation to a post gets absorbed subsequently, whether absorption may be termed as promotion or direct recruitment. What will be the case if an employee on deputation holds a post in the same pay scale as that of the post held by him in the present cadre? Also, what will be the situation if he was holding a post in the present cadre carrying a lower post?</p> | <p>The benefits under ACPs are limited to higher pay scale and do not confer designation, duties and responsibilities of the higher post. Hence, the basic criterion to allow the higher pay scale under ACPs should be whether a person is working in the same pay scale for the prescribed period of 12/24 years. Consequently, so long as a person is in the same pay scale during the period in question, it is immaterial whether he has been holding different posts in the same pay scale. As such, if a Government servant has been appointed to another post in the same pay scale either as a direct recruit or on absorption (transfer) basis or first on deputation basis and later on absorbed (on transfer basis), it should not make any difference for the purpose of ACPS so long as he is in the same pay scale. In other words, past promotion as well as past regular service in the same pay scale, even if it was on different posts for which appointment was made by different methods like direct recruitment, absorption (transfer)/deputation, or at different places should be taken into account for computing the prescribed period of service for the purpose of ACPS. Also in case of absorption (transfer)/deputation in the aforesaid situations, promotions earned in the previous/present organisations, together with the past regular service shall also count for the purpose of ACPS. However, if the appointment is</p> |
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|  | <p>made to higher pay scale either as on direct recruitment or on absorption (transfer) basis or first on deputation basis and later on absorbed (on transfer basis), such appointment shall be treated as direct recruitment and past service/promotion shall not count for benefits under ACPS.</p> <p>Needless to say, in cases of transfer on administrative ground, involving only change of station within the same department, the service rendered in the same grade at two stations may count for ACPS, as such transfers are within the same organisation, ordered generally for administrative/personal considerations and the service rendered in the earlier station counts as eligibility service for promotion.</p> |
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The clarification given in the said O.M. dated 10.2.2000 reproduced above clearly settles the issue. The most important point in the operation of the Scheme is, as stated in the O.M. dated 9.8.1999 (Annexure 1) that on completion of 12 years and 24 years of regular service, the Government employee in Groups B, C and D will be entitled to financial upgradation in service and 'regular service' has been defined in paragraph 3.2 of that O.M. as "eligibility service counted for regular promotion in terms of relevant Recruitment/Service Rules." This means, in the instant case, 12 years regular service is to be counted with reference to the Recruitment Rules for UDC and that being the legal position, the Respondents are correct in holding that the years of service of the applicant in the cadre of Postal Assistant cannot be taken into account for the purpose of ACP Scheme. Further, clarifying the points of doubt raised at Sl.Nos.4,5 and 6, the Government O.M. clearly



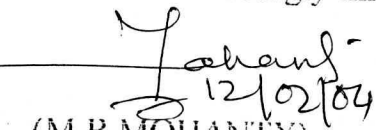
states that the benefits under the Scheme are limited to higher pay scale. Hence, the basic consideration to allow the higher pay scale under the Scheme is whether a person is working in the same pay scale for the prescribed period of 12/24 years. It has been further clarified that although in case of absorption (transfer) promotion earned in the previous/present organisations together with the past regular service shall also count for the purpose of ACP, but if the appointment is made to the higher pay scale either as on direct recruitment or on absorption (transfer) basis or first on deputation basis and later on absorbed (on transfer basis), such appointment shall be treated as direct recruitment and past service/promotion shall not count for benefits under A.C.P.Scheme.

7. The instant case of the applicant is squarely covered by the aforesaid clarification because the applicant at first came on deputation as LDC and was promoted on ad hoc basis as UDC followed by absorption with effect from 1.11.1989 and therefore, his regular service with effect from 1.11.1989 constituted appointment as a direct recruit and accordingly, he could have no claim to the past service to count for benefit under the ACP Scheme. It should be understood that while his past service will be counted for the purpose of pension, i.e., his service from 8.4.1981 to 31.10.1989, the same shall not count either for seniority in the grade of UDC or for benefit under the ACP Scheme.

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8. In view of the aforesaid legal implication of the applicant's absorption as UDC in the present organisation, the relief sought by him is devoid of merit and accordingly this Original Application is dismissed. No costs.

  
(M.R. MOHANTY)  
MEMBER (JUDICIAL)

  
(B.N. SOM)  
VICE-CHAIRMAN

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