CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.NOS. 141/2002, 142/2002 & 143/2002
Cuttack, this the 4th day of February, 2004

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C O R A M

THE HONOURABLE MR. B.N. SOM, VICE-CHAIRMAN

AND

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

O.A.No.141/2002

Gangadhar Biswal, aged about 54 years,
S/o.Late Sambhu Biswal,
Central Revenue Colony, Qr.No.
Type-II/33, Block-3, PO: Banivihar,
Dist.Khurda, now working as Sepoy,
Central Excise and Customs,
Department, Bhubaneswar-1, Dist.Khurda.

... Applicant.

By legal practitioner: M/s.K.N.Jena,
R.Rath,
D.K.Mohapatra,
B.P.Bal,
M.Ganguly,
Advocates.

-Versus-

1. Union of India represented through its Secretary, Ministry of Finance, Department of Revenue(CVEC), South Block, New Delhi-1.

2. Administrative Officer, Commissionerate of Central Excise and Customs, C.R.Building, Rajaswa Vihar, Bhubaneswar-4, District-Khurda.

3. Commissioner, Central Excise and Customs, C.R.Building, Bhubaneswar-1, Rajaswa Vihar, Dist.Khurda.

4. Central Board of Excise and Customs, (CIBEC) South Block, New Delhi-1.

5. Deputy Collector(P&E)/Commissioner Collectorate of Central Excise and Customs, Bhubaneswar, PO Box No.166, Dist.Khurda.

... Respondents.

By legal practitioner: Mr.A.K.Bose, Senior Standing Counsel.

O.A.No.142/2002:

Purna Chandra Sahoo, aged about 58 years, S/o.Late Kandarpa Sahu, residing at Qr. No.Type 1/5, Income Tax Colony, Kafla Fandi, Cuttack, now working as Sepoy, in Central Excise and Customs, Cuttack-II Range, Bidanasi, Cuttack.

... Applicant.

By legal practitioner: Mr.K.N.Jena & Associate

-Versus-

1. Union of India & others.

... Respondents.

By legal practitioner: Mr.A.K.Bose, SSC.

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O.A.No.143/2002:

Bhagaban Swain, aged about 58 years, Son of Madhaba Swain, now working as Sepoy in Central Excise and Customs Cuttack I Division, Bidanashi, Twon/Dist.Cuttack.

... Applicant.

By legal practitioner: Mr.K.N.Jena & Associates.

-Versus-

Union of India & Others. .... Respondents.

By legal practitioner: Mr.A.K.Bose,SSC.

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O R D E R

MR.MANORANJAN MOHANTY,MEMBER(JUDICIAL):-

In all these three cases that were heard one after the other,since common questions of fact and law are involved, for the sake of convenient,these are disposed of through this common order.

2. Applicants,all the three cases, were initially appointed as Patwari(Amin Gr.'C') in the Dandakaranya Development Project w.e.f. 05-04-1996(Applicant in O.A. No.141/2002),14-04-1970(Applicant in O.A.No.142/2002)and 01-07-1965(Applicant in O.A.No.143/2002) and on the closure of the Dandakaranya Development Project, the three Applicants,having been found surplus,were deployed as Sepoy in the Central Excise and Customs Organisation (under the present Respondents) on 10-03-1988,18-04-1988 and 10-03-1988 respectively.The grievance of the Applicants, in these three cases,are that since they have put in morethan 24 years of service,they are entitled to get two financial

upgradations(as recommended by the Fifth Central Pay Commission and instructions issued in O.M. dated 9th August,1999)and the benefits of the same were denied to them. Having been unsuccessful in their efforts, through filing of representations,the Applicants have filed these cases under section 19 of the Administrative Tribunals Act,1985 with prayers to direct the Respondents to grant the second financial upgradation benefits to the Applicants from the date it is due and to release all the arrear salaries and service benefits within a stipulated period.

3. The Respondents,by filing their counter,have taken the common stand that since the Applicants,in all these three cases,do not fulfil the promotional norms like passing of departmental examination and possessing requisite educational qualification,they are not entitled to get the ACP benefits;as per the instructions/clarification issued by the DOPT in its O.M. dated 09-08-1999 and 10-02-2000.The Respondents have also taken the stand that the Applicants are not entitled to count the past service benefits;as per the dictum laid down by the Hon'ble Apex Court;in the case of redeployment.Therefore,the representations of the Applicants could not be considered for granting the ACP benefits.

4. Applicants,by filing their rejoinders,have stated that (as per Clause-14 and 15 of the OM under Annexure-1 dated 09-08-1999) the Applicants are entitled

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to get the two financial upgradations irrespective of their educational qualification and the norms prescribed for promotion and that similarly situated persons (like the Applicants) having been granted two financial up-gradations after completion of 12/24 years of their service, gross discrimination has been caused to the Applicants. By filing additional rejoinder to the counter, it has been brought to the notice of this Tribunal that the Respondents had already given Ist and second financial upgradation under ACP scheme to all the Sepoys and Habildars, even though they are under matriculate, but in the case of the Applicants, a step-motherly/discriminatory attitude has been shown. They have also disclosed the names of such persons in the additional rejoinder.

5. Having heard Mr. K. N. Jena, learned Counsel appearing for the Applicants and Mr. Anup Kumar Bose, Learned Senior Standing Counsel, appearing for the Respondents, in all these three cases, we have perused the materials placed on record.

6. The Government of India (in order to deal with the problem of genuine stagnation and hardship faced by the employees, due to lack of adequate promotional avenues) while accepting the recommendations of the Fifth Central Pay Commission Report, with regard to ACP benefits/scheme, have issued O.M. on 9th August, 1999 with certain modifications. In the said OM, the Govt. of India have exhaustively provided the norms/eligibility/entitlements etc. for the Central Govt. employees. At Sl. No. 6 of the said OM it has been enumerated as to how the ACP benefits will be granted to

the employees and it has been provided that a Departmental Screening Committee constituted for the purpose to process the case for grant of benefits under the ACP scheme. With regard to composition of the Screening Committee, it has been provided that the Screening Committee shall be the same as that of the DPC prescribed under the relevant recruitment/service rules for grant of regular promotions to the higher grade to which financial upgradation is to be granted. Consequent upon introduction of the scheme, clarifications have been sought by various Ministries/ Departments about certain issues in connection with implementation of the ACP scheme. The doubts raised by varius quarters have been duly examined and point-wise clarifications were also issued in OM dated 10-02-2000. In the said OM dated 10-02-2000, basing on which the grievance of the Applicants did not receive due consideration reads as under:-

POINT OF DOUBT	CLARIFICATION
The relevant recruitment/ Service Rules prescribe departmental examination/ skill test for vacancy based promotion. However, this need not be insisted for upgradation under ACPs.	As per the scheme condition No.6 all promotion norms have to be fulfilled for upgradation under the scheme. As such, no upgradation shall be allowed if an employee fails to qualify departmental/skill test prescribed for the purpose of regular promotion.

In another OM issued by the Government of India, in OM No. 35034/1/97-Estt.(D)(Vol.IV)Dt.18-07-2001(as published in the Swamys News of September, 2001) it has been clarified as under:-

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"Clarification- As the employee has remained in the scale of Rs.800-1,150/- all along and has not availed any promotion,he is entitled to two financial upgradations in a scale higher than Rs.800-1,150/-(pre-revised)irrespective of the post actually held after redeployment. Since in the Ministry,a Group 'D' employee is eligible for promotion to the grade of LDC, provided he is a matriculate and as a post in the scale of Rs.825-1,200(S-4) is not in the normal hierarchy in the Secretariat,such an employee can be considered for two financial upgradations in the grades of LDC and UDC, provided he is a matriculate.Otherwise he will get only one financial upgradation in the revised scale of Rs.825-1,200(Rs.2,750-4,400/-).Cases of other persons re-deployed to lower posts through the Surplus Cell may also be regulated accordingly".

7. It is a fact that the Applicants are under-matriculates and are in the basic pay of Rs.3050-4590/-; though they are working as Sepoys on their redeployment. It has been specifically pointed out by the Respondents that in order to be eligible for higher pay scale of UDC (i.e. Rs.4,000-6,000/- and above) under the ACP scheme,Applicants have to fulfil the promotional norms like passing the departmental examination and possessing requisite educational qualification(i.e.minimum Matriculation)but they do not fulfil such norms and, hence,they are not eligible for financial upgradation under ACP scheme.But,in view of the above quoted clarification of the DOPT,the Applicants,even though are under matriculates,are entitled to get one financial upgradation,after being duly screened.

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9. As regards the second financial upgradation (though, as per the above quoted instructions, they are not entitled) it is the specific case of the Applicants that in the case of similarly situated persons, such second upgradation have been allowed and therefore, we hereby direct the Respondents to examine the matter and, if it is a fact that second upgradation has been allowed to persons situated similar to the Applicants, then the case of the Applicants may also be considered in the light of the fact; basing on which others were allowed to take the second financial benefits.

10. In the light of the above discussions and directions, this Original Application is hereby disposed of with further direction to the Respondents to complete the entire exercise (for granting the first financial upgradation under the ACP scheme, after completion of 12 years to the Applicants and for examination/review of grant of the second financial upgradation, in the light of the observations made in paragraph 9 above) within a period of 90 (ninety) days from the date of receipt of a copy of this order. No costs.

sd/- B.N. Som
Vice-Chairman

sd/- M.R. Mohanty
Member (J)

TRUE COPY

Section Officer.
Central Administrative Tribunal
Cuttack Bench, Cuttack.