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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.235 of 2005
Cuttack, this the 22nd day of June, 2007.

Ganeswar Puhan ... Applicant
Versus
Union of India & Others ... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? *yes*
2. Whether it be circulated to all the Benches of the CAT or not? *no*


(N.D.RAGHAVAN)
VICE-CHAIRMAN


(B.B.MISHRA)
MEMBER(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.235 of 2005
Cuttack, this the 22nd day of June, 2007.

C O R A M:

THE HON'BLE MR. N.D.RAGHAVAN, VICE-CHAIRMAN
AND
THE HON'BLE MR.B.B.MISHRA, MEMBER (A)

Shri Ganeswar Puhan, aged about 45 years, Son of Late Haguru Puhan, Village-Danla, PS-Kanjipani, Dist. Keonjhar, at present working as Bindry Assistant Postal Printing Press, Mancheswar, Bhubaneswar.

..... Applicant.

By legal practitioner: M/s. K.C.Kanungo,
B.Das,
Miss.C.Padhi,
Advocates.

-Versus-

1. Union of India represented through Secretary cum D.G. Posts, Dak Bhawan, New Delhi.
2. The Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist. Khurda.
3. The Postmaster General, Berhampur Region, Berhampur, Dist Ganjam.
4. The Manager, Postal Printing Press, Bhubaneswar-751 010, Dist. Khurda.

... Respondents.

By legal practitioner: Mr.U.B.Mohapatra, SSC.

10 ORDER

MR.B.B.MISHRA, MEMBER(A):

The Applicant, presently working as Bindry Assistant in the Postal Printing Press, Mancheswar, Bhubaneswar calls in question the date of granting the ACP benefits with effect from 01-07-2004 instead of 09.08.1999 vide order No. PP/7-54/90 dated 22-07-2004 under Annexure-A/3. He also challenges the order No.PP/1/115/87 dated 10.11.2004 under Annexure-A/5 rejecting his representation for grant of ACP benefits w.e.f. 09.08.1999 instead of 01.07.2004 stating the same to be unjust, illegal, arbitrary, discriminatory and is an outcome of non-application of mind. He has, therefore, prayed to direct the Respondents to modify the order under Annexure-A/3 by way of granting the up-gradation scale of pay under ACP with effect from 09.08.1999 i.e. the date of completion of 12 years of service of Applicant in a particular grade with all consequential service and financial benefits.

2. The stand of the Respondents in the counter filed on 11th February, 2004 is that to deal with the problem of genuine stagnation and hardship faced by the employees working under the Union of India , due to lack

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of adequate promotional avenues, as a matter of policy, the Government of India, formulated a scheme commonly known as Assured Career Progression Scheme (in short 'ACP') vide OM No. 35034/1/97-Estt.(D) dated 09.08.1999. According to the ACP scheme, the first financial up-gradation shall be allowed to an employee after 12 years of regular service and the second up-gradation after 12 years of regular service from the date of the first financial up-gradation subject to fulfillment of prescribed conditions. In other words, if the first up-gradation gets postponed on account of the employee not found fit or due to departmental proceedings, etc., this would have consequential effect on the second up-gradation which would also get deferred accordingly. It was also provided that 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 made there under. According to the Respondents, the ACP scheme came into force with effect from 08.09.1999. It has been provided that in order to make the scheme operational, the cadre controlling authorities shall constitute the first screening

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committee of the current financial year within a month from the date of issue of these instructions to consider the cases that have already matured or would be maturing up to 31.3.2000 for grant of benefits under the ACP scheme. But for the reason of the subsequent instructions issued vide letter No. ST/12-38/2000 dated 07.04.2000 directing that the ACP scheme is not applicable to the industrial employees, the screening committee could not be convened. However, again vide GO Letter No. EST/1-2/38 dated 08.03.2001 it was directed that ACP scheme is applicable to the Postal Printing Staff. Consequently, the first screening committee was convened on 18.04.2001 to consider the cases of the employees of the Postal Printing Press for grant of the benefits under the ACP scheme.

They have stated that the Applicant entered the service of the Postal Printing Press on 30.01.1987 as Binder Grade II. The Binder Grade II post was abolished and merged with Bindry Assistant Grade in the year 1998 vide directorate letter No. 23-61/97-PF-1 (PCC) dated 17.03.1998 and since then, the applicant has been continuing as Binder Assistant in the Postal Printing Press, Bhubaneswar. In the meantime, certain lapses having been noticed, the Applicant, vide Memo No. PP/1-115/87 dated 24.05.2000, was issued with charges under Rule 14

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of the CCS (CCA) Rules, 1965. After following due procedure of Rules, since the Applicant was found guilty of the charges, he was visited with the punishment of reduction of pay by one stage for a period of one year vide memo dated 18.07.2003.

It has been stated by the Respondents that in view of the departmental proceedings under Rule 14 of the CCS (CCA) Rules, though the first screening committee met on 18.04.2001 it considered the case of applicant for grant of ACP benefits, but as per Rules kept his case in the sealed cover. The punishment against the applicant was over on 30.06.2004. Therefore, on the recommendation of the subsequent Screening Committee held on 20.07.2004, the first financial up-gradation under ACP scheme was granted to the Applicant with effect from 01.07.2004. The Respondents, therefore, have stated that there being no wrong in the matter of granting the ACP, this OA filed by the Applicant needs to be dismissed *in limine*.

3. The contention of the Learned Counsel for the Applicant is that the ACP scheme dated 09.08.1999 specifically provided that in order to make the scheme operational, the cadre controlling authorities shall constitute the first screening committee of the current

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financial year within a month from the date of issue of these instructions to consider the cases that have already matured or would be maturing up to 31.3.2000 for grant of benefits under the ACP scheme. If, according to the Respondents, the screening committee could not be convened due to the instructions of the Postmaster General issued vide letter No. ST/12-38/2000 dated 07.04.2000, however, this instructions were modified vide GO Letter No. EST/1-2/38 dated 08.03.2001 making the scheme applicable to the employees of the Postal Printing Press. Thereafter, when the first screening committee held on 18.04.2001, they ought to have considered the cases that have matured or would be maturing up to 31.03.2000. Had it been so, the applicant would not have suffered, because proceedings under rule 14 of CCS (CCA) was initiated against the applicant only on 24.05.2000.

4. On the other hand, by relying on the instructions under Annexure-R/8 clarifying the doubts on the point of grant of ACP benefits especially Sl.No.48, the Learned Senior Standing Counsel for the Respondents has argued that the Respondents have acted not beyond the Rules on the subject. Since, on the date of screening committee, the conduct of the applicant was under

cloud, his case was rightly kept in the sealed cover. Further he has argued that in absence of any specific direction, the screening committee had rightly sat on 18.04.2001 and considered the case of employees for grant of the benefits under ACP scheme. Therefore, he has vehemently opposed the prayer of applicant for grant of ACP benefits prior to 01.07.2004. Before dealing with the various submissions advanced by the parties, we would like to extract the clarification given under Annexure-R/8 on the point, based on which the case of the applicant was kept in the sealed cover and it runs thus:

Sl. 48- Point of doubt :

Whether sealed cover procedure as laid down vide DOP&T OM No. 22011/4/91-Estt.(A) dated 14.9.1992 is to be followed in cases relating to ACP also ?.

Clarification :

Yes. Condition no. 11 of the ACP scheme issued vide DOP&T OM dated 9.8.1999 clearly states that in the matter of disciplinary/penalty proceedings, grant of benefits under the ACP Scheme shall be subject to rules governing normal promotion. Therefore, when the employee is exonerated, the

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recommendations of the Screening Committee placed in a sealed cover will be opened and its recommendations acted upon. If he has been recommended for grant of financial up-gradation, the benefit of the same will be allowed from 09.08.1999 or from the date of completion of 12/24 years regular service, which ever is later. If, however, the employee is not exonerated and a formal penalty is imposed, sealed cover will not be opened and the case of employee will be considered only in the next meeting of the screening Committee. If such Screening committee having regard to all relevant facts, recommends grant of financial up-gradation, then such up-gradation shall be allowed only on expiry of the period of penalty and not during the currency of penalty. If penalty imposed is Censure or recovery of loss to the Government, then such up-gradation shall be allowed from the date of meeting of the Screening Committee which met to consider his case subsequent to

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imposition of penalty. The next financial up-gradation shall be allowed only on completion of 12 years regular service from the date from which the first up-gradation under the ACP is allowed and not necessarily on completion of 24 years of service.

5. It has been clarified by the Learned Counsel for the Applicant that he is not disputing with regard to adoption of sealed cover procedure in the case of ACP. His grievance is that when ACP scheme came into force, since there was no proceedings, the Applicant's case ought to have received due consideration as on that date and any event that took place beyond the date cannot be taken into consideration.

6. Now, therefore, the question for consideration is the crucial date of convening the selection committee and even if the selection committee convened on a subsequent date, it would relate back prior to 2001 i.e. the date of issue of the memorandum of charge to the Applicant. For the sake of prominence, dates of incidents are mentioned herein below:

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09.08.1999 ACP scheme came into force directing that first screening committee of the current financial year should be convened within a month from the date of issue of the instructions;

07.04.2000 PMG, Orissa, BBSR issued instructions that benefits of ACP is not applicable to industrial employees.

24.05.2000 Memo of charge under Rule 14 of the CCS (CCA) Rules, 1965 was issued to the Applicant;

08.03.2001 Chief PMG, Orissa Circle, Bhubaneswar issued instructions that the ACP scheme is applicable to the employees of the Postal Printing Staff;

18.04.2001 First Screening Committee for considering the cases of employees for grant of the benefits under ACP was convened;

18.07.2003 Punishment of reduction of scale of pay for one year was imposed on the Applicant;

20.07.2004 Second Screening Committee for considering the cases of eligible employees of the

01.07.2004

Postal Printing Press for grant of ACP benefits was convened; First up-gradation of pay under ACP scheme was granted.

7. From the above, it is clear that had the screening committee been convened at the right earnest pursuant to the ACP scheme dated 09.08.1999, the applicant would have got the benefits of first up-gradation of scale of pay under the ACP when he had completed 12 years of service/with effect from 09.08.1999. But the meeting could not be convened due to the subsequent instructions of the PMG, Orissa, Bhubaneswar which was modified on 08.03.2001 and, therefore, the selection committee met thereafter ought to have considered the cases of the employees that had matured as on 31.03.2000 and, in that event, the applicant would have been given the benefits of up-gradation scale of pay under ACP, as it is the admitted case of the parties that prior to 24.05.2000, there was no proceedings against the Applicant.

8. In this connection we would like to say that the ACP scheme dated 09.08.1999 clearly provides as under:

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"6.3 In order to prevent operation of the ACP scheme from resulting not undue strain on the administrative machinery, the Screening Committee shall follow a time-schedule and meet twice in a financial year- preferably in the first week of January and July for advance processing of the case. Accordingly, cases maturing during the first half (April, September) of a particular financial year for grant of benefits under the ACP Scheme shall be taken up for consideration by the Screening Committee meeting in the first week of January of the previous financial year. Similarly, the Screening Committee meeting in the first week of July of any financial year shall process the cases that would be maturing during the second half (October-March) of the same financial year. For example, the Screening Committee meeting in the first week of January, 1999 would process the cases that would attain maturity during the period April 1, 1999 in September 30, 1999 and the Screening Committee meeting in the first week of July, 1999 would process like cases that would mature during the period October 1, 1999 to March 31, 2000.

6.4. To make the scheme operation, the Cadre Controlling Authorities shall constitute the first Screening Committee of the current financial year within a

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month from the date of issue of these instructions to consider the cases that have already matured or would be maturing up to March 31, 2000 for grant of benefits under the ACP Scheme. The next Screening Committee shall be constituted as per the time schedule suggested above."

9. On the face of the above mandatory provisions, there is no discretion left with the administrative authorities to act contrary to the provisions laid down above. Therefore, non-consideration of the case of the Applicant for grant of the benefits under ACP, during 09.08.1999 to 07.04.2000 cannot be said to be logical or in accordance with the instructions quoted above. Besides, if the above view of the Respondents is accepted, then it would be like imposing double punishment on the applicant for one offence. Not only he will be visited with double punishment but also this, would be more harsh than the punishment imposed on him in the disciplinary proceedings initiated against him under Rule 14 of the CCS

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(CCA) Rules; because in that proceedings his pay has been reduced by one stage for one year; whereas by this he will be deprived of getting the benefits of higher pay for nearly about five years which is highly disproportionate and unjust.

10. In this view of the matter, this Original Application is disposed of with direction to the Respondents, especially Respondent No.4, to convene a Review Screening Committee meeting and get the case of Applicant reviewed on the basis of service records/annual confidential reports and vigilance clearance reports as on 09.08.1999 and in the event that he is found suitable, he should be given the benefits of up-gradation scale of pay under ACP scheme retrospectively. The entire exercise shall be completed within a period of 90 days from the date of receipt of a copy of this order. Since the Applicant has already been made to suffer, we make it clear that in case the entire exercise shall not be completed within the period mentioned above, the Applicant shall be entitled to interest @ 8% per annum, on the entire arrear dues to be accrued to him beyond 90 days and the extra amount to

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be incurred by way of interest shall be recovered from the officer(s) responsible for the delay.

11. In the result, this OA stands allowed in the afore-stated terms. There shall be no order as to costs.

Orderly line.
(N.D.Raghavan)

Vice-Chairman

B.M.
(B.B.Mishra)
Member(A)

KNM/PS.