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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.555 OF 2005

Cuttack this the 31st day of 2008

JULY

V.N.Rao & Ors.Applicants

-VERSUS-

Union of India & Ors.Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to the Principal Bench of the Central Administrative Tribunal or not ?


(C.R. MOHAPATRA)
MEMBER (ADMINISTRATIVE)


(K. THANKAPPAN)
MEMBER (JUDICIAL)

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CORAM:

THE HON'BLE SHRI JUSTICE K.THANKAPPAN,
MEMBER(JUDICIAL)

AND

THE HON'BLE SHRI C.R.MOHAPATRA,
MEMBER(ADMINISTRATIVE)

- ...
1. V.Narayan Rao, S/o.Jangamiya, at present Peon, Qr.No.2RA/185/ARC, Charbatia, P.S. Choudwar, Cuttack
 2. Khageswar Badajena, S/o. Late Somnath Badajena, Qr.No. 2RA-Charbatia, P.S.Choudwar, Cuttack, at present Peon, A.R.C., Charbatia
 3. Kanhu Naik (SC), S/o. late Nanda Naik, at present Peon, Qr.No.2RA/96/ARC, Charbatia, P.S.Choudwar, Dist-Cuttack
 4. Sanatan Moharana, S/o. Sri Biswanath Moharana, Peon, A.R.C., Charbatia, PS-Choudwar, District-Cuttack
 5. Gangadhar Behera, S/o.Sri Raghunath Behera, Peon, Qr.No.2RA/145, A.R.C., Charbatia, PS-Choudwar, Dist-Cuttack

By the Advocates

...Applicants
M/s.A.K.Bose
P.K.Das
D.M.Mallick

-Versus-

1. Union of India represented through its Special Secretary, Aviation Research Centre, Office of the Director General & Security, Cabinate Secretariat, East Block-V, Government of India, R.K.Puram, New Delhi-110066
2. Deputy Director, Aviation Research Centre, Government of India, At/Po-Charbatia, Via-Choudwar, District-Cuttack
3. The Secretary, Department of Personnel and Training, Ministry of Personnel, Public Grievances & Pension, Government of India, New Delhi-110 001

By the Advocates:

...Respondents
Mr.S.B.Jena

ORDER**SHRI JUSTICE K.THANKAPPAN, MEMBER(JUDICIAL):**

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985, challenging the orders passed by the Deputy Director, Aviation Research Center, Government of India, Charbatia (Respondent No.2), Cuttack.

2. The short factual matrix which has led to filing of this Original Application is as follows.

3. All the applicants are now working as Peon at A.R.C., Charbatia, having been appointed from 1971 to 1976. The Recruitment Rules, viz., A.R.C. (Miscellaneous Staff) Recruitment Rules, 1977 (hereinafter referred to as Rules) came into force with effect from 1.3.1977 which prescribed the minimum educational qualification for the post of Peon, Middle Class pass, whereas the applicants were not having that minimum educational qualification. However, the applicants were appointed substantively against permanent posts and allowed to draw permanent pay scales which were being revised from time to time. When the A.C.P. scheme, viz., Assured Career Progression Scheme was introduced in 1999, the 2nd Financial Upgradation to the applications was also allowed. As a matter of fact, the 2nd Financial Upgradation which was though allowed early, by the impugned orders under Annexures-A/7 and A/8, the said benefit given to the applicants was



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cancelled on the basis of clarification issued by a letter of the Department of Personnel & Training, Government of India. Aggrieved by the above, the applicants filed this Original Application.

4. The Tribunal heard Shri A.K.Bose, learned counsel appearing for the applicants and Shri S.B.Jena, learned counsel appearing for the Respondents and had perused the documents produced in the O.A. and the relevant rules applicable to the instant case of the applicants. The learned counsel, Shri A.K.Bose, appearing for the applicants raised the following contentions:

- i) As the applicants were appointed in substantive posts permanently prior to the commencement of the Rules, the educational qualification or the qualification for promotion as prescribed in the Recruitment Rules could not be made applicable to their case.
- ii) As the rule making authority had considered continuance of the existing staff while prescribing qualification and the method of appointment and promotion, the insistence now made by the Department that the applicants are not entitled to any promotion and/or any financial benefits under the A.C.P. Scheme on the ground that they are not having the prescribed minimum qualification is arbitrary.
- iii) As per Annexure-5 there are other Peons or employees who have been given the benefit of 2nd Financial Up-gradation for promotion are not having the prescribed qualification and if so, there should not be any discrimination to the applicants, which is violative of Article 14 of the Constitution of India.

5. To the above contentions of the learned counsel for the applicants, relying on the counter-affidavit for and on behalf of the Respondents, it is contended by Shri S.B.Jena, learned counsel



that as per the Recruitment Rules, the applicants having not the minimum educational qualification were not even eligible to be appointed as Peon and this^{is} how, the 2nd Financial Up-gradation granted to the applicants, has been withdrawn/cancelled as per Annexures-A/7 and A/8. These two orders have been issued on the basis of clarification letter of the Department of Personnel & Training O.M. dated 9.8.1999 and that the orders of cancellation, according to counsel for the Respondents are also based on the Recruitment Rules, which is applicable to non-Gazetted staff, coming into force with effect from 1.3.1977. Shri Jena further contended that as the applicants lack in educational qualification they are neither eligible nor entitled to any further promotion and this is why, as per the principles enunciated under the A.C.P. Scheme, the 2nd financial upgradation granted to them has been cancelled. The learned counsel further contended that there is no discrimination shown to the applicants since the other officials, whose names appear in Annexure-5 are within the ambit of Recruitment Rules for the post of Peon, having the minimum educational qualification. It is further contended that the promotional avenues of Peons are to the post of Daftries and Senior Gestner Operators and the upgradation, now allowed to those Peons was on the basis of clarification made by the Department of Personnel & Training vide their O.M. dated 9.8.1999, as those Peons have acquired the minimum educational qualification of



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Middle Class pass, whereas the present applicants do not so acquire. Hence, the orders under challenge are tenable in law.

6. On anxious consideration of the rival contentions and the stand taken by the counsel on either side, the question to be decided in this O.A. is whether the applicants are entitled to 2nd financial upgradation or not.

7. Admittedly, the applicants were appointed prior to 1.3.1977, i.e., before introduction or rather the framing of the ARC(Miscellaneous Staff)Recruitment Rules, 1977. After coming into force and in line with the said Rules, the applicants were appointed in substantive capacity against permanent posts(Annexure-A/1 series) and consequently, they were allowed pay scales which were being revised from time to time on the basis of the recommendations of the each Pay Commission. If so, unless and until the services of the applicants have been terminated and as they were appointed in substantive capacity against permanent vacancies, even after the commencement of the Recruitment Rules, it is only just and proper to hold that the applicants are eligible and entitled for promotion and/or the financial upgradation as contemplated under the provisions of the A.C.P.Scheme, which came into force with effect from 1999. At this juncture, it is also to be noted that when the Recruitment Rules came into force with effect from 1.3.1977, an exemption ought to have been granted to the employees already in service and having not prescribed so, the

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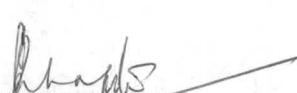
applicants, being only five in number, the Department ought to have considered the question of granting them the benefit of A.C.P. scheme as well as the promotion. Though it is stated in the counter-affidavit that the promotional avenues from the post of Peon is to the post of Daftry and Sr.Gestner Operator, for which an educational qualification has already been prescribed in the Recruitment Rules, but even if the applicants are not entitled for any promotion as they do not have the minimum educational qualification, they should have been treated as deemed passed or possessed the minimum educational qualification prescribed in the Recruitment Rules. It is further to be noted that though the matter was referred to the department of Personnel & Training, the clarification given by that Department is not beneficial to the applicants. The Department of Personnel & Training must not have brushed aside claims of the applicants in the light of the relevant provisions in the Recruitment Rules, as no exemption for regularization of services of these applicants and the fact that the applicants are still working in the Department as Peons and are getting the pay scales being revised from time to time on the basis of the recommendations of the Pay Commission. This being the situation, we are of the view that the applicants are entitled to 2nd financial upgradation under the A.C.P. Scheme, as if they were qualified to be promoted. Accordingly, the impugned orders under Annexures-A/7, A/8 and A/10 are quashed. The orders under



which the benefit of 2nd financial upgradation under the A.C.P. Scheme was granted to the applicants shall revive.

8. Before parting with this case, it is needless to mention that this order will not stand as a precedent for any other purpose nor would it be treated as granted for claiming promotion to other cadre by the applicants. But this can be benefited only for continuation of the benefit granted to the applicants under the A.C.P. scheme.

9. With the above directions, this O.A. stands allowed. No costs.


(C.R. MOHAPATRA)
MEMBER (ADMINISTRATIVE)


(K. THANKAPPAN)
MEMBER (JUDICIAL)