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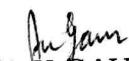
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

OA No. 278 of 2006
Cuttack, this the 27th day of November, 2008

Pramod Kumar Ray Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?


(A.K. GAUR)
MEMBER (JUDICIAL)


(C.R. MOHAPATRA)
MEMBER (ADMN.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.278 of 2006
Cuttack, this the 27th day of November, 2008

C O R A M:
THE HON'BLE MR.A.K.GAUR, MEMBER (J)
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

Promod Kumar Ray, aged about 51 years, son of Late Ghaniram Rai, presently working as Draftsman, O/O the Director Census Operation, Orissa, Unit-IX, Janpath, Bhubaneswar-22, Dist. Khurda.

.....Applicant

Legal practitioner : M/s. K.C.Kanungo, Miss.C.Padhi,
S.Beura, Smt.S.Adhikary,
Counsel.

- Versus -

1. Union of India represented through
Registrar General of India, Census Operation, 2/A, Mansingh Road, New Delhi-11.

2. Director Census Operation, Orissa, Unit-IX, Janpath, Bhubaneswar-22, Dist. Khurda.

3. Deputy Director, Census Operation, Orissa, Unit-IX, Janpath, Bhubaneswar-22, Dist. Khurda.

....Respondents

Legal Practitioner : Mr. U.B.Mohapatra, SSC
Mr. S.Mishra, ASC

O R D E R

MR. C.R.MOHAPATRA, MEMBER (A):-

Briefly stated, the case of the Applicant is that on 11.09.1979 he was appointed as Draftsman in the office of Respondent No.2. Government of India, vide OM under Annexure-A/2 dated 09.08.1999 notified and implemented the ACP Scheme for Central Government Civilian Employees providing therein that two financial up-gradations under the ACP Scheme in the entire service career of an employee shall be counted against regular promotions (including in-situ promotion and/or any other promotion including

fast-track promotion availed through limited departmental competitive examination) availed from the grade in which an employee was appointed as a direct recruit. This means that two financial up-gradations under the ACP Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee. If an employee has already got one regular promotion, he shall qualify for the second financial up-gradation only on completion of 24 years of regular service under the ACP Scheme. In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him. According to Applicant he was entitled to 1st Financial Up-gradation under the ACP scheme w.e.f. 09.08.1999. On 10.02.2000 further clarification on ACP was issued by the Government.

2. Under Annexure-A/12 dated 24.04.2000 adverse entries in the ACR for the year 1998-99 were communicated to the Applicant. He submitted representation against these adverse remarks on 11.05.2000. On 19.05.2000 Screening Committee meeting was held for grant of ACP benefits to eligible employees. In the order dated 13.06.2000 except the Applicant, others were extended the benefit of ACP on the recommendation of the Screening Committee. The representation of applicant against adverse ACR was rejected and the same was communicated to him vide order under Annexure-A/13 dated 16.06.2000. As per the Recruitment Rules for Senior Draftsman notified on 15.03.2001, the Applicant was fulfilling norms of promotion and hence was entitled for 2nd financial up-gradation in the

scale of Rs.6500-10,500/- w.e.f. 11.09.2003. Against the order of rejection of his representation for expunction of the adverse CCRs for the year 1998-1999 he approached this Tribunal in OA No. 544 of 2000 and as per the orders of this Tribunal dated 27.2.2003, the Respondents reconsidered the prayer for expunction of the adverse entries recorded in the ACR of the Applicant for the year 1998-99 and again rejected it on 15.1.2004. Subsequently, vide order under Annexure-A/4, dated 10.11.2004 the Applicant was granted the 2nd financial up-gradation in the pay scale of Rs.5500-9000/- w.e.f. 11.09.2003. This was however, subsequently modified under Annexure-A/7 dated 26.09.2005 as 1st Up-gradation. Representations submitted by him against this modified order at Annexure-A/7 did not yield any result. Now he has approached this Tribunal in the present OA seeking the following relief:

“It is therefore prayed to quash Annexure-A/1, A/4, A/7 and A/9 for the ends of justice;
And

Be further pleased to hold that the Applicant is entitled to the first financial up-gradation as the scale of Rs.5,500-Rs.9,000/- w.e.f. 09.08.99 and the second financial up-gradation in the scale of Rs.6500-Rs.10,500/- w.e.f. 11.9.2003;

And

Be further pleased to direct the Respondents to grant the benefit under ACP i.e. first financial up-gradation and second financial up-gradation in the scale of Rs.5,500-Rs.9000 and Rs.6500-10,5000 respectively w.e.f. 9.8.99 and 11.9.2003 respectively with all arrears in such time as your lordships deem it fit and proper.”

3. By filing counter, the Respondents have opposed the prayer of the Applicant for the reasons that the case of the Applicant for grant of first financial up gradation after completion of 12 years of

regular service was due w.e.f. 09.08.1999 which aspect was considered by the Department Screening Committee on 19.05.2000. The Committee found the applicant not eligible for grant of the 1st financial up-gradation on the due date stated above due to adverse remarks in his ACR for the year 1998-1999. He was also not entitled to get the 2nd financial up-gradation w.e.f. 11.9.2003 due to the postponement of the 1st Financial up-gradation which had consequential effect on the 2nd financial up-gradation as per the terms and conditions prescribed by the Department of Personnel and Training under Annexure-A/2 for fulfillment of normal promotion norms for grant of benefit under the ACP Scheme. Hence, the plea taken by the applicant that he was arbitrarily denied the 1st financial benefit w.e.f. 09.08.99 and the 2nd financial benefit w.e.f. 11.09.2003 is misconceived and misrepresentation of facts and law.

4. It is the contention of the Learned Counsel for the Applicant that the Respondents have intentionally and deliberately held the Screening Committee meeting for the purpose of granting ACP on 19.05.2000 instead of just after issuance of Annexure-A/2 or in the first week of January, 2000. Representation submitted by the Applicant against the adverse remarks was rejected and communicated under Annexure-A/13 dated 16.6.2000. Therefore, for all purposes when representation against the adverse remarks was pending, the Respondents ought not to have taken into consideration those adverse remarks as per the Government of India (DoPT) instruction dated 30.1.1978. It is the specific contention of the

applicant that except the adverse remarks for the year 1998-99, there is no other adverse remarks and as such, the Applicant ought not to have been deprived of the benefit of ACP; especially when as per the Recruitment Rules, the post carrying the upgraded scale of applicant was meant to be filled in on the principle of seniority cum merit.

5. On the other hand it was argued by Learned Counsel for the Respondents that when the Screening Committee found the applicant unsuitable to be placed in the higher scale under ACP scheme and there has been no miscarriage of justice in the decision making process, there is hardly any scope for this Tribunal to interfere in the decision of the administrative authority. Accordingly, he has prayed for dismissal of this OA.

6. After giving our in-depth consideration to various submissions advanced in relation to their pleadings by the respective parties, we have perused the materials placed on record. Instruction dated 30th January, 1978 clearly provides that adverse remarks should not be deemed to be operative if any representation filed within the prescribed time limit is pending which has also the sanction of law that neither un-communicated adverse remarks nor adverse remarks against which representation is pending can be acted upon against an employee. Also it is trite law that preceding five years ACR is normally to be taken into consideration for assessing promotion and if bench mark for promotion is achieved, there is no reason to hold an employee ineligible to be promoted. In the absence of any contrary statement, it is proved that except for the year 1998-99 there is no

other adverse entry in the ACR of the Applicant for the relevant period. It is not in dispute that adverse ACR for the year 1998-99 was communicated to the applicant on 24.04.2000 against which he made representation on 11.05.2000. The representation of Applicant against adverse entry was rejected and communicated to Applicant under Annexure-A/13 dated 16.6.2000. Meanwhile, on 19.05.2000 Screening Committee Meeting was convened for grant of ACP to the Applicant and others and the recommendation of Selection Committee was implemented on 13.06.2000. In other words, on the basis of the adverse remark against which the representation of applicant was pending, the Selection Committee did not recommend the case of applicant for grant of ACP which is against the instructions of the Government dated 30th January, 1978 as also law of the land.

7. For the reasons stated above, we find substantial force in the submission of the Applicant that there has been miscarriage of justice in the decision making process for grant of ACP benefit to the Applicant with effect from his entitled date. In view of the above, we remit the matter back to the Respondents for reconsideration of the case of the Applicant for grant of 1st and 2nd up gradation of pay under ACP w.e.f. 09.08.1999 & 11.09.2003 respectively within a period 90 days from the date of receipt of copy of this order. This OA is accordingly allowed to the extent stated above. No costs.

A.K. Gaur
(A.K. GAUR)
MEMBER (JUDICIAL)

C.R. Mohapatra
(C.R. MOHAPATRA)
MEMBER (ADMN.)