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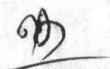
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


OA No.445 of 2006
Cuttack, this the 21st day of January, 2009

Duryodhan Bhoi 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?


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


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

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.445 of 2006

Cuttack, this the 21st day of January, 2009

C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

Sri Duryodhan Bhoi, Son of Late Jagannath Bhoi, at present working as Peon at Aviation Research Centre, Charbatia, Qr.No.2RA/2001, PS Choudwar, Cuttack.

.....Applicant

By Advocate :M/s. A.K.Bose, P.K.Das, D.K.Mallik.

- Versus -

1. Union of India represented through its Special Secretary, Aviation Research Centre, Office of the Director General and Security, Cabinet Secretariat, East Block V , Government of India, R.K.Puram, New Dehi-110 066.
2. Deputy Director, Aviation Research Centre, Government of India, At/Po. Charbatia, Via-Choudwar, Dist. Cuttack.
3. The Secretary, Department of Personnel and Training, Ministry of Personnel and Public Grievances and Pension, Govt. of India, New Delhi-110 001.

....Respondents

By Advocate :Mr.P.R.J.Dash.

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O R D E R

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

Applicant is a Group D/Class-IV employee of the ARC, Charbatia. In this Original Application filed under Section 19 of the A.T.Act, 1985, he has challenged the order under Annexure-A/7 dated 15.02.2005 and the order under Annexure-A/8 dated 24.3.2005. The order dated 24.5.2005 is consequential to the order under 15.2.2005 cancelling

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the order granting the benefit of second financial up-gradation under ACP to the Applicant. Also he has prayed for a declaration that the applicant is entitled to the 2nd financial up-gradation in the scale of pay of Rs.3050-4590/- w.e.f. 09.08.1999 and accordingly the respondents should pay the differential amount within a stipulated period.

2. It is the case of Respondents both in the counter and during hearing that as per the Recruitment Rules, as the applicant does not have the educational qualification he was not eligible to be appointed as Peon and, therefore, as per the OM of the DOP&T dated 09.08.1999, by the impugned orders 2nd financial up-gradation granted to the Applicant was cancelled/withdrawn vide annexure-A/7 and as a consequence vide order under Annexure-A/8 the fixation of pay made consequent upon the second financial up-gradation was cancelled.

3. Heard Learned Counsel for both sides and perused the materials placed on record. Having gone through the order dated 31st July, 2008 in OA No. 555 of 2005 of this Bench produced by the Learned Counsel for the Applicant during the course of argument we find no need for noting the rival submission of the parties. We feel that the extract of relevant portion of the order in OA No. 555 of 2005 will ^{subsume} ~~subsume~~ the issues raised in this OA. Hence, the relevant portion of the order in OA No. 555 of 2005 is extracted below:

“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 post (Annexure 0-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 up-gradation as contemplated under the provisions of the ACP 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 applicants, being only five in number, the Department ought to have considered the question of granting them the benefit of ACP 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 and 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

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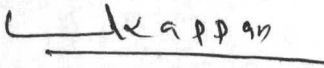
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to 2nd financial up-gradation under the ACP scheme, as if they were qualified to be promoted. Accordingly, the impugned orders under Annexures-A/7, A/8 and A/10 are quashed. The orders under which the benefit of 2nd financial up-gradation under the ACP 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.”

4. When the factual scenario of the instant case vis-à-vis the case in OA No. 555 of 2005 is examined we find no reason to deviate from the view that the orders under Annexures-A/7 & A/8 are not sustainable in the touch stone of judicial scrutiny. Hence, both the impugned orders are hereby quashed. As a consequence, the order under which the benefit of 2nd financial up-gradation under the ACP scheme was granted to the applicant revives. The Respondents are hereby directed accordingly to calculate the differential amount and pay the same to the applicant within a period of ninety days from the date of receipt of copy of this order,

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


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


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