

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

OA No.573 of 2006
Cuttack, this the 20th day of January, 2009

Gangadhar Mohanty 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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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)

Shri Gangadhar Mohanty, aged about 60 years, an Ex-L.D.C of Potal Department Orissa Zone, S/o.Late Ananta Mohanty at present residing of Village Nayapalli, PO. Deuli, Via Pichukuli, Dist. Khurda.

.....Applicant

By Advocate: M/s. C.Ananda Rao, Sarat Kumar Behera, Arun Kumar Rath.

- Versus -

1. Union of India represented by the Secretary, Department of Post Dak Bhawan, New Delhi-110001.
2. Director General (Postal Wing) Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 001.
3. Post Master General, Orissa, Bhubaneswar, Dist. Khurda.
4. Director of Accounts (Postal) Department of Posts, Cuttack-753 001, At/Po/Dist. Cuttack.

....Respondents

By Advocate :Mr.S.K.Patra

O R D E R

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

Applicant was initially recruited to the post of Patwari under DNK Project w.e.f. 07.04.1966. Having been rendered surplus, he was adjusted as a 'Sorter' in the Office of the Director of Accounts (Postal), Kolkata w.e.f. 13.05.1988 with necessary pay protection. Thereafter he was promoted to

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the post of LDC w.e.f. 01.10.1993 and transferred to the office of Respondent No.4 as LDC w.e.f. 01.07.1998. On the recommendation of the 5th Central Pay Commission, the scales of pay of Patwari and LDC was clubbed together and made as Rs.3050-4590/- He having been denied the ACP benefits has approached this Tribunal in the present Original Application seeking to quash the impugned order of rejection of his representation under Annexure 7,9,11 and 14.

2. In order to meet the genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues, on the recommendation of the 5th Pay Commission, the Government of India, as a safety net measure accepted and floated a policy commonly known as Assured Career Progression (ACP) Scheme. The scheme provides for grant of two financial up-gradations in the entire service career of a Government servant, if no regular promotion during the prescribed periods (12 and 24 years) have been availed of by an employee. It further provides that 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. It also envisages that 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. In column 6 of the said scheme it provides that fulfillment of conditions of

normal promotion shall be ensured for grant of benefits under the ACP scheme.

3. According to the Applicant, similarly situated persons like the applicant having been redeployed have been given the benefits of ACP whereas though he fulfilled all the norms to be entitled to benefit of ACP the same was denied to him. According to him, denial of ACP benefits to similarly placed employees of other departments formed the subject matter of consideration in OA No.40 of 2001. The said OA was disposed of on 2nd May, 2003 with direction for grant of the benefit of ACP to the applicants therein but even then he has been deprived of extension of the benefit of ACP although he has not got any promotion during his entire service career starting from 1966 till his voluntary retirement w.e.f. 02.09.2004.

4. In the counter it has been stated by the Respondents that the applicant was working as LDC. From LDC his next promotion was Junior Accountant. As per the rules LDCs are eligible for promotion to Jr. Accountant by passing the departmental examination specified by DG (Posts) or LDCs possessing minimum educational qualification of Matriculation with five years service in the grade rendered after appointment to the post on regular basis. The Applicant has neither passed the prescribed departmental examination nor is he a Matriculate.

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As such, although the applicant has completed more than 24 years of service without getting a promotion he was not entitled to the benefit of the ACP as he is not fulfilling the eligibility conditions which are mandatory for grant of ACP benefits as provided in the DOPT OM dated 10.02.2000 and dated 18.07.2001 (Annexure-R/3 and R/4. They also do not dispute the conferment of the benefits under ACP so far as surplus DNK employees adjusted in other departments including the Department of Posts. But it has been stated that such benefits have been given to those employees who fulfilled the requisite conditions stipulated under the ACP scheme. It has further been stated that the conditions stipulated in para-6 of the DOP&T OM dated 9.8.99 and in column 53 of Annexure-R/4 has already been upheld by the Lucknow Bench of the Tribunal in the case of Mani Ram Vishwakarma and others in OA No. 198 of 2004 disposed of on 09.05.2006. By stating so though the Respondents sympathized for this yet have stated that since Rule does not permit they are undone in the matter.

5. By filing rejoinder, the Applicant has reiterated the contentions raised in the OA. He has stated that the applicant was fulfilling all the conditions for promotion yet he was not granted the benefit of ACP. Learned Counsel for both sides reiterated their stand

taken in the pleadings and having heard them at length perused the materials placed on record.

6. It is true that as per the scheme of ACP and subsequent clarifications issued thereon one is required to fulfill all promotional norms for up-gradation under the scheme. It has been provided that no up-gradation shall be allowed if an employee fails to qualify departmental/skill test prescribed for the purpose of regular promotion. According to the Respondents the post of Jr. Accountant is the promotional grade of the post of LDC. LDCs are eligible for consideration for such promotion provided they pass the departmental examination specified by DG (Posts) OR possess the minimum educational qualification of Matriculation with five years service in the grade rendered after appointment to the post on regular basis. When despite not possessing the minimum qualification of Matriculation for the post of LDC the applicant after being declared surplus was allowed to be appointed as LDC in all fairness, he is entitled to be promoted to the next post, according to his turn although he was not a Matriculate, of course, after completion of five years service in the grade. Admittedly, applicant has not got any promotion. As such denial of the benefit of ACP on the pretext stated in the counter cannot be said to be in consonance with the purpose for which the scheme was introduced. In view of the above, it is

held that the ground upon which the applicant was denied the benefits of ACP is not justified and he is entitled to the benefit of ACP provided he is otherwise eligible.

7. In the result, this OA is disposed of with direction that the Applicant is entitled to the benefit of ACP subject to fulfillment of other conditions as per the scheme formulated by the Government and the Respondents are hereby directed to consider grant of the ACP benefits as directed above, within a period of ninety days from the date of receipt of copy of this order. No costs.

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(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

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

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