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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.834 & 843 of 2006
Cuttack, this the 20th day of May, 2009

Suresh Kumar Behera & Ors. Applicants
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.)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.834 & 843 of 2006
Cuttack, this the 20th day of May, 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)

.....
OA No. 834 of 2006

Suresh Kumar Behera, aged about 52, Son of Late Gokul Chandra Behera, permanent resident of Cheruapada, PO. Modipara, Sambalpur, PS/Dist. Sambalpur and at present working as Staff Car Driver, Grade-1 in Doordarshan Kendra Bhubaneswar-751 005, Dist. Khurda.

.....Applicant

Advocate for Applicant: M/s.R.B.Mohapatra, D.K.Mohanty
-Vs-

1. Union of India represented by Secretary to Government of India, Ministry of Information and Broadcasting, New Delhi-110 001.
2. Director General, Doordarshan (Broadcasting Corporation of India), Prasar Bharati, Mandi House, Copernicus Marg, New Delhi-110 001.
3. Chief Executive Officer (Broadcasting Corporation of India), Prasar Bharati, Mandi House, Copernicus Marg, New Delhi-110 001.
4. Director of Doordarshan Kendra, Bhubaneswar (Broadcasting Corporation of India), Prasar Bharati, PO. Bhubaneswar-751 005, Dist. Khurda (Orissa).
5. Administrative Officer, Doordarshan Kendra, Bhubaneswar (Broadcasting Corporation of India), Prasar Bharati, PO. Bhubaneswar-751 005, Dist. Khurda (Orissa).

Advocate for Respondents: Mr.S.B.Jena

OA No. 843 of 2006

Shri Narayan Prasad Das, aged about 57 years, Son of Late Nityananda Das, Vill/Po.Dehuri, Via-Anandapur, Dist. Bhadrak at present residing at Qr.No.B-5/7, Doordarshan Staff Colony, Bhubaneswar-751 013, District-Khurda and at present working as Staff Car Driver Grade-I in Doordarshan Kendra, Bhubaneswar, PO-Bhubaneswar-5, Dist. Khurda.

.....Applicant

Advocate for Applicant: M/s.R.B.Mohapatra, D.K.Mohanty
-Vs-

1. Union of India represented by Secretary to Government of India, Ministry of Information and Broadcasting, New Delhi-110 001.
2. Director General, Doordarshan (Broadcasting Corporation of India), Prasar Bharati, Mandi House, Copernicus Marg, New Delhi-110 001.

3. Chief Executive Officer (Broadcasting Corporation of India), Prasar Bharati, Mandi House, Copernicus Marg, New Delhi-110 001.
4. Director of Doordarshan Kendra, Bhubaneswar (Broadcasting Corporation of India), Prasar Bharati, PO. Bhubaneswar-751 005, Dist. Khurda (Orissa).
5. Administrative Officer, Doordarshan Kendra, Bhubaneswar (Broadcasting Corporation of India), Prasar Bharati, PO. Bhubaneswar-751 005, Dist. Khurda (Orissa).

Advocate for Respondents: Mr.S.B.Jena

O R D E R

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

Both the Applicants are Grade I Staff Car Driver in the Doordarshan Kendra, Bhubanswar. On the recommendation of the Fifth Central Pay Commission, Government of India as a matter of policy issued instruction under Annexure-5 dated 9th August, 1999 known as "ACP" for grant of two financial up-gradations to the employees of the Government on completion of 12 and 24 years of regular service, without any promotion. Rejection of their grievance for extension of the benefits of the ACP is the cause of grievance in both the Original Applications. The impugned orders read as under:

"Annexure-A//11 dated 06/09.10.2006 in OA No. 834/2006.

With reference to his representation dated 26.09.2006, S.K.Behera, Driver, Grade I is hereby informed that the Competent Authority has duly considered his case, but it is not found possible to consider his case for 2nd ACP due to following reason.

The date of initial appointment of Shri S.K.Behera as Driver was 25.01.1978 in the pay scale of Rs.3050-4590/- (Revised). As per ACP Scheme he would be eligible for 1st ACP w.e.f. 09.08.1999 (from the date of operation of the scheme) & 2nd ACP w.e.f. 25.01.2002 (after completion of 24 years of service) as per Scheme. He would have received one up-gradation of pay and 1st ACP we.f. 09.08.1999 in the pay scale of Rs.4000-6000/- and from 25.01.2002, 2nd ACP in the pay scale of Rs.4500-7000/-. But as per the revised promotional Scheme of Staff Car Drivers, Shri Behera received promotion to Staff Car Driver Grade I w.e.f. 01.08.1993 in the pay scale of Rs.4500-7000/- i.e. two up-gradation of pay from the date of operation of the promotional scheme. As such, Shri Behera is not eligible for 2nd ACP as claimed by him."

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"Annexure-A//11 dated 04.09.2006 in OA No. 843/2006.

With reference to his representation dated 26.09.2006, N.P.Das Driver, Grade I is hereby informed that the Competent Authority has duly considered his case, but it is not fund possible to consider his case for 2nd ACP due to following reason:

The date of initial appointment of Shri N.P.Das as Driver was 12.12.1977 in the pay scale of Rs.3050-4590/- (Revised). As per ACP Scheme he would be eligible for 1st ACP w.e.f. 09.08.1999 (from the date of operation of the scheme) & 2nd ACP w.e.f. 12.12.2001 (after completion of 24 years of service) as per Scheme. He would have received one up-gradation of pay and 1st ACP w.e.f. 09.08.1999 in the pay scale of Rs.4000-6000/- and from 12.12.2001, 2nd ACP in the pay scale of Rs.4500-7000/-. But as per the Revised promotional Scheme of Staff Car Drivers, Shri Das received promotion to Staff Car Driver Grade I w.e.f. 01.08.1999 in the pay scale of Rs.4500-7000 i.e. two up-gradation of pay from the date of operation of the promotional scheme As such Shri Das is not eligible for 2nd ACP as claimed by him."

2. In OA No. 834/06, the claim of the Applicant is that his date of appointment as Driver being 25.01.1990 (revised to Rs.3050-4590/-) he completes 12 years service as on 25.01.1978 and 24 years of service as on 25.01.2002 and thereby in terms of ACP scheme, he is entitled for two financial up-gradations in the scale of pay of staff Driver Grade I. Because as per the decision of the Principal Bench of the CAT in the case of Staff Car Drivers Association and others v Union of India and others (OA No.2957 of 1991) Government of India, Ministry of Personnel Public Grievances and Pensions issued an office memorandum dated 30th November, 1993 by devising a promotional scheme for Staff Car Drivers with the grade structure (Rs.950-1500, Rs.1200-1800/- and Rs.1320-2040/-) w.e.f. 01.08.1993. But such a promotion is not a promotion rather it is an up-gradation in the guise of promotion. According to him, if it is counted as a promotion w.e.f. 01.08.1993 then the subsequent 12 years shall be completed by 01.08.2005 and thereby he is entitled for second financial up-

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gradation from 01.08.2005. But by giving wrong interpretation to the ACP Scheme the first financial up-gradation was sanctioned w.e.f. 09.08.1999. As such, the rejection of representation for grant of second financial up-gradation in the scale of pay of Rs.5000-8000/- w.e.f. 01.08.2005 being contrary to the scheme, the order of rejection is liable to be quashed. Except the date of appointment of the applicant, similar is the grievance of Applicant in OA no. 843 of 2006.

3. Similar line of replies has been filed by the Respondents in both the Original Applications opposing the stand of the Applicants. It has been stated that the applicants were appointed as Driver and received two financial up-gradations i.e. in the cadre of Driver Grade I as per the revised promotional scheme of Staff Car Drivers vide DoP&T OM no. 22036/1/92-Estt (D) dated 30.11.1993 (Annexure-A/1) and received all the arrear dues. As per the clarification of DoP&T dated 18/6/2000 where the staff Car Driver scheme is applicable, ACP is not applicable. The Applicant was informed accordingly vide OM dated 04.10.2006. However, it has been stated that as per the ACP scheme one can get 1st financial up-gradation after completion of 12 years and 2nd Financial Up-gradation after completion of 24 years of continuous regular service. But as per the instructions of DOP&T the Staff Car Drivers are not eligible for the ACP benefits due to which they were not paid the same. Accordingly, Respondents prayed for dismissal of both the OAs.

4. Having heard the rival submissions of the parties perused the materials placed on record. It is the categorical submission both in the counter as well as during hearing that where the staff car driver scheme is applicable ACP Scheme is not applicable. But from order

under Annexure-A/14 dated 10.04.2000 filed along with the counter which was also not controverted by the Respondents it is seen that ACP benefits have been granted to some of the Drivers named in the orders like Shri S.S.Panda and a few others. Hence, the submission that ACP scheme is not applicable to the Drivers appears to be false. In view of the above, the order under Annexure-A/11 dated 06/09.10.2006 in OA No. 834/2006 and under Annexure-A/11 dated 04.09.2006 in OA No. 843/2006 are hereby quashed. As a consequence, Respondent No.2 is hereby directed to give a fresh consideration to the grievance of the Applicants for grant of ACP benefits as claimed by them and pass a reasoned order within a period of three months from the date of receipt of copy of this order and communicate the decision to the Applicants.

5. With the aforesaid observations and directions, both the OAs stand disposed of. No costs.

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 (JUSTICE K. THANKAPPAN)
 MEMBER (JUDICIAL)

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