

6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.902 of 2006
Cuttack, this the ~~27th day of March~~, 2009
~~2nd day of April,~~

Gitarani Biswas & Anr. 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.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.902 of 2006
Cuttack, this the ~~20~~^{April} day of ~~March~~^{March}, 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)

1. Gitarani Biswas

2. Tarun Kumar Biswas

C/o.Late Tarapada Biswas, MV-9, PO/PS Goudaguda,
District-Malkangiri.

.....Applicant

By Advocate : M/s.D.P.Dhalsamant, P.K.Behera.

- Versus -

1. Union of India represented through its Director General, All India Radio, Akashavani Bhawan, Parliament Street, New Delhi.
2. The Pay & Accounts Officer, Pay & Accounts Office, All India Radio, Akashvani Bhawan, Eden Garden, Kolkata-1.
3. Station Director, All India Radio, Cuttack, Cantonment Road, Cuttack-753 001.
4. The Station Director, All India Radio, Jeypore, District-Koraput.

....Respondents

By Advocate :Mr.U.B.Mohapatra,SSC

O R D E R

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

Originally this OA was filed by Tarapada Biswas, an UDC of All India Radio, Jeypore. As he died prematurely while in service, his wife and son maintained this OA by substituting them vide order dated 26.09.2008.

2. Briefly stated the facts are that Tarapada Biswas was an Assistant Teacher in the erstwhile DNK Project since 24-06-1976. Due to the closure of the project, the ex-employee having been

8
- 2 -

declared surplus, was redeployed as LDC (Rs.950-1500/-) in the All India Radio, Jeypore on 03.11.1987. By efflux of time, on 18.01.1995, he was promoted to Clerk Grade-I carrying the scale of pay of Rs.1200-2040/-. Pursuant to the direction of the Hon'ble Supreme Court, the pay scale of Assistant Teachers of the erstwhile DNK Project subsequently adjusted in various department of the Government was revised to Rs.1200-2040/- retrospectively w.e.f. 01.01.1986 (vide GOI, MHA, Rehabilitation Division O.O No.1(1)SW (DNK)/Pay-fixation/98 dated 11-01-1999). Accordingly, his pay was fixed/re-fixed at Rs.1260/- (in the time scale of pay of Rs.1200-2040/-) w.e.f 03.11.1987 and Rs.4, 600/- (in the time scale of pay of Rs.4000-6000/-) w.e.f 01-01-1996 vide order dated 16-03-1999. After completion of 24 years of service, he was granted the scale of pay of Rs.5000-8000/- by way of 2nd financial up-gradation w.e.f. 24-06-2000 fixing his pay at Rs.5,300/-. In view of the retrospective revision of the scale in the grade of LDC of the ex employee to that of UDC (Rs.1200-2040/-) to which post he was promoted w.e.f. 18.01.1995, by making representation dated 05.07.2004, the ex employee claimed grant of 1st financial up-gradation under ACP to Rs.1400-2600/-(revised to Rs.5000-8000/-) w.e.f. 09.08.1999 (i.e. after he completed 12 years of regular service in the grade of LDC) and 2nd financial up-gradation under ACP to Rs.6500-10500/- w.e.f. 24.06.2000 followed by series of other representations.

Alleging no action on the said representations, the ex employee approached this Tribunal in the present Original Application filed u/s.19 of the A.T. Act, 1985 seeking the following relief(s):-

- “8.1. To direct the respondents to grant of 1st Financial up-gradation in the scale of pay of Rs.1200-2040/- w.e.f. 09.08.1999 and 2nd Financial up-gradation in the scale of pay of Rs.6500-10500/- w.e.f. 24.06.2000;
- 8.2 That direction be issued to the respondents to release the arrear of the applicant within a stipulated period.
- 83. That further be pleased to pass any other order/orders as it would deem fit and proper to give complete relief to the applicant.”

3. By filing counter, the Respondents opposed the prayers of the Applicant. While admitting the factual positions stated above, it has been stated by the Respondents that the applicant got his first promotion to the post of UDC on 13.2.1995 in the All India Radio, Rourkela. As per the ACP scheme those who have got first promotion will not get the 1st ACP and will get the 2nd ACP on completion of 24 years of regular service from the date of first entry into Government service in case there has been no regular promotion in the meanwhile. In the instant case the applicant completed 12 years of regular service as on 23.06.1988 and completed 24 years of service as on 23.06.2000. The ACP scheme came into force and made effective w.e.f. 09.08.1999. Since by that time he was promoted to the post of UDC he was placed in the

higher scale of Rs.5000-8000/- w.e.f. 24.06.2000 vide order dated 24.3.2003 by way of second financial up-gradation under ACP scheme. As such, it has been claimed by the Respondents that the applicant is not entitled to any of the relief(s) claimed in this OA and this OA is liable to be dismissed.

4. Learned Counsel appearing for the parties have reiterated their stand taken in their respective pleadings and having heard them at length, perused the materials placed on record including the ACP scheme introduced by the Government w.e.f. 09.08.1999 and various other circulars issued thereafter.

5. Relying on the clarification No.1 furnished in Office Memorandum No.35034/1/97-Estt.(D) (Vol.IV) dated 10.02.2000; as also the decision of the Ernakulam Bench of the Tribunal in the case of **M.K.Rajan v Union of India and others, 2002(2) ATJ 619** it has been contended by the Learned Counsel for the Applicant that since the scale of pay of the feeder grade of the husband of the applicant was merged to that of his promotional grade, his scale ought to have been placed, by way of grant of two up-gradations under ACP in the next higher scale. But by way of wrong interpretation of ACP scheme, the husband of the Applicant No.1 was denied the higher scale which needs rectification. On the other hand Learned Counsel for the Respondents objected to the stand

taken by the Applicants' counsel by stating that it is completely a myth to state that there was merger of two scales. However, he admitted the revision of the scale of pay of the husband of the Applicant No.1 retrospectively pursuant to the order of the Hon'ble Supreme Court. He contended that since LDC was the feeder grade of UDC, and in fact the deceased was given promotion to UDC before revision of his pay in the feeder grade took place, he was rightly placed in the next higher scale Rs.5500-9000/- after completion of 24 years of regular service w.e.f. 24.06.2000. Therefore, according to the Respondents' counsel there being no injustice in decision making process of the matter, this OA being devoid of any merit is liable to be dismissed.

6. The very aim and object of introduction of the ACP scheme is to enable a Government servant to move up-ward so far as the scale of pay is concerned. In other words, by way of benediction the Government of India introduced the scheme to avoid stagnation in the scale of pay of an employee. Promotion means placing an employee in higher scale with higher responsibility. But in ACP there is no such concept of taking higher responsibility. It is only placing an employee in the higher scale irrespective of availability of vacancy. In the instant case the pay of the deceased in the feeder grade was made at par with the

promotional grade by the order of the Hon'ble Apex Court retrospectively. As per clarification No.1 of the OM No.35034/1/97-Estt.(D) (Vol.IV) dated 10.02.2000 and the decision of the Ernakulam Bench of the Tribunal in the case of **M.K.Rajan v Union of India and others**, 2002(2) ATJ 619 when in the event of merger of the promotional scale with the feeder scale an employee is entitled to ACP benefits, we do not see any reason to hold that the husband of Applicant No.1 was not entitled to two up-gradations under ACP scheme. The contention of the Respondents that the husband of the Applicant No.1 had got promoted as UDC in the year 1995 cannot be sustained as the scale of Rs.1200-2040/- became available to him since 1.1.1986 not because of promotion but because of the retrospective application of the higher scale to his earlier post by the orders of the Hon'ble Apex Court. In the peculiar situation of the present case, what should be the method of grant of up-gradation scale has been dealt ^{with} ~~into~~ in point No.17 of the aforesaid OM dated 10.02.2000. It provides as under:

“17. An employee who has completed 24 years of service is to be allowed two up-gradations directly. What will be the mode of fixation of pay of the employee?

The clarification issued on the above point is as under:-

The following illustration shall clarify the doubt. ~~Annexure~~ incumbent in the pay scale of Rs.4000-6000/- (S-7) has put in 24 years of regular service without a regular promotion. The incumbent shall

-7- 13

be allowed two up-gradations i.e. to S-8 and S-9. His pay shall first be fixed in S-8 and then in S-9. Pay fixation directly from S-7 to S-9 shall not be allowed."

7. In view of the above, the case of grant of the benefit of two up-gradations to the husband of the Applicant No.1 needs re-examination which the Respondents shall do forthwith and pass orders extending the arrear financial benefits to the Applicants within a period of 90 days from the date of receipt of copy of this order.

8. In the result, with the observations and directions made above, this OA stands allowed to the extent indicated above. No costs.

K.Thankappan
(JUSTICE K.THANKAPPAN)
MEMBER (JUDICIAL)

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