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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

Original Application No. 783 of 2002
Cuttack, This the 6th day of July, 04

Bhimananda Dehury & Others	Applicant
Vs.		
Union of India & others	Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? NO
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? ye.


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No. 783/2002
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CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDICIAL)

.....

1. Bhimananda Dehury, aged about 60 years, s/o late Natha Dehury.
2. Sudam Charan Naik, aged about 54 years, s/o Judhistira Naik.
3. Sadananda Majhi, aged about 48 years, s/o late Namrai Majhi.
4. Dama Naik, aged about 52 years, s/o Nidhi Naik.
5. Niranjan Naik, aged about 48 years, s/o Muralidhar Nayak.

All are working as Poultry Attendants under the Establishment of Director, Central Poultry Breeding Farm, Bhubaneshwar, At/PO-Bhubaneshwar-751012, Dist. Khurda.

.....Applicants

Advocates for the applicants - M/s P.K. Mohapatra, & Sambit Mohanty.

Vs.

1. Union of India, represented through its Secretary, Ministry of Agriculture, Department of Animal Husbandry and Dairying Central Secretariate, Krishi Bhawan, New Delhi-110001.
2. The Pay and Accounts Officer, Government of India, Ministry of Agriculture, Directorate of Marketing and Inspection, New Secretariate Building, Second Floor, Civil Line, Nagpur-440001.
3. The Director, Government of India, Central Poultry Breeding Farm, At/PO-Bhubaneshwar-751012, Dist. Khurda.

..... Respondents

Advocate for the Respondents - Mr. A.K. Bose, (R. 1 to 3)

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ORDER

SHRI B.N.SOM. VICE-CHAIRMAN

Heard the matter at length and perused the materials placed on record.

Sri. Bhimananda Dehuri and four others, working as Poultry Attendants, in the Office of the Director, Central Poultry Breeding Farm, Bhubaneswar have filed this O.A. under Section 19 of the AT Act, 1985, assailing the decision of Res.No.3, withdrawing the benefit of IInd financial upgradation to the scale of Rs.4000-100-6000/- granted to them with effect from 1999 and 2000 under the ACP Scheme (Annexure-3 series) being illegal, arbitrary and discriminatory in nature. At the same time, they have also prayed for direction to be issued to Respondents-Department to extend the benefits under the ACP Scheme granted to them vide Annexure-2 series.

2. The facts of the case reveal that the applicants were granted in-situ promotion in the scale of Rs.975-1540/- in the year 1991/92 onwards. However, on introduction of the Assured Career Progression Scheme (in short ACP) with effect from 09.08.99, the cases of the applicants were again considered by the D.P.C. for grant of ACP with effect from 1999 and 2000 onwards vide Annexure-2 series.

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3. After implementation of the ACP Scheme, it came to the notice of the Respondents that the Applicants having already got the benefit of in-situ promotion, they could not have been given the benefit of ACP Scheme. In this connection they relied on the clarification issued by the Ministry of Agriculture vide letter No. 24-1/99/Admn.III dated 14th June, 2002 that the existing time-bound promotion schemes, including in-situ promotion scheme, in various Ministries/Departments may, as per choice, continue to be operational for the concerned categories of employees. However, these schemes shall not run concurrently with the ACP Scheme.

4. In other words, these schemes are separate and should not run concurrently. It is upto the Department to choose to implement any one of the schemes. It is the case of the Respondent, that as the applicants had already got the benefit of in-situ promotion, they had, therefore, by issuing orders under Annexure-3 series withdrew the benefit of ACP Scheme. We have perused the relevant instructions germane to the issue, which are extracted hereunder:

"No.13. Existing time-bound promotion schemes, including in-situ promotion scheme, in various Ministries/Departments may as per choice, continue to be operational

for the concerned categories of employees. However, these schemes, shall not run concurrently with the ACP Scheme. The Administrative Ministry/Department -- not the employees -- shall have the option in the matter to choose between the two schemes, i.e., existing time-bound promotion scheme or the ACP Scheme, for various categories of employees. However, in case of switch-over from the existing time-bound promotion scheme to the ACP Scheme, all stipulations (Viz., for promotion, redistribution of posts, upgradation involving higher functional duties etc.) made under the former (existing) scheme would cease to be operative. The ACP Scheme shall have to be adopted in its totality."

5. Reading of the condition No.13 makes it clear that the applicants having already got the benefit of in-situ promotion scheme, could not have been given the benefit of ACP Scheme. We have found that by issuing orders under Annexure-2 series, the respondents have given them the benefit of 1st and 2nd financial upgradation under the ACP Scheme to the applicants by withdrawing the benefit of in-situ promotion. As the respondents have decided to adopt ACP Scheme by giving up in-situ Promotion Scheme, the action taken by them by convening a Review DPC on the advice of the Department of Animal Husbandry,

Ministry of Agriculture, vide their letter dated 14th June, 62 cannot be called in question.

6. In the circumstances, the O.A. fails. No costs.


(M.R. MOHANTY)

MEMBER (JUDICIAL)


(B.N. SON)

VICE-CHAIRMAN