

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

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OA No. 433 of 2010
Sri Madhu PatiApplicant
-Versus-
Union of India & Ors. Respondents

ORDER DATED – 26th April, 2012. (Oral)

CORAM
THE HON'BLE MR.C.R.MOHAPATRA, MEMBER, (ADMN.)
And
THE HON'BLE MR.A.K.PATNAIK, MEMBER (JUDL.)
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Heard. Perused the materials placed on record.

Applicant is a retired employee of the Respondent. He initially joined as Assistant Halwai on 01-08-1976 but as per the Government of India order his service was counted with effect from 1.10.1979. His pay was fixed in the scale of pay of Rs.225-308/- at Rs.204 + 2 PP with DNI on 1.10.1983. He was promoted to the post of Halwai in the scale of pay of Rs.260-4000/- and accordingly his pay was fixed at Rs.260/- as on 12.5.1984 with DNI on 1.5.1985. His date of birth being 10.05.1949, he retired on reaching the age of superannuation w.e.f. 31-05-2009. The prayer of the Applicant in this OA is as under:

“Your Lordship may be graciously pleased to direct the Respondents to grant the benefit of first financial up gradation of pay under ACP scheme upgrading/fixing the basic pay of the applicant from the pay scale from 3200-4900/- to Rs.4000-6000/- with all arrears w.e.f. 09.08.1999 till dt.25.09.2007 and second up gradation w.e.f. 26.09.2007 to Dt.31.5.2009 in the pay scale of Rs.5000-8000/- and with interest till the actual payment is made for the ends of justice;

And

Be further pleased to direct all consequential benefits such as Pay Revision and other benefits in the new Pay Rules, 2008 and in terms of Annexure-A/8 and arrear thereof till Dt.01.05.2009 and

interest thereof till the actual payment is made for the ends of justice;

And

Be further pleased to quash the order at Annexure-A/7 or in the alternate direct the Respondents to modify Annexure-A/7 by extending two financial up gradation by revising the pay scale under the ACP Scheme, 2000 for the ends of justice;

And

Be further pleased to issue any other/further order(s) or direction(s) as deemed fit and proper in the circumstances of the case;

And

For such kind act, the Applicant shall as in duty bound ever pray."

2. Respondents filed their counter objecting to the prayer of the Applicant and praying for dismissal of this OA. In this regard it has been stated that the grant of financial up gradation is subject to fulfillment of all promotional norms as per DOPT OM No.3/4/2005-Dir(C) dated 10.04.2006. The next higher scale in the hierarchy is Rs. 4000-6000/- . Since the applicant has not satisfied the promotional norm as provided in the Recruitment Rules of IA & AD (Gr.C & D posts) Recruitment Rules, 2001 he was not granted the financial up gradation. However, since the applicant has got one promotion to the post of Halwai **after 26.9.1983** he was not eligible to get first up gradation under ACP scheme after 12 years of service and he was allowed 2nd financial up gradation under MACP scheme to the pay Band of Rs.5200-20200/- in the grade pay of Rs.2400/- in accordance with DOPT OM No. 35014/97-Estt.(D) dated 19.5.2009. The order which the applicant sought to quash under Annexure-A/7 reads as under:

“OOC No. 151.

Sri Madhu Pati, Canteen employee (retd.) who was officiating in the Pay Band of Rs.5200-20200 with Grade Pay of Rs.2000 is granted 2nd financial up gradation under Modified Assured Career Progression Scheme with effect from 1.9.08 carrying Grade Pay of Rs.2400 in accordance with OM No. 35034/1/97-Estt.(D) dated 19.5.09 of Govt. of India, Ministry of Personnel, Public Grievances and Pensions, DOPT, New Delhi and subject to the conditions laid down therein.

The financial benefits would accrue from the date of resumption of duty in case the official is on leave. Branch Officer, Admn.II shall obtain necessary certificate regarding attendance of the official from the concerned authority.

Benefit of pay fixation available at the time of regular promotion shall be allowed at the time of financial up gradation under the scheme. The pay shall be raised by 3% of the total pay in the pay band and the grade pay drawn before such up gradation. There shall be no further fixation of pay at the time of regular promotion, if it is in the same grade pay as granted under MACPS. If at the time of actual promotion, it happens to be in a post carrying higher grade pay than what is available under MACPs, no pay fixation would be available and only difference of grade pay would be admissible.

With regard to fixation of pay on grant of financial up gradation under MACP scheme, a Govt. servant has an option under FR 22 (1) (a) (1) to get his pay fixed in the grade pay either from the date of his up gradation or from the date of his next increment viz. 1st July of the year. The pay and the date of increment would be fixed in accordance with the clarification No.2 of Department of Expenditure OM No. 1/1/208-IC dated 13.9.08.

The financial up gradation is purely personal and shall have no relevance to seniority. There shall be no additional financial up gradation for the senior employee on the ground that the junior employee has got higher pay scale under the ACP scheme.

The grant of benefits under MACP scheme is subject to further instructions received from Govt. of India/Hdqrs from time to time.”

3. In course of hearing by producing copy of the letter No. Admn.I-P-213/97 dated 25-04-2012 it was brought to our notice by Mr. S.B.Jena, Learned ASC appearing for the Respondents as under:

“Information regarding OA 433/2010 filed by Sri Madhu Pati, Ex-Halwai.

With reference to the subject cited above, it is to furnish herewith the desired information as stated below:

1. Consequent upon change of status to Departmental Canteen all records have been submitted to ARCS (As per intimation of BO, Welfare). So, the Board's

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Resolution dated 02.4.1984 is not available with this office. The ARCS is being moved separately to furnish a copy of the same.

2. **There is no promotional avenue of Halwai to the next higher post in the Canteen Establishment of this Office.**
3. Sri Pati was holding the post of Halwai carrying pay scale of Rs.3200-4900. The next higher scale is Rs.4000-6000/- which is identical with the pay scale granted to Accountant/Manager Gr.II. Since he did not fulfill the promotional norms for promotion to these posts, no 2nd ACP was granted in terms of provisions of ACP Scheme."
4. In so far as the prayer of the applicant for grant of first financial up gradation under the ACP is concerned, it is the contention of the Respondents that as OM dated 9th May, 2001 provides that promotions granted prior to 26.09.1983 are to be ignored and the applicant has got one promotion after 26.09.1983 and hence the applicant was not entitled to first financial up gradation after 12 years of service and that the applicant has also not satisfied the promotional norm as provided in the Recruitment Rules of IA & AD (Gr.C & D posts) Recruitment Rules, 2001, he was allowed 2nd financial up gradation under MACP scheme to the pay Band of Rs.5200-20200/- in the grade pay of Rs.2400/- in accordance with DOPT OM No. 35014/97-Estt.(D) dated 19.5.2009.
5. In paragraph 2(i) of the Office Memorandum under Annexure-A/2 dated 25th July, 2000 it has been provided that "**for the purpose of determining the eligibility for consideration of financial up gradation of Canteen employees under the ACP Scheme, the service rendered by a Canteen employee will be**

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reckonable from 26.09.1983 or the actual appointment in regular pay scale, whichever is later".

6. The Office Memorandum No.3/4/99-Dir) (C) dated 9th May, 2001 placed at Annexure-A/3 provides that "**service rendered as well as the promotion(s) earned prior to 26th September, 1983 may be ignored while considering the Canteen employees for financial up-gradation under ACP scheme".**

7. It is clear from the order under Annexure-A/1 that the applicant was promoted to Halawai w.e.f. 25.09.1983. In view of the above, the plea of the Respondents that as the promotion of the applicant was after 26.09.1983 and therefore, he was not entitled to first financial up gradation, after completion of 12 years of service is a mistake of fact. As such the applicant is entitled to first financial up gradation under ACP after completion of 12 years of service.

8. In so far as second financial up gradation is concerned, it is the case of the Respondents that as the applicant has not satisfied the promotional norm he was not granted the financial up gradation. However, he has was allowed 2nd financial up gradation under MACP scheme to the pay Band of Rs.5200-20200/- in the grade pay of Rs.2400/- in accordance with DOPT OM No. 35014/97-Estt.(D) dated 19.5.2009. By producing a copy of the letter dated 25.4.2012 it has been clarified by the Respondents that **there is no promotional avenue** for 'Halawai' to the next higher post in the Canteen



Establishment of the office. If there is no promotional prospect for the post of **Halwai**, the question of fulfilling the promotional norm by the applicant does not arise. The scheme of ACP or MACP was introduced by the Government on the recommendations of the 5th or 6th CPC to over come the financial hardship caused to the employees due to stagnation in promotion. Therefore, as admitted by the Respondents there being no promotional avenue for the post of Halwai, the Respondents are duty bound to grant second financial up-gradation after completion of 24 years of service by a Canteen employee i.e. Halwai.

9. Accordingly, Respondents are hereby directed to grant the 1st and 2nd financial up gradation to the applicant, in the light of the observations made above, and clear up his dues including revision of pension and pensionary dues, within a period of 90 (ninety) days from the date of receipt of copy of this order. The OA succeeds to the extent stated above. No costs.

A.K. Patnaik
(A.K. Patnaik)
Member(J)

C.R. Mohapatra
(C.R. Mohapatra)
Member (A)