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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.396/2011

Cuttack this the 21<sup>st</sup> day of December, 2011

Kshyama Nidhi Pradhan .....Applicant

VERSUS

Union of India & Ors. ....Respondents.

1. Whether it be referred to reporters or not? ✓
2. Whether it be referred to PB, CAT, New Delhi or not? ✓

(A.K.PATNAIK)  
MEMBER (JUDICIAL)

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

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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.  
ORIGINAL APPLICATION NO.396/2011

Cuttack this the 24<sup>th</sup> day of December, 2011

CORAM : THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)  
THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

Kshyama Nidhi Pradhan,  
Assistant Accounts Officer in the  
Office of the Director of Accounts (Postal),  
Cuttack – 753004.

...Applicant

(By Advocate Shri Akshya Mohanty)

Vs.

1. Union of India represented by  
Secretary, Department of Post,  
Dak Bhavan, Sansad Marg,  
New Delhi-110001.
2. The Dy. Director General (PAF),  
Dak Bhavan, Sansad Marg,  
New Delhi-110001.
3. The Director of Accounts (Postal),  
Mahanadi Vihar,  
Cuttack – 753004.

...Respondents.

(By Advocate Shri S.B.Jena, ASC)

ORDER

{C.R.MOHAPATRA, MEMBER (A)}

The Applicant in this OA prays to quash the orders under Annexure-A/6 dated 23.02.2011, Annexure-A/10 dated 01.06.2011, direct the Respondents to uphold the order in which

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he was granted the third financial upgradation under MACP w.e.f. 30.12.2008 and also to direct the Respondents to refund the amount recovered from the Applicant.

2. The Respondents filed their counter in which it has been stated that as the Applicant was erroneously granted the third financial upgradation under MACP to which he was not entitled to, the same was subsequently withdrawn and amount paid in excess by such erroneous order was recovered from the Applicant. As such, when the Applicant was not entitled to the benefit which was wrongly paid to him and the authority has the power and jurisdiction to rectify its mistake at any point of time no notice was necessary to be given to the Applicant. Hence, the Respondents have prayed to dismiss this OA.

3. The Applicant has filed rejoinder reiterating his stand that since withdrawal of the benefit already granted to the applicant was unjustified he is entitled to the relief claimed in this OA.

4. Learned Counsel appearing for both sides have reiterated their cases taken in the respective pleadings and having heard them at considerable length, we have perused the materials placed on record. According to the Applicant's Counsel his client joined as Postal Assistant/Time Scale Clerk in the Department of Posts on 30.12.1978. On completion of 16/26 years of regular service he was granted the financial upgradation under TBOP and BCR scheme which was prevalent prior to the ACP scheme came

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into force. However, pursuant to the order under Annexure-A/2 dated 9<sup>th</sup> September, 2010 the financial upgradation earned/granted under TBOP/BCR scheme were counted towards financial upgradation under MACP scheme. Thereafter, after passing the Departmental Examination the applicant was promoted as JAO w.e.f. 25.7.2008 (which post was subsequently re-designated on restructuring as AAO). As per the ACP scheme introduced by the Government of India provided for grant of two financial upgradations through out the service career of an employee i.e. after completion of 12/24 years of regular service. The scheme was modified by the DOP&T known as MACP scheme wherein it was provided that financial upgradations i.e. after completion of 10, 20 and 30 years regular service, would be provided to an employee if there has been no promotion. Further case of the Applicant is that the Department of Posts issued OM under Annexure-A/4 dated 18<sup>th</sup> September, 2009 wherein it was provided that after two financial upgradations under the scheme if an employee has not got third promotion in the hierarchy during thirty years of regular service, he would be entitled to third financial upgradation under MACP scheme and accordingly, after the recommendation of the Screening Committee as the applicant has not got third promotion in the hierarchy the applicant was granted third financial upgradation under the MACP; but the Respondents without putting any notice to the Applicant and without considering

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that the promotion of the Applicant to the post of AAO was not the third promotion in the hierarchy unilaterally withdrew the benefit of third financial upgradation granted to him and without due application of mind rejected his representation under Annexure-A/10. By placing reliance on the enclosures to Annexure-A/4, the Applicant has tried to justify his claim.

5. On the other hand, Respondents' counsel supplemented the stand taken in the counter by stating that as the applicant has got one promotion meanwhile, even though he was not entitled to third financial upgradation but erroneously on the recommendation of the Screening Committee the same was paid to him. Subsequently, the wrong committed in the matter of grant of financial upgradation under the MACP having come to the notice the same was rectified by the order under Annexure-A/6. When the applicant was not entitled to the benefit and the said benefit was erroneously paid to him, he cannot claim to enjoy the benefit which he was not entitled to but wrongly given. Hence, the Respondents' Counsel has prayed to dismiss this OA.

6. We note that the issue involved in this Original Application is whether withdrawal of the benefit of third financial upgradation under the MACP granted to the Applicant after completion of 30 years of service on the recommendation of the Screening Committee is legal and valid. In this regard, we may state that the Fifth Central Pay Commission in its Report has made

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certain recommendations relating to the Assured Career Progression (ACP) Scheme for the Central Government civilian employees in all Ministries/Departments. The Government of India accepted the recommendation and issued the ACP Scheme as a 'Safety Net' to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. It was provided in the scheme that an employee continuing in a post for 12/24 years having no promotion should be given two financial upgradation. The objective is to ensure that an employee should be given at least two promotions to higher scales during his entire span of service period. In the absence of promotion, he should be duly compensated by way of two financial upgradations. Subsequently, the ACP scheme was modified and came to be known as MACP wherein it was provided that in place of two i.e. after completion of 12/24 years regular service, there should be three financial upgradation i.e. after completion of 10,20 and 30 years of regular service in the absence of any promotion. Hence, the basic aim/object of the scheme is to mitigate the hardship caused to an employee due to stagnation. The scheme clearly envisages grant of financial upgradation provided the employee has got no promotion at an interval of 10, 20 and 30 years period. According to the Respondents as after two financial upgradations the applicant has got one promotion, after completion of thirty years of service he was not entitled to next

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financial upgradation. In this connection, the Respondents have relied on the illustration given at 28 (c) in Annexure-A/4. Relevant portion of the illustration is extracted herein below :-

"28 (c) If a Government servant has been granted either two regular promotions or 2<sup>nd</sup> financial upgradation under the ACP scheme of August, 1999 after completion of 24 years regular service then only 3<sup>rd</sup> financial upgradation would be admissible to him under the MACPs on completion of 30 years of service provided that he has not earned third promotion in the hierarchy.

6. We note that the sole contention of the Applicant is that the promotion of the Applicant to AAO is not the third promotion in the hierarchy and hence withdrawal of the benefit was not justified, whereas Respondents' stand is that third promotion does not mean that three promotions would have to be provided in addition to two financial upgradation. The applicant has not disputed that upgradations by way of TBOP/BCR cannot be equated with financial upgradation under the ACP/MACP as per instructions issued by the Department of Posts at Annexure - A/2. Besides, after going through the provisions at 28 (c) we are convinced that the provision also otherwise envisages that if a Government Servant has been granted either two regular promotions or 2<sup>nd</sup> financial upgradation under the ACP scheme of August, 1999 after completion of 24 years regular service then only 3<sup>rd</sup> financial upgradation would be admissible to him under the MACPs on completion of 30 years of service provided that he has not earned third promotion in the hierarchy. Admittedly the applicant has got two financial

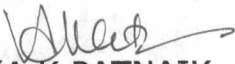
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upgradation i.e. under analogous scheme of TBOP & BCR and before becoming eligible to third financial upgradation he has got promotion. Hence, there is no stagnation. In view of the above, we find no infirmity in the order at Annexure-A/6 and A/10 withdrawing the benefit of financial upgradation as the same is consistent with the primary objective of the scheme. However, we find substantial force in the submission of the Learned Counsel for the Applicant that as the financial upgradation was granted to the applicant not due to any of his misrepresentation, the amount already paid cannot be recovered from him. Accordingly, we are of the view that the Respondents are obliged to refund the amount already recovered from the applicant. Ordered accordingly. The refund should be made within a period of sixty days from the date of receipt of copy of this order; failing which the applicant would be entitled to 6% interest on the recovered amount till it is actually paid to him.

7. For the reasons discussed above, this OA stands allowed in part. There shall be no order as to costs.

  
(A.K.PATNAIK  
MEMBER (JUDL.)

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

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