

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.531 of 2011

Cuttack this the 25th day of September, 2014

Aduri Ranga Srinivasa Rao...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? ✓
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not? ✓


(R.C.MISR)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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CORAM

HON'BLE SHRI A.K.PATNAIK, MEMBER(J)
HON'BLE SHRI R.C.MISRA, MEMBER(A)

Aduri RangaSrinivasaRao

Aged about 39 years

Son of A.K.G.Sarma,

5-17/4, Santosh Nagar

Kothapalem

Visakhapatnam-530 027

At present working as steno to Senior Superintendent of Post
Offices

Koraput Division

At/PO-Jeypore

Dist-Koraput

PIN-764 001

...Applicant

By the Advocate(s)-M/s.S.Mallick
M.Ku.Mohapatra
P.Ch.Das

-VERSUS-

Union of India represented through

1. The Secretary to Government of India
Department of Posts,
DakBhawan,Ashoka Road
New Delhi-110 001

2. The Chief Post Master General
Berhampur Region
At/PO-Bhubaneswar,
Dist-Khurda
PIN-751 001

3. Post Master General
Berhampur Region
At/PO-Berhampur
Dist-Ganjam
PIN-760 001

4. Senior Superintendent of Post Offices
Koraput Division

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At/PO-Jeypore
Dist-Koraput
PIN-764 001

...Respondents

By the Advocate(s)-Mr.S.B.Jena

ORDER

R.C.MISRA, MEMBER(A)

Applicant is presently working as Stenographer under the Respondent No.4, i.e., Senior Superintendent of Post Offices, Koraput Division. He has approached this Tribunal being aggrieved by the action of the Respondents in not granting him the financial benefit under the Assured Career Progression (in short ACP) Scheme with effect from 01.07.2008. In this O.A., he has, therefore, sought for the following relief.

- i) Direct/order that the applicant shall be allowed the benefit under ACP with effect from 01.07.2008 as per the provisions of ACP Scheme floated under the Memorandum under Annexure-2.
- ii) Declare/held that the applicant is entitled the benefit under ACP and not the benefit under MACP which came into applicable much after the date of eligibility of the applicant for ACP
- iii) Direct/order that the differential arrear salary under ACP Scheme shall be paid within a stipulated period as may be fixed by this Hon'ble Tribunal
- iv) To pass any other order(s), direction(s) deemed fit and proper.

2. Facts of the matter as revealed in the O.A. are that on being nominated through the Staff Selection Commission,



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applicant was appointed to the post of Stenographer, Gr.D in the Central Secretariat Stenographers Services Cadre (CSSSC) with effect from 17.03.1997, being allotted to the Supply Department under the Government of India. Government of India issued Memorandum No.35034 dated 09.08.1999 providing guidelines in the matter of Assured Career Progression Scheme for the Central Government Civilian Employees in pursuance of the recommendations of the 5th Central Pay Commission. While the matter stood thus, applicant joined in the same capacity of Stenographer, Gr.D in the Department of Posts on being transferred from his parent cadre, (CSSS) vide Memo No.22.3.2001(A/5) issued by the Office of Chief Post Master General, Orissa Circle, Bhubaneswar. As would be evident from A/6 series, applicant went on preferring representation after representation to various authorities of the Department of Posts including Chief Post Master General, Orissa Circle claiming extension of 1st ACP with effect from 01.07.2008, inter alia, on the ground that he being a direct recruit of 1995 batch for the post of Stenographer, Gr.D through SSC and having joined as Stenographer in the Central Secretariat Stenographer Services (CSSS) Cadre on 31.03.1997 is entitled to count his regular service/residency service from 1st July of the year following the year of examination for the purpose of grant of ACP. In this connection, he has also relied on the Office Memorandum dated 31.10.2002(A/4). However,

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in the meantime, applicant was granted 1st MACP with effect from 01.09.2008 vide Memo dated 5.4.2010(A/8). But as he did not receive the benefit of ACP as prayed for in his representations vide A/6 series, he has moved this Tribunal in the present O.A. for the redressal of his grievances.

3. The whole structure of the case of the applicant rests upon Paragraph-2© of the Central Secretariat Stenographers' Service Rules, 1969, the relevant portion of which reads as under.

2. Definitions:

(a)

(b)

© "**approved service**" in relation to any grade means:

- (i) ***in respect of an officer recruited directly to that grade, period or periods of regular service rendered in that grade, including the period or periods of absence during which he would have held a post on regular basis in that grade but for his being on leave or otherwise not being available to hold such post, from first day of July of the year, following the year in which the examination for direct recruitment was held".***

4. Over and above, applicant has also laid emphasis on the Office Memorandum dated 31.10.2002 (A/4) issued by the



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Government of India, Ministry of Home Affairs *regarding grant of financial upgradation to the cadre officials of MHA under the Assured Career Progression Scheme - date of effect - reg.*, which lays down the same principle as in CSSS Rules, 1969, as quoted above.

5. Respondent-Department have filed a detailed counter refuting the claim of the applicant. Since factually there is no dispute, we do not feel it proper to repeat the same so as to avoid exaggeration. However, according to Respondents, the applicant joined the Department of Posts by submitting a declaration/undertaking to the effect that his past service would be regulated as per the instructions of the Department of Posts. It has been submitted that the Department of Posts is a non-Secretariat Organization and as such his regular service in the Central Secretariat Stenographer Service cadre cannot be taken into account and conversely, his service conditions have to be governed only as per the rules and regulations of the Department of Posts. According to Respondents, although the applicant was appointed in CSSS cadre, after joining the Department of Posts, he is to be governed by the rules and regulations of the Department of Posts. While submitting that the applicant was initially appointed as Stenographer, Gr. D of CSSS cadre on 17.03.1997⁷ (1995 examination), it has been submitted by the Respondents that grant of financial upgradation is to be regulated in terms of service rules of CSSS

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cadre so long he remained in that cadre. Therefore, rules regarding CSSS cadre which allow ***approved service w.e.f. 1st July of the following year of the examination*** for normal promotion and as such the same is to be counted for grant of financial upgradation under the ACP scheme does not apply to the Department of Posts. Since the applicant opted for unilateral inter-ministerial transfer to the Department of Posts w.e.f. 16.04.2001, he is required to regulated under the rule and regulations of the Department of Posts. In the end, it has been submitted that the applicant joined in regular service in the Department of Supply, Ministry of Commerce on 31.0.1997 and he completed 10 years service on 31.03.2007 and 12 years of service on 31.03.2009. He was due to get 1st financial upgradation under ACP Scheme on 31.03.2009. Since the ACP Scheme was superseded by MACP Scheme with effect from 01.09.2008 and the applicant had completed 10 years of service as on the date of commencement of the MACP Scheme, he has correctly been granted 1st financial upgradation on 01.09.2008 as per the rules and regulations of the Department of posts. Accordingly, it has been submitted that the O.A. being devoid of merit is liable to be dismissed.

6. In the rejoinder filed by the applicant, it has been submitted that although he entered into service in CSSS cadre and was transferred to the Department of Posts on his own request, but his transfer was effected with the condition that his

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past service shall be counted for all other purpose than seniority. According to applicant, ***other purpose includes financial upgradation under the ACP Scheme.*** In this connection, applicant has relied on Clause-14 of ACP Scheme, August, 9, 1999 issued vide Office Memorandum(A/2) which, will be discussed later on.

7. We have heard the learned counsel for both the sides and perused the materials on record. We have also gone through the short note as well as the written note of submission filed by the applicant and Respondents, respectively.

8. From the pleadings of the parties the sole point to be decided is whether applicant is entitled to count his service from the 1st day of July of the year, following the year in which the examination for direct recruitment was held, as provided in Para-2© of CSSS Rules, 1969, for the purpose of grant of benefit under APC Scheme.

9. Before considering the above point in issue, it would be prudent to catch a glimpse to Office Memorandum dated 31.10.2002(A/4), as relied on by the applicant in support of his relief. The above referred Office Memorandum has been issued by the Government of India, Ministry of Home Affairs ***in the matter of grant of financial upgradation to the cadre officials of MHA under the Assured Career Progression***

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Scheme - date of effect - reg. The full text of this OM reads as under.

"The undersigned is directed to state that *the cadre officials in various grades including LDC, UDC, Assistant, Steno Grade 'D', Steno Grade 'C' have been accorded with the financial upgradation under the ACP scheme after completion of 12/24 years of regular services.* For the purpose of calculating the 12/24 years of regular service, this *Ministry has so far been taking the date of actual appointment in service as the date of commencement of the regular service and accordingly ACP benefit has been given on completion of 12/24 years from the date of actual appointment in the respective grade.* However, DOPT, Establishment-D have now clarified that *for the purpose of ACP scheme, the regular service will have to be the same as counted for regular promotion and that the regular service/residency service will have to commence from the 1st July of the year following the year of examination.* In other words, *the regular service in respect of direct recruitment will commence from the 1st July of the year following the year of examination* and in respect of seniority quota/departmental examination, the regular service will commence from the 1st July of the select List year in which they have been included. It has therefore, become essential to review all cases of ACP upgradation and predate/postpone the date accordingly.

2. *All the Cadre Units are requested to kindly review all cases of financial upgradation under ACP scheme given to the cadre officials posted in their respective Cadre Units and provide the information in the revised proforma taking the 1st July of the appropriate year as the date of commencement of regular service and accordingly indicate the date of completion of 12/24 years respectively.* This information may kindly be provided at the earliest so that the revised orders of financial



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upgradation under ACP scheme could be issued by the cadre Controlling Authority in respect of these officials".

10. In the backdrop of the above, it would be aptly to quote hereunder some of the conditions relevant for grant of benefit under the APC Scheme(A/2).

"3. The financial benefits under the ACP Scheme shall be granted from the date of completion of the eligibility period prescribed under the ACP Scheme or from the date of issue of these instructions whichever is later.

5.2. *Residency periods (regular service) for grant of benefits under the ACP Scheme shall be counted from the date in which an employee was appointed as a direct recruit.*

14. In case of an employee declared surplus in his/her organization and *in case of transfers including unilateral transfer on request, the regular service rendered by him/her in the previous organization shall be counted along with his/her regular service in his/her new organization for the purpose of giving financial upgradation under the scheme".*

11. We have given our utmost consideration to 2© of CSSS Rules, 1969, OM dated 31.10.2010 issued by the Ministry of Home Affairs and OM dated August, 9, 1999 in the matter of ACP, the relevant provisions of which have already been quoted above.



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12. No doubt, "**approved service**" in relation to the grade coming under CSSS Rules, 1969, has to count from the first day of July of the year, following the year in which the examination for direct recruitment was held. But counting of approved service as per CSSS Rules, 1969 being inconspicuous in the ACP Scheme issued vide Office Memorandum dated 9.8.1999, the Ministry of Home Affairs vide Office Memorandum dated 31.10.2002 clarified the position at a later stage and accorded the approval to take into account the 1st July of the year following the year ^{of R} examination in case of direct recruits for the purpose of benefits under the ACP Scheme and to work out the arrears thereon, by which time the benefit flowing from the ACP Scheme had been granted to the cadre officials in various grades including LDC, UDC, Assistant, Steno D, Steno Grade C.

13. It is an admitted position that the applicant joined as Stenographer in CSSS Cadre and therefore, he was being governed under CSSS Rules, 1969 until he had not joined the Department of Posts on transfer at his own requests. Therefore, the question here arises whether applicant having joined the Department of Posts is entitled to benefit as provided under CSSS Rules, 1969 in so far as benefit under the ACP Scheme is concerned.

14. As already mentioned above, after the implementation of the ACP Scheme issued in the year, 1999, in ^{consonance} ~~coherent~~ with the

[Signature]

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provisions of CSSS Rules, 1969, Ministry of Home Affairs issued OM dated 31.10.2002 extending the benefit of regular service/residency service for the purpose of grant of benefit under the ACP from the first day of July of the year, following the year in which the examination for direct recruitment was held and this OM issued by the Ministry of Home Affairs based on the clarification issued by the DoP&T.

15. The applicant having joined as Stenographer, Gr.D in the Department of Supply was initially governed by the CSSS Rules, 1969. Under these rules, the approved service would count from 1st day of July of the year following the year in which the examination for direct recruitment was held. Since the applicant had passed the examination in the year 1995, according to this rule, his approved service starts from 1.7.1996. In the clarification issued by the Ministry of Home Affairs with the approval of the DoP&T on 31.10.2002, it has been mentioned that ***for the purpose of benefit under the ACP Scheme, regular service will have to be the same as counted for regular promotion and the regular service or residency service will have to commence from the 1st July of the year following the year of examination.*** Had the applicant continued to be governed by the CSSS Rules, 1969, his regular service period would have been counted from 1st July, 1996. However, the admitted fact of the case is that the applicant opted for his transfer and based on his option, he was

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transferred to the Department of Posts from 16.4.2001. There is no doubt that from that date onwards the conditions of his services will be governed by the rules as applicable to the Department of Posts. The question for determination here is that in the ACP Scheme of August, 1999 how the regular service of the applicant would be determined. Condition No.5.2 for grant of benefit under the ACP Scheme lays that ***the residency period of regular service period shall be counted from the date in which the applicant was appointed as a direct recruit.*** However, in the present case, applicant was not appointed as a direct recruit in the Department of Posts. He was initially appointed as Stenographer, Gr.D and later on, on transfer he came to the Department of Posts. The plea taken by the applicant is that when he came on transfer his past service and the benefits were protected and as per the condition No.14 of the ACP Scheme, his past regular service in the previous organization shall also be counted for this purpose. We have examined carefully the condition No.14 of the said Scheme, which is quoted below.

- "14. In case of an employee declared surplus in his/her organization and ***in case of transfers including unilateral transfer on request, the regular service rendered by him/her in the previous organization shall be counted along with his/her regular service in his/her new organization for the purpose of***

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giving financial upgradation under the scheme".

16. ^{2nd} In case of the applicant ^{is} that under this condition regular service rendered by him in the previous organization will have to be taken into account while calculating his regular period of service. On the other hand, his regular service under the previous organization being regulated by the Office Memorandum dated 31.10.2002 issued by the Ministry of Home Affairs, it is quite obvious that the period of regular service would be counted from the 1st of July, 1996, i.e., ²the one year after the year of recruitment in respect of the applicant. Therefore, 12 years regular service for the purpose of 1st ACP in case of the applicant would count from 1.7.1996.

17. MACP Scheme has come into effect from 01.09.2008. It is also very clear that by the time the applicant had completed 12 years of regular service, ACP Scheme was still in force and therefore, his case should have been considered under the ACP Scheme. Based upon the above logic, it is quite evident that the benefit of ACP will accrue from 1.7.2008 as claimed by the applicant since by that time MACP had not come into force.

18. Therefore, applicant's claim is substantiated on the basis of the examination of the position of rules as mentioned above and accordingly, the point in issue is decided in favour of the applicant.



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19. Respondents are therefore, directed to re-calculate the benefit of ACP in favour of the applicant with effect from 1.07.2008 and make payment of the differential arrears within a period of 120 (one hundred twenty) days from the date of receipt of this order.

In the result, the O.A. is allowed to the extent indicated above. No costs.

(R.C.MISR)
MEMBER(A)

(A.K.PATNAIK)
MEMBER(J)

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