

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.682 of 2011

Cuttack this the 1st day of December, 2017

Sri Bansidhar Chhatoi...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 ? ✓

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

(S.K.PATTNAIK)
MEMBER(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.682 of 2011

Cuttack this the 12th day of December, 2017

CORAM:

THE HON'BLE SHRI S.K.PATTNAIK, MEMBER(J)
THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

Sri Bansidhar Chhatoi, aged about 52 years, S/o., late Jadumani Chhatoi, of Vill_Achhutipur, PO-Makundadaspur, Via-Pipili, Dist-Khurda, Orissa working as Tea & Coffee Maker in the Departmental Canteen of Office of Principal Accountant General (A & E), Orissa, Bhubaneswar, Dist-Khurda, Orissa

...Applicant

By the Advocate(s)-M/s.K.Ch.Kanungo
H.V.B.R.K. Dora

-VERSUS-

Union of India represented through:

1. Principal Accountant General (A&E), Orissa, Bhubaneswar, Dist-Khurda, Orissa
2. Director of Canteen, Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pension, Lok Nayak Bhawan, Khan Market, New Delhi-3.

...Respondents

By the Advocate(s)-Mr.S.K.Patra

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant was working as a Tea & Coffee Maker in the Departmental Canteen of the Office of Principal Accountant General (A&E), Orissa at the time of filing the present O.A. He had joined as Tea & Coffee Maker in the Departmental Canteen with effect from 1.4.1970 and continued in the same post. Applicant was given the benefit of 1st financial upgradation under the Assured Career Progression (ACP) Scheme of 1999 on completion of 12 years of service vide order dated 21.5.2001. He was placed in the scale of Rs.3050-4590/- with effect from 9.8.1999. he claims that he is entitled to 2nd financial

upgradation under the ACP Scheme with effect from 26.9.2007 in the scale of Rs.3200-4900/-. He had submitted a representation dated 5.4.2010, reminders on 12.5.2010 and 23.9.2010. On 13.10.2010, the Respondents granted him financial upgradation under the MACP Scheme with effect from 1.9.2008. The applicant however claims that he should be given the 2nd financial upgradation under the ACP Scheme with effect from 26.9.2007. He has filed this O.A. praying for the following reliefs:

- i) ...to direct the Respondent No.1 to grant the benefit of second financial upgradation of pay under ACP Scheme 1999 upgrading/fixing the basic pay of the applicant from the pay scale of Rs.3050-4590/- to Rs.3200-4900/- with all arrears w.e.f. 26.09.2007 with interest till the actual payment is made for the ends of justice.
- ii) ...to direct the Respondent No.1 to pay the applicant all consequential benefits such as Pay Revision and other benefits under the new Pay Rules, 2008 and in terms of Annexure-A/4 (PB-1 Rs.5200-20200/- with grade pay of Rs.2000/-) and all arrears thereof and interest thereof till the actual payment is made for the ends of justice.
- iii) ...to direct Respondent No.1 to extend all other service benefits and entitlements from time to time after the fixation of pay for the ends of justice.
- iv) ...to quash the order at Annexure-A/8 to the extent the applicant is concerned or in the alternate direct the Respondent No.1 to modify Annexure-A/8 by extending second financial upgradation by revising the pay scales under the ACP Scheme, 2000 and the revised scheme of 2006 for the ends of justice.

- iv) ...to issue any other/further order(s) of direction(s) as deemed fit and proper in the circumstances of the case.

2. The Respondents in their counter reply dated 18.6.2012 have contested the claim of the applicant. It is their contention that although the applicant had completed 24 years of service as on 26.9.2007, he could not be given the 2nd financial upgradation under the ACP Scheme in view of the fact that the next promotional scale in the hierarchy is Rs.3200-4900/- which is the scale of Manager Grade-III/Store Keeper or Assistant Manager-cum-Store Keeper/Cashier/Halwai, the eligibility criteria for the said post as per IA&AD (Gr.C & D Post) Recruitment Rules, 2001, a Clerk or a Salesman with at least three years' service in the grade for the post of manager, Gr.III/Store Keeper or Asst.Manager-cum-Store Keeper/Cashier or the post of Halwai the eligibility criteria is Cook or Asst.Halwai with at least three years of service. Respondents have raised the issue of limitation since the applicant's claim for 2nd financial upgradation with effect from 2007 which was not claimed within one year of the date from which the applicant claims it. Since the applicant did not fulfill the above eligibility norms, he could not be granted the 2nd financial upgradation under the ACP Scheme with effect from 26.9.2007. The applicant could be granted the 2nd financial upgradation under the MACP Scheme because the MACP Scheme does not provide any condition of specifying promotion norms as stipulated in

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the ACP Scheme of 1999. Therefore, the applicant has been granted financial upgradation to the PB-I (Rs.5200-20200 with GP of Rs.2000/-) with effect from 1.9.2008 from which date the MACP Scheme became effective.

3. The applicant filed a rejoinder on 20.7.2012 in which it has been submitted that the matter relating to pay fixation is a continuous cause of action and therefore, it cannot be said that the O.A. is barred by limitation. The applicant has annexed the clarification issued by the DOP&T dated 12.2.2012 which stipulates that where the cadre/hierarchy is limited to two grades only, the 2nd financial upgradation should be given in keeping with the pay scale of analogous grade/post existing in the concerned office. Since the post of Manager, Gr.III/Store Keeper or Asst. Manager - cum - Store Keeper/Cashier/Halwai cannot be filled up by promotion from the grade of Tea & Coffee Maker, the question of fulfilling the eligibility criteria does not arise. Therefore, the benefit of 2nd financial upgradation should be given by following the guidelines issued in the O.M. dated 10.2.2000.

4. The Respondents filed a reply to the rejoinder on 12.5.2014 in which they have reiterated that under the ACP Scheme it was necessary for the applicant to fulfill the conditions for promotion for the grant of 2nd financial upgradation whereas under the MACP Scheme such condition is not mandatory and therefore, the applicant has been given the

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2nd MACP raising his GP of Rs.2000 with effect from 1.9.2008. He has also been granted the 3rd MACP after completion of 30 years of service from 26.9.2013 raising his GP of Rs.2400/- with effect from 26.9.2013.

5. We have heard the learned counsels from both the sides and examined the documents submitted by them. It is quite obvious that the posts of Tea & Coffee Maker in the Departmental Canteen of the Office of the Principal Accountant General (A&E), Orissa falls within the definition of "isolated posts" mentioned in the OM dated 9th August, 1999 prescribing the ACP Scheme. Para 3.1 covers the case of isolated posts:

"3.1 While in respect of these categories also promotion shall continue to be duly earned, it is proposed to adopt the ACP Scheme in a modified form to mitigate hardship in cases of acute stagnation either in a cadre or in an isolated post. Keeping in view all relevant factors, it has, therefore, been decided to grant two

financial upgradations [as recommended by the Fifth Central Pay Commission and also in accordance with the Agreed Settlement dated September 11, 1997 (in relation to Group 'C' and 'D' employees) entered into with the Staff Side of the National Council (JCM)] under the ACP Scheme to Group 'B', 'C' and 'D' employees on completion of 12 years and 24 years (subject to condition no.4 in Annexure-I) of regular service respectively. Isolated posts in Group 'A', 'B', 'C' and 'D' categories which have no promotional avenues shall also qualify for similar benefits on the pattern indicated above. Certain categories of employees such as casual employees (including those with temporary status), ad-hoc and contract employees shall not qualify for benefits under the aforesaid Scheme. Grant of financial upgradations under the

ACP Scheme shall, however, be subject to the **conditions** mentioned in **Annexure-I**".

Para-7 of the Annexure-1 laying down the conditions for grant of Benefits under the ACP Scheme states as follows:

"Financial upgradation under the Scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts without creating new posts for the purpose. However, in case of isolated posts, in the absence of defined hierarchical grades, financial upgradation shall be given by the Ministries/Departments concerned in the immediately next higher (standard/common) pay-scales as indicated in Annexure-II which is in keeping with Part-A of the First Schedule annexed to the Notification dated September 30, 1997 of the Ministry of Finance (Department of Expenditure). For instance, incumbents of isolated posts in the pay-scale S-4, as indicated in Annexure-II, will be eligible for the proposed two financial upgradations only to the pay-scales S-5 and S-6. Financial upgradation on a dynamic basis (i.e. without having to create posts in the relevant scales of pay) has been recommended by the Fifth Central Pay Commission only for the incumbents of isolated posts which have no avenues of promotion at all. Since financial upgradations under the Scheme shall be personal to the incumbent of the isolated post, the same shall be filled at its original level (pay-scale) when vacated. Posts which are part of a well-defined cadre shall not qualify for the ACP Scheme on 'dynamic' basis. The ACP benefits in their case shall be granted conforming to the existing hierarchical structure only".

Since there is no promotional avenue for the incumbents of isolated posts such as Tea & Coffee Makers, it is meaningless to insist on fulfilling of eligibility conditions.


6. It is therefore our considered view that the applicant in the present O.A. will be covered under the provisions for


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"isolated posts" and the applicability of the ACP Scheme in his case will be governed by the provisions laid down in Para-3.1 and Para-7 of the O.M. dated August, 9, 1999 and the Annexure-I of the said OM respectively.

7. In view of the above, the respondents are directed to reconsider the prayer of the applicant in the O.A. afresh and take an appropriate decision in the light of Para-6 above within a period of eight weeks from the date of receipt of this order.

No costs.


(DR.MRUTYUNJAY SARANGI)
MEMBER(A)


(S.K.PATTNAIK)
MEMBER(J)

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