

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.689 of 2011
Cuttack this the 19th day of March, 2015

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

Abhimanyu Mohanty & Ors....Applicants

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

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

R.C.MISRA
(R.C.MISRA)
MEMBER(A)

A.K.PATNAIK
(A.K.PATNAIK)
MEMBER(J)

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

1. Shri Abhimanyu Mohanty, aged about 54 years, S/o. late Bharat Chandra Mohanty, Permanent resident of Vill/O-Bilasuni, Via-Niali, Dist-Cuttack, Orissa at present residing at - Jameswarpatna Sahi, Loknath Bhawan, Old Town, Bhubaneswar, Dist-Khurda, Orissa working as Bearer in the Departmental Canteen of Office of Principal Accountant General(A&E), Orissa, Bhubaneswar, Dist-Khurda, Orissa
2. Shri Sanatan Das, aged about 54 years, S/o. late Gadhar Das, permanent resident of Vill/PO-Permandapur, Via-Motto, Dist-Bhadrak, Orissa, at present residing at Qr.No.H/123, Old A.G.Colony, Unit-IV, Bhubaneswar, Dist-Khurda, Orissa, working as Bearer in the Departmental Canteen of Office of Principal Accountant General(A&E), Orissa, Bhubaneswar, Dist-Khurda, Orissa
3. Shri Daitari Nayak, aged about 50 years, S/o. late Mandar Nayak, permanent resident of Vill-Bhairpur, PO-Rajes, Via-Pipili, Dist-Khurda, Orissa at present residing at Qr.No.H/111, Old A.G.Colony, Unit-IV, Bhubaneswar, Dist-Khurda, Orissa, working as Bearer in the Departmental Canteen of Office of Principal Accountant General (A&E), Orissa, Bhubaneswar, Dist-Khurda, Orissa
4. Shri Dhurba Charan Jena, aged about 46 years, S/o. late Raaghunath Jena, Permanent resident of Vill-Jagannathpur, PO-Ganjai Bari, Via-Dalasahi, Dist-Bhadrak, Orissa, at present residing at Qr.No.H/244, Old A.G.Colony, Unit-IV, Bhubaneswar, Dist-Khurda, Orissa, working as Bearer in the departmental Canteen of Office of Principal Accountant General (A&E), Orissa, Bhubaneswar, Dist-Khurda, Orissa
5. Shri Rankanidhi Barik, aged about 56 years, S/o. late Gouranga Barik, Present & Permanent resident of Vill-Nimabasant, PO-Harirajpur, Via-Jatni, Dist-Puri, Orissa, working as Bearer in the Departmental canteen of Office

of Principal Accountant General (A&E), Orissa, Bhubaneswar, Dist-Khurda, Orissa

6. Shri Nakula Nayak, aged about 51 years, S/o. late Subal Nayak, permanent resident of Vill-Bhairpur, PO-Rajes, Via-Pipili, Dist-Khurda, Orissa at present residing at Qr.No.H/326, Old A.G.Colony, Unit-IV, Bhubaneswar, Dist-Khurda, Orissa working as Bearer in the Departmental Canteen of Office of Principal Accountant General (A&E), Orissa, Bhubaneswar, Dist-Khurda, Orissa

...Applicants

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

-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 and Pension, Lok Nayak Bhawan, Khan Market, New Delhi-3.

...Respondents

By the Advocate(s)-Mr.U.B.Mohapatra

ORDER

R.C.MISRA, MEMBER(A):

Applicants, six in number, having a common cause of action have approached this Tribunal being aggrieved by the inaction of the Respondent-authorities in granting them the benefit of 2nd financial upgradation under the Assured Career Progression (ACP) Scheme.

2. The facts leading to filings this Original Application are thus: Applicants are presently working as Bearers in the Departmental Canteen of Respondent No.1 being appointed to

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that post with effect from 1.3.1972, 1.5.1976, 1.10.1979, 1.5.1972 and 1.5.1975 respectively. Their conditions of service are stated to be such as admissible to Central Government employees. In the light of Office Memorandum dated 8.9.1999 extending the benefits of financial upgradation under the ACP Scheme, Respondent No.2 issued O.M. dated 25.7.2000 exclusively for the canteen employees for grant of financial upgradation under the ACP Scheme which is *reckonable from 26.9.1983 or the actual appointment in the regular scale, whichever is later*. In pursuance of the said O.M., applicants on completion of 12 years regular service were granted the benefit of 1st financial upgradation under the ACP Scheme vide A/2 dated 21.5.2001. Grievance of the applicants is that though they were entitled to grant of 2nd financial upgradation under the ACP Scheme on completion 24 years regular service with effect from 26.09.2007, they were not so granted. Aggrieved with this, they went on preferring representations and after representations, vide A/5, A/6 and A/7 series. While the matter stood thus, they were granted the benefits of Modified Assured Career Progression(MACP) Scheme vide order dated 13.10.2010(A/8). This gave rise to a cause of action to the applicants for approaching this Tribunal, seeking the following relief.

“...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 applicants from the pay scale of Rs.3050-45900/- to Rs.3200-Rs.4900/- with all arrears w.e.f. 26.09.2007 with interest till the actual payment is made for the ends of justice; and

...to direct the Respondent No.1 to pay the applicants 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; and

...to direct Respondent No.1 to extend all other service benefits and entitlements from time to time after the fixation of pay; and

...to quash the order at Annexure-A/8 to the extent the applicants are concerned or in the alternate direct the respondent No.1 to modify Annexure-A/8 by extending second financial upgradation by revising the pay scale under the ACP Scheme, 2000 and the revised scheme of 2006 for the ends of justice".

3. While not disputing the factual aspects of the matter, Respondents have filed their counter opposing the prayer of the applicants. The main thrust of the counter reply by the Respondents is that financial upgradation under the ACP Scheme is subject to fulfillment of normal promotion norms as per Para-6 of DoP&T O.M. dated 9.8.1999(A/1). According to respondents, as on the date of implementation of the Scheme, applicants were holding the post of Bearers in the scale of Rs.2650-3540/-. Their next promotion is to the grade of Cook carrying the pay scale of Rs.3050-4590/-. The eligibility criteria

for promotion of Bearer to Cook is "Bearer/Tea Maker with two years regular service in the scale of Rs.2610-3540/- as per IA & AD (Gr.C & D Post) Recruitment Rules, 2001, hereinafter to be referred to Rules, 2001. Since the applicants fulfilled the eligibility criteria for promotion to the post of Cook, they were granted the 1st financial upgradation in the scale of Rs.3050-4590/- on completion of 12 years regular service(A/2). It is the case of the Respondents that even though the applicant had completed 24 years' service as on 26.09.2007, they were not granted the 2nd financial upgradation under the ACP Scheme in view of the fact that the next promotional scale in the hierarchy being identical with Manager cum Storekeeper/Cashier/Halwai carrying the scale of Rs.3200-4900/- the applicants did not fulfill the eligibility conditions for promotion as laid down in the Rules, 2001. However, they have submitted that the MACP Scheme which came into force with effect from 1.9.2008 stipulated for grant of three financial upgradations at the intervals of 10, 20 and 30 years regular service. It also provided in the said Scheme that grant of such benefits is of non-functional basis subject to fitness in the hierarchy or grade pay. It also did not make any provision for satisfaction of promotional norms as stipulated in the ACP Scheme dated 9.8.1999. In the circumstances, applicants were granted 2nd MACP with effect from 1.9.2008 in PB-5200-20,2000 with GP Rs.2000/- on completion of 20 years' service. Hence, the

Respondents have submitted that the O.A. being devoid of merit is liable to be dismissed.

4. Applicants have filed a rejoinder to the counter. The case made out by the applicants therein is that Rules, 2001 does not stand in conflict with the provisions of O.M. dated 10.4.2006(A/3). Further, it has been submitted that A/3 was issued keeping in view the DOP&T Circular on ACP dated 09.08.1999 read with the clarification issued by the Government of India (DOP&T) OM.No.35034/1/97-Estt.(D) (Vol.IV) dated 10.02.2000. O.M. dated 10.02.2000 clarifies that where cadre/hierarchy is limited to two grades, 2nd financial upgradation may be given in keeping with the pay scale of an analogous grade/post existing in the concerned office. Since the posts of Manager, Gr.III/Store Keeper or Asst. Manager cum Storekeeper/Cashier/Halwai cannot be filled up by promotion from the grade of Bearer, the question of fulfilling the eligibility criteria does not arise and in such eventuality, the benefit of 2nd ACP should be extended in view of the guidelines set out in the O.M. dated 20.2.2000.

5. Upon perusal of pleadings, we have heard the learned counsel for both the sides. We have also gone through the written notes of submission filed by the respective parties.

6. From the pleadings of the parties, the very basic point that merges for our determination is whether fulfillment of

eligibility criteria for promotions stands as a bar for grant of financial upgradation under the ACP Scheme.

7. To fortify his contention, applicant has relied Applicant on O.M. dated 10.02.2000(A/9), the relevant portion of which reads as under.

Sl.	Point of Doubt	Clarification
32.	Where the cadres/hierarchy is limited to two grades only, what should be the pay scale for grant of second upgradation under ACPS ?	<p>Such a cadre/hierarchy shall not fall in the isolated category as defined at Sl.No.31 above. Hence, the standard/common pay scales mentioned in annexure-II of the Office Memorandum dated 9.8.1999 shall not be applicable in such cases. Action in such cases may, therefore, be taken as per following clarifications:-</p> <p>(i)If such cadre/hierarchy exists in the Ministry/Department concerned, the second upgradation may be allowed in keeping with the pay scale of an analogous grade of a cadre/post in the same Ministry/Department. However, if no such grade exists in the Ministry/Department concerned, comparison may be made with an analogous grade available in other Ministries/Department.</p> <p>(ii)In the case of attached/subordinate offices, the second upgradation under the ACPS may be given in keeping with the pay scale of an analogous grade of a cadre/post of the concerned office. However, if no such cadre/post exists in the concerned office, comparison may be made with an analogous grade available in other attached/subordinate office of the Ministry/Department concerned.</p>

8. O.M. dated 10.2.2010 deals with Assured Career progression Scheme (ACPS) for the Central Government

Civilian employees - clarificatory instructions - First Set.

Paragraph-2 thereof reads as under.

"2. The ACP Scheme should strictly be implemented in keeping with the Department of Personnel & Training Office Memorandum of even number, dated August, 9, 1999 read with the aforesaid clarifications(Annexure)"

9. In this connection, Office Memorandum dated 25.7.2000(A/1) reads as under.

Subject: The Assured Career Progression Scheme for the Canteen employees working in non-statutory Departmental Canteens/Tiffin Rooms located in Central Government Offices - Matter regarding.

The undersigned is directed to say that the question of extending the Assured Career Progression Scheme, as circulated vide Department of Personnel & Training, Ministry of Personnel, Public Grievances and Pensions O.M.No.35034/1/97-Estt(D) dated 9th August, 1999, read with the clarificatory O.M. dated 10.2.2000 to the employees of non-statutory Canteens/Tiffin Rooms located in Central Government Offices has been under examination in this Department. It has now been decided that the Assured Career Progression (ACP) Scheme will be extended to the staff working in non-statutory Canteens/Tiffin Rooms located in Central Government Offices as per the provisions contained in O.M. ibid

(dated 9.8.1999). With the introduction of ACP Scheme, the previously introduced in situ Promotion Scheme as circulated vide Department of Personnel and Training O.M.No.3/4/94-Dir.(C) dated 14.3.995 will cease to operate.

2. While implementing the ACP Scheme, following guidelines may be kept in view:

- (i) For the purpose of determining the eligibility for consideration of financial upgradation of Canteen employees under the ACP Scheme, the service rendered by a Canteen employee will be reckonable from 26.9.1983 or the actual appointment in regular pay scales, whichever is later.
- (ii) In accordance with the provision of ACP Scheme, every non-statutory Canteen/Tiffin Room employee will be eligible for a minimum of two financial upgradations in the entire service if he has not been offered two vacancy bound promotions. First and second financial upgradations will be considered for the eligible staff after completion of 12 and 24 years of regular service respectively subject to the parameters prescribed in this regard”

10. Office Memorandum dated 10.4.2006 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training vide Paragraph-3 lays down as under.

Consequent upon revision of pay scale for certain categories of posts of the non-statutory Departmental canteens, as indicated above, the hierarchy of pay scales that will be applicable to the Canteen staff for placement in the higher pay scales under the ACPS would also undergo a change. Accordingly, it has now been decided that w.e.f. 22.12.2004, the hierarchy of the pay scales that will be applicable to the Canteen staff upon becoming eligible for the grant of 1st and 2nd financial upgradations under the ACPS will be as per the restructured promotional hierarchy as given in the enclosed Annexure. ***The grant of financial upgradation will be subject to the fulfillment of all promotional norms".***

11. In addition to above, while granting the benefit of 1st financial upgradation to the applicants vide A/2 dated 21.5.2001, it has been indicated in Paragraph-5 thereof as under.

"Grant of higher pay scale under ACP Scheme shall be conditional to the fact that an official while accepting the said benefit **shall be deemed to have given his/her unqualified acceptance for regular promotion to higher grade on occurrence of vacancy subsequently".**

12. From the above recital of rules on the subject, it is quite clear that in order to be entitled to avail the benefit of financial upgradation under the ACP Scheme, an employee in the

Government of India has to fulfill all the promotional norms in the hierarchy.

13. It is an admitted position that the applicants did not fulfill the eligibility conditions for promotion in the hierarchy being identical with Manager cum Storekeeper/Cashier/Halwai carrying the scale of Rs.3200-4900/- as provided in the Rules, 2001. Therefore, the Respondents have not committed any illegality in not granting him the 2nd financial upgradation under the ACP Scheme with effect from 26.09.2007.

14. However, it is the case of the applicants that O.M. dated 10.02.2000 clarifies that where the cadres/hierarchy is limited to two grades, the 2nd financial upgradation may be given in keeping with the pay scale of an analogous grade/post existing in the concerned office. We have considered this submissions of the learned counsel for the applicants. It reveals that the applicants have raised this point for the first time in their rejoinder to the counter, leaving no scope for the respondents to consider the matter on this aspect. Therefore, in our considered view, the Tribunal should not rush to a conclusion before this point is decided by the Respondents. In this view of the matter, we remit this matter to the Respondents with a direction to reconsider the matter in the light of what has been clarified under the point of doubt vide O.M. dated 10.02.2000(A/9), as quoted above and pass appropriate orders

within a period of three months from the date of receipt of this order. Ordered accordingly.

In the result, the O.A. is disposed of with the aforesaid direction. No costs.

(R.C.MISRA)
MEMBER(A)
BKS


(A.K.PATNAIK)
MEMBER(J)