

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH:CUTTACK

ORIGINAL APPLICATION NO.83 OF 2009  
Cuttack this the 22<sup>nd</sup> day of April, 2010

Indrajit Patel & Ors. ...Applicants  
-VERSUS-  
Union of India & Ors. ...Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ?
2. Whether it be referred to C.A.T., Principal Bench or not ?

  
(C.R.MOHAPATRA)  
ADMINISTRATIVE MEMBER

  
(B.V.RAO)  
JUDICIAL MEMBER

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ORIGINAL APPLICATION NO. 83 OF 2009

Cuttack this the 22nd day of April, 2010

CORAM:

HON'BLE SHRI B.V.RAO, JUDICIAL MEMBER  
AND

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

...

1. Indrajit Patel, aged about 51 years, S/o. Jogeswar Patel, Vill-Belmunda, PO-Samarsingha, Via/P.S. Kolabira, Dist-Jharsuguda-768213 – at present working as ACT, NYKS at Bhubaneswar
2. Basant Kumar Mishra, aged about 45 years, S/o. Sri Pratap Chandra Mishra, At-Ashok Nagar-5, PO-Berhampur, Dist-Ganjam at present working as ACT, NYKS at Bhubaneswar
3. Sasanka Sekhar Mohapatra, aged about 42 years, S/o. Binod Kumar Mohapatra, At-Amalapada (Chapala Nivas), PO/Dist-Dhenkanal-759 001 at present working as ACT, NYKS at Sundargarh
4. Ashok Kumar Sahu, aged about 44 years, S/o. Late Duryodhan Sahu, At-Baghra Road, Ward No.10, PO-Baripada, Dist-Mayurbhanj, at present working as ACT, NYKS at Baripada
5. Ashok Kumar Behera, aged about 40 years, S/o. Nrusingha Charan Behera, Vill-Guhali, PO-Kuanl, Via-Pritipur, Dist-Jajpur at present working as ACT, NYKS at Bhubaneswar
6. Kailash Chandra Mohanty, aged about 46 years, S/o. late Indramani Mohanty, At-Nakhiguda, PO-hawanipatna, Dist-Kalahandi at present working as ACT, NYKS at Sambalpur
7. Saroj Kumar Pattanaik, aged about 42 years, S/o. late Managovinda Pattnaik, At/PO-Pithapur, Via-Vograi, Dist-Balasore at present working as ACT, NYKS at Kendrapara
8. Subash Chandra Manna, aged about 42 years, S/o. late Rakhal Chandra Manna, At-Giri Bhawan, PO-Sahadevkhunta, Dist-Balasore-756001 at present working as ACT, NYKS at Balasore
9. Sri Bipin Bihari Jena, aged about 43 years, S/o. late Bikal Charan Jena, At-Kandamunda, PO-Nuapada, Dist-Bolangir at present working as ACT, NYKS at Bolangir
10. Sushant Kumar Sahu, aged about 46 years, S/o. late Baranidhi Sahu, At/PO-Randha, Via-Golanth, Dist-Ganjam at present working as ACT, NYKS at Berhampur
11. Sudam Charan Sabat, aged about 48 years, S/o. Pravakar Sabat, At-Lanjipali, PO-Berhampur, Dist-Ganjam at present working as ACT, NYKS at Phulbani
12. Dutia Banchhor, aged about 39 years, S/o. late Kahnu Banchhor, Vill-Potalpada, PO-Haldi, Dist-Bolangir at present working as ACT, NYKS at Bhaawanipatna
13. Suvendra Nath Sahoo, aged about 39 years, S/o. Fakir Charan Sahu, At-Berhampur, PO Charirakaba, Via-Salipur, Dist-Cuttack at present working as ACT, NYKS, Puri
14. Uday Shankar Behera, aged about 41 years, S/o. late Radhakanta Behera, At-Mandarbagichapada, PO-Bhawanipatna, Dist-Kalahandi at present working as ACT, NYKS at Nuapada

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15. Bijay Kumar Singh, aged about 55 years, S/o.late Bipin Bihari Singh, At/PO- Rajnagar, Dist-Kendrapada at present working as ACT,NYKS at Keonjhar
16. Gunanidhi Patra, aged about 59 years, S/o. late Fakir Charan Patra, At/po- Dhenkanal (Jubilee Town), Dist-Dhennakal at present working as ACT, NYKS at Dhenkanal

...Applicants

By the Advocates:M/s.M.M.Basu and A.P.Mishra

**-VERSUS-**

1. The Union of India represented through secretary, Ministry of Youth Affairs and Sports, C. Wing, Sastri Bhawan, New Delhi-110001
2. Nehru Yuva Kendra Sangathan represented by its Director General, Core-IV, 2<sup>nd</sup> Floor, Scope Minor Complex, Laxmi Nagar, District Center, Vikash Marg, New Delhi-110 092
3. The Zonal Director 9P.A.O.), Nehru Yuva Kendra Sangathan, N-2/45, IRC Village, Bhubaneswar, Dist-Khurda-751015
4. The Zonal Director, Nehru Yuva Kendra Sangathan, N-2/45, IRC Village, Bhubaneswar, Dist-Khurda-751015

...Respondents

By the Advocates : Mr. R.C..Behera, ASC

**O R D E R**

**HON'BLE SHRI B.V.RAO, JUDICIAL MEMBER:**

1. In this Original Application, 16 applicants having a common cause of action, have joined together. All the applicants are at present working as Accounts Clerk-cum-Typist (in short ACT) in different Nehru Yuva Kendra Sangathans (in short NYKS) situated in different Districts of the State of Orissa under the Respondents-Department.
2. According to applicants, in the year 2003, NYKS, vide order dated 3.1.2003 (Annexure-A/4 series) implemented the Assured Career Progression (in short A.C.P.) Scheme. According to the said scheme, the 1<sup>st</sup> and 2<sup>nd</sup> financial upgradation is admissible after completion of 12 years and 24 years of regular service in the grade of ACT. As per the recommendations of 5<sup>th</sup> Central Pay Commission, they are entitled to pay scales of Rs.5500- 175-9000/- and Rs.6500-200-10500/- respectively, in the promotional hierarchy or due to stagnation by financial upgradation under the ACP Scheme. In the above backdrop, the applicants were granted the benefit of ACP as per orders dated 3.1.2003, 7.7.2003, 23.11.004



and 12.12.2006 (Annexure-A/4 series). While the matter stood thus, in pursuance of the directives issued by Respondent No.1 on 19.5.2008(Annexure-A/5) to Respondent No.2 to the effect that NYKS had granted the benefit ACP to the applicants in violation of the guidelines for upgradations, the benefits so granted to the applicants as per Annexure-A/4 series were cancelled vide Annexure-A/6 dated 4.6.2008 with retrospective effect, with further order as under:

“As per the direction of the Ministry of Youth Affairs & Sports, the first financial upgradation (after 12 years of service) will be in the scale of Rs.4500-7000/- and the second financial upgradation (after 24 years of service) will be in the scale of Rs.5500-9000/-.

The Ministry of YA & S has also ordered that the excess financial benefits that have accrued to the ACT due to the grant of higher scales under ACP Scheme as mentioned in Para-1 will be recovered forthwith.

As such finally it is ordered that individual pay fixation will be separately issued and recovery of Rs.500/- approximately per month will commence with effect from June, 2008 from the salary of the ACTs”.

3. This being the genesis of the grievance, the applicants have sought for the following relief:

- a) To direct the Respondents to quash, withdraw and/or rescind order dated 4.6.2008, Ministry'sletter dt.19.05.08 and the order of replacement of scale of pay of the applicants dt. 27.10.08.
- b) To direct the Respondents to fix and finalize their scale of pay as per 6<sup>th</sup> CPC in conformity with their 1<sup>st</sup> ACP scale of Rs.5500-9000/- being already enjoyed by the applicants setting aside the order dated 27.10.2008 or at all.
- c) To direct the Respondents to produce relevant records with copy to the Ld.Advocate of the applicant”.

4. The Respondents have filed their counter contesting the Original Application. They have submitted that on receipt of a complaint, the matter regarding grant of benefits to the applicants under the ACP Scheme was examined by Respondent No.1 and it was found that they had been granted the benefit of ACP by Respondent No.2 in the higher grade to which they were not entitled to. It has been submitted that as per the laid down procedure, autonomous bodies are required to take prior approval of the concerned Administrative Ministry along with concurrence of Ministry of Finance for issuing orders having financial

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implications, which has not been adhered to in this case. It has been submitted that Respondent No.1 vide letter No.F.1.4/97-YS.1 dated 14.5.1998 issued instructions regarding revised pay scales of post-Sangathan employees of NYKS pursuant to acceptance of the recommendations of the 5<sup>th</sup> Central Pay Commission, which have been violated to by the NYKS. They have submitted that the post of Junior Account which is a promotional grade of the post of ACT has been in existence in the NYKS even prior to the issue of Government of India letter dated 14.5.1998. They have submitted that as per the Recruitment Rules of ACT which were approved by the Government of India vide letter No.F.1-6/96 YS. 1 dated 29.1.1998 and were made effective from 5.3.1998, there are four posts of Jr. Accountants. The method of recruitment provides hundred percent promotion from the feeder grade of ACT with three years regular service in the grade. It has been submitted that the financial upgradations are given with the existing hierarchy in a cadre/category of posts and where the existing recruitment rules provide for multiple channels for promotion, the first financial upgradation is allowed with reference to the lowest promotion grade. In the above backdrop, the Respondents have submitted that the O.A. being devoid of merit is liable to be dismissed.

5. Having regard to the pleadings of the parties, the point to be decided is whether there existed posts of Junior Accountant in the promotional hierarchy, the feeder grade being ACT in the recruitment rules as on the date the applicants became eligible and/or entitled to grant of benefit under the ACP Scheme.

6. We have heard the learned counsel for the parties and perused the materials on record. At the outset it is to be noted that the Respondents have not produced any letter bearing No.F.1-6/96 YS 1 dated 29.1.1998 wherein the approval of the Government of India had been accorded sanctioning four posts of Junior Accountants nor the letter dated 5.3.1998 making the post of Junior Accountant effective .We have gone through the order dated 14.5.1998 of the Government of India regarding regarding the revision of pay scales of post-Sangathan



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employees of Nehru Yuva Kendra Sangathan, pursuant to the acceptance of the recommendations of the V Central Pay Commission(Annexure-A/3). In this connection, we would note the vital aspect of the matter in Para-4, which reads as under:

“The emoluments’ structure and conditions of service will be exactly similar to those of the corresponding categories of the Central Government employees. NYKS shall modify their service Rules, if necessary, to ensure that the conditions of service of their employees are exactly similar to those of Central Government employees”.

7. Apart from the above, the annexure to the above referred letter captioned as “Replacement Scales for Nehru Yuva Kendra Sangathan” does not contain any post of Junior Accountant carrying the pay scale of Rs.4500-7000/-. Incidentally it may be noted that the Department of Personnel and Training vide O.M. dated 18.7.2001 had issued clarification to the effect that “provisions in the existing Recruitment Rules in various organizations providing for multiple channels for promotion are not consistent with the guidelines on framing of the Recruitment Rules. All such Rules should be reviewed immediately so as to provide only a single channel of promotion. In this connection it is worthmentioning that no such Recruitment Rules in accordance with the guidelines issued by the DOP&T dated 18.7.2001 providing only a single channel of promotion has been produced by the Respondent-Department, based on which they have submitted that the Junior Accountant is the promotional hierarchy, the ACT being the feeder grade.

8. In so far as grant of benefit under the ACP to the applicants is concerned, it goes without saying that ACP Scheme has been introduced on the recommendations of the 5<sup>th</sup> Central Pay Commission to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of financial upgradation. This by itself makes it clear that the benefit under the ACP Scheme could only be granted to the next higher grade in the hierarchy. The Respondents-Department have not produced any such Recruitment Rules wherein the Junior Accountant is the next higher/promotional grade of ACTs even as on the



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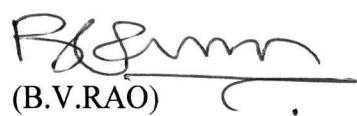
date when the applicants were granted the benefits under the ACP Scheme in the years commencing from 2003 to 2006. It is also not the case of the Respondents that until the applicants are promoted to the higher grade in the hierarchy they shall be granted the benefit just above the pay scale drawn by them in the feeder grade. What all the record reveals is that the next promotional grade of ACT is Junior Accounts Officer carrying the pay scale of Rs.5500-9000/- . This being the position, there was nothing wrong in granting the benefit of 1<sup>st</sup> financial upgradation under the ACP Scheme to the pay scale of Rs.5500-9000/- due to stagnation and so also the 2<sup>nd</sup> financial upgradation to Rs.6500-10500/-.

9. Having regard to what has been discussed above, we answer the point in issue that there exists no post of Junior Accountant in the promotional hierarchy, the feeder grade being ACT in the recruitment rules as on date(s) the applicants became eligible and entitled to grant of benefit under the ACP Scheme.

10 In the circumstances, the impugned orders at Annexures-A/5, A/6 and A/10 dated 19.5.2008, 4.6.2008 and 27.10.2008 respectively are quashed. The Respondents are directed to refund the excess amount, if any, recovered from the applicants forthwith. It is also further directed that if the Respondents have refixed the pay of the applicants in the scale of Rs.4500-4700 and Rs.5500-9000/- the same shall be restored to Rs.5500-9000/- and Rs.6500-10500/- respectively. At any rate, this exercise shall be completed within a period of 90 days from the date of receipt of this order.

With the above observation and directions this O.A. is allowed. No costs.

  
(C.R.MOHAPATRA)  
ADMINISTRATIVE MEMBER

  
(B.V.RAO)  
JUDICIAL MEMBER