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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK
O.A.NO.453 of 2012
Cuttack this the 22nd day of August, 2013.

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

Sri Chandra Sekhar Behera
Aged about 59 years
Son of Sri Anant Charan Behera
Working as UDC (Cash),
In the Institute of Hotel Management Catering Technology & Applied Nutrition
Bhubaneswar – 751 007
Resident of Qr.No.E/4, IHM Staff Qrs.
Unit-IX
Bhubaneswar-751 022

...Applicant

By the Advocate(s)-M/s.A.K.Mohanty
D.K.Mohanty
P.K.Kar

-VERSUS-

Union of India represented through

1. The Secretary, Govt. of India,
Ministry of Tourism
New Delhi-110 001
2. The Principal
Institute of Hotel Management Catering Technology & Applied Nutrition
VSS Nagar,
Bhubaneswar-751 007
3. The Chairman,
Board of Governors
Institute of Hotel Management Catering Technology & Applied Nutrition
VSS Nagar
Bhubaneswar-751 007

...Respondents

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

ORDER

HON'BLE SHRI R.C.MISRA, MEMBER(A):

The applicant in this Original Application is an employee of the Institute of
Hotel Management Catering Technology & Applied Nutrition, (in short Institute)

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Bhubaneswar, functioning under the Ministry of Tourism, Government of India. He has approached this Tribunal by challenging the Office Order dated 7.5.2012 issued by the Principal of the Institute, who is Respondent No.2 in the present O.A. By virtue of this order, the Respondent No.2 has withdrawn the 2nd financial upgradation granted under the Assured Career Progression (in short ACP) Scheme in favour of the applicant with effect from 27.2.2004 and allowed one more increment on 1.1.2006 as per Office Memorandum dated 19.3.2012 of the Ministry of Finance, Department of Expenditure, Government of India and 2nd and 3rd financial upgradation under the Modified Assured Career Progression(MACP)Scheme. The applicant has also challenged the order of recovery dated 24.5.2012 in pursuance of the order issued on 7.5.2012. These impugned orders have been placed at Annexures-A/8 and A/9 respectively, of this O.A.

2. The short facts of the case are that the applicant who was initially appointed as LDC on 28.2.1980 was promoted as UDC with effect from 5.5.1986. He was not sanctioned the 1st financial upgradation under the ACP Scheme because of his promotion as UDC with effect from 5.5.1986. However, after completing 24 years of continuous service, he was sanctioned the 2nd financial upgradation in the scale of Rs.4500-7000/- with effect from 27.2.2004 vide orders of Respondent No.1 dated 22.11.2005(Annexure-A/3). Subsequently, the pay of the applicant was re-fixed on implementation of the recommendations of the 6th Central Pay Commission by the Government. Subsequently, the Government of India introduced a new scheme called Modified Assured Progression (MACP) Scheme by superseding the earlier ACP Scheme and implemented it with effect from 1.9.2008. In accordance with the provisions of the MACP, the applicant was

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sanctioned the 3rd financial upgradation after completion of 30 years of service with effect from 27.2.2010. Subsequently, by issuing order dated 7.5.2012, the Respondents withdrew the 2nd financial upgradation that had been granted to the applicant with effect from 27.2.2004 and thereby reduced his pay from Rs.5375/- to Rs.5300/- with effect from that date. The Respondents also allowed him the 2nd financial upgradation under the MACP Scheme with effect from 1.9.2008 in addition to grant of 3rd MACP with effect from 27.2.2010 which was already granted to him. As a result of this order being passed, another Office Order dated 24.5.2012 was also issued for recovering an amount of Rs.27,287/- from the salary of the applicant in 10 instalments. The applicant, thereafter submitted an appeal petition to the Chairman of the said Institute on 10.5.2012. In response to this appeal, the Principal of the Institute intimated him that the 2nd financial upgradation allowed under the ACP Scheme in the pre-revised scale of pay of Rs.4500-7000/- was considered erroneous by the internal audit of the Ministry of Tourism and therefore, it was withdrawn since the applicant was not eligible to get the 2nd financial upgradation in terms of the Condition No.6 of the ACP Scheme notified on 9.8.1999. On the above grounds, the appeal made by the applicant was rejected. Thereafter the applicant has approached this Tribunal challenging the impugned orders.

3. The Respondents by filing a counter affidavit have contended that the ACP Scheme applicable to Central Government Civilian Employees was made applicable to the employees of the Institute after the consideration by the Ministry of Tourism, Government of India, with due approval of the Board of Governors of the Institute with effect from 9.8.1999. Under the scheme, 2nd financial upgradation shall be available only if no regular promotions during the

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prescribed period, i.e. 12 years and 24 years have been availed of by an employee. Since the applicant was promoted to the post of UDC 2nd financial upgradation was allowed to the immediately next higher pay scale of Rs.4500-7000/-, instead of allowing the pay scale of Accountant-cum-Office Superintendent, i.e., Rs.5500-9000/- with effect from 27.2.2004 on completion of 24 years of service as the applicant did not fulfill the normal norms for promotion to the post of Accountant-cum-Office Superintendent.

4. Modified Assured Career Progression Scheme(MACP) was implemented by the Institute with effect from 1.9.2008 and this replaced the earlier ACP Scheme. As per the provisions of MACP, 3rd financial upgradation would be available only if no regular promotions during the prescribed period of 10, 20 and 30 years have availed of by an employee. The applicant had got one promotion and the 2nd financial upgradation under the ACP Scheme to the immediately ~~to the~~ next higher pay scale and was hence allowed 3rd financial upgradation to the immediately next higher Grade Pay of Rs.4200/- in PB-2 of Rs.9300-34800/- with effect from 27.2.2010 on completion of 30 years of service. Thereafter, the internal audit of the Ministry of Tourism, Government of India, in their observation dated 2.2.2012 pointed out that the financial upgradation allowed under ACP/MACP Scheme to two of the employees of the Institute, viz., S/Shri Ramesh Chandra Debata and Rabindra Kumar Pal was erroneous. It was also recommended that all other cases may also be reviewed in the light of the above two cases. Therefore, all the cases were reviewed and financial upgradation allowed in the same line to three more employees including the applicant was withdrawn in compliance of the audit observation. The clarification issued by the Government of India, Department of Personnel & Training O.M.No.35034/1/97-

Estt(D) (Vol.IV) dated 18.7.2001 states that in terms of Condition No.6 of the Annexure-1 to DoP&T OM dated 9.8.1999, only those employees who fulfill all promotional norms are eligible to be considered for the benefit under the ACP Scheme. Therefore, various stipulations and conditions specified in the Recruitment Rules for promotion to the next higher grade including the higher educational qualification if prescribed would need to be met for consideration of ACP. The applicant was an UDC and was in the existing hierarchy of Accountant-cum-Office Superintendent. Therefore, it was required for him to fulfill all the normal promotion norms for consideration of 2nd financial upgradation under the ACP Scheme. Since the applicant was a Matriculate the financial upgradation allowed to the immediately next higher scale of pay, i.e. Rs.4500-7000/- as applicable to ^{isolated} promoted posts was considered erroneous and hence, orders were passed to withdraw this benefit which was already sanctioned in his favour.

5. The applicant has filed a rejoinder to the counter-affidavit. He has mentioned that the MACP Scheme of Government of India was introduced with effect from 1.9.2008 and it was clearly mentioned in the connected OM dated 19.5.2009 that the financial upgradation as per the provisions of earlier ACP scheme would be granted till 31.8.2008. Therefore, the MACP scheme has no relevance to the financial upgradation granted to the applicant with effect from 27.2.2004 under the old ACP Scheme. It has been argued in the rejoinder that the objections raised by the internal audit in the cases of Shri Ramesh Chandra Debata and Shri Rabindra Kumar Pal were in a different context and that the case of the applicant stood on a different footing. In the cases of other two persons, they were sanctioned 2nd financial upgradation under the ACP Scheme to the scale of pay applicable to UDCs in the Departmental hierarchy without possessing

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the requisite educational qualifications as per the Recruitment Rules. In the case of the applicant, he was given financial upgradation with effect from 27.2.2004 to the next scale of pay of Rs.4500-7000/-. The applicant was not given the scale of Rs.5500-9000/- which was applicable to the post of Accountant cum Office Superintendent in the departmental hierarchy. He was only given the next scale of pay from S-7 to S-8 when he was granted the 2nd financial upgradation. Therefore, the grant of 2nd financial upgradation was completely appropriate and withdrawal of this financial upgradation from 27.2.2004 and grant of the same with effect from 1.9.2008 was irregular and unsustainable. On these grounds, the applicant has made a prayer for quashing the orders of withdrawal of the 2nd financial upgradation granted to him under the ACP Scheme.

6. We have heard the learned counsel of both the sides and perused the relevant records.

7. It is an admitted fact in this case that on the advice of the internal audit of the Ministry of Tourism, action has been taken by the Respondents to withdraw the benefit of 2nd financial upgradation given to the applicant in the year 2004. A perusal of the audit objection reveals that the cases of upgradation under the ACP Scheme of one Ramesh Chandra Debata, Laboratory Attendant and one Rabindra Kumar Pal, Laboratory Attendant were scrutinized by the Audit which made an observation that due to non- fulfillment of promotional norms, the grant of higher scale is wrong and irregular and hence, the grant of 2nd ACP which is not a part of the definite hierarchical grades of the cadre is inadmissible. The Audit further observed that with the implementation of new MACP Scheme no financial upgradation as per the previous ACP Scheme would be granted after 31.8.2008. The audit further recommended that the ^{excess} cases of payment of pay and allowances

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on account of this wrong sanction may be recovered from the above officials and further all the other cases may also be reviewed in the light of the observation of the audit. Although the Respondents are required to comply with the observation made by the Audit, they are also duty bound to review the other cases as suggested by the Audit and take a well- considered decision. The Office Order dated 7.5.2012, only makes a mention that in compliance of the observations made by the audit of the Ministry of Tourism, the pre-revised scale of pay of Rs.4500-7000/- granted to Shri Chandrasekhar Behera UDC ,(applicant herein) towards 2nd financial upgradation under the ACP Scheme with effect from 27.2.2004 is hereby withdrawn. It is evident from the language of this order that the Respondents have not specifically considered the case in the light of the audit observations and come to a definite finding about the case of the applicant. It is required for the concerned authorities to apply their minds to the decision of a case even though the matter was being reviewed on account of observations made by the Audit. The applicant also made a representation to the Chairman, Board of Governors of the Institute on 10.5.2012 in which he mentioned that by issuing the order of withdrawal of the benefit without issuing any show cause notice to him, the principles of natural justice were violated. In reply to this representation, the Principal of the Institute vide his letter dated 31.5.2012 intimated the applicant that the 2nd financial upgradation allowed under the ACP Scheme was considered erroneous by the internal audit and was hence withdrawn as he was not eligible to get the same in terms of the Condition No.6 of the ACP Scheme, notified in August, 1999. It is very clear from the various communications that the exact fact in relation to the case of the applicant was not considered and no reasoned order was passed by the concerned authorities in

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 this regard. Without delving into the actual merits of the case, we would like to observe here that the employees are to be treated fairly and there must not be arbitrariness in the conduct of the authorities. Whenever any action is contemplated which would ^{cause} ~~be~~ prejudice to their interests, they must be adequately and timely informed about the said contemplated action thereby giving them a fair chance to tell their side of the story. When the authorities have ^{detected} ~~dictated~~ their own mistake in conferring a benefit on the employee, due to certain interpretation of the Rules, which they discovered later to be ^a ~~of~~ misinterpretation, they should be extra careful to explain their action with due lucidity to the employee. The principle of Audit Alteram partem is not a dry formality but a sound and healthy principle of maintaining natural justice. In the present case, when we apply this principle, it is quite clear that the authorities cannot issue a flat order by merely citing some audit objection. How the case of the applicant is hit by the observation of the audit has to be in detail explained. In the present case, the 2nd financial upgradation under the ACP Scheme was granted in the year 2004. The audit objection was made on 2.2.2012, i.e., after a lapse of long time and thereafter, the review was done in the year 2012. It is quite obvious that the authorities could rectify their mistake even at this distant point of time, but that should be done only after following the principles of natural justice. It is plain and obvious that the audit observation was required to be discussed and a decision should have been taken after hearing the applicant by issuing a reasoned order. In the absence of this, it cannot be accepted that the concerned authorities have passed the order with due application of mind.

8. In view of the discussions made above, the Respondents are directed to consider the matter afresh by discussing the audit observations and giving a

reasonable opportunity to the applicant to present his points and only thereafter, come to a decision regarding the admissibility or otherwise of the 2nd ACP granted to the applicant on 27.2.2004. This exercise shall be completed and decision communicated to the applicant within a period of 90 days from the date of receipt of this order. In the circumstances, Office Order dated 7.5.2012(Annexure-A/8) and Office Order dated 24.5.2012(Annexure-A/9) in so far as applicant is concerned are hereby quashed.

With the above observation and direction, this O.A. is disposed of. No costs.



(R.C.MISRA)
MEMBER(A)



(A.K.PATNAIK)
MEMBER(J)

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