

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH: JODHPUR

.....
Date of Order : 21.03.2002 .

O.A.NO. 245/2001

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D.K.Nanda S/o Late Shri S.N.Nanda, aged about 56 years, R/o 11/39, Shanti Niketan Colony, Bedla Bargaon, Link Road, Udaipur (Rajasthan), Presently working on the post of Research Associate in Anthropological Survey of India, Western Regional Centre No. 16, Madhuban, Udaipur (Rajasthan).

.....Applicant.

versus

1. Union of India through the Secretary, Government of India, Department of Culture, Ministry of Tourism and Culture, Shastri Bhavan, Dr. Rajendra Prasad Road, New Delhi.
2. Director Anthropological Survey of India, 27, Jawaharlal Nehru Road, Kolkata - 700 016.

Deputy Director and Head of the Office, Anthropological Survey of India, Western Regional Centre No. 16, Madhuban, Udaipur (Raj).

.....Respondents.

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Mr. S.K.Malik, Counsel for the applicant.

Mr. Kuldeep Mathur, Adv. brief holder for

Mr. Ravi Bhansali, Counsel for the respondents.

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CORAM :

Hon'ble Mr. Justice O.P.Garg, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

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Per Mr.Gopal Singh :

In this Application under section 19 of the Administrative Tribunals Act, 1985, the applicant, D.K.Nanda, has prayed for a

Gopal Singh

direction to the respondents to grant the first and the second financial upgradation under the Assured Career Progression Scheme ('ACP' for short), w.e.f. 9.8.1999 with all consequential benefits including arrears of pay and allowances with interest at the rate of 12% per annum.

2. Applicant's case is that he was initially appointed after due selection on the post of Senior Technical Assistant pay scale Rs. 210-360 in the year 1972. Subsequently, he was selected through Union Public Service Commission (UPSC) for the post of Research Associate and was promoted as such w.e.f. 31.12.1977. The pay scale of Senior Technical Assistant and that of Research Associate, were merged together in the scale of Rs. 5500-9000 in terms of the Recommendations of the V Pay Commission. Contention of the applicant is that he had joined the respondent-department in the year 1972 and he had completed 24 years of service by the year 1996 and, therefore, in terms of the ACP Scheme, he is entitled to two financial upgradations on 9.8.1999, the date of effect of the ACP Scheme. Applicant has cited clarification No. 1 given by the Government of India vide Office Memorandum dated 10.2.2000 in support of his contention. Hence, this application.

3. In the counter, the case of the applicant has been denied by the respondents. It is stated by the respondents that the applicant though, initially appointed on the post of Senior Technical Assistant, was subsequently appointed on the post of Research Associate as a direct recruit in the year 1977 and, therefore, for the purpose of ACP Scheme his services would be counted from the year 1977 and he would be entitled to second upgradation only after completion of 24 years of service counting from 1977. The respondents relying upon clarification No. 5 given by the Government of India, vide Office Memorandum dated 10.2.2000, have denied the benefit of second upgradation to the applicant.

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4. We have heard the learned counsel for the parties and perused the record of the case carefully.

5. For better appreciation of the rival arguments, we consider it appropriate to extract below, Clarification No. 1 and Clarification No. 5 of the Office Memorandum dated 10.2.2000 :-

"Point of Doubt :

Two posts carrying different pay scales constituting two rungs in a hierarchy have now been placed in the same pay scale as a result of rationalization of pay scales. This has resulted into change in the hierarchy in as much as two posts which constituted feeder and promotion grades in the pre-merged scenario have become one grade. The position may be clarified further by way of the following illustration : Prior to the implementation of the Fifth Central Pay Commission recommendation, two categories of posts were in the pay scales of Rs. 1,200-1800 and Rs. 1320-2040 respectively; the latter being promotion post for the former. Both the posts have now been placed in the pay scale of Rs. 4000-6000. How the benefits of the ACP Scheme is to be allowed in such cases ?

Clarification No.1

Since the benefits of upgradation under ACP Scheme (ACPS) are to be allowed in the existing hierarchy, the mobility under ACPS shall be in the hierarchy existing after merger of pay scales by ignoring the promotion. An employee who got promoted from lower pay scale to higher pay scale as a result of promotion before merger of pay scales shall be entitled for upgradation under ACPS ignoring the said promotion as otherwise he would be placed in a disadvantageous position vis-a-vis the fresh entrant in the merged grade.

Point of Doubt :

"Whether a Government servant, who is direct recruit in one

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grade and subsequently joins another post again as direct recruit, is eligible for first financial upgradation under ACPS after completion of 12 years of service counted from the first appointment or from the subsequent second appointment as direct recruit ?

Clarification No. 5 :

"The benefits under ACPS are limited to higher pay scale and do not confer designation, duties and responsibilities of the higher post. Hence, the basic criterion to allow the higher pay scale under ACPS should be whether a person is working in the same pay scale for the prescribed period of 12/24 years. Consequently, so long as a person is in the same pay scale during the period in question, it is immaterial whether he has been holding different posts in the same pay scale. As such, if a Government servant has been appointed to another post in the same pay scale either as a direct recruit or on absorption (transfer) basis or first on deputation basis and later on absorbed (on transfer basis), it should not make any difference for the purpose of ACPS so long as he is in the same pay scale. In other words, past promotion as well as past regular service in the same pay scale, even if it was on different posts for which appointment was made by different methods like direct recruitment, absorption (transfer)/deputation, or at different places should be taken into account for computing the prescribed period of service for the purpose of ACPS. Also, in case of absorption (transfer)/deputation in the aforesaid situations, promotions earned in the previous / present organizations, together with the past regular service shall also count for the purpose of ACPS. However, if the appointment is made to higher pay scale either as on direct recruitment or on absorption (transfer) basis or first on deputation basis and later on absorbed (on transfer basis), such appointment shall be treated as direct recruitment and past service / promotion shall not count for benefits under ACPS."

6. It is a fact that pay scale of Senior Technical Assistant and that of Research Associate, have been merged into one scale of Rs.

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5500-9000 as per the Recommendations of the V Central Pay Commission. It is also not disputed that the post of Senior Technical Assistant was in the feeder cadre for promotion to the post of Research Associate. In that view of the matter, we are of the view that the applicant's case would be covered by Clarification No. 1 (supra). The said clarification provides that an employee who got promoted from lower pay scale to higher pay scale as a result of promotion before merger of pay scales, shall be entitled for upgradation under ACP Scheme ignoring the said promotion as otherwise he would be placed in a dis-advantageous position vis-a-vis the fresh entrant in the merged grade. The applicant was initially appointed in the year 1972 as Senior Technical Assistant and was subsequently appointed on the post of Research Associate in the year 1977. The post of Research Associate was in a higher pay scale and the post of Senior Technical Assistant was in the feeder cadre for promotion to the post of Research Associate. Thus, the applicant fulfils the conditions laid down in Clarification No. 1 and, therefore, he is entitled to count his service from his initial appointment in 1972. Seen in this view, the applicant would be completing 24 years of service by the year 1996 and since the ACP Scheme was implemented from 9.8.1999, the applicant would be entitled to two financial upgradations on 9.8.1999 in terms of the Scheme. Thus, we find much merit in this application and the same deserves to be allowed.

7. The O.A. is accordingly allowed with a direction to the respondents to extend the benefit of first and second financial upgradation to the applicant w.e.f. 9.8.1999 with all consequential benefits including arrears of pay and allowances. No order as to costs.

Gopal Singh
(Gopal Singh)
Member (A)

O.P.Garg
(Justice O.P.Garg)
Vice Chairman

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Part II and III destroyed
in my presence on 19/10/77
under the decision of
Section Officer as per
order dated 14/5/1977

Section Officer (Record)

Second copy
on 1/4/82
SJR

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✓ 0-2-2