

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

ORIGINAL APPLICATION NO. 211/2005

Date of order: 10-11-2009

CORAM:

**HON'BLE MR. JUSTICE S.M.M. ALAM, JUDICIAL MEMBER
HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER**

Smt. Sohni Devi W/o Late Shri Madan Lal, by caste Harijan, aged about 47 years, resident of Nawal Basti, 3rd 'C' Road, Sardarpura, Jodhpur.

(working as Peon under respondent No. 3).

...Applicant.

Mr. Manoj Bhandari, counsel for applicant.

VERSUS



1. The Union of India through the Director General, Indian Council of Medical Research, Ansari Nagar, New Delhi.
2. Senior Dy. Director General, NCD-II, Ansari Nagar, New Delhi - 110029.
3. The Dy. Director and Officer Incharge of Desert Medicine Research Centre, New Pali Road, Post Bag No. 122, Jodhpur.
4. Dr. R.C. Sharma, Officer In-Charge, Desert Medicine Research Centre, Jodhpur.

... Respondents.

Mr. M. Godara, proxy counsel for
Mr. Vinit Mathur, counsel for respondents.

ORDER

Per Hon'ble Dr. K.S. Sugathan, Administrative Member

The applicant in this Original Application is working as a Peon in the respondents' organization. She was originally

engaged as a Sweeper on daily wages in the year 1988. In May 1992, she was appointed as a Peon after a due process of selection. She became entitled to the first financial upgradation under the ACP Scheme in May 2004. However, by letter dated 13.07.2005 (Annexure A/1) the applicant was informed that an outside independent enquiry committee conducted an enquiry on the issue of granting financial upgradation and that as per the opinion given by the said committee the upgradation can be considered at a future date; and that she should wait for the next meeting of the departmental promotion committee. Aggrieved by the stand taken by the respondents, the applicant has filed this Original Application seeking the following relief:



- "(i) by an appropriate order or direction, the impugned communication dated 11/13.7.2005 (Annex. A/1) and 27.5.2005 (Annex. A/13) & 29.06.2004 (Annex. A/10) may kindly be declared illegal and be set aside and the respondents be directed to convene the DPC forthwith to consider the case of applicant.
- (ii) by an appropriate order or direction, the respondents be directed to grant the ACP benefit to the applicant after completion of 12 years of service w.e.f. July, 2001 with all consequential benefits along with interest @ 24% per annum from the date the same had become due till the date of payment.
- (iii) Any other appropriate order or direction which this Hon'ble Tribunal may deem fit just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.

2. The respondents filed a reply in September 2005. It is contended in the said reply that the applicant has not been denied the benefit of the ACP scheme. The competent authority considered the matter and decided to keep it pending

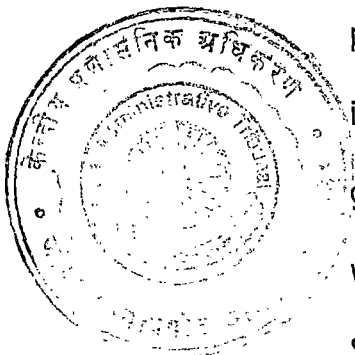
for the consideration of the next DPC as she was not considered fit for grant of the benefit. That action of the respondents is strictly in accordance with the ACP scheme. The decision of the Departmental Promotion Committee (DPC) was conveyed to the applicant vide letter dated 29.06.2004 (Annex. A/10). She was also advised to improve her performance. It is also contended in the reply that the applicant is a habitual latecomer and spends office time in gossiping. She was issued a memo dated 27th June 2005 for participating in a Dharna organized by some sections of employees against the management. The respondents are also contemplating initiating disciplinary proceedings against the applicant pursuant to the memo issued to her in June 2005. However, the proposed departmental proceedings have no relevance to the relief prayed in the Original Application by the applicant.

3. The applicant filed a rejoinder in September 2005 itself denying the allegations made against the applicant in the reply statement. It is also stated in the rejoinder that the respondents are required to hold DPC meetings every year for the purpose of considering ACP benefits and that they cannot go on delaying it. She has been working in the organization since 1988 and no memo was ever issued to her till the year 2005. The ACP became due to her in the year 2004. No reason has been given for denying the benefit of ACP. There has been no adverse entry in her service record. The Dharna



was organized by SC/ST employees union to protest against the attitude of the management.

4. In an additional affidavit filed by the applicant in January 2007 further arguments have been advanced. This was in response to some points made by the counsel for the respondents during the course of the arguments. It is stated in the said additional affidavit that the matriculation pass is not required for the post of Peon. A peon who has put in at least 3 years of service is entitled for promotion as Record Sorter, which is created by the ICMR headquarter office. Therefore, it is wrong to state that there is no promotional avenue for the post of Peon. The objective of the ACP scheme will be defeated if it is insisted that peons who are not matriculates cannot be given the next promotional scale of LDC. Shri Ram Lal, Peon who is not a matriculate has been given the benefit of ACP. Similar benefits have been given to other Class IV employees i.e. Smt. Kanti, Lab Attendant, Ladu Ram, Peon and Shri Mukesh.



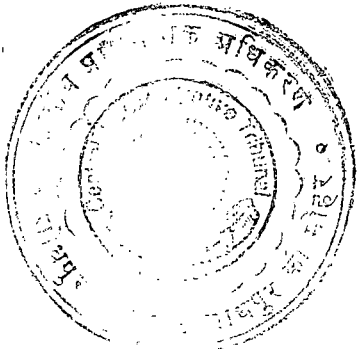
5. The respondents filed an additional reply in February 2007 in which they have taken the stand that there is no post of Record Sorter in the organization for which peons are eligible for promotion. It is also stated that for getting the pay scale of the LDC a pass in matriculation is necessary. The case of the applicant is not comparable to that Mr. Mahesh Sharma and Mrs. Kanta as they are attendants in the technical cadre. The

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matter regarding the grant of ACP to Peon Shri Ram Lal will be looked into.

6. We have heard the learned counsel for the applicant Shri Manoj Bhandari and the learned counsel for the respondents Shri Godara for Shri Vinit Mathur. We have also perused the records carefully.

7. The issue for consideration in this Original Application is whether the respondents are justified in delaying the granting of ACP benefits to the applicant. The objective of the ACP Scheme is to ensure that employees do not stagnate in the same pay scale for long years. For that reason, it is stipulated in the ACP Scheme that the Screening Committee shall meet twice in a year. The relevant paragraph of the ACP Scheme reads as follows:



"No. 35034/1/97-Estt (D)
Government of India
Ministry of Personnel, Public Grievances and Pensions,
(Department of Personnel and Training)

North Block New Delhi 110001
August 9, 1999

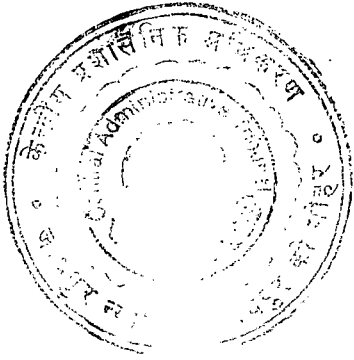
OFFICE MEMORANDUM

Subject: THE ASSURED CAREER PROGRESSION SCHEME FOR
THE CENTRAL GOVERNMENT CIVILIAN EMPLOYEES.

xxxxxx

6.3 In order to prevent operation of the ACP Scheme from resulting into undue strain on the administrative machinery, the Screening Committee shall follow a time - schedule and meet twice in a financial year - preferably in the first week of January and July for advance processing of the cases. xxxxx"

8. The respondents have not disputed the eligibility of the applicant for the first financial upgradation with effect from May 2004 when she completed 12 years of regular service as a Peon. It is seen from the communication dated 29.06.2004 (Annex. A/10) that the Departmental Promotion Committee considered the issue but as she was not found fit, it was decided to consider the matter in the next meeting of the Committee. From the documents available on record it appears that the next meeting was not convened for the purpose till at least the filing of the additional affidavit in February 2007. The reply filed by the respondents does not indicate that there is any adverse entry in her service record for the relevant period prior to the date of eligibility. No adverse entry in the ACR has been communicated to her. The show cause notice issued to the applicant is dated 27th June 2005 for participating in the Dharna, but that is a year after she became due for the first ACP and therefore as rightly stated by the respondents themselves, that show- cause notice or the proposed action is not relevant for the purpose of granting the first ACP. The Screening Committee is required to scrutinize the service record/ACRs of the employee in the five years prior to the date in which the employee became entitled to the financial upgradation. The applicant became entitled to the first financial upgradation in May 2004. If the meeting of the DPC held in 2004 found that the applicant was not suitable for grant of ACP benefit, the matter should have been considered by convening



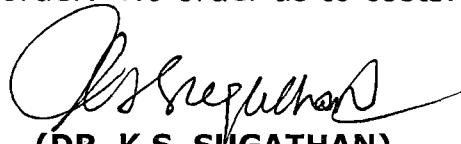
another meeting of the Committee after six months or at least after one year. That does not appear to have been done by the respondents. In that view of the matter, we are unable to accept the contention of the respondents that they have acted within the guidelines of the ACP Scheme. We are, therefore, of the considered view that the respondents have failed to carry out their duty to implement the ACP scheme in its letter and spirit. It is also seen from the records that another Peon Shri Ram Lal who is the immediate senior of the applicant as per the seniority list at Annex. A/6 has been given the benefit of the first financial upgradation by order dated 25.11.1999 (Annex. A/18). The respondents have not denied the granting of ACP to peon Ram Lal. They have merely stated that the matter will be looked into. The entitlement of the applicant to get the same scale in the first upgradation given to Shri Ram Lal, peon stands clearly established.

9. In view of the above discussion we are of the considered view that the respondent's action in delaying the decision regarding grant of ACP to the applicant is arbitrary and illegal. Therefore this is a fit case which calls for a direction to be given to the respondents to convene the meeting of the DPC immediately and consider the case of the applicant on the basis of service record during the five year period prior to May 2004.

10. For reasons stated above, the Original Application is allowed. The impugned order dated 13.07.2005 is quashed and

set aside. The respondents are directed to convene the meeting of the DPC immediately, in any case within a period of one month from the date of receipt of copy of this order for considering the granting of the ACP benefit to the applicant on the basis of service record prior to May 2004. Necessary orders in this regard should be issued by the respondents within a period of two months from the date of receipt of copy of this order. No order as to costs.




(DR. K.S. SUGATHAN)
ADMINISTRATIVE MEMBER


(JUSTICE S.M.M. ALAM)
JUDICIAL MEMBER

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Received Copy
Gould
13/11/09

13/11/09

Part II and III destroyed
in my presence on 8/11/08
under the supervision of
section officer () as per
order dated 07/07/15
Section officer (Records)