

109

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application No.307/2007

Date of decision: 11/05/2011

Hon'ble Mr. Justice Syed Md Mahfooz Alam, Judicial Member.
Hon'ble Mr. Sudhir Kumar, Administrative Member.

Mangi Lal Meena S/o Shri Sawant Ram, aged about 56 years, by caste Meena (ST), R/o Central Cattle Breeding Farm, Residential Colony, Post Bhagwan Sar, Via Suratgarh, District Ganganagar. Presently working as Fieldman in the office of Central Cattle Breeding Farm, Suratgarh.

: Applicant.

Rep. By: Mr. Manoj Bhandari, counsel for applicant.

Versus

1. The Union of India, through the Secretary, Ministry of Agriculture, Krishi Bhawan, Government of India, New Delhi.
2. The Joint Secretary, Ministry of Agricultural, Department of AHD & Fisheries, Room No.530, Krishi Bhawan, New Delhi.
3. The Director, Central Cattle Breeding Farm, Suratgarh, District Ganganagar.

: Respondents.

Rep. By: Mr. M.S. Godara, proxy counsel for
 Mr. Vinit Mathur, counsel for respondents.

ORDER

Per Sudhir Kumar, Administrative Member.

The applicant was appointed to the post of Agricultural Fieldman on 08.05.1975, and is before us aggrieved by the office memorandum dated 23.10.2007 (Annexure-A/1) by which he has been informed that the benefit of the Second Assured Career Progression accorded to him in the pay scale of Rs.5000-8000 is in order, and cannot be revised to be in the pay scale of Rs.6500-10500, due to his not fulfilling the eligibility criteria for the post of



Agricultural Officers associated with the pay scale as per the recruitment rules, which require a Diploma in Agriculture, and he has preferred this O.A claiming the following reliefs:-

- "(i) by an appropriate order or direction, the order dated 23.10.2007 (Annexure-A/1) passed by the respondent No.3 may kindly be declared illegal and be set aside.
- (ii) By an appropriate order or direction, the respondents be directed to confer him the benefit of second ACP i.e. second financial upgradation after completion of 24 years of service w.e.f 01.05.1999 with all consequential benefits in the pay scale of Rs.6500-10500.
- (iii) By an appropriate order or direction, the order granting him the pay scale i.e. 22.02.2000 may kindly be modified to the extent that he may confer the benefit of pay scale of Rs.6500-10500 instead of 5000-8000 w.e.f. 01.05.1999 alongwith interest @ 18% per annum from the date the same had become due till the date of payment.
- (iv) 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 applicant has pleaded that the first promotional post for an Agricultural Fieldman is Agricultural Assistant, and the next promotional post is Agricultural Officer, which requires a degree or diploma in Agriculture from a recognized University, and also three years' experience, for the purposes of direct recruitment. A post similar to Agricultural Officer is that of a Livestock Officer, which requires a degree or diploma in Veterinary Science from a recognized University, with three years' experience, for the purposes of direct recruitment. However, the applicant has submitted that for being appointed as a Livestock Officer or Agricultural Officer, a person working in Agricultural Assistant



grade, with eight years of service on a regular basis, can be considered for promotion. And, for being promoted as an Agricultural Assistant, the initial requirement in the lower pay scale of Agricultural Fieldman is five years' of service experience, but it requires possession of diploma or degree for the purposes of direct recruitment.

3. Applicant has accepted that his qualification is only that of a Higher Secondary from the Board of Secondary Education, Rajasthan. When the Assured Career Progression Scheme was introduced by the Central Government w.e.f. 09.08.1999 (Annexure-A/4), the applicant, who was working as an Agricultural Fieldman then, and had not received any promotion in the regular course till that date, was conferred with the ACP benefits of both the First and Second Financial Upgradations together, through Annexure-A/5 dated 22.02.2000. He was first allowed ACP benefit in the pay scale of Rs.4500-7000, and the Second ACP benefit in the pay scale of Rs.5000-8000, and allowing these benefits at internal of 12 and 24 years of his service, on 09.08.1999, the pay of the applicant was fixed at Rs.5300, i.e. two increments ^{above} the minimum of the pay scale, with the next date of increment being fixed as 01.08.2000. Not being satisfied with this fitment, the applicant submitted a representation dated 24.01.2004 (Annexure-6), stating that since he is the senior-most Agricultural Fieldman in the organization, he ought not to have been given the benefit of the Second ACP in the pay scale of Rs.5000-8000, which was

applicable only to the isolated post, but, treating his qualification of Higher Secondary Examination, with Agriculture as a subject, to be equivalent to the Diploma qualification prescribed, he may be allowed the pay scale of Agricultural Officers i.e. Rs.6500-10500 as his Second ACP benefit, in accordance with Annexure-A/7, Office Memorandum dated 10.11.2003, which states as follows:-

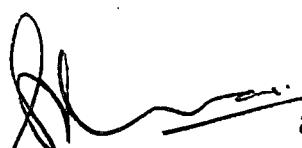
"OFFICE MEMORANDUM"

Subject:-2nd Financial upgradation under ACP Scheme to the post of Fieldman in Subordinate Offices under A.H. Division-reg.

The undersigned is directed to say that the matter regarding grant of 2nd Financial Upgradation to the Agricultural Fieldman of Regional Stations for Forage Production & Demonstrations (RSFP & Ds) and Central Cattle Breeding Farms (CCBFs) has been considered in consultation with DoPT and it has been decided to allow 2nd financial upgradation under ACP Scheme after completing 24 years of service to those Agricultural Fieldmen of the RSFPDs and CCBFs who are not eligible to second promotion as Agriculture Officers (Scale of pay Rs.6500-10500) owing to their not possessing Diploma in Agriculture.

All concerned officers are requested to process pending ACP cases of such Agricultural Fieldman, if any, accordingly under intimation to this Department."

4. The contention of the applicant is that the ACP scheme envisaged benefits of financial upgradation to be granted only in the pay scales of the prescribed promotional hierarchy, and since in his hierarchy, the next promotion was only to the post of an Agricultural Officer, in the pay scale of Rs.6500-10500, just because he was not possessing the prescribed qualification of Diploma in Agriculture, his Second ACP benefit could not have been accorded in the pay scale of Rs.5000-8000, which is not a part of a



defined promotional hierarchy, and is a pay scale associated only with an isolated post. Not getting a favourable response, the applicant submitted another representation on 02.07.2007 (Annexure-A/9), in response to which the impugned O.M. dated 23.10.2007 (Annexure-A/1) has been issued.

5. The applicant submitted that this impugned clarification is absolutely contrary to the basic principles of the service jurisprudence, and the provisions of ACP Scheme. He submitted that several others have been granted the benefit of Second ACP in the pay scale of Rs.6500-10500, and that his being denied the benefit of Second Financial Upgradation in the ACP Scheme in the relevant pay scale of Rs.6500-10500 is arbitrary, discriminatory, and violative of Articles 14 and 16 of the Constitution of India.

6. He further submitted that the rejection of his case on the ground that he does not possess a degree or a diploma in Agriculture is illegal and contrary to the relevant Rules. He, therefore, prayed for the O.A. to be allowed and the reliefs as enumerated in the opening paragraph to be granted to him.

7. The respondents filed a detailed reply written statement on 28.05.2008. Explaining the Scheme of ACP, they submitted that financial upgradation under the ACP Scheme has to be given in to the next higher grade in the service within the existing hierarchy in a cadre/category of post, without creating any new post for the purpose. However, in the case of isolated posts, in the absence of a

defined hierarchy of grades, financial upgradation shall be given by the Ministry/Department concerned in the immediately next higher standard/common pay scale, as indicated in the order of the ACP Scheme itself. They submitted that as the applicant does not fulfill the eligibility criteria as per the Recruitment Rules for the posts of Agricultural Officers in the pay scale of Rs.6500-10500, because he does not possess even a diploma in agriculture, he could not have been granted that pay scale as a part of the Second ACP Financial Upgradation.

8. Explaining further the contents of the O.M. dated 10.11.2003 (Annexure-A/7) reproduced above in para-3, the respondents submitted that those who are not eligible for second promotion as Agricultural Officers in the pay scale of Rs.6500-10500 owing to their not possessing even a diploma in agriculture, could have been granted the Second ACP benefit only in the next higher standard/common pay scale of Rs.5000-8000. It was submitted that while granting the First and Second ACP benefits on completion of 12 and 24 years of service respectively against the existing hierarchy, the prescribed conditions as per the norms of Recruitment Rules should be fulfilled by the employee concerned. It was submitted that the applicant has tried to mislead this Tribunal by citing only the O.M. dated 10.11.2003 as Annexure-A/7, even though it has since been amended and superseded by the O.M. dated 24.11.2001 (Annexure-R/3) in which this aspect has been clarified as below:-



"OFFICE MEMORANDUM"

Subject:-2nd Financial upgradation under ACP Scheme to the post of Fieldman in Subordinate Offices under A.H. Division-reg.

In supercession of this Department's O.M. of even number dated 10.11.2003, the undersigned is directed to say that the matter regarding grant of 2nd Financial Upgradation to the Agricultural Fieldman of Regional Stations for Forage Production & Demonstrations (RSFP & Ds) and Central Cattle Breeding Farms (CCBFs) has been considered in consultation with DoPT and it has been decided to allow 2nd financial upgradation under ACP Scheme after completing 24 years of service to those Agricultural Fieldmen of the RSFPDs and CCBFs who are not eligible to second promotion as Agriculture Officers (Scale of pay Rs.6500-10500) owing to their not possessing Diploma in Agriculture, in the scale of pay of Rs.5000-8000.

All concerned officers are requested to process pending ACP cases of such Agricultural Fieldman, if any, accordingly under intimation to this Department."

9. The respondents also filed the concerned Recruitment Rules relating to the post of Agriculture Officers through Annexure-R/1, to submit that the applicant has tried to mislead the Tribunal by quoting wrongly. The cases of other Agricultural Fieldmen, who had been granted the Second ACP benefit in the relevant pay scale of Rs.6500-10500, were explained by stating that those persons possessed the qualification of B.Sc. Degree in Agriculture etc., and fulfilled the promotional norms. The respondents also objected to the claim of the applicant for First and Second ACP benefits to be granted to him from 01.05.1999, stating that the ACP Scheme itself was introduced only w.e.f. 09.08.1999, for grant of benefits from that date after taking into account the date of completion of 12 years and 24 years of continuous service by the employees concerned. The respondents had, therefore, prayed that the

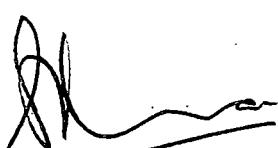
impugned clarificatory order communicated to the applicant on 23.10.2007 (Annexure A/1) was absolutely correct, and in accordance with the ACP Scheme, read with the clarificatory O.M. dated 24.11.2001 (Annexure-R/3), reproduced in para 8 above, and that the O.A. therefore deserves to be dismissed with costs.

10. The applicant filed a rejoinder on 20.02.2009 more or less reiterating his pleadings in the O.A. Through this, he pointed out that under the Revised Pay Rules of 2008, after the Sixth Pay Commission, through an order passed on 15.09.2008, the respondents have conferred the benefit of the pay scale of Rs.9300-34800 and grade pay of Rs.4200 on the applicant through Annexure-A/11, and w.e.f. 01.01.2006 he has already been conferred pay scale equivalent to the pay scale of Rs.6500-10500. In view of this, he submitted that the respondents themselves had now not relied upon as to whether a person was holding a diploma or not, and all have now been treated equally for the purpose of revision of pay scale. He, therefore, pleaded that non-possessing of diploma cannot now be a ground for the respondents to deny him his Second Financial Upgradation under the ACP Scheme in the pay scale of Rs.6500-10500. He further submitted that the respondents cannot be permitted to approbate and reprobate in the matter of conferring upon him the pay scale, which would be violative of Articles 14, 16 & 21 of the Constitution of India.

11. The respondents filed an additional affidavit in response on 15.07.2009. In this, they reiterated that for the grant of Second

ACP benefit in the existing defined hierarchy, possession of the prescribed educational qualifications for promotion to the next higher post, as per the norms of Recruitment Rules, was a requirement which should be fulfilled on mandatory basis by the employee concerned, as laid down in the ACP scheme itself. They, therefore, justified that unless the applicant fulfills the prescribed qualifications as per the Recruitment Rules, the benefit of grant of the next defined hierarchy promotional pay scale of Rs.6500-10500 could not have been given to the applicant.

12. Explaining the merger of various pay scales w.e.f. 01.01.2006 after the Sixth Pay Commission award through the Revised Pay Scales Rules, 2008, they explained that in fact on the basis of Sixth Pay Commission report, the pre-revised pay scales of Rs.5000-8000 (S-9) and Rs.5500-9000 (S-10), irrespective of the post, have now been merged and upgraded alongwith the pay scale of Rs.6500-10500 (S-12), which have all now been clubbed together in a single combined pay scale of Rs.9300-34800, with a grade pay of Rs.4200. But it was clarified that the same is not applicable to all the Fieldmen, and the original pay scale of the Fieldman, which the present applicant held, is still R.4000-6000 (S-7), which has now been allotted the new combined pay scale of Rs.5200-20200, with a grade pay of Rs.2400. It was further clarified that since the applicant was already drawing the pay scale of Rs.5000-8000 (S-9), after the grant of Second ACP benefit to him, his pay scale was upgraded to the new combined pay scale of



Rs.9300-34800 + grade pay of Rs.4200, with effect from 01.01.2006 (Annexure-A/11). It was however submitted that this still does not mean that the applicant has come to fulfill the eligibility criteria for substantive promotion in the defined hierarchy, or that both the categories of persons, whether holding diploma or not, are now akin to each other for the purpose of revision of pay scale. In the result, the respondents had prayed once again that possession of the required qualification was mandatory for the grant of ACP benefit in defined hierarchy for the purpose of promotion, and, therefore, the O.A. is liable to be dismissed.

13. Heard. The learned counsels argued along the lines of their pleadings. Learned counsel for the applicant emphasized that the ACP Scheme did not provide for a pay scale outside the regular hierarchy of promotion to be granted as an ACP benefit. However, the learned counsel for the respondents explained the ACP scheme as also the Assured Career Progression Mechanism, and submitted that Annexure-I of the O.M. dated 09.08.1999 had clearly prescribed the requirements on the basis of which the financial upgradations under the ACP scheme could have been granted. He also pointed out to Annexure-II of the O.M., which had described the revised pay scales S-1 to S-24, which were the standard/common pay scales prescribed for the purpose of grant of ACP benefits.

S.M.

14. It is seen that Para 11 of the O.M. dated 09.08.1999 providing for grant of ACP benefits states that any interpretation/clarification/doubt as to the scope and meaning of the provisions of ACP Scheme shall be given by the Department of Personnel and Training. Para 6, 7 and 8 of the Annexure-I to the O.M. dated 09.08.1999 state as follows:-

"6. Fulfillment of normal promotion norms (bench-mark, departmental examination, seniority-cum-fitness in the case of Group 'D' employees, etc.) for grant of financial upgradations, performance of such duties as are entrusted to the employees together with retention of old designations, financial upgradation as personal to the incumbent for the stated purposes and restriction of the ACP Scheme for financial and certain other benefits (House Building Advance, allotment of Government accommodation, advances, etc.) only without conferring any privileges related to higher status (e.g. invitation to ceremonial functions, deputation to higher posts, etc.) shall be ensured for grant of benefits under the ACP Scheme.

7. Financial upgradation under the scheme shall be given to the next higher grade in service with the existing hierarchy in a cadre/category of posts without creating new posts for the purpose. However, in case of isolated posts, in the absence of defined hierarchical grades, financial upgradation shall be given by the Ministries/Departments concerned in the immediately next higher (standard/common) pay scales as indicated in Annexure II which is keeping with Part-A of the First Schedule annexed to the Notification dated September 30, 1997 of the Ministry of Finance (Department of Expenditure). For instance, incumbents of isolated posts in the pay scale S-4, as indicated in Annexure-II, will be eligible for the proposed two financial upgradations only to the pay scale S-5 and S-6. Financial upgradation on a dynamic basis (i.e. without having to create posts in the relevant scales of pay) has been recommended by the Fifth Central Pay Commission only for the incumbents of isolated posts which have no avenues of promotion at all. Since financial upgradations under the Scheme shall be personal to the incumbent of the isolated post, the same shall be filled at its original level (pay scale) when vacated. Posts which are part of a well defined cadre shall not qualify for the ACP Scheme on 'dynamic' basis. The ACP benefits in their case



shall be granted conforming to the existing hierarchical structure only.

8. The financial upgradation under the ACP Scheme shall be purely personal to the employee and shall have no relevance to his seniority position. As such, there shall be no additional financial upgradation for the senior employee on the ground that the junior employee in the grade has got higher pay scale under the ACP Scheme."

15. As seen above, fulfillment of the normal promotion norms was very much a requirement for the grant of financial upgradation under the ACP Scheme. What would happen if an employee does not fulfill the normal promotion norms had, however, not been prescribed in as many words in Annexure-I to the DoPT O.M. dated 09.08.1999 (Annexure-A/4). It is seen that only to clarify the position in regard to the persons not fulfilling the normal promotion norms, O.M. dated 10.11.2003 (Annexure-A/7), which is also Annexure-R/2, and the subsequent clarification O.M. dated 24.11.2003 (Annexure-R/3), were issued by the respondents, in consultation with the Department of Personnel and Training, as was permitted under the above cited para 11 of the original ACP Scheme itself as notified through O.M. dated 09.08.1999.

16. It is clear from the contents of the ACP Scheme O.M. dated 09.08.1999, and its Annexure-I that this Assured Career Progression Scheme was introduced to mitigate hardship in cases of stagnation, either in a defined cadre, or in an isolated post, while vacancy based promotions, as distinct from the financial upgradations under the ACP Scheme, were to be continued to be granted as regular promotions. Para 6.2 of the ACP O.M. dated

09.08.1999 also prescribed that the composition of the Screening Committee for the purpose of grant of ACP was to be same as that prescribed for the DPC for considering regular promotions to the higher grade, to which financial upgradation has to be granted. The Screening Committee, therefore, was obviously expected to verify the fulfillment of the norms relating to possession of the required educational qualifications, and also the residency period (regular service counted from the date on which an employee was appointed as a direct recruit) and other normal promotional norms, before recommending sanction of ACP benefits. It was further clarified by para 5.1 of Annexure-I of the ACP O.M. dated 09.08.1999 that the financial upgradations under the ACP scheme were to be counted against regular promotions, and that two financial upgradations under the ACP scheme were to be available only if no regular promotions had been availed of by an employee during the prescribed periods of 12 years and 24 years, and if any employee had already got one regular promotion, he was to qualify only for the grant of Second Financial Upgradation on completion of 24 years of regular service. In ample measure it was prescribed that in case two prior promotions had already been received by the employee, no benefit under the ACP scheme was to be accorded to him.

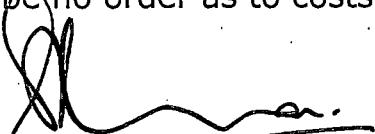
17. As mentioned above, the ACP Scheme as notified on 09.08.1999 did not prescribe anywhere as to what was to be done in the cases of Government employees who had completed the

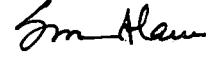
prescribed residency period of 12 years or 24 years in their respective lower pay scales, but did not fulfill the normal promotion norms like possessing of the required essential educational qualification, the bench-mark of performance as per their ACRs, passing of the Departmental Examination, and, in the case of Group 'D' employees, seniority-cum-fitness criteria etc. One thing is however clear from a combined reading of para 6 and para 7 of the Annexure-I of the ACP O.M. dated 09.08.1999 as cited above in para 14 that in the absence of fulfillment of normal promotion norms, an employee could not have been given the next higher grade within a existing hierarchy in a cadre/category of posts.

18. What Annexure-R/3 dated 24.11.2003 has done is that while modifying the earlier order dated 10.11.2003 Annexure-A/7 / Annexure-R/2, it has prescribed that even if Agricultural Fieldmen of the respondent department are not eligible for norm based regular promotion as Agricultural Officers, due to their non fulfillment of normal promotion norms, owing to their not possessing the requisite minimum prescribed educational qualification of a Diploma in agriculture, which makes them ineligible for grant of ACP benefits by the Screening Committee in the normal existing hierarchy, in the pay scale of Rs.6500-10500 prescribed for the cadre/category of posts as an Agricultural officers, as a measure of mitigation of hardship and stagnation, such persons, who would otherwise have been totally denied the ACP benefits, have been declared to be still eligible for grant of ACP benefits into the next available standard/common pay scale S-9

Rs.5000-8000, which is quite sympathetic an attitude, and stands to reason. In case this clarificatory O.M. dated 24.11.2003 (Annexure-R/3) had not been issued for allowing Second ACP benefit in the S-9 pay scale of Rs.5000-8000 to the Agricultural Fieldmen not fulfilling the normal promotion norms, by virtue of operation of paragraph 6 of Annexure-I of the ACP O.M. dated 09.08.1999, the Second ACP benefit would not have been available to them at all, altogether, because of their not fulfilling the normal promotion norms.

19. Therefore, we do not find anything contrary to the spirit of the ACP scheme O.M. dated 09.08.1999 having been done in the case of applicant, and the O.A. is therefore dismissed, but there shall be no order as to costs.


[Sudhir Kumar]
Administrative Member


[Justice S.M.M. Alam]
Judicial Member