

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

ORIGINAL APPLICATION NO. 45/2008

Date of Order: 25th May, 2011.
SK.

CORAM:

HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER
HON'BLE MR. SUDHIR KUMAR, ADMINISTRATIVE MEMBER

Chittar Lal Sameria S/o Shri Bhanwar Lal, aged about 49 years, presently working as Store Keeper in Central Cattle Breeding Farm, Suratgarh, R/o Type-II/7, C.C.B.F., Residence Colony, Suratgarh.

...Applicant.

Mr. Manoj Bhandari, counsel for the applicant.

Versus

1. The Union of India through the Secretary, Ministry of Agriculture, Department of Animal Husbandry and Dairing, Krishi Bhawan, New Delhi.
2. The Director, Department of Animal Husbandry and Fisheries and Central Cattle Breeding Farm, Suratgarh - 335804.

...Respondents.

None present for the respondents.

ORDER

(Per Sudhir Kumar, Administrative Member)

The applicant is a qualified Mechanic possessing diploma in Agriculture Farm (Mechanic) and was appointed as Junior Mechanic in June, 1979, under the respondent no. 2. In that cadre, his next promotion was to the post of Senior Mechanic.

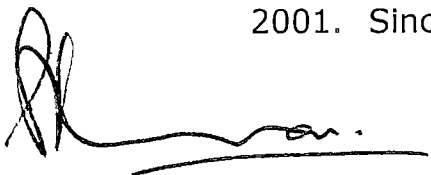
2. However, in the meanwhile, a separate category post of Store Keeper was circulated by the respondents, and newspaper advertisement was also given for the same seeking applications

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from eligible S.C. candidates, since the post was reserved for S.C. candidates as per the roster. The applicant also applied, faced the Departmental Selection Committee on 11.10.1994 (Annexure A/3), and among the 07 candidates, who had appeared at the interview, he was found fit, and his name was recommended for appointment to the post of Store Keeper, keeping the name of another person on the waiting list. These proceedings of the Departmental Promotion and Selection Committee were approved, and through Annexure A/4 dated 07.06.1995, offer of appointment order for the post of Store Keeper was issued to the applicant, which post he joined on 09.06.1995.

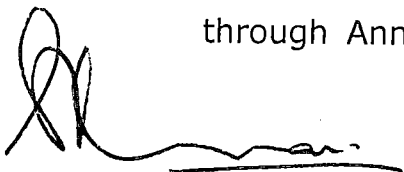
3. The applicant completed two years' probation in his new post and was confirmed w.e.f. 08.06.1997 by the order dated 28.09.1999, issued by the respondent no. 1 through Annexure A/5.

4. In the meanwhile, the respondents had introduced a scheme called ~~Annual~~ ^{Advance} Career Progression Scheme (ACP Scheme, for short) for removing the stagnation in cadres, and for the purpose of conferring the financial benefits of promotional pay scales after completion of 12 and 24 years of service in the cases of employees who never got regular promotion, and the scheme was issued on 09.08.1999 through Annexure A/6. Certain clarifications regarding the ACP scheme were later issued through Annexure A/7 office memorandum dated 18th July, 2001. Since the applicant had completed 12 years of his service



from the date of his initial appointment in June 1979 as a Junior Mechanic, and since he had not been granted any promotion, and since it was his contention that his selection as Store Keeper in 1995 was not a promotion in the cadre of Junior Mechanic, but was a selection outside the cadre, the applicant submitted that such recruitment or promotion not being in his original promotional hierarchy could not have been treated by the respondents as a promotion, debarring him from the claim of benefit under the ACP scheme. The applicant submitted that the clarifications issued through Annexure A/7 dated 18.07.2001 clearly prescribe that if an employee is transferred on request from one cadre to another cadre, the regular service rendered in the previous cadre, shall be counted along with the regular service of the new cadre for the purpose of granting financial upgradation under the ACP scheme, but that, however, the ACP benefit shall be allowed in the hierarchy of the new post, and that the benefit of this clarification ought to have been given to him.

5. The applicant submitted that since he has not been conferred with any benefit of promotion in his previous cadre of Mechanic after completion of 12 years of service in the year 1991 from June, 1979, and that he has not been granted any promotion even after completion of 24 years of his total service in the year 2003, and since his selection as Store Keeper could not be counted as a promotion, he was eligible for grant of both the first and the second ACP benefits under the scheme notified through Annexure A/6, as per the clarifications issued through



Annexure A/7. The applicant represented in this behalf on 07.11.2003 through Annexure A/8, and his case was recommended by respondent no. 2 to the respondent no. 1 through letter dated 29.11.2003 (Annexure A/9). The stand taken by the respondent no. 2 in this letter was that the financial benefit of first ACP has already been granted to the applicant in respect of the first 12 years of his service from June, 1979, and now that he has completed 24 years of regular service, approval was sought to accord him the benefit of 2nd ACP. The applicant also represented once again in this regard to the respondent no. 2 through Annexure A/10 dated 24.01.2004.

6. The applicant further submitted that since the post of Store Keeper has been treated as an isolated post, in accordance with the clarificatory circular dated 07.12.2001 issued by the respondent no. 1 through Annexure A/11, the pay scales prescribed therein for the grant of 1st financial upgradation and 2nd financial upgradation have to be followed by the respondents, but it was not so done in his case. The applicant again represented through Annexure A/12 on 17th July, 2007, after which through Annexure A/13 order dated 19.07.2007, he was granted the benefit of first ACP w.e.f. 08th June, 2007, within his cadre of Store Keeper itself, but not in the pay scale of Rs. 5000-8000 as prescribed through Annexure A/11, but in a lower pay scale of Rs. 4500-7000, which was not prescribed in respect of isolated post of Store Keeper. The applicant represented against this through Annexure A/14 dated 27.07.2007. He submitted that in accordance with his

understanding, he was entitled to the benefit of first ACP in the pay scale of Rs. 4000-6000 after completion of 12 years of his service as Junior Mechanic in the year 1991, and in terms of Annexure A/11, since he had completed 24 years of regular service in the year 2003, he was to be granted 2nd financial upgradation only in the pay scale of Rs. 5500-9000, as prescribed in respect of the isolated post of Store Keeper, which he had in the meanwhile come to occupy from 1995. He requested for modification of the orders issued through Annexure A/13, and also submitted a representation to the respondent no. 1 through his representation dated 22.09.2007 (Annexure A/15), and another representation to the respondent no. 2 on 27.12.2007 through Annexure A/16. Soon thereafter, he learnt that through OM dated 31.07.2007 (Annexure A/2), his earlier request dated 27.07.2007 through Annexure A/14 had been rejected. But both his representations dated 22.09.2007 (Annex. A/15) and dated 27.12.2007 (Annexure A/16) also came to be rejected by the respondents by passing the impugned order at Annexure A/1 dated 02.01.2008, by which it was ordered that since the applicant did not fulfill the condition of essential qualification as given in the Recruitment Rules for the promotional post from the post of Store Keeper, he cannot be given the ACP benefit at all.

7. The applicant has assailed the impugned orders stating that when the respondents have themselves clarified that the post of Store Keeper is an isolated post, the benefit of ACP cannot be denied to him by stating that the next higher post for

promotion was Accountant, and since he does not hold the qualification for being appointed as Accountant, he cannot be granted the ACP benefit, as has been stated in his case through the impugned Annexure A/2. He submitted that Recruitment Rules in respect of the Accountant only prescribe experience of 10 years in the farm of the respondent no. 2, and since he had already completed more than the required number of years of service, he was qualified for being promoted / appointed as Accountant also. The applicant submitted that they cannot obviously dispute regarding conferment of the financial benefit of 1st ACP to him in the pay scale of Rs. 4000-6000 within the cadre of Junior Mechanic when he completed 12 years of service in the year 1991. His submission is that even his service experience as Junior Mechanic shall have to be counted for the purpose of 2nd ACP after completion of 24 years of his continuous service under the respondent no. 2, as has been clarified through Annexure A/7 dated 18.07.2001.

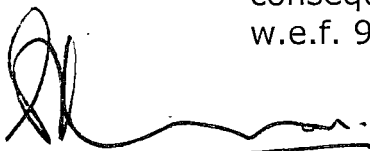
8. The applicant conceded that an amendment had taken place in the Recruitment Rules of the respondent-farm in the year 1993, stating that the post of Store Keeper shall also be treated as a feeder post for the post of Accountant, and a person with 10 years of regular service in the farm, and having undergone the training in Cash and Accounts from ISTM, shall be eligible for promotion, but he submitted that there is no provision in the ACP scheme that a person must possess the relevant qualifications for being appointed in the higher post while granting the benefit of ACP, more so when the post held by

him presently has already been treated as an isolated post, and a separate hierarchy for grant of ACP benefit for the isolated post has already been prescribed by the respondents through Annexure A/11 dated 07.12.2001. He had also submitted that the respondents were wrong in treating his representations as his request for withdrawal of his first ACP benefit, which could not have been treated as withdrawn with retrospective effect through the impugned order dated 31st July 2007 (Annexure A/2), without giving an opportunity of being heard to the applicant. He had reiterated that there cannot be any dispute as regard the conferment of the benefit of first ACP to him within the cadre of Junior Mechanic after his completing 12 years of service, and, as such, the order withdrawing that benefit is arbitrary, unreasonable and discriminatory, and violative of his rights under Article 14 and 16 of the Constitution of India. He had, therefore, assailed the validity of the impugned orders at Annexure A/1 and A/2, and had prayed for them to be declared illegal, and then be quashed & set aside, and had prayed for grant of ACP benefits, by making the following prayers in the prayer portion of the O.A.

"8(i). by an appropriate order or direction, the order dated 2nd Jan., 2008 (Annex. A/1) passed by the Respondent No. 2 may kindly be declared illegal and be quashed.

8(ii). by an appropriate order or direction, the order dated 31st July, 2007 (Annex. A/2) passed by the Respondent No. 2 may kindly be declared illegal and be quashed.

8(iii). by an appropriate order or direction, the respondents be directed to confer the benefit of first ACP after completion of 12 years of service w.e.f. 1.6.1991 to the applicant in the pay scale of Rs. 4000-6000 with all consequential benefits on the introduction of the Scheme w.e.f. 9th Aug., 1999.

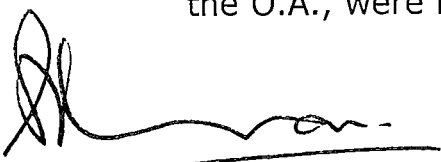


8(iv). by an appropriate order or direction, the respondents be directed to confer the benefit of second ACP after completion of 24 years of service w.e.f. 1.6.2003 in the pay scale of Rs. 5500-9000 with all consequential benefits.

8(v). 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."

9. The respondents explained their position that since the post of Store Keeper is one of the feeder grades to the post of Accountant, and the financial upgradation or promotion to the post of Accountant can only be given to an employee subject to his fulfillment of the conditions of regular promotion as per the Recruitment Rules, and since the applicant does not fulfill the conditions for being granted promotion as per the Recruitment Rules, Annexure R/1, the order dated 02.01.2008 (Annex. A/1) was just and proper.

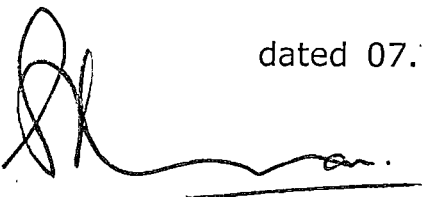
10. The respondents had similarly justified the order dated 31.07.2007 (Annex. A/2) also as being just and proper, as the pay scale of Rs. 4500-7000 allowed to the applicant was also not as per the ACP scheme, and could only have been given if the post of Store Keeper was an isolated one. But since the post of Store Keeper had been declared to be one of the feeder grades to the post of Accountant, and the applicant had failed to qualify/pass the required essential training course, they had justified the withdrawal of even the first ACP granted to the applicant. All the other facts and circumstances, as detailed above, as contained in the O.A., were more or less admitted by the respondents, except





the applicant's contentions about his eligibility for the grant of the benefit of ACP scheme. It was submitted that the applicant was appointed in the pay scale of Rs. 4000-6000 w.e.f. 08.06.1995 on direct recruitment basis, and since he had not completed 12 years' service from that date, as a direct recruit in that pay scale, the applicant can only be treated to have completed 12 years of regular service in the cadre of Store Keeper as a direct recruit on 08.06.2007, and therefore, the first ACP benefit becomes due to him only w.e.f. 08.06.2007, but even that cannot be given to him since he does not fulfill the essential qualification for the next promotional post in the hierarchy, which is essential for the grant of ACP financial upgradations.

11. Since the ACP Scheme was introduced from 09.08.1999, and the applicant had completed 12 years of his service as Junior Mechanic in the year 1991, it was submitted that there was no question of granting any ACP benefit to him with retrospective effect from the year 1991. It was submitted that the applicant was entitled to ACP benefit only in accordance with the post of Store Keeper held by him on the date of introduction of the ACP scheme on 09.08.1999, and since he completes 12 years of service in that post only on 08.06.2007, his eligibility has to be considered only as on that date, which eligibility also he has not been found to fulfill.

12. The respondents denied the applicability of the circular dated 07.12.2001 (Annex. A/11) to the respondent-farm, as it



was addressed to Directors of all subordinate offices, except the respondent no. 2 - Central Cattle Breeding Farm and CHRS, where the post of Store Keeper is not an isolated post. 

13. The learned counsel for the respondents had laid emphasis on the Recruitment Rules of the respondent-Central Cattle Breeding Farm, to show that the post of Store Keeper is not an isolated post in their Farm, and as per notification dated 03.03.1993 (Annex. R/1), issued much prior to the selection and appointment of the applicant as a Store Keeper w.e.f. 09.06.1995, it had already been prescribed that the promotional post for the cadre of Store Keeper will be that of Accountant, and that the post of Store Keeper was prescribed to be one of the feeder cadres for the post of Accountant by mentioning as follows: 

"Promotion:

UDC/Stenographer Gr. D/Store Keeper/UDC-cum-Store Keeper with 10 years regular service in the Central Cattle Breeding Farms and having undergone training in Cash and Accounts work in the ISTM or equivalent.

Note: The eligibility list for promotion shall be prepared with reference to the date of completion of the prescribed qualifying service by the officers in the respective grade/posts."

14. It was further submitted that in view of the specific prescription of "having undergone training in Cash and Accounts work in the ISTM or equivalent", the promotional avenue to a Store Keeper for promotion to the post of Accountant in the grade of Rs. 5500-9000 pre requires possession of the prescribed essential qualification as per the existing hierarchy.

It was submitted that the applicant does not possess this



qualification as per the Recruitment Rules as of now, as he could not pass the test at the end of the training which he had undergone, even though he is within one of the feeder grades for the post of Accountant.

15. It was submitted that it was only on this account that the Departmental Screening Committee had considered the case of the applicant, and allowed him first ACP in the next available pay scale of Rs. 4500-7000 vide order dated 19.07.2007, which was, however, later withdrawn in view of the refusal request given by the applicant through Annexure A/14 dated 27.07.2007.

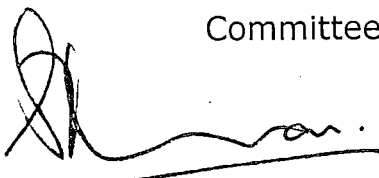
16. It was submitted that after refusal by the applicant, his case was referred to the Ministry for consideration, and was examined in consultation with the Integrated Finance Division of the Department, when vide letter dated 17.10.2007 it was communicated that since he does not fulfill the essential qualification, which is a pre condition for promotion to the post of Accountant as per the Recruitment Rules, he cannot be given ACP benefit. The respondents had, therefore, justified the withdrawal of the ACP benefit incorrectly granted to the applicant in the pay scale of Rs. 4500-7000 on the recommendations of the Departmental Screening Committee earlier through order dated 19.07.2007, more so on the ground that the applicant himself also had refused to accept that benefit.

17. The respondents had further explained the DoPT clarifications in respect to doubt no. 5 & 6 of the order dated



10.02.2000. It was submitted that if an appointment is made to a post carrying higher pay scale, either on the basis of Direct Recruitment or on absorption (transfer) basis, or even first on deputation, these cases shall all be treated as Direct Recruitment to that higher post with higher pay scale, and in such cases, the past service rendered before such promotion in the lower pay scale shall not count for the grant of ACP benefits under the higher pay scale. It was submitted that in the light of this clarification, the benefit of first ACP was due to the applicant only on completion of 12 years from the date of his initial appointment as Store Keeper in the higher pay scale of Rs. 4000-6000 w.e.f. 08.06.1995. It was submitted that, thus, the benefit of first ACP is due to the applicant only as on 08.06.2007, subject to his fulfilling the norms prescribed for regular promotion in the hierarchy. In reply to the contention of the applicant that no qualification for being promoted to the higher post is required under ACP scheme, it was submitted that DoPT itself has clarified the doubts on point no. 16 & 53 vide its order dated 10.02.2000 and 18.07.2001 that only those employees who fulfill all promotional norms, and have not yet got promotion due to stagnation in their cadres, are eligible for being considered for the grant of financial benefit under the ACP scheme.

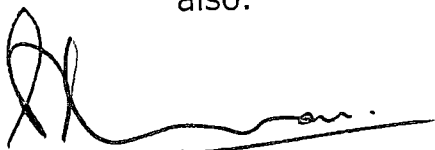
18. Heard. There is merit in the submission of the respondents that the previous service rendered by the applicant before his selection through a proper Departmental Selection / Promotion, Committee to the higher post of Store Keeper in the higher pay



scale of Rs. 4000-6000 w.e.f. 08.06.1995, is not entitled to be counted for the grant of ACP benefit in the higher post. Even though the applicant had spent more than ~~20~~¹⁵ years of service in the lower grade, but that was before the ACP scheme was introduced, and therefore no benefit of ACP can be granted to him in the cadre of Junior Mechanic.

19. Once having come into the higher cadre of Store Keeper w.e.f. 08.06.1995 in the pay scale of Rs. 4000-6000, on the date of issuance of the ACP notification dated 09.08.1999, he became eligible for his case being considered for ACP benefit in his present pay scale and cadre, as and when it becomes due. There is merit in the submission of the respondents that in view of this, the benefit of first ACP in the promotional cadre from the post of Store Keeper was due to the applicant only on completion of 12 years of his service as Store Keeper, on 08.06.2007.

20. Also, there is merit in the contention of the respondents that, as has been prescribed in the ACP scheme itself, the benefit of ACP has to be granted only to those persons who fulfill all the required criteria for regular promotion, but they have not been able to avail of the regular promotion due to stagnation in the cadres and non-availability of posts in the higher post. It is clear that possession of essential qualification for the purpose of promotion is a condition precedent for the grant of ACP benefit also.



21. Therefore, we do not find any reason to interfere with the orders dated 31st July, 2007 (Annex. A/2) passed by the respondent no. 2 and the clarification dated 02nd January, 2008 (Annex. A/1), which have been impugned in this O.A. at paragraph 8(i) & 8(ii) of the relief, as prayed for, cited above. The contention of the applicant that he is entitled to the grant of first ACP on completion of 12 years of service w.e.f. 01.06.1991 in the pay scale of Rs. 4000-6000 is also rejected as already discussed above, because the applicant cannot be granted any ACP benefits in his previous post of Junior Mechanic even though he had completed more than 12 years of service in that cadre before moving in the present cadre on selection, only because the ACP scheme itself came into operation w.e.f. 09.08.1999, and, therefore, his prayer at 8 (iii) in the relief portion is also rejected.

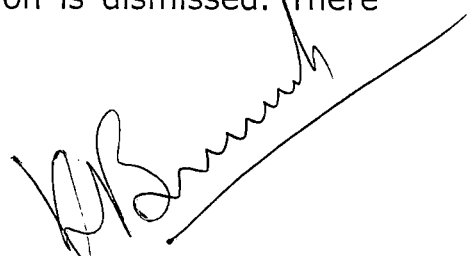
22. As a corollary, his prayer at 8(iv) of the relief portion also cannot be granted as already discussed above, since he was freshly appointed to a higher post of Store Keeper w.e.f. 08.06.1995 and his eligibility for grant of ACP benefit under the scheme w.e.f. 09.08.1999 will only arise on the date of his completing 12 years of service on 08.06.2007. Therefore the prayer of the applicant at 8(iv) is also rejected.

23. It is further clarified that the stand of the respondents that the qualifications necessary for the purpose of promotion are essential before grant of ACP benefit, ^{is correct,} and if the applicant did not possess necessary qualifications for grant of ACP benefit as on

08.06.2007, obviously the grant of first ACP benefit to him also would get deferred till the date the applicant comes to acquire the necessary qualification, and fulfills all the requirements for his next promotion. The contention of the applicant that the post of Store Keeper in the respondent-farm is an isolated post, and therefore, the letter dated 07.12.2001 (Annex. A/11) is applicable in his case, is also rejected, in view of the specific statement in the body of that letter itself, stating that it is applicable to all Subordinate Offices except CCBF/CHRS. The respondents are correct in contending that at least in the case of the respondent-Institute CCBF, the post of Store Keeper is not an isolated post, but the promotional avenue to the post of Accountant is available as one of the feeder cadres.

24. In the result, the Original Application is dismissed. There shall be no order as to costs.


(SUDHIR KUMAR)
ADMINISTRATIVE MEMBER


(Dr. K.B. Suresh)
JUDICIAL MEMBER

Kumawat/