CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No.588/02

Friday the 19th day of September, 2003

C O R A M

Hon'ble Mr.T.N.T.Nayar, Administrative Member
Hon'ble Mr.K.V.Sachidanandan, Judicial Member.

P.C.Sankaran, Assistant Binder,
Government of India Press,
Koratty, Kerala. .....Applicant

(By Advocate M/s S.Radhakrishnan &
Ms.Jean Vineta Peter)

V.

1. The Manager,
Government of India Press,
Koratty-680 309.

2. Director of Printing,
Directorate of Printing,
B.Wing, Nirman Bhavan,
New Delhi-11.

3. Union of India, represented
by the Secretary to the Govt. of India
Ministry of Urban Development and
Poverty Alleviation
Nirman Bhavan,
New Delhi.11. ...Respondents

(By Advocate Mr. C.Rajendran, SCGSC)

The application having been heard on 19.9.2003, the Tribunal on the same day delivered the following:

O R D E R

The only question to be decided in this case is whether the denial of benefit of the second financial upgradation to the applicant as per ACP Scheme dated 9.8.99 is in order.

2. The applicant's case is that although as a labourer under the Govt of India Press, Koratty, the applicant received the benefit of in situ promotion as per Annx.A3 on 2.12.93, such in situ promotion cannot be said to be a promotion in the normal

hierarchy as is clear from Annxs.A3 and A4. The applicant was granted in situ promotion w.e.f 1.4.91 (Annx.A3 dated 2.12.93)and subsequently granted functional promotion w.e.f. 1.7.97 (Annx.A4 dated 7.7.97). According to the applicant, he has availed only one promotion and was therefore entitled to the 2nd financial upgradation as per the ACP Scheme. This O.A has been filed for the following main reliefs:

> (a) declare that the applicant is entitled for 2nd financial upgradation under the ACP Scheme on completion of 24 years continuous service in the Govt of India Press, Koratty.
>
> (b) declare that the in situ promotion granted to the applicant not to the next higher scale in thee defined hierarchy cannot be treated as first promotion for granting the benefit under ACP Scheme.
>
> (c) quash Annx.A8 order and the order of the Director of Printing referred to therein as they are illegal, irregular and unjust.
>
> (d) direct the respondents to grant the 2nd financial upgradation to the applicant with effect from 6.1.96 under the ACP Scheme with all consequential benefits.

3. A reply statement has been filed by the respondents opposing the claim of the applicant and stating that in situ promotion to higher scale of pay is the first promotion and the functional promotion is the second promotion. In that view of the matter, since the applicant has received two promotions, there cannot be a second financial upgradation, according to the respondents.

4. We have gone through the material placed on record and have heard Mr.S.Radhakrishnan,the learned counsel for the

applicant and Mr.C.Rajendran, SCGSC, the learned counsel for the respondents. Mr.Radhakrishnan has invited our attention to Annx.A7 dated 10.2.2000, being a clarification regarding ACP Scheme for the Central Govt Civilian Employees, wherein it is clarified that if any selection grade/in situ promotion has been allowed to employees which is not a part of the hierarchy, it shall not be counted as promotion for the purpose of ACPS. The learned counsel for the applicant has further brought to our notice Annx.A3 order granting in situ promotion. It is made abundantly clear in that order that the applicant would continue to be borne on the seniority list of the lower post, namely, labourer even after in situ promotion and that such in situ promotion did not involve assumption of higher duties and responsibilities. Counsel would also state that as per Annx.A4 order dated 7.7.97, which is the order of functional promotion as Assistant Binder, it is made explicit that the applicant was functionally promoted to the post of Assistant Binder thereby indicating that he was holding the lower position in the hierarchy, i.e. as labourer when he received the said functional promotion. The position therefore, would be that the applicant had received only one promotion in his career. The learned counsel for the respondents on the other hand would place reliance entirely on the reply statement and would contend that in situ promotion is effectively a promotion itself and that therefore, the applicant having got the higher scale as a result of the in situ promotion and subsequently the functional promotion he should be deemed to have availed two promotions. The question of grant of financial upgradation does not arise, it is urged.

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5. On a perusal of the records and having considered the arguments of the learned counsel for either side, we find that in situ promotion which is not a part of the hierarchy should not be counted as promotion for the purpose of ACP Scheme vide Annx.A7 clarification dated 10.2.2000. In this case, it is quite clear that the in situ promotion received by the applicant as per Annx.A3 order is not a part of the hierarchy because he continued to be a labourer even after the issue of Annx.A3 order granting in situ promotion. It would, therefore, be obvious that the next promotion, namely, the functional promotion as per Annx.A4 order dated 7.7.97 received by the applicant, is the first promotion availed by him. That being the position, the applicant, subject to his fulfilling other conditions would be eligible for grant of second financial upgradation in terms of the provisions of ACP. In any case, there is no dispute about the fulfilment of other condions in this case as far as we can see. In the circumstances, we hold that the application should succeed. The respondents are directed to issue appropriate orders granting the full benefit of applicant second financial up gradation with effect from the due date within a period of two months from the date of receipt of a copy of this order. No order as to costs.

Dated the 19th day of September, 2003

(K.V.Sachidanandan)
Judicial Member

(T.N.T. Nayar)
Administrative Member.

kkj.