

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 603 / 2006

Wednesday, this the 5th day of March, 2008.

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HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE DR K.S.SUGATHAN, ADMINISTRATIVE MEMBER

S.Subramanian,
Senior Auditor,
A/c No.8333422,
Pay & Accounts Office (Other Ranks),
Defence Security Corps,
Mill Road, Kannur-670 013.Applicant

(By Advocate Mr V Ajith Narayanan.)

v/s,

1. Union of India represented by its Secretary,
Ministry of Defence,
New Delhi.
2. The Controller General of Defence Accounts,
R.K.Puram, New Delhi.
3. The Controller of Defence Accounts
Anna Salai, Thynampet,
Chennai-18.
4. The Assistant Controller of
Defence Accounts (In Charge),
Pay & Accounts Office (Other Ranks),
Defence Security Corps,
Mill Road, Kannur -13.
5. The Senior Accounts Officer (AN),
Pay and Accounts Office (Other Ranks),
Defence Security Corps,
Mill Road, Kannur – 13.
6. The Assistant Accounts Officer (AN),
Pay & Accounts Office (Other Ranks),
Defence Security Corps,
Mill Road, Kannur – 13.Respondents

(By Advocate Mr.CM Nazar, ACGSC)



This application having been finally heard on 5.2.2008, the Tribunal on 5.3.2008 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant's grievance in this O.A is against the Annexure A-5 order dated 23.3.2001 issued to him by the 6th respondent in reply to his Annexure A-4 representation dated 6.12.2000 regarding grant of financial benefits under the Assured Career Progression Scheme (ACPS for short).

2. The applicant was initially appointed as a Lower Division Clerk with effect from 15.2.1971 in the National Savings Organisation (NSO for short). According to the then existing rules, he was granted financial benefits by granting selection scale of Rs.1200-1800 with effect from 15.2.1985. Later on, he was promoted to the grade of UDC in the scale of Rs.1200-2040 with effect from 17.7.1991. The applicant was declared surplus in the NSO and was redeployed as Auditor in the Defence Accounts Department (DAD for short) with effect from 19.12.1992 in the same scale of pay Rs.1200-2040. In DAD, he was again promoted as Senior Auditor with effect from 19.3.1999 in the scale of pay Rs.5000-8000.
3. With the acceptance of the IV Central Pay Commission, the pay scales of Rs.1200-1800 and Rs.1200-2040 were merged with effect from 1.1.1986. Later on, with the introduction of the ACP Scheme (Scheme for short) with effect from 9.8.1999 vide Department of Personnel & Training OM No.35034/1/97-Estt(D) dated 9.8.1999 employees have become entitled to at least 2 financial upgradations after 12 years and 24 years respectively, if no promotions were granted during this period. According to conditions No.4 of the "Conditions for grant of Benefits under the ACP Scheme"

"The first financial upgradation under the ACP Scheme shall be allowed after 12 years of regular service and the second upgradation after 12 years of regular service from the date of the first financial upgradation subject to fulfilment of prescribed conditions."

The applicant submitted that in view of paras 14 and 15 of Scheme and clarification given by the Department of Personnel & Training (DOPT for short), the respondents shall ignore the promotion given to him as UDC with effect from 17.7.1991 as the scale of UDC and that of Selection Grade LDC has already been merged and in effect he got only a placement in the Selection Grade of LDC and no promotion as UDC. He has, therefore, contended that he got only one promotion i.e. on 19.3.1999 when he was promoted from the post of Auditor to that of Sr. Auditor and the promotion for the LDC (Selection Grade) to the UDC with effect from 17.7.1991 is required to be ignored.

4. The applicant has relied upon paras 14 & 15 of the said DOPT OM dated 9.8.1999 for getting the 2nd financial upgradation with retrospective effect from 9.8.1999. It reads as under:

"14. In case of an employee declared surplus in his/her organization and in case of transfers including unilateral transfer on request, the regular service rendered by him/her in the previous organization shall be counted along with his/her regular service in his/her new organization for the purpose of giving financial upgradation under the Scheme."

15. Subject to Condition No.4 above, in cases where the employees have already completed 24 years of regular service, with or without a promotion, the second financial upgradation under the scheme shall be granted directly. Further, in order to rationalize unequal level of stagnation, benefit of surplus regular service (not taken into account for the first upgradation under the Scheme) shall be given at the subsequent stage (second) of financial upgradation under the ACP Scheme as a one time measure. In other words, in respect of employees who have already rendered more than 12 years but less than 24 years of regular service, while the first financial upgradation shall be granted immediately, the surplus regular service beyond the first 12 years shall also be counted towards the next 12 years of regular service required for grant of the second financial upgradation and, consequently, they shall be considered for the second financial upgradation also as and when



they complete 24 years of regular service without waiting for completion of 12 more years of regular service after the first financial upgradation already granted under the Scheme."

5. He has also relied upon the first point of doubt and its clarifications contained in the Annexure A-1 to DOPT OM No.35034/1/97-Estt(D) dated 10.2.2000 which is as follows:

Point of Doubt	Clarification
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 rationalisation 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.1,200-1,800 and Rs.1,320-2,040 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?	Since the benefits of upgradation under ACP Scheme (CPS) 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.

6. Further, he referred to the Annexure A-3 Circular of the 3rd respondent dated 3.10.2000 in which it has been clarified that for grant of financial upgradation under the ACP Scheme to the directly recruited Auditors, they

- Should be a directly recruited Auditor.
- Should have been promoted to Sr., Auditor Grade.
- Should have completed 24 years of service in DAD.
- Should have qualified in the Departmental Examination of Supervisor Accounts/SAS Part I/SAS Part II in conformity with the clarification given



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under point of doubt No.16 vide DOPT OM NO.35634/1/97 ESTD (D) dated 10.2.2000.

The applicant's contention is that the above mentioned conditions are applicable only in the case of directly recruited Auditors and not applicable to inter-Departmental transferees, transfer as surplus staff etc. like him.

7. The applicant, therefore, made representations on 6.12.2000, 16.12.2002, 8.8.2005 and 2.12.2005 to respondents 3 & 2 (Annexure A-4, A-6, A-8 and A-9) claiming ACP benefits with effect from 9.8.1999 based on the instructions/clarifications contained in the aforementioned OM dated 9.8.1999 and OM dated 10.2.2000. The respondent No.6 vide Annexure A-5 impugned letter dated 23.3.2001, informed the applicant that during the period from 15.2.1971 to 12.12.1994, i.e. the period during which he worked in NSO, he was given one promotion as UDC on 17.1.1991 and thereafter he joined the DAD as a surplus employee with effect from 12.12.1994. He was given the next promotion to the grade of Senior Auditor from 19.3.1999. According to them, the clarifications 4 & 5 furnished under the aforementioned DOPT's OM dated 10.2.2000 envisages that the basic condition to allow the higher pay scale under the ACP Scheme should be whether the person is working in the same scale of pay for the prescribed period of 12/24 years or not and if a Government servant is appointed to another post in the same pay scale either as a direct recruit or on absorption basis etc., it should not make any difference for the purpose of ACPs so long as he is in the same scale of pay. They have, therefore, contended that the applicant has not been getting the same scale of pay for a period of 12/24 years and his promotion to the post of UDC on 17.7.1991 is to be treated as the first financial upgradation and his promotion to the post of Senior Auditor in DAD with effect from 19.3.1999 is to be considered as the second financial upgradation.

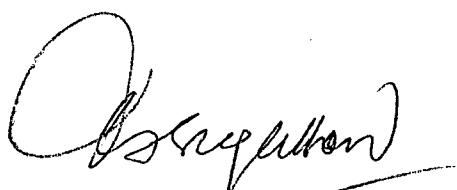


8. We have heard Shri Ajith Narayanan counsel for applicant and Shri CM Nazar, ACGSC for respondents. The undisputed fact is that the applicant was initially appointed as an LDC in the scale of Rs.110-180, (revised to Rs.260-400) in the NSO with effect from 15.2.1971 and he was placed in the higher scale of Rs.1200-1800 as Selection Grade LDC with effect from 15.2.1985. Later, he got a promotion as UDC in the scale of Rs.1200-2040 in the same organization with effect from 17.7.1991. Thereafter, the scale of Rs.1200-1800 and the scale of Rs.1200-2040 got merged. It is also a fact that the applicant was declared as surplus employee in the NSO and he was redeployed in the DAD as Auditor in the same scale of Rs.1200-2040 and the regular service rendered by him in NSO was counted along with his regular service in his DAD for the purpose of giving financial upgradation under the Scheme. It is in this context that the clarification of the DOPT made vide OM NO.35634/1/97 ESTD (D) dated 10.2.2000 becomes relevant. It says "*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.*" The merger of two scales in this case has taken place after the applicant was promoted as UDC in NSO on regular basis. Hence the aforesaid clarification of UDC squarely applies in his case and the promotion given to him as UDC with effect from 17.7.1991 in NSO has to be ignored. Resultantly and in effect, applicant was granted only Selection Grade in LDC grade which is not a promotion. Therefore, the only promotion given to him in his entire service career was as Senior Auditor in DAD with effect from 17.7.1991. Hence, he is entitled to have his financial upgradation under ACP Scheme after completing 24 years of service from 15.2.1971 i.e. by 15.2.1995 or with effect from 9.8.1999 i.e. date from the ACP Scheme came into existence

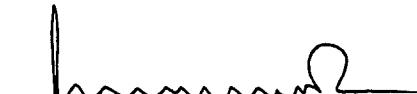
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whichever is later. Accordingly, the respondents shall grant him the financial upgradation to the applicant under the ACP Scheme with effect from 9.8.1999 and we order accordingly. Respondents are also directed to issue the necessary orders in this regard within two months from the date of receipt of this order. The O.A is allowed in the above terms. There shall be no order as to costs.

Dated, the 5th March, 2008.



DR K.S. SUGATHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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