

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.68/2000

Friday, this the 8th day of February, 2002.

CORAM;

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

1. M.M.Jacob,
Inspector of Central Excise,
Cochin-I Commissionerate,
Central Revenue Buildings,
I.S.Press Road,
Cochin-18.
2. K.K.Ganapathy,
Inspector of Central Excise,
Cochin I Commissionerate,
Central Revenue Buildings,
I.S.Press Road,
Cochin-18.
3. P.K.Sahadevan,
Inspector of Central Excise,
Cochin-I Commissionerate,
Central Revenue Buildings,
I.S.Press Road,
Cochin-18.

- Applicants

By Advocate Mr CSG Nair

Vs

1. Union of India,
represented by Secretary,
Department of Personnel & Training,
Ministry of Personnel,
Public Grievances & Pension,
New Delhi-1.
2. The Secretary,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi-1.
3. Commissioner of Central Excise & Customs,
Cochin-I Commissionerate,
Central Revenue Buildings,
I.S.press Road,
Cochin-18.

- Respondents

By Advocate Mr C Rajendran, SCGSC

The application having been heard on 4.12.2001 the Tribunal on 8.2.2002 delivered the following:

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The applicants 3 in number, are working as Inspectors of Central Excise. They started their career in 1974/1975 as Lower Division Clerks(LDCs for short). They were promoted as Upper Division Clerks(UDCs for short) during 1978-80 period. All of them became Inspectors of Central Excise on regular promotion in December 1984. They are aggrieved by A-1 Office Memorandum dated 9.8.99 of the 1st respondent with regard to the Assured Career Progression (ACP for short) Scheme for Central Government Civilian employees. The applicants focus their challenge on paragraph 8 of the impugned A-1 Memorandum which stipulates that the financial upgradation envisaged under the ACP Scheme shall be purely personal to the employee and shall have no relevance to his seniority position and that there shall be no additional financial upgradation for the senior employees on the ground that the junior employee in the grade has got higher pay scale under the ACP scheme. The applicants further assail the condition for grant of benefit under ACP scheme as contained in Clause 5.1 of the Annexure to the impugned ACP scheme to the effect that the benefit of ACP scheme shall be available only if no regular promotion during the prescribed periods of 12 and 24 years has been availed by an employee and that in case 2 prior promotions have already been received by an employee, no benefit under the ACP scheme was accrued to him. The applicants have specifically impugned A-5 communication dated 26.11.99 whereby their separate representations, A-2, A-3 and A-4 have been rejected by the third respondent. The applicants seek an order setting aside the condition No.5.1 and para 8 of A-1

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O.M.No.35034/1/97-Estt(D) dated 9.8.1999(A-1), in so far as it stipulates that the Assured Career Progression scheme will not be available to those officers who have already assured of promotions or that if an employee has already got one promotion, he would qualify for the second financial upgradation only on completion of 24 years of regular service and a declaration that the applicants are eligible for financial upgradation under ACP scheme.

2. It would appear that the applicants have already got 2 promotions in their career so far, culminating in their present placement as Inspector of Central Excise. The direct recruit Inspectors who are their juniors have received 2 financial upgradations in terms of the ACP scheme. Apparently, on account of their having availed 2 promotions within a period of 24 years of their service, no financial upgradation as per the ACP scheme was granted to them. The applicants have put in already over 16 years of service as Inspectors i.e. the present post they are holding and still stagnate as such while their direct recruit counterparts who are juniors to them have received financial upgradation resulting in grant of higher pay than themselves. This is an anomaly according to them.

3. We have heard Shri CSG Nair, learned counsel for the applicants and Shri C Rajendran, learned SCGSC on behalf of the respondents.

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4. Shri CSG Nair says that para 8 of the impugned O.M. (A-1) is prima facie, unjust and unfair, as it legitimises grant of higher remuneration by way of financial upgradation to juniors without consideration of the applicants' seniority and long stagnation in the present post. This, according to the learned counsel for the applicants, is, violative of Articles 14 and 16 of the Constitution. He would maintain that the promoted Inspectors are unfairly discriminated solely on the ground that they got promotion in their earlier cadres as LDC and UDC but the fact is that they have been stagnating as Inspectors well over 16 years. Those direct recruit Inspectors who are juniors to them would be enjoying unreachably higher remuneration and perquisites including higher TA/DA, HRA, Travel facilities, accommodation etc. than the applicants because of grant of ACP benefit to them. The principle of equal pay for equal work is thus violated, according to counsel.

5. Shri Rajendran, learned SCGSC on the other hand, would contend that the ACP scheme impugned in the O.A. did not cause any genuine injustice to the applicants who started their career as LDCs and who received 2 promotions within the period stipulated in the ACP scheme. The reasonableness of the grant of financial upgradation to the direct recruit Inspectors has to be adjudged from the fact that they did not get any promotion since their first entry in service. As against that the applicants have availed of 2 promotions already. The financial upgradation allowed to those

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Inspectors has nothing to do with inter se seniority, as it is not a functional promotion. It is purely personal to them and would not mean that they would attain ipso facto any higher position. The impugned scheme is in order and the impugned A-5 communication rejecting the applicants' representations could not be interfered with, learned SCGSC would urge.

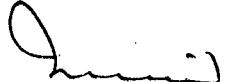
6. We have perused the records and have carefully considered the contentions on either side. The applicants who started their career as LDCs in 1974/75 became UDCs in 1978/80. Two of them had got ad hoc promotion as Inspector in November 1982. Eventually, they were regularly promoted as Inspectors in December 1984. Thus, within 10-11 years of their entry into service, they received 2 regular promotions. It is true that they have been functioning as Inspectors for the last 16 years or so. Depending on the unexpired service to their credit and the expansion of the Department, the applicants might expect to get further promotions. A person whose first entry as Inspector stagnates for 12 years and thus becomes eligible for the first financial upgradation under the ACP scheme. The applicants cannot ask for the ACP benefit under the scheme in force. The modified ACP scheme (A-1) has been designed to mitigate hardship in cases of acute stagnation either in a cadre or in isolated post. The 2 financial upgradations granted on completion of 12 years and 24 years are on the basis of the Vth Central Pay Commissions' recommendations and the agreed settlement with the staff side (generally referred to as JCM). It is to be clearly understood that financial upgradation is not a functional

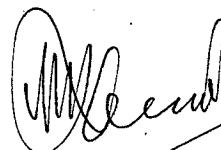
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promotion. It does not impinge on individual employees' seniority, nor does it affect the normal promotion prospects. In fact, the ACP scheme underscores the importance of exploring the possibility of improving the promotional prospects, notwithstanding the financial upgradations offered by the scheme which is nothing but a succour. Neither para 8 of the Scheme nor the conditions for grant of benefit under ACP scheme as contained in Clause 5.1. of the Annexure thereto contains any unjust or inequitable provision.

7. From the above, it is quite clear that the applicants cannot claim the benefit of ACP scheme as they have availed 2 regular promotions between 1974 and 1984. The application is therefore devoid of merit. Accordingly, we dismiss the application leaving the parties to bear their respective costs.

Dated, the 8th February, 2002.


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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APPENDIX

Applicant's Annexures

1. A-1: True copy of the OM No.35034/1/97-Estt(D) dt.9.8.99 issued by the 1st respondent.
2. A-2: True copy of the representation dt.9.11.99, from the 1st applicant.
3. A-3: True copy of the representation dt.5.11.99 from the 2nd applicant.
4. A-4: True copy of the representation dt.5.11.99 from the 3rd applicant.
5. A-5: True copy of the Memo C.No.II/39/66/99-Estt.I Chn.I dt.26.11.99 issued by the 3rd respondent.