

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.95/2002

Thursday this the 11th day of July, 2002.

CORAM:

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

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

G.Ganesan,
Head Mechanic,
Government of India Press,
Koratty, Khanna Nagar,
Koratty -680 309.

.. Applicant

(By Advocate S/Sri M.R.Rajendran Nair, Sreeraj.R.,
Mr.Hariraj,P.A.Kumaran, & P.M.Reshmy)

vs.

1. Union of India represented by the
Secretary to Government,
Ministry of Urban Affairs and Employment,
New Delhi.
 2. The Director of Printing, 'B' Wing, Nirman Bhavan,
2-Maulana Azad Road, New Delhi-11.
 3. The Manager, Government of India Press,
Koratty, Khanna Nagar, Thrissur-680 309.
- ... Respondents

(By Advocate Sri P.M.M.Najeeb Khan, ACGSC)

The Application having been heard on 20.6.02, the Tribunal
on 11.7.2002 delivered the following:-

ORDER

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

The applicant while working as Assistant Mechanic
(Mechanical) in Govt. of India Press, Coimbatore w.e.f.
3.9.64 was selected and appointed on transfer to the post of
Mechanic(Mechanical) in the sister press at Koratty. He was
relieved from Govt. of India Press, Coimbatore by order
dated 12.3.1971(A2). He joined the Govt. of India Press,
Koratty as Mechanic(Mechanical) and was promoted to the post
of Head Mechanic w.e.f. 20.10.1975. Thereafter he did not
get any promotion though he had 36 years of service, out of

which 28 years was under the third respondent itself. The third respondent did not consider the applicant for financial upgradation under the Assured Career Progression Scheme (ACP). The applicant submitted A3 representation to the second respondent in reply to which he was told by A4 communication that he had already availed of two promotion and was not entitled to any benefit under ACP Scheme. The applicant challenged A4 order in O.A.No.438/2001 before this Bench of the Tribunal on the ground that the second respondent did not consider the claim of the applicant in the light of clarification No.4 in O.M. dated 10.2.2000. The above O.A. was disposed of as agreed to by the counsel on either side permitting the applicant to make a detailed representation to the second respondent referring to the O.M. dated 10.2.2000 and directing the second respondent to give an appropriate reply to the representation. The applicant submitted A6 representation stating that appointment in Govt. of India Press in the Mechanic cadre as per the Recruitment Rules is made 50% by transfer /deputation and 50% by promotion, that while working as Assistant Mechanic in Govt. of India Press, Coimbatore he was appointed as Mechanic in the Govt. of India Press, Koratty by transfer and that therefore under clarification 4 in O.M. dated 10.2.2000, the applicant is entitled for financial upgradation considering 28 years of his service under the third respondent. The second respondent has by impugned order A1 turned down the claim of the applicant for benefit under ACP on the ground that the applicant who was Assistant Mechanic, was promoted on transfer to the

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Govt. of India Press, Koratty as Mechanic and was again promoted as Head Mechanic and therefore having availed of two promotion, he is not entitled to any benefit under the scheme. Aggrieved by this the applicant has filed this application seeking to set aside A1 order on the ground that the applicant's appointment as Mechanic in Govt. of India Press, Koratty not being a promotion but on transfer, the second respondent has gone wrong in treating the applicant to have availed of two promotion.

2. The respondents in their reply statement contend that the applicant having been selected for promotion transfer to Govt. of India Press, Koratty, first joined there as Assistant Mechanic on 15.3.71, that thereafter by office order dated 16.3.71 he was promoted as Mechanic, that he was again promoted as Head Mechanic w.e.f. 25.10.75 and that therefore the applicant having got two promotion is not entitled to any financial upgradation under ACP. It has also been stated that on promotion to the higher scale of pay of Mechanic by order dated 16.3.71 the pay of the applicant was fixed giving him benefit under FR 21(1)(a)(i) and that the claim of the applicant is misconceived. In the additional reply statement it is stated that though the applicant joined the Govt. Press, Koratty as Assistant Mechanic w.e.f. the same date (15.3.1971) he was promoted as Mechanic.

3. The applicant in his rejoinder has denied the contention that the applicant first joined Govt. of India

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Press, Koratty as Assistant Mechanic and was then promoted there as Mechanic w.e.f. the same date giving fixation of pay under FR 22 1(a)(i) and asserted that there is no such entry in the service book of the applicant as contended by the respondents. It has also been stated that on the relevant date there was no sanctioned post of Assistant Mechanic in the Govt. of India Press, Koratty.

4. The pivotal point that would determine the fate of this application is whether the appointment of the applicant as Mechanic in the Govt. of India Press was by transfer/transfer on deputation / absorption or by promotion. If the appointment was by promotion, the applicant has no case. On the other hand if it was by transfer/deputation and absorption, the case of the applicant might fall under clarification 4 to O.M. dated 10.2.2000.

5. We have very carefully gone through the pleadings, scrutinized all the documents placed on record and have heard the arguments of Sri Hariraj, the learned counsel of the applicant and of Ms.Shelja, representing Mr.Najeebkhan , Additional Central Govt. Standing Counsel for the respondents.

6. Annexure A2 order dated 12th March,1971 of the Manager, Govt. of India Press, Coimbatore reads thus:-

"Consequent upon his selection on transfer to the post of Mechanic(Mechanical), in the Govt. of



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India Press, Koratty on promotion, Shri G.Ganesan, Asstt.Mech(Mech1), is hereby relieved of his duties in this press w.e.f. 12.3.71(A.N).

2. He is accordingly directed to report for duty to the Manager, Govt. of India Press, Koratty after availing of minimum joining time.

3. He should return Govt. articles in his possession before being relieved. "

Sri Hariraj, the learned counsel of the applicant pointed out that taking advantage of the words "on promotion" contained in A2, the respondents are vainly attempting to show that the appointment of the applicant as Mechanic in Govt. of India Press, Koratty was by way of promotion while actually it was by transfer/ transfer on deputation basis from other sister presses as there was no Assistant Mechanic in the Govt. of India Press to be promoted as Mechanic after taking the approval of the Directorate of Printing. The counsel argued that as per the recruitment rules promotion as Mechanic has to be made from the feeder grade of the unit of recruitment namely individual presses and appointment from other units or elsewhere can be made on transfer/transfer on deputation/absorption basis only. We find considerable force in this argument of the learned counsel. As is admitted by the respondents, the recruitment of the applicant as Mechanic in the Govt. of India Press, Koratty, was made pursuant to Memorandum dated 12.5.70(Annexure R2). The method of recruitment mentioned is on permanent transfer/deputation for the initial period of two years which is liable to further extension. It is therefore obvious that the appointment was made in this case not by promotion but by transfer with due approval of the competent authority. From Annexure A9 letter dated

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20.1. 1970 of the third respondent addressed to the Chief Controller of Printing and Stationery, it is evident that there was no sanctioned post of Assistant Mechanic(Mechanical) under the third respondent. In Annexure A10 letter of the third respondent dated 25.3.70 it is seen stated :-

"In this Press there is no post of Assistant Mechanic(Mechanical). Hence no one can be promoted as Mechanical(Mechanical) on a regular basis as per Recruitment Rules."

It is therefore further evident that process for recruitment by permanent transfer/deputation was resorted to under Annexure R2. Admittedly the applicant applied only pursuant to Annexure R2 notification for permanent transfer and not for promotion. The mere fact that in Annexure A2 order by which the applicant was relieved after stating "consequent upon his selection on transfer to the post of Mechanic(Mechanical) in the Govt. of India Press, Koratty, the words "on promotion" is also added that would not alter the nature of appointment from one of "permanent transfer" to that of "promotion". The contention of the respondents that the applicant first joined the Govt. of India Press, Koratty on 15.3.71 in the post of Assistant Mechanic(Mechanical) and then by order dated 16.3.71 promoted as Mechanical(Mechanical) is found to be absolutely untenable and untrue from the respondents own statement in para 2 of the additional reply statement. The applicant in his rejoinder had refuted the allegation that he joined the Govt. of India Press, Koratty on 15.3.71 as Assistant Mechanic and was promoted by order dated 16.3.71 as Mechanic



(Mechanical) and that the entries in his service book would prove that this contention of the respondents is not true to fact when confronted with the factual situation, the respondents in the additional reply statement have stated as follows:-

"2. As regards the averments made in Para-2 of this additional rejoinder it is stated that the applicant is trying to cite the technicalities of the Service Book entries only to confuse and misguide the Honourable Central Administrative Tribunal. In this respect it is submitted that the entries at Page No. 6 and 7 of his Service Book reveal that he was relieved on 12.3.71(A.N) from Government of India Press, Coimbatore in the capacity of Assistant Mechanic(Mechanical) on his promotion and posting as Mechanic(Mechanical), in the Government of India Press, Koratty. Accordingly he reported for duty at Government of India Press, Koratty on 15.3.71 in the capacity of Assistant Mechanic(Mechanical) and on his reporting for duty to this Press only his promotion to the post of Mechanic (Mechanical) became effective from the same day i.e. 15.3.71 as rightly recorded in the Service Book. Since he was promoted as Mechanic(Mechanical) on joining in this Press itself and also his service started in this Press as Mechanic(Mechanical), the entries made in the Service Book is correct."

The contention in the first reply statement that on joining the Government of India Press on 15.3.71 as Assistant Mechanic(Mechanical), the applicant was promoted as Mechanic(Mechanical) by order dated 16.3.71 therefore is evidently not true and in the additional reply statement it appears a feeble attempt is made to wriggle out of the situation in the light of the definite stand taken by the applicant that his service in Government of India Press,

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Koratty started only as Mechanic(Mechanical) and that no order of promotion after joining at Government of India Press, Koratty on 16.3.71 was issued.

7. Now that it is seen that the appointment of the applicant in Government of India Press, Koratty as Mechanic(Mechanical) was not by way of promotion but by permanent transfer and since the applicant had put in more than 28 years of service and has been given only one promotion in 1975 , we have to see whether the applicant is entitled to be considered for the second financial upgradation under the ACP Scheme. An answer to this can be had on a proper interpretation of the clarification contained in G.I.Department of Personnel and Training O.M.No.35034/1/97 Estt. dated 10.2.2000. The queries 4,5 and 6 and the clarification given thereto in the O.M. dated 10.2.2000 (Annexure A7) is reproduced below for the sake of convenience:

Point of Doubt:

"4. In a case where a person is appointed to a post on transfer(absorption) basis from another post, whether 12 years and 24 years of service for the purpose of ACPS will count from the initial appointment or otherwise.

5. Whether a Government servant, who is direct recruit in one grade and subsequently joins another post again as direct recruit, is eligible for first financial upgradation under ACPS after completion of 12 years of service counted from the first appointment or from the subsequent second appointment as direct recruit?

6. An employee appointed initially on deputation to a post gets absorbed subsequently, whether absorption may be termed as promotion or direct recruitment. What will be the case if an employee

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on deputation holds a post in the same pay scale as that of the post held by him in the present cadre? Also, what will be the situation if he was holding a post in the parent cadre carrying a lower pay scale?

Clarification:

The benefits under ACPS are limited to higher pay scale and do not confer designation, duties and responsibilities of the higher post. Hence, the basic criterion to allow the higher pay scale under ACPS should be whether a person is working in the same pay scale for the prescribed period of 12/24 years. Consequently, so long as a person is in the same pay scale during the period in question, it is immaterial whether he has been holding different posts in the same pay scale. As such, if a Government servant has been appointed to another post in the same pay scale either as a direct recruit or on absorption (transfer) basis or first on deputation basis and later on absorbed (on transfer basis), it should not make any difference for the purpose of ACPS so long as he is in the same pay scale. In other words, past promotion as well as past regular service in the same pay scale, even if it was on different posts for which appointment was made by different methods like direct recruitment, absorption (transfer)/deputation, or at different places should be taken into account for computing the prescribed period of service for the purpose of ACPS. Also, in case of absorption (transfer)/deputation in the aforesaid situations, promotions earned in the previous/present organizations, together with the past regular service shall also count for the purpose of ACPS. (However, if the appointment is made to higher pay scale either as on direct recruitment or on absorption (transfer) basis or first on deputation basis and later on absorbed (on transfer basis), such appointment shall be treated as direct recruitment and past service/promotion shall not count for benefits under ACPS).

Needless to say, in cases of transfer on administrative ground, involving only change of station within the same department, the service rendered in the same grade at two stations may count for ACPS, as such transfers are within the same organisation, ordered generally for administrative/personal considerations and the service rendered in the earlier station counts as eligibility service for promotion."

(emphasis supplied)

Since the applicant was while holding the post of Assistant

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Mechanic in the lower scale in the Govt. of India Press, Coimbatore was appointed as Mechanic in the higher scale in the Government of India Press, Koratty, another independent Recruitment unit, on his selection pursuant to Annexure R1 notification was by way of permanent transfer in view of the clarification contained in Annexure A7:

"However, if the appointment is made to higher pay scale either as on direct recruitment or on absorption (transfer) basis or first on deputation basis and later on absorbed (on transfer basis), such appointment shall be treated as direct recruitment and past service / promotion shall not count for benefits under ACPS."

We are of the considered view that the applicant should be deemed to have been directly recruited to the post of Mechanic (Mechanical) in the Government of India Press, Koratty w.e.f. 16.3.71. The promotion earned prior to 15.3.71 and service rendered prior to that date therefore is not to be taken note of for the purpose of benefit under ACPS. The applicant having obtained only one promotion after 15.3.71 i.e. in the year 1975, we find that he is entitled to be considered for the second financial upgradation under ACPS.

8. In the light of the above discussion, we allow the original application, set aside the impugned order Annexure A1, declare that the applicant, having joined service under the third respondent on 15.3.71 on permanent transfer and having so far been granted only one promotion, is entitled to be considered for second financial upgradation under the ACP scheme and direct the respondents to consider and grant



the applicant the second financial upgradation with effect from the due date and make available to him the consequential benefits flowing therefrom within three months from the date of receipt of a copy of this order. There is no order as to costs.



(T.N.T.NAYAR)
ADMINISTRATIVE MEMBER



(A.V.HARIDASAN)
VICE CHAIRMAN

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APPENDIX

Applicant's Annexures:

1. Annexure A1 True copy of the Order No.7/12/2001-A1 dated 26.11.2001 issued by the 2nd respondent.
2. Annexure A2 True copy of the relieving order dated 12.3.1971 issued by the 3rd respondent.
3. Annexure A3 True copy of the representation dt. 31.1.2001 submitted by the applicant to the 3rd respondent.
4. Annexure A4 True copy of the Office Memorandum No.22011/10(a)/2000/E1/173 dated 10.4.2001 issued by the 3rd respondent.
5. Annexure A5 True copy of the final order dt. 24.9.2001 in O.A. 438/2001 of this Hon'ble Tribunal.
6. Annexure A6 True copy of the representation dt. 1.10.2001 submitted by the applicant to the 2nd respondent.
7. Annexure A7 True copy of the relevant portion of the O.M.No.35034/1/97-Estt(D) dated 10.2.2000.
8. Annexure A8 True copy of proforma for obtaining Chief Controller's approval to filling up of posts by transfer/deputation submitted by 3rd respondent, dated September, 1970.
9. Annexure A9 True copy of Memo No.1/2/68-69/Est.I/Vol XVI/7422 dt. 20.1.1970 issued by the Manager, Government of India Press, Koratty.
10. Annexure A10 True copy of the letter No. 1/2/68-69/Est.1/8925 dt. 25.3.1970 issued by the Manager.

Respondent's Annexures:

1. Annexure R1 OM No.17013/70/E1/1117-1130 dated 12.5.70.
2. Annexure R2 Memo No.2/13(3)/69-A1 dated 31.12.70