

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No. 20 OF 2013

Friday, this the 11th day of September, 2015

CORAM:

**HON'BLE Mr. U. SARATHCHANDRAN, JUDICIAL MEMBER
HON'BLE Mr. P.K. PRADHAN, ADMINISTRATIVE MEMBER**

P.K. Mochithan,
Upper Division Clerk, Branch Office,
Employees' State Insurance Corporation,
Tripunithura. Residing at : Pullattu House,
Thiruvankulam (P.O), Ernakulam – 682 305. - Applicant

(By Advocate Mr. P. Chandrasekhar)

Versus

1. The Union of India represented by
Secretary to Government of India,
Department of Personnel & Training,
Ministry of Personnel, Public Grievances &
Pensions, North Block, New Delhi – 110 001.
2. The Director General,
Employees' State Insurance Corporation,
Panchdeep Bhavan, C.L.G. Marg,
New Delhi – 110 002.
3. The Director, Sub-Regional Office,
Employees' State Insurance Corporation,
Malu's Complex, St. Francis Church Road,
Kaloor, Ernakulam – 682 017. - Respondents

(By Advocates Mr. Anil Ravi for R-1
Mr. T.V. Ajayakumar for R2&3)

The application having been heard on 07.09.2015, the Tribunal on
11.09.15...delivered the following:

ORDER

P.K. PRADHAN, ADMINISTRATIVE MEMBER

The applicant has filed this O.A seeking the following reliefs:-

"(a) Call for the records leading to Annexure A-6 order of the 2nd respondent and set aside the same.

(b) Declare that the denial of 2nd upgradation to the applicant as per Annexure A-1 for the reason that the applicant does not possess educational qualification for promotion to the post of Upper Division Clerk, is arbitrary, illegal and without jurisdiction.

(c) Direct the respondents to grant to the applicant 2nd financial upgradation in his pay from 24.03.2003 and grant to him all consequential monetary and other benefits, forthwith; and

(d) to such other relief as this Hon'ble Tribunal may deem fit and proper to grant on the facts and in the circumstances of the case."

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2. The applicant joined the service of respondents on 24.09.1979 as Group 'D'. Thereafter, he passed Departmental Competitive Examination based on which he was appointed as Lower Division Clerk with effect from 10.01.1986. The Government of India introduced the Assured Career Progression Scheme in 1999 for entitlement of a person to receive two financial upgradation on completion of 12 and 24 years of continuous service, if he does not get any promotions in the meanwhile. According to the applicant, he completed 24 years continuous service on 24.09.2003 and was entitled to 2nd financial upgradation under ACP. However, it was not allowed in spite of the fact that his service records were up to the mark and there was no enquiry or disciplinary proceedings against him. Subsequently, vide order dated 29.11.2011 (Annexure A-3) he was posted as Upper Division Clerk consequent upon the upgradation of the posts of LDC to UDC. Earlier, the applicant had approached this Tribunal in O.A 19/2012 being aggrieved by the non-granting of 2nd financial upgradation under ACP. Since his representation before the respondents was pending this Tribunal vide its order dated 18.07.2012 in the said O.A directed the respondents to consider and dispose of his representation by a speaking order and communicate the same to him within period of three months. The applicant was also permitted to submit his further representation within a period of two weeks. In terms of the order of this Tribunal vide Annexure A-4, the applicant submitted a further representation dated 20.07.2012 (Annexure A-5) to the respondents. However, the 2nd respondent passed an order dated 16.10.2012 (Annexure A-6) rejecting the representation of the applicant on the ground that applicant does not have educational qualifications which is a pre-requisite for promotion to the post of UDC. According to the applicant, the said order is unreasonable, since the ACP Scheme does not stipulate any educational qualification in order to become eligible for 2nd financial upgradation. The very purpose of this Scheme was to allow financial



upgradation to those category of employees who languish in a post for a long time in the absence of any promotional avenue. There is no stipulation in the scheme that those who were having educational qualification for promotion to the next higher post alone would be granted 2nd financial upgradation. The applicant also contented that due to non-grant of financial upgradation under ACP, many juniors of the applicant started getting more pay than the applicant. Therefore, the applicant prayed for granting the relief as sought for.

3. The respondents filed their reply statement in which they have contended that though the applicant who joined in the Group-D post being a non-matriculate, he had qualified in the Limited Departmental Competitive Examination for promotion to the post of LDC and as such was appointed as LDC on 10.01.1986. The Recruitment Regulation for the post of UDC got amended vide notification dated 13.02.1998 which states inter alia that "*a non-qualified Group D employee who became LDC on the basis of Departmental Competitive Examination would be considered for further promotion only on his acquiring the minimum educational qualification required for LDC*". The ACP Scheme of Government of India categorically mentioned that fulfillment of normal promotional norms are to be made for the grant of financial upgradation under the scheme. This aspect was further reinforced by the DoPT clarification on ACP against points Nos. 16,45,49 and 53. The applicant even though had completed 24 years of service on 24.09.2003 is not entitled for ACP as he did not possess the educational qualification for promotion to the next higher grade of Upper Division Clerk. The applicant had submitted a representation dated 23.09.2009 requesting to grant him the ACP benefits. In response to that he was clearly informed that he is not entitled for 2nd financial upgradation under ACP Scheme vide communication dated 26.11.2009 [Annexure R-2(a)]. The

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applicant did not challenged the same which presumes that he accepted the position. The Modified Assured Career Progression Scheme (MACP Scheme) was introduced with effect from 01.09.2008 vide O.M dated 19.05.2009 granting three financial upgradations to the employees on completion of 10, 20 and 30 years of continuous regular service and the criteria of educational qualification have been dispensed with. The applicant was, therefore, granted 2nd financial upgradation under MACP to the Grade Pay of Rs. 2000/- with effect from 01.09.2008 and 3rd upgradation to the Grade Pay of Rs.2400/- with effect from 24.09.2009 vide Office Order No. 174/2010 dated 03.06.2010 [Annexure R-2(b)]. Therefore, the applicant was granted two financial upgradations, which has not been mentioned by him in the present O.A. Further, when the post of LDCs were upgraded to that of UDC, an order were issued on 29.11.2011 posting the applicant as UDC though he was not qualified for promotion to the post. Subsequent to the order passed by this Tribunal in earlier O.A, the representation of the applicant was considered afresh and his request for upgradation of pay under ACP Scheme could not be acceded to as the applicant did not fulfill normal promotional norms which are required to be met to become eligible for 2nd financial upgradation under ACP. A well reasoned order was passed on the representation made by the applicant which does not call for any interference. Therefore, the respondents contended that there is no merit in the O.A.

4. The applicant has filed a rejoinder, in which he submitted that the only qualification required for promotion to the post of UDC is LDC. Since he was working as LDC on regular promotion basis, the applicant is entitled to get 2nd ACP with effect from 14.09.2003 the date on which he completed 24 years of service. No separate qualification for UDC has been fixed. All existing LDCs became UDCs and there is no existing LDCs working in the

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Department except those who were recruited in 2011. Referring to the clarification given by Government of India vide Annexure R-2(f) the applicant contended that it is in the nature of a circular and cannot override a statutory scheme. The said clarification is highly arbitrary and against granting of 2nd financial upgradation. Therefore, he is entitled to the 2nd financial upgradation.

5. Heard the learned counsel for the parties.

6. Learned counsel for the applicant reiterated the contention made in the O.A and the rejoinder and submitted that the applicant was working as LDC after passing the departmental test. The ACP Scheme was introduced to provide financial benefits to persons who do not get promotional avenues. Since the applicant had already become LDC a post which was upgraded to UDC subsequently, he is entitled to 2nd financial upgradation under ACP when he completed requisite service period. The element of educational qualification brought in by the respondents is highly arbitrary and cannot be justified. Therefore, the respondents should grant him the 2nd financial upgradation from the date on which it was due to him.

7. The respondents on the other hand reiterated the submissions made in the reply and submitted that for grant of 2nd ACP all the requisite parameters required for promotion to the next higher grade are to be met. The norms clearly stipulated that a LDC would be entitled for promotion to next higher grade i.e. the UDC only, if he has the requisite qualification and this is one of the key criterion for grant of 2nd ACP. Therefore, the applicant could not be considered for grant of 2nd ACP along with other persons who were granted the same since he did not possess the minimum educational qualification. However, when the MACP came into existence, he was granted 2nd and 3rd financial upgradation in terms of the provisions of the said



Scheme. Therefore, there is nothing arbitrary in the action of the respondents.

8. We have carefully considered the facts of the case.

9. The admitted facts in this case are that the applicant, is a non-matriculate, was initially appointed as Group-D employee, passed the Limited Departmental Competitive Examination and on being successful, he was appointed as Lower Division Clerk and worked in that post for more than 17 years, when he is became entitled to 2nd financial upgradation under ACP. The issue involves in this case is whether the benefit of financial upgradation under ACP can be denied to him on the ground that he does not possess the required educational qualification for regular promotion to the next higher post of UDC. It is needless to point out the fact that subsequently the Government has decided in favour upgrading all the posts of LDC to UDC.

10. The Assured Career Progression Scheme (ACP) was introduced vide Memorandum No. 35034/1/97-Estt.(D) dated 09.08.1999. Some of the stipulations made for grant of benefit under the ACP Scheme in the said O.M are as follows:-

".....4. 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 fulfillment of prescribed conditions. In other words, if the first upgradation gets postponed on account of the employee not found fit or due to departmental proceedings, etc. this would have consequential effect on the second upgradation which would also get deferred accordingly.

.....6. Fulfillment of normal promotion norms (bench-mark, departmental examination, seniority-cum-fitness in the case of Group 'D' employees, etc.) for grant of financial upgradations, performance of such duties as are entrusted to the employees together with retention of old designations, financial upgradations as personal to the incumbent for the stated purposes and restriction of the ACP Scheme for financial and certain other benefits (House Building Advance, allotment of Government accommodation, advances, etc.) only without conferring any privileges related to higher status (e.g. Invitation to ceremonial functions, deputation to higher posts, etc.) shall be ensured for grant of benefits under the ACP Scheme;

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.....12. The proposed ACP Scheme contemplates merely placement on personal basis in the higher pay-scale/grant of financial benefits only and shall not amount to actual/functional promotion of the employees concerned. Since orders regarding reservation in promotion are applicable only in the case of regular promotion, reservation orders/roster shall not apply to the ACP Scheme which shall extend its benefits uniformly to all eligible SC/ST employees also. However, at the time of regular/functional (actual) promotion, the Cadre Controlling Authorities shall ensure that all reservation orders are applied strictly;"

The respondents in their reply have referred to further clarifications issued by the DoPT vide Memorandum dated 10.02.2000 and specifically referred to Point Nos. 16, 45, 49 and 53 which are as follows:- "

	Issue	Clarification
16.	The relevant Recruitment/ Service Rules prescribe departmental examination/ skill test for vacancy based promotion. However, this need not be insisted for upgradation under ACPS.	As per the scheme (Condition No. 6), all promotion norms have to be fulfilled for upgradation under the Scheme. As such, no upgradation shall be allowed if any employee fails to qualify departmental/skill test prescribed for the purpose of regular promotion.
45.	In certain organisations, an employee after his selection on direct recruitment basis or even on promotion is required to undergo an induction training before he is given a functional post. Whether such induction training shall count towards the eligibility service for ACPS?	If under the relevant Recruitment/ Service Rules, the induction training counts towards eligibility service for regular promotions, the same will also be counted towards the 12 years/24 years residency period/regular service required for financial upgradations under ACP Scheme.
49.	Whether any period(s) of break-in-service under FR 17A declared during the career of an employee will have any adverse effect on his getting financial upgradation under the ACP Scheme?	Break-in service under FR 17A incurs only 3 specific disabilities as specified in the relevant FR. It does not affect the normal regular promotions. Consequently, it will have no effect on financial upgradation under the ACP Scheme.
53.	If for promotion on regular basis, an employee has to possess a higher/additional qualification, will it be necessary to insist on possession of these qualifications even while considering grant of financial upgradation under the ACPS?	In terms of condition No. 6 of Annexure-I to DoP&T O.M. Dated 9.8.1999, only those employees who fulfill all promotional norms are eligible to be considered for benefit under ACPS. Therefore, various stipulations and conditions specified in the recruitment rules for promotion to the next higher grade, including the higher/additional educational qualifications, if prescribed, would need to be met even for consideration under ACPS.

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11. It is evident from the above that the entitlement of financial upgradation under ACP Scheme would depend upon fulfillment of normal promotional norms which are specified at para 6 as bench mark, departmental examination, seniority cum fitness in the case of Group -D employees, etc. Nowhere it stipulates that for getting the benefit of ACP, the educational qualifications shall be as one of the pre-conditions. It is also clearly mentioned that the ACP Scheme contemplates merely placement on personal basis in the higher pay scale / grant of financial benefits only and shall not amount to actual / functional promotion of the employee concerned.

The clarification highlighted by the respondents also reiterates the condition of promotions in terms of stipulations under para No. 6. The clarification under point No. 53 refers to acquiring higher/additional qualification when required for promotion to next grade. It does not speak of any minimum qualification regarding on the existing post.

12. The respondents also referred to the Recruitment Rules, which mentioned the essential qualification for UDC and LDC as follows:-

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5. Upper Division Clerk/Upper Division Clerk-in-Charge. Cashier in U.D.C.s scale	Lower Division Clerk/Cashier/Adrema Operator/Computer/Telephone Operator
7. Lower Division Clerk/ Cashier/ Adrema Operator/ Computer / Telephone Operator	Essential:- (1) Qualifications : Matriculation or equivalent qualification until replaced by Higher Secondary Examination. Desirable qualifications: Knowledge of typewriting with a speed of atleast 35 words per minute.

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They have also referred to a Gazette dated 28.01.1988 [Annexure R-2(d)] which mentions that a non-qualified Group 'D' employee who become L.D.C on the basis of a departmental competitive examination would be considered for further promotion only on his acquiring the minimum educational



qualifications required for L.D.C. This stipulation may be correct, if the promotional post requires a high level of function by the incumbent concerned. But, as already mentioned earlier, the ACP Scheme is only meant for financial benefit and so no actual / functional promotion of the employee concerned is involved. Therefore, it would be unfair to hold / assume the educational qualification as one of the pre-conditions for giving financial benefit under ACP Scheme more so when the condition No. 6 for grant of benefit under ACP Scheme does not expressly provide the same.

13. In Civil Appeal No. 3562 of 2007 (M.N. Raghunatha Kurup & Ors. v. Union of India & Ors.) the Hon'ble Supreme Court in its order dated 13.10.2011 had observed as follows:-

"Appellants herein claimed the benefit of Assured Career Progression Scheme (for short 'ACP') as per the recommendation of the Vth Pay Commission.

Admittedly, the appellants have cleared the departmental examination but they have been denied the benefit on the ground that they did not possess the qualification of promotional post.

In the ACP Scheme, which is Annexure P1 to this appeal, nowhere it is mentioned that for getting the benefit of ACP, the applicant must possess the qualification of promotional post.

Accordingly, this appeal is allowed, the impugned judgment of the High Court is set aside and a direction is given that the appellants herein, who have no retired, be given the benefit of ACP notionally with all consequential benefits. No costs."

This would squarely apply to this case also.

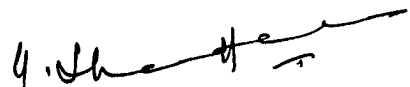
14. In view of the position held by the Hon'ble Apex Court in its aforesaid order and also in the light of the discussions in the preceding paragraphs, we are of the view that the applicant is entitled to the benefit of 2nd ACP from the date he completed 24 years of service i.e. with effect from 24.09.2003. Accordingly, the respondents are directed to issue necessary orders granting financial upgradation under 2nd ACP to the applicant from the date he becomes eligible to get said benefits under ACP and grant him the consequential financial benefits within a period of three months from the date of receipt of a copy of this order.

15. The Original Application is accordingly **allowed** . No order as to costs.

(Dated, the 11th September, 2015.)



(P.K.PRADHAN)
ADMINISTRATIVE MEMBER



(U. SARATHCHANDRAN)
JUDICIAL MEMBER