

O.A.No.207/2004

CORAM:

K.P.Jose, Peon
Canteen Stores Department
Area Depot, Kochi. Applicant

Vs.

1. Union of India represented by
the Secretary, Ministry of Defence,
New Delhi.
2. The General Manager,
Canteen Stores Department,
Adelphi, No.119, M.K.Road, Mumbai – 20.
3. The Manager,
Canteen Stores Department
Area Depot, Kochi.

The Application having been heard on 17.10.2006 the Tribunal on the same day delivered the following

HON'BLE MR. K.B.S. RAJAN, JUDICIAL MEMBER

The applicant who had joined as a Peon in the scale Rs.750-940 w.e.f. 11.8.80, stagnated in 1984. As a number of such stagnations arose, the Department vide A-1 order dated 13.2.96 allowed in situ promotion w.e.f. 1.8.95 in scale Rs.775-1150. The applicant is also one of the beneficiaries of the promotion order, which was effected by order dated 12.6.2000 fixing his pay at Rs.970/- w.e.f. 1.8.95 and with necessary replacement scale of pay. Subsequent increments under the replacement scale were also made available to him. Thus, as on 1.8.99, the applicant's pay was Rs.3280. From 9.8.99 the Government had introduced financial upgradations by what is called "ACP Scheme" in respect of

those who did not have promotion for twelve years/24 years. The applicant's name also figured in the list of financial upgradations vide Sl.No.11 of Appendix 2 order dated 29.3.2000. According to this order the applicant and others who put in requisite years of regular service in the grade 2400-3200 were placed in the grade of 2610-3450. However, as the applicant had already received the benefit of in-situ promotion with effect from 1.8.95 he had not opted for the same. Later on when the applicant observed that, under the ACP Scheme, one of his juniors was drawing more pay, he preferred a representation dated 26.2.2003 requesting for stepping up of his pay at par with his juniors. Further the respondents have rejected his claim vide impugned order dated 4.8.2003 specifying that the anomaly is due to granting the financial upgradation under ACP Scheme to the applicant's junior and since as per the Government O.M. on ACP Scheme such upgradations being personal, anomaly due to grant of ACP cannot be set right, the applicant's pay cannot be stepped up at par with his juniors. It is this order that is under challenge in this O.A.

2. The respondents have resisted the O.A. According to them, vide clause viii of the conditions for grant of benefits under the ACP Scheme the financial upgradation being purely personal to the employee, the same has no relevance to his seniority position and consequently there shall be no additional financial upgradation for the Senior employee on the ground that the junior employee in the grade has got higher pay scale under the ACP Scheme.

3. Counsel for the applicant submitted that at the time when the applicant did not opt for the ACP, he was under the impression that in-situ promotion would be more beneficial. But, he realised that due to stagnation increment which is only once in two years, his pay is less than his juniors who had opted for the ACP scheme. He, has, therefore, submitted that he may be permitted to file a representation for opting the ACP and he is prepared to abide by any conditions that may be imposed upon him in this regard.

4. Counsel for the respondents has invited our attention to para 13 of the conditions for grant of benefits under the ACP Scheme which is reproduced as hereunder.

 "Existing time-bound promotion schemes, including in-situ promotion scheme, in various Ministries/Departments may, as per

choice, continue to be operational for the concerned categories of employees. However, these schemes, shall not run concurrently with the ACP Scheme. The Administrative Ministry/Department – not the employees – shall have the option in the matter to choose between the two schemes, i.e. existing time-bound promotion scheme or the ACP Scheme, for various categories of employees. However, in case of switch-over from the existing time-bound promotion scheme to the ACP Scheme, all stipulations (viz.) for promotion, redistributing of posts, upgradation involving higher functional duties, etc) made under the former (existing) scheme would cease to be operative. The ACP Scheme shall have to be adopted in its totality.”

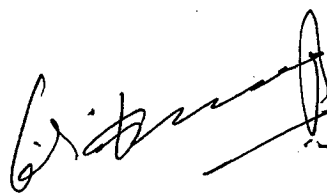
5. Arguments were heard and documents perused. The respondents are right when they have rejected the case of the applicant for stepping up of pay at par with his juniors, as the anomaly arose on account of ACP benefits to the juniors. However, as per para 13 of the conditions, an individual is entitled to either the Time bound promotion or the ACP. When such provisions exist, though the applicant has committed an error in not opting for ACP Scheme at the relevant point of time, justice demands that the applicant's case for switching over to ACP Scheme, be considered by the respondents. In that event, the applicant has to refund all the financial benefits that he could have got by way of enjoying the in-situ promotion offered to him vide order dated 13.2.96. The applicant may, therefore, move an appropriate application to the respondents giving an undertaking in regard to the refund of any excess amount drawn by way of in-situ promotion and if such a representation is filed, the department may consider the same and communicate its decision to the applicant. Since the matter pertains to 1995 onwards, it is bound to take some time to the department in processing the case, if they accede to the request of the applicant and hence, sufficient time may be required by them. As such, we are not inclined to calendar any time schedule for consideration of the representation of the applicant.

No costs.

Dated the 17th October, 2006.



N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K.B.S. RAJAN
JUDICIAL MEMBER