

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No.302 of 2004

Wednesday, this the 25th day October, 2006

CORAM :

**HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER**

1. M.Bhaskaran
Lower Division Clerk,
Office of the Director of Accounts(Postal),
Trivandrum.
2. T.Kuttappan,
Lower Division Clerk,
Office of the Director of Accounts(Postal),
Trivandrum.
3. C.Krishnan,
Lower Division Clerk,
Office of the Director of Accounts(Postal),
Trivandrum.
4. K.Karunakaran Nair,
Lower Division Clerk,
Office of the Director of Accounts(Postal),
Trivandrum.

Applicants

(By Advocate Mr. Thomas Mathew)

Versus

1. Senior Accounts Officer (Administration),
Lower Division Clerk,
Office of the Director of Accounts(Postal),
Trivandrum.
2. Director of Accounts (Postal),
Trivandrum.
3. Chief Postmaster General,
Kerala Circle,
Trivandrum.
4. Senior Accounts Officer (PA-Admn)
Postal Accounts Wing,
Department of Posts,
Dak Bhavan, Sansad Marg,
New Delhi.



5. Director General,
Department of Posts,
New Delhi.

6. Union of India represented by
its Secretary,
Department of Posts,
New Delhi. : Respondents

(By Advocate Mr. TPM Ibrahimkhan, SCGSC)

The application having been heard on 27.9.2006, the Tribunal on 25.10.2006 delivered the following :

ORDER

HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicants are aggrieved by denial of second financial up gradation under Assured Career Progression Scheme (scheme for short).

2. All the four applicants are presently working as LDCs in the Directorate of Postal Accounts. Having been directly recruited as Sorters during 1971-1973 and promoted as LDCs during 1975-1981, they anticipated that in terms of the A-1 document dated 9.8.99 providing for ACP, they would get the second promotion as on that date i.e. 9.8.99, by which time they had completed 24 years of service. The relevant provision relied upon by them is the para 5.1

"5.1 Two financial upgradations under the ACP Scheme in the entire Government service career of an employee shall be counted against regular promotions (including in situ promotion and fast track promotion availed through limited departmental competitive examination) availed from the grade in which an employee was appointed as a direct recruit. This shall mean that two financial



upgradations under the ACP scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee. If an employee has already got one regular promotion, he shall qualify for the second financial upgradation only on completion of 24 years of regular service under the ACP scheme. In case two prior promotions on regular basis have already been received by an employee no benefit under the ACP Scheme shall accrue to him."

They were fortified in their belief by virtue of the clarifications issued by the OM dated 18.7.2001 (A-8). Their expected rise was to the scale of Junior Accountant Rs.4000-100-6000 since revised to Rs.4500-7000. Oral representations were made, followed by written ones (A-9 by first applicant and identical ones by the others). In reply, they received A-10 communications, informing them that they could not be given the II upgradation, but the matter had been sent to the Directorate for orders. The orders (A-11, A-12, A-13 and A-14) turned down their request by informing them that they were not entitled for any further financial upgradation as they did not fulfil the prescribed condition of educational qualification as per clarification received from the Directorate vide No.3(6) 2002/PA-Admn.I/887 dated 11.3.2004. Challenging these orders they have come before this Tribunal.

3. They claim the reliefs of quashing the impugned orders and of securing the direction to the effect the applicants are entitled to 2nd financial up gradation in the grade of Junior Accountant in the pay scale of Rs.4500-7000 (revised from 4000-6000) the next grade of LDC as per hierarchy with effect from 9.8.1999 with all arrears and consequential benefits. The above claim rest on the following grounds.



- i) The rejection was arbitrary, unconstitutional.
- ii) By virtue of A-8 clarifications they are entitled to the grade of Junior Accountant, the next grade as per hierarchy of the grade to which they were promoted.
- iii) The scheme does not provide for any condition of educational qualification.
- iv) This condition of educational qualification was negatived by order of this Tribunal in O.A.309/2001 dated 7.1.2002.

4. The respondents oppose the application by pointing out that

- i) A-1 OM dated 9.8.99 specifically provides for fulfilment of promotion norms(para 6 of the Annexure referred to in para 3 of the OM). In the progression from LDC to Junior Accountants, possession of matriculation is prescribed for seniority-cum-fitness route and passing of departmental examination otherwise. None of the two preconditions is fulfilled by any of the applicants.
- ii) The Principal Bench considered this aspect in O.A.2196/2000 and ordered as follows

"... after a careful consideration of the matter in the background of the salient/relevant features of the scheme contained in para 5 above, we are inclined to take the view that though as a rule the aforesaid ACP Scheme is designated to provide two financial upgradations to the generality of Government servants, the Government have, as to the same time, thought it fit to lay down a few conditions in order to ensure that only those who are fit for promotion generally and in their turn are given the benefit of financial upgradation. In other words, the aforesaid scheme is in our view so designed as to ensure that non-performers and the dead wood are not able to accrue the benefit of financial upgradations. The Government servant do not have an absolute right to secure financial upgradations under the scheme in question as a matter of course.



That being so, we cannot find any fault with the clarification rendered by the respondents vide their OM of 10th February 2000".

5. Heard both parties and perused the documents.
6. The determinant point in the adjudication of this application is whether the insistence of normal promotional norms for upgradation under the scheme is in order. First point to consider in this regard is the argument of the applicants that two financial upgradations under the ACP scheme in the entire Government service career of an employee shall be counted against regular promotions (including in situ promotion and fast-track promotion, availed through limited departmental competitive examination) from the grade in which an employee was appointed as a direct recruit. This shall mean that two financial upgradations under the ACP Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed of by an employee. If an employee has already got one regular promotion, he shall qualify for the second financial upgradation only on completion of 24 years of regular service under the ACP scheme. In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP scheme shall accrue to him. What is provided in para.6 of the Annexure of the OM referred to above, is a set of conditions which are only illustrative and not exhaustive which is evident by the word etc. at the end of enumeration. The relevant portion of the said paragraph begins as follows:

"6. Fulfilment of normal promotion norms(benchmark, departmental examination, seniority-cum-fitness in the case of Group'D' employees, etc(emphasis supplied) for grant of financial



upgradation...."

This by no stretch of imagination be construed to be an exhaustive list of vital parameters.

7. Secondly, reference was made about the orders passed by the Principal Bench in O.A. 2196/2000. This point has not been countered by the applicants. In the said judgment

8. Besides the above mentioned judgment, the Principal Bench considered this very aspect in Full Bench (Chandigarh) in O.A.No.125/CH/2003 with O.A.465/CH/2003 and delivered an order dated 8.12.2004. In the said order the question posed for consideration by the Full Bench was as follows:

"WHETHER a person, for getting financial up gradation under the ACP Scheme dated 9.8.1999 to the next grade/scale, is required to be possessed of educational qualifications required for appointment/promotion to the next higher post, carrying the same scale which is to be given now under the Scheme as a financial up gradation?"

While considering the matter, the Hon. Principal Bench had occasion to refer to O.A.309/2001 V.E. Chandran and others v. Union of India, on the decision of which the applicant in this case relies upon to buttress their claim. The following observations were made by the Principal Bench:

"34. Great stress, however, was laid on the decision of the Ernakulam Bench in the matter of V.E. Chandran & others (supra). The learned Judge had observed:

"It can be inferred from the underlined stipulation that in the case of Group D employees the condition precedent for grant of the financial up gradation first and second is only seniority cum fitness. Possession of educational qualification prescribed for appointment

as LDC does not appear to be a pre-condition. It is not easy for a Group D employee to acquire the educational qualification prescribed for recruitment to the post of LDC. Therefore a Sepoy does not have adequate promotional avenues. The scheme itself was evolved to mitigate the hardship of such employees. By giving the financial up gradation what is made available is only a **financial benefit and not an elevation in status**. They continue to be Sepoys performing the same duties as before but enjoying only a higher pay scale after rendering service for a specified period without any promotional chance. We are of the considered view that the view taken by the respondents as reflected in the impugned orders as also in their written statement that passing Matriculation is a condition precedent for financial up gradation to the scale of Rs.3050-4590 to Group D employees like the applicants is erroneous and is repugnant to the provision of the Assured Career Progression Scheme. Further while the second financial up gradation in the cadre of Sepoys in the Central Excise and Customs is to the pay scale of Rs.3050-4590 as is evident from Annexure A2, the impugned order Annexure A12 dated 1st June 2001 issued by way of clarification providing that financial upgradation to non-Matriculate Group D would be only to the scale of Rs.2650-7-3800-75-4400 is also unsustainable as it is arbitrary, discriminatory and irrational and opposed to the spirit of the Assured Career Progression Scheme. Such a differentiation is not made on the basis of any intelligible differentia which bears a nexus with the objective sought to be achieved by the Scheme."

After analysing the Principal Bench answered the question raised above as follows:

"A person for grant of financial up gradation under the ACP Scheme dated 9.8.1999 to the next higher grade/scale is required to possess the educational qualifications required for appointment/promotion to the next higher post carrying the same scale."

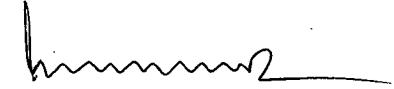
9. In view of the categorical answer and decision as mentioned above,

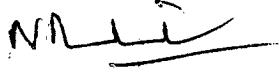


we find that the applicants have no sustainable case.

10. In view of this, the O.A is rejected. No costs.

Dated, 25th October, 2006.


GEORGE PARACKEN
JUDICIAL MEMBER


N RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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