

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No.591 of 2005

This the 19th day of September, 2011

Hon'ble Mr. Justice Alok Kumar Singh , Member-J
Hon'ble Mr. S.P. Singh, Member-A

Nanak Chand, Aged about 50 years, S/o Sri Pannalal, R/o
Central Cattle Breeding Farm Andeshnagar, Lakhimpur
Kheri.

.....Applicant

By Advocate : Sri P.K. Srivastava

Versus.

1. Secretary, Ministry of Agriculture, Department of
Animal Husbandry & Dairying, Krishi Bhawan, New
2. ~~Director~~ Secretary, Department of Animal Husbandry &
Dairying, Krishi Bhawan, New Delhi.
3. Director, Central Cattle Breeding Farm, Andesh nagar,
Lakhimpur Kheri.

.....Respondents

By Advocate : Sri S.P. Singh

ORDER

By Justice Alok K Singh, Member-J

This O.A. has been filed for the following relief(s) :-

- (a) *to direct the respondents to give the second leg of functional upgradation under the ACP scheme by giving the applicant the pay-scale of Rs. 10000-15200/- w.e.f. the date the applicant becomes eligible for the same taking into consideration the fact that the applicant's junior Sri Harpal Sharma has already been given the said benefit with all consequential benefits including the arrears of pay.*
- (b) *to direct the respondents to pay the cost of this application.*
- (c) *Any other order which this Hon'ble Tribunal deems just and proper in the circumstances of the case be also passed."*

2. The case of the applicant is that he was appointed as Agricultural Assistant on 1.3.1978 under the control of respondent nos. 1 & 3. On the basis of recommendations of

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Vth Central Pay Commission, the Government of India announced ACP scheme on 9.8.1999 for Central Government civilian employees. This scheme provides two financial up-gradation ;(i) after 12 years ; (ii) after 24 years of service, in case an employee does not get promotion during this period. Further, the case of the applicant is that he was not given the second financial up-gradation though it was given to one Sri Harpal Sharma, who was junior to the applicant. The applicant came to know that he has been deprived from this benefit on the ground that he does not possess the minimum qualification required for the post of Director, Regional Station Forage Production & Demonstration (RSFP&D) which requires a degree in Agriculture from a recognized University or equivalent, while the applicant only possessed a Diploma in Agriculture. It is said that this view is patently perverse because he is not to be actually promoted to the post of Director (RSFP&D) .

3. The respondents have contested the O.A. on the plea that the next higher post in the hierarchy is that Agriculture Officer for which minimum qualification prescribed is that of Graduation in Agriculture and ACP benefit has to be granted conforming to the existing hierarchical structure only. It has been said that though Sri Harpal Sharma was junior to the applicant, but he was given this benefit as per recruitment rules for promotion to the post of Director (RSFP&D) as he possessed the required educational qualification.

4. After hearing the arguments advanced by both the parties, this Tribunal earlier reached to the conclusion that the ACP scheme has nothing to do with the plea taken by the respondents that an employee should fulfill qualification requirement meant for the higher post in order to be eligible for financial upgradation to the next higher pay scale in a hierarchical structure. It was not a regular promotion. In the circumstances, the O.A. was allowed on 10.8.2009 saying that the case of financial upgradation of the applicant should be considered by the screening committee from the date such a facility was granted to his immediate junior.

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5. Against the order of the Tribunal, the respondents went for judicial review before Hon'ble High Court by filing Writ petition no. 631 (S/B) of 2010. Before Hon'ble High Court, the Additional Solicitor General pointed out that after issuance of the scheme of ACP on 9.8.1999, a clarification was issued on 18.7.2001, according to which, the benefit of second financial up-gradation on completion of 24 years of service can be given only on possessing the requisite eligibility for being considered for promotion to the higher post. From the side of the Opposite parties i.e. the applicant in the present O.A., it was submitted that clarificatory order was not placed before the Tribunal and for the first time, it is being placed before this Court. Nevertheless, learned counsel for the parties agreed that this matter may be remanded to Lucknow Bench of CAT for a fresh consideration in the light of the Government order dated 18.7.2001.

In view of the above, earlier judgment of this Tribunal was set-aside and the matter was remanded to this Tribunal for a fresh consideration by means of judgment and order dated 18.5.2010.

6. Thereafter, the respondents filed Supplementary Counter Reply by means of M.P. no. 1207 of 2010 enclosing therewith the aforesaid judgment of Hon'ble High Court as also clarificatory order dated 18.7.2001 issued by DOP&T, Ministry of Personnel, Public Grievances & Pensions (Annexure SCA-4). In this Supplementary Counter reply, nothing new has been said except that according to clarificatory order dated 18.7.2001 it has been clarified that various stipulations and conditions specified in the recruitment rules for promotion to the next higher grade, including the higher/additional educational qualification if prescribed would need to be met even for consideration under ACPS. But the applicant (wrongly typed as Opposite party no.1 in para 14 of the Supplementary Counter Reply) admittedly did not possess the degree in Agriculture and, therefore, he was rightly denied this benefit.

7. The applicant also filed Supplementary Rejoinder Reply reiterating almost similar pleadings as contained in the O.A. A

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reference has also been made to the case of Roop Chand Adesh & Others Vs. DDA reported in JT 1988 (4) SCC 114 wherein the Hon'ble Supreme Court has laid down certain law in respect of eligibility for consideration for promotion to the next higher post. But in the present case, we have to deal with only the parameters pertaining to grant of ACP scheme.

8. Heard the learned counsel for the parties at length and perused the material on record.

9. It is worthwhile to mention that from the pleadings of both the parties as also from the statement given by both the counsel before the Hon'ble High Court as mentioned in the judgment dated 18.5.2010 in Writ petition no. 631 (S/B) of 2010 (Annexure SCA-2) it transpires that clarificatory order dated 18.7.2001 issued by the DOP&T was not placed before this Tribunal when the O.A. was initially decided. The relevant clarification as also clarificatory order mentioned at sl. no. 53 in the aforesaid clarificatory order dated 18.7.2001 is reproduced below:

<i>If not 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?</i>	<i>In terms of condition no. 6 of Annexure-1 to DoP&T O.M. dated 8.9.1999, 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 qualification, if prescribed, would need to be met even for consideration under ACPS.</i>
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10. From the aforesaid clarification, it is clear that prior to issuance of this clarification, there were doubts as to whether or not for promotion on regular basis, an employee has to possess the higher/additional qualification and will it be necessary to insist on possession of these qualifications and even while considering grant of financial upgradation under the ACPS. This doubt has been set at rest by the above clarification issued by

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DOP&T saying that in terms of condition no.6 of Annexure no.1 to DoP&T O.M. dated 8.9.1999, only those employees who fulfill all promotional norms are eligible to be considered for benefit under ACPS. Therefore, it was clarified that various stipulations and conditions specified in the recruitment rules for promotion to the next higher grade including the higher /additional educational qualification, if prescribed, would need to be met even for consideration under ACPS.

11. There is no quarrel on the point that the recruitment rules for promotion to the post of Director (RSFP&D) a Degree in Agriculture from a recognized University or equivalent is a condition precedent; whereas the applicant owns only Diploma in Agriculture.

12. Now, the question as to whether or not at the time of consideration of the case of applicant these norms were considered for grant of ACPS. In the initial Counter Reply as also in the Supplementary Counter Reply it has been merely said that the essential eligibility condition for promotion to the post of Director (RSFP&D) under the recruitment rules is Fodder Agronomist/Agriculture Officer with 7/10 years regular service in the respective grade and possessing a degree in Agriculture from a recognized University. But the applicant did not possess the degree in Agriculture from a recognized university or equivalent appears to be in order.

13. In the Supplementary Rejoinder Reply, the applicant has made a mention about a case of Roop Chand Adesh & Others Vs. DDA reported in JT 1988 (4) SCC 114 decided by Hon'ble Supreme Court. But that case pertains to matter of promotion. The applicant cannot derive any direct benefit from this case law because of different facts and circumstances. On the other hand, from the side of the respondents, reliance has been placed on the following case law:

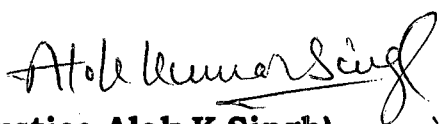
- (i) Bhakra Beas Management Board Vs. Krishan Kumar Vij & Another reported in (2010) 8 SCC 701.

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In this case, it was laid down that by interpretation of statutory provision, the basic rule is purposive construction and, therefore, statutory provision must be so construed as to make it effective and operative. Any such construction which reduces the statute to futility has to be avoided even though there may be some inexactitude in language used. The Hon'ble Supreme Court while dealing with the case in respect of time bound promotion scheme of Punjab Electricity Board Service of Engineers (Electrical) Regulations, 1965 has laid down that only those employees who fulfilled the pre-requisite qualification for further promotion alongwith certain length of service as prescribed would be entitled to one time promotional scale.

14. Having regard to the above discussion, we find that crux of the matter is that since in view of the clarificatory order dated 18.7.2001, the minimum qualification of Graduation in Agriculture was one of the stipulations/conditions for consideration under ACPS, which the applicant did not possess, he has no claim for second Financial upgradation, in question. Therefore, this O.A. is liable to be dismissed and is dismissed accordingly. No order as to costs.


(S.P. Singh)
Member-A


(Justice Alok K Singh)
Member-J 19.9.11

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