

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

Original Application No. 337 of 2008

Reserved on 1.9.2014
Pronounced on 18th September, 2014

**Hon'ble Mr. Navneet Kumar, Member-J
Hon'ble Ms. Jayati Chandra, Member-A**

1. Radhey Shyam, S/o Sri Chhotely Lal.
2. Balram, S/o Sri Guru Prasad.
3. Shree Ram, S/o Phatte.
4. Shanker Lal, S/o Sri Girdhari.
5. Sunder Lal, S/o Sri Gazi.
6. Chheda Lal, S/o Sri Maiku.
7. Roop Chand, S/o Sri Ganga Prasad.
8. Bhagirath, S/o Sri Subba.
9. Maiku Lal, S/o Sri Sukhai.
10. Ram Dayal, S/o Sri Prabhu.
11. Ram Prasad, S/o Sri Sukhai.
12. Ram Bilas, S/o Sri Chandrika
13. Mahabeer, S/o Sri ~~Prabhu~~ PUTTU connected with order dated 22/3/14.
14. Ram Swaroop, S/o Sri Dhanai.
15. Ram Lal, S/o Sri Jurakhan.
16. Kallu, S/o Sri Chandrika.
17. Shukru Prasad, S/o Sarjoo Prasad.
18. Ganga Ram, S/o Sri Rajjo.
19. Chheda Lal, S/o Sri Shiv Dayal.
20. Ram Chandra, S/o Sri Ram Charan.
21. Amrit Lal, S/o Sri Radhey Lal.
22. Khem Lal, S/o Sri Devi Prasad.
23. Harish Chandra, S/o Sri Nihal.
24. Shiv Raj, S/o Sri Kedar.
25. Ram Krishan, S/o Shree Ram.
26. Ram Charan, S/o Ram Dayal.
27. Bhagwan Din, S/o Jola.
28. Nanha Lal, S/o Sri Durjan.
29. Buddha, S/o Sri Lochan
30. Raj Bahadur, S/o Sri Ram Padarath.
31. Shree Ram, S/o Dalla.
32. Kallu, S/o Sri Tulsi.
33. Vishram, S/o Sri Harchhat.
34. Chhang, S/o Sri Kanhai.
35. Ram Kumar, S/o Sri Jangali.
36. Mohd. Saleem, S/o late Mohd. Azeem.
37. Chunni Lal, S/o Sri Maiku Lal.
38. Mathura Prasad, S/o Sri Devi Prasad.
39. Kamta Prasad, S/o Sri Pokhai.
40. Raja Ram, S/o Sri Hemraj X *Sri Jurakhan J. Chandra*
41. Ram Asrey, S/o Sri Nihal.
42. Prabhu, S/o Sri Gajodhar.
43. Ateek Ahmad, S/o Sri Sadhiq Ahmad.
44. Ram Prakash, S/o Tuladas.

connected with order dated 23/12/2014

*J. Chandra
V.P. A.*

J. Chandra

45. Babu Lal, S/o Sri Munni Lal.

46. Gurdyal, S/o Sri ~~Ramdev~~ ^{Ramdeon}

*converted into order chandra,
dated 22-3-2014....Applicants
J.C.*

By Advocate : Sri A. Mishra for Sri P. Bisht

Versus.

1. Union of India through the Secretary, Ministry of Agriculture, Government of India, New Delhi.
2. Indian Council for Agriculture Research, Krishi Bhawan, Dr. Rajendra Prasad, New Delhi through its Director General.
3. Central Institute for Subtropical Horticulture, Rehankhera, Kakori, Lucknow through its Director.
4. The Director, Central Institute for Subtropical Horticulture, Rehankhera, Kakori, Lucknow.
5. Administrative Officer and Head of Office, Central Institute for Subtropical Horticulture, Rehankhera, Kakori, Lucknow.

.....Respondents.

By Advocate : Sri S.P. Singh

O R D E R

Per Ms. Jayati Chandra, Member (A)

This O.A. has been filed by the applicant under Section 19 of Administrative Tribunals Act, 1985 initially seeking five reliefs, but on the statement of the learned counsel for the applicant at the bar on 1.9.2014, the relief nos. (ii) and (iii) have not been pressed. Thus, the present O.A. remains for adjudication for relief nos. (i), (iv) and (v), which are as under:-

- "(i) *quash/set-aside the order dated 4.1.2007 (Annexure no.1 to the O.A.) issued by the respondent nos. 4 & 5 whereby they have given the benefit of ACP Scheme w.e.f. 30.7.2004 instead of 9.8.1999 and direct the respondents to pay the benefit of first up-gradation in ACP scheme in the pay scale of Rs. 2610-4000/- to the applicants from 9.8.1999 and respondents be directed to regularize the services of the applicants as SS Gr.I from the date when similarly circumstances persons have been regularized as such.*
- (ii) *issue any other order or direction which this Hon'ble Tribunal may deem just fit and proper in the circumstances of the case favouring the applicants.*
- (iii) *allow the original application with costs.*

2. The facts of the case are that the applicants are working on daily wage basis at Central Institute for Subtropical Horticulture,

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Lucknow (in short Institute). As their services were not being regularized, the Workmen/Trade Union of the applicants raised an Industrial dispute through its Joint Secretary before the Assistant Labour Commissioner (Central), Kanpur and the aforesaid Industrial Dispute was decided vide Memorandum of Settlement arrived at 6.6.1985. The relevant portion of the settlement reads as under:-

"The employer shall regularize these enlisted workers within five months from the date of signing this settlement and in any case these workers shall be deemed to have been regularized after expiry of six months from the date of signing the settlement."

The settlement/award was challenged by the respondents in Writ petition No. 18719 of 1985, which was subsequently transferred to Allahabad Bench of the Tribunal and registered as T.A. No. 1892/1987. The said T.A. was decided vide judgment and order dated 7.3.1991 in the following terms:-

"In the result, we hold the settlement dated 6.6.1985 is a legally valid and enforceable contract between the workman and the employer (CIHNP). Therefore, the Writ petition accordingly must fail. The Writ petition is dismissed without any order as to costs."

However, the respondents instead of regularizing the services of the applicants, gave them temporary status under the scheme of CIH&P 1992 on the pattern of the DoP&T for grant of temporary status Regularization Scheme dated 10.9.1993 and were given the benefits and pay scale at par with Group 'D' employees. Since the regularization was not done by the respondents, few of the signatories to the Industrial Disputes filed O.A. no.128 of 1996, which was allowed vide judgment and order dated 16.12.2003. The operative portion of the order runs as thus:-

"In the result, the O.A. is allowed. Respondents are directed to give effect to the settlement which has been declared as legal and valid by regularizing applicants with all consequential benefits except back wages within a period of six months from the date of receipt of a copy of this order, against the Group 'D' post. No costs."

The respondents, thereafter, regularized the services of 08 persons who were applicants in O.A. no. 128 of 1996 by order dated 1.7.2004 (Annexure no.10). The applicants of the instant

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O.A. and other signatories to the Original settlement were regularized vide order dated 30.7.2004 (Annexure no.11) against special Group 'D' posts, which were created to specially accommodated them. The Government of India had issued O.M. on 9.8.1999 by which the Assured Career Progressive (ACP) scheme for Group 'B', 'C' and 'D' was introduced vide O.M. dated 9.8.1999 (Annexure no.12). As per clause IV of the scheme, the financial up-gradation is to be given on completion of 12 years regular service and since the applicants had completed 12 years regular service as per regularization order dated 30.7.2004, but w.e.f. 6.12.1985, they became entitled for the first financial up-gradation under the ACP Scheme from 9.8.1999. When the respondents did not give the financial up-gradation in time, the applicants gave representation to the respondents. However, the department by impugned order dated 4.7.2007 allowed the benefit of financial upgradation to the applicants of O.A. no. 128 of 1996, w.e.f. 1.7.2004; whereas the present applicants of this O.A. have been given the aforesaid benefit w.e.f. 30.7.2004. This date is at variance with the respondents' own statement made in the impugned order that in column 5 shown 8.8.1999 as the year when the applicants completed the requisite period for grant of 1st financial up-gradation. The applicants continued to give representation against this order seeking correction of effective date of grant of ACP on 9.8.1999 instead of 30.7.2004, this no result; hence this O.A.

3. The respondents have stated that the applicant had been engaged as casual labour from 1973 onwards. Subsequent to the settlement dated 6.6.1985 and in compliance of judgment and order dated 7.3.1991 in consultation with the Ministry of Finance, all causal labourers including the applicants were granted temporary status under grant of Temporary Scheme 1992. In so far as the judgment in O.A. no. 128 of 1996 is concerned, the same is applicable only to those who were party to the O.A. and were regularized on SS Gr. I Posts w.e.f. 6.12.1985 by order dated 1.7.2004. By Council's letter dated 15.7.2004, $88 + 14 = 102$ posts were scrutinized. Out of these 88 posts were created w.e.f. 6.12.1985 and 14 w.e.f. 6.12.1985 and upto specific period as shown against each case (Annexure CR-2). Accordingly by order

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dated 30.7.2014 75 persons (including the applicants) were regularized on Group 'D' supporting staff in the pay scale of Rs. 196-232 (Rs 750-940) and (Rs. 2550-3200) (revised) 6.12.1985. As per the terms & conditions of para 5.2 of the ACP Scheme, benefit shall be counted from the grade in which employee was appointed as direct recruitment. All the SS Gr.I and SS Group 'D' employee were regularized appointed through departmental selection committee meetings held on 29.6.2004 and 29.7.2004 in para 13 of the CA, the respondents have stated the following

.....However, it is submitted that as per the clarification no. 15 issued by the Government of India vide letter dated 10.2.2000 endorsed by ICAR vide their endorsement dated 1.3.2000 that actual financial benefits could be given only prospective dates as the ACP scheme can have only prospective application, it is not permissible to allow the notional benefits with retrospective effect. In view of this, all of them should be given the financial benefits from the date 4.1.2007, but the applicants belongs to weaker section of the society, the financial benefit was given from the date of appointment as SS Gr. I against the available SS GR-I posts and supporting staff Group 'D' post i.e. 1.7.2004/30.7.2004.

4. Rejoinder has been filed by the applicants denying the averments made in the Counter Reply/ Supplementary Counter Reply and reiterating the stand taken in the Original Application.

5. We have heard the learned counsel for the parties at length and have also perused the pleadings available on record.

6. The important point involved in this case is that the applicants were beneficiaries of Industrial settlement dated 6.6.1985 and subsequent orders passed in TA no. 1871 of 1985/ 1892 of 1987. The Government of India vide its order dated 15.7.2004 had given permission for creation of 88 Group 'D' posts w.e.f. 6.12.1985 to enable the CISH to regularize as the rest of the casual workers who were parties to the settlement of 1985 and who were still waiting to be regularized. Further, they have given permission for creation of 14 supernumerary Group 'D' posts for arranging the period to accommodate. Subsequently by order

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dated 30.7.2004, 75 persons were regularized w.e.f. 6.12.1985 on Group 'D' supporting staff posts.

7. It is not clear from the aforesaid order whether these Group 'D' posts were created as Supporting Staff Gr.II and or Gr.I. An examination of letter dated 15.7.2004 reveals the heading merely "creation of Group 'D' posts at CISH, Lucknow. However, the respondents themselves have regularized the services of those of the applicants in the instant O.A. who were also applicants in O.A. no. 128 of 1996 as SS Gr.I w.e.f. 6.12.1985 vide order dated 1.7.2004 and the rest have been regularized on Group 'D' Supporting Staff in the pay scale of Rs. 2500-3200 w.e.f. 6.12.1985 vide order dated 30.7.2004. In view of no subsequent order, withdrawing/amending/modifying these orders these orders, the services of the applicants so named in those orders stand regularized w.e.f. 6.12.1985 in the pay scale shown therefor. The question of rightness and wrongness of the pay scale as conferred is not the subject matter of controversy in this O.A. The uncontroverted date of regularization of the applicants is to be taken as 6.12.1985.

8. Coming to the question for grant of financial up-gradation under ACP Scheme, the ACP scheme was introduced w.e.f. August, 1999. Para 3.1 of the Scheme states as under:-

"While in respect of these categories also promotion shall continue to be duly earned, it is proposed to adopt the ACP Scheme in a modified form to mitigate hardship in cases of acute stagnation either in a cadre or in an isolated post. Keeping in view all relevant factors, it has, therefore, been decided to grant two financial upgradations [as recommended by the Fifth Central Pay Commission and also in accordance with the Agreed Settlement dated September 11, 1997 (in relation to Group 'C' and 'D' employees) entered into with the Staff Side of the National Council (JCM)] under the ACP Scheme to Group 'B', 'C' and 'D' employees on completion of 12 years and 24 years (subject to condition no.4 in Annexure-I) of regular service respectively. Isolated posts in Group 'A', 'B', 'C' and 'D' categories which have no promotional avenues shall also qualify for similar benefits on the pattern indicated above. Certain categories of employees such as casual employees (including those with temporary status), ad-hoc and contract employees shall not qualify for benefits under the aforesaid Scheme. Grant of financial upgradations under the ACP Scheme shall, however, be subject to the conditions mentioned in Annexure-I.

Para 6.3 of the scheme runs as under:-

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*"In order to prevent operation of the ACP Scheme from resulting into undue strain on the administrative machinery, the Screening Committee shall follow a **time-schedule** and meet twice in a financial year – preferably in the first week of January and July for advance processing of the cases. Accordingly, cases maturing during the first-half (April-September) of a particular financial year for grant of benefits under the ACP Scheme shall be taken up for consideration by the Screening Committee meeting in the first week of January of the previous financial year. Similarly, the Screening Committee meeting in the first week of July of any financial year shall process the cases that would be maturing during the second-half (October-March) of the same financial year. For example, the Screening Committee meeting in the first week of January, 1999 would process the cases that would attain maturity during the period April 1, 1999 to September 30, 1999 and the Screening Committee meeting in the first week of July, 1999 would process the cases that would mature during the period October 1, 1999 to March 31, 2000."*

9. The aforesaid para provides that while laying down the periodically of the meeting of the screening committee for the purpose of first screening committee meeting subsequent to the passing of the scheme. Para 6.4 of the scheme states as follows:-

"To make the Scheme operational, the Cadre Controlling Authorities shall constitute the first Screening Committee of the current financial year within a month from the date of issue of these instructions to consider the cases that have already matured or would be maturing upto March 31, 2000 for grant of benefits under the ACP Scheme. The next Screening Committee shall be constituted as per the time-schedule suggested above."

10. A reading of these rules would provide that all cases which had matured by the date of introduction of the scheme, had to be expeditiously scrutinized by the DPC and successful persons were to be given the benefit from the date of eligibility or introduction of the scheme which ever was later. The applicants having been regularized w.e.f. 6.12.1985, even though retrospectively, are eligible for consideration for all consequential benefits. There is no question of notional benefits in this case, as the grant of ACP is consequential to the regularization exercise.

11. We fail to understand on what basis the respondents have firstly held that the applicants are entitled to the benefit of ACP w.e.f. 4.1.2007, thereafter have made out a case for charity and compassion by granting them financial up-gradation w.e.f. 1.7.2014/30.1.2014. We may ask the respondents under what enabling provisions of the scheme they assumed the authority for

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such relaxation ! And if they did have the powers, what made them pick on a particular date ?. The revised pay fixation as per ACP scheme is neither the question of charity or discretion. It is a benefit conferred upon the regular employees vide Government order/circular dated 8.8.1999. Also it is not understood how in the impugned orders the respondents have shown the date 8.8.1999 as "Prathama Vittiya Labbh poorna hone ki tithi" and then stated that applicants were entitled to the benefit w.e.f. 4.1.2007.

12. In view of the above, O.A. succeeds. The impugned order dated 4.1.2007 is quashed. We feel on account of facts of the case no useful purpose is going to be served by remanding the matter for holding a review, the Departmental Screening Committee. The Screening Committee has already found the applicants suitable by a subsequent meeting and the qualifying service periods (between 1985 and 1999) for grant of ACP has been regularized retrospectively by order dated 30.7.2004. The respondents are directed to give the benefit of ACP to the applicant from 9.8.1999 instead of 30.7.2004 and pay the arrears thereof. The aforesaid exercise shall be completed within a period of four months from the date of receipt of copy of this order. No costs.

J. Chandra.

(Ms. Jayati Chandra)
Member-A
 Girish/-

Navneet Kumar
(Navneet Kumar)
Member-J