

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH; PATNA**

Original Application No. 74/2006

Date of decision: 27/1- January 2011

**CORAM: HON'BLE MR. JUSTICE ANWAR AHMAD, MEMBER (J)
HON'BLE MR. SUDHIR KUMAR, MEMBER (A)**

Ram Chandra Sharma s/o late Y.P. Sharma, working as AEB/R;
Age B/R Dhanapur later on tr. To as AE B/R, Age (Fy) Shahjanpur
(MES), C/o GE (I) Fy Morad Nagar, District Ghaziabad.

..... Applicant.

Rep. By Sh. M.P. Dixit, Counsel for the applicant.

Versus


1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi 110 0011.
2. The Directorate General (Personnel)/ E1 (DPC-1), Military Engineering Services' Engineer-in-Chief's Branch; Army Headquarter, Kashmir House; DHQ; New Delhi.
3. The Chief Engineer (HQ), Central Command, Lucknow-226002.
4. The Chief Engineer Jabalpur Zone, Jablpur.
5. The Head Quarter, the Commander Works Engineer, Depatoli Cantt. Ranchi 834009.
6. Garrison Engineer Danapur Cantt. At P.O. Subdivision-Danapur.

.....Respondents.

Rep. By Sh. R.K. Choudhary, Counsel for the respondents.

ORDER

Per Mr. Sudhir Kumar, Member (Administrative)

 This Original Application has been filed by the applicant against the order dated 15.3.2005 through which the benefits of 2nd Financial

Upgradation under Assured Career Progression (ACP) scheme were given to him w.e.f. 9.3.2003 onwards, since there was a disciplinary proceedings case pending against him till 8.3.2000, in which a penalty of 'Censure' was awarded to him on that date. His grievance is that he should have been given the benefit of 2nd ACP w.e.f. 9.8.99 itself, when the ACP Scheme became applicable to him, and an alternative prayer of his, made already before the respondents through his representation dated 1.5.2005, was for consideration of grant of 2nd ACP benefit to him at least w.e.f. 3.2.2000, even though he is entitled for the same since 9.8.1999 itself.

2. It is seen from the pleadings that even though ACP became applicable to the department of Military Engineering Service since 9.8.1999, and the applicant had already completed 24 years of his service prior to that on 23.2.1997, as on that date he was undergoing a punishment of reduction of pay of one lower stage for a period of one year awarded to him on 2.2.1999, punishment order being without cumulative effect, his increment was released w.e.f. 2.2.2000. As a result due to the currency of the penalty period under Rule 16 of CCS (CCA) Rules, 1965, his date of increment also got postponed to be effective as from 2.2.2000, in place of 1.11.99. The applicant's case is that, as accepted by the respondents themselves in the impugned order (Annexure A/9), his previous penalty order had expired on 2.2.2000, and he was entitled upto date of 23.11.2000 for the grant of 2nd ACP, as only from that date the second departmental proceedings were initiated against him, which culminated in the award of penalty of 'Censure' by the order dated



8.8.2003. Therefore, his submission is that there was nothing adverse in period from 2.2.2000 to 23.11.2000 to deny him the benefit of 2nd ACP in the pay scale of Rs. 10,000-15,000/-, which had already become due to him much prior to that date.

3. The respondents filed their written statement and defended their action, more or less stating only that since the applicant had been awarded the 2nd penalty on 8.3.2003, the 2nd ACP has been correctly given to him w.e.f 9.3.2003. However, even in the reply written statement, the respondents could not explain as to why the ACP benefit which became due to the applicant on 9.8.1999, was not granted to him on 2.2.2000 or from 3.2.2000, after his earlier penalty period had expired, since the subsequent disciplinary proceedings were initiated against him much later only, from 23.11.2000 onwards.

4. Therefore, we find merit in the O.A. and the same is allowed with the direction to the respondents to grant 2nd ACP benefits to the applicant from the date his first penalty period had expired on 2.2.2000, and, to that extent, the impugned (Annexure A/9) is set aside. The O.A. is allowed with no order as to costs.


(SUDHIR KUMAR)
MEMBER(A)


(JUSTICE ANWAR AHMAD)
MEMBER (J)

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