

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Dated of order: 05.09.2003

OA No.332/2002

Hari Shanker Panwar s/o Shri Chunni Lal Panwar r/o E-102
Vaishali Nagar, Jaipur, presently working as Safaiwala in
the Office of the National Archives of India, Record
Centre, IOA, Jhalana Dungri, Jaipur.

.. Applicant

Versus

1. The Union of India through the Secretary to the Govt. of India, Ministry of Tourism and Culture, Shastri Bhawan, Rajendra Marg, New Delhi.
2. The Director General, National Archives of India, Jan Path, New Delhi.
3. Assistant Director of Archives, National Archives of India, 10-A, Jhalana Doongri, Jaipur.

.. Respondents

Mr. P.N.Jatti - counsel for the applicant.

Mr. L.N.Boss - counsel for the respondents.

CORAM:

HON'BLE MR. S.K.AGEAWAL, MEMBER (ADMINISTRATIVE)

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

O R D E R

PER HON'BLE MR. M.L.CHAUHAN

The applicant, who is working as Safaiwala in the office of National Archives of India, Record Centre, Jhalana Doongri, Jaipur has filed this OA against inaction on the part of the respondents in not allowing him upgradation in the higher pay scale on completion of 12 years of satisfactory service under the Assured Career Progression (ACP) Scheme for the Central Government Civilian Employees as notified vide Office Memorandum

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dated August 9, 1999.

2. The applicant was appointed as Safaiwala-Cum-Farash on 6.9.84 and is working as such since then. According to the applicant, he has completed satisfactory service of 12 years as on 6.9.96. It is further alleged that as per OM dated August 9, 1999, the applicant was entitled to financial upgradation after completion of 12 years of satisfactory service as no case was pending against the applicant at the relevant time. The applicant has submitted his representation to the respondents dated 3.12.2001 (Ann. Al) for grant of benefit of ACP scheme. Since no action has been taken by the respondents on his representation, the applicant has filed the present OA thereby praying that direction be issued to the respondents to allow upgradation in the pay after satisfactory service of 12 years as per the ACP Scheme.

3. The respondents have filed reply. The fact that the applicant was appointed as Safaiwala-cum-Farash on 6.9.1984 has not been disputed. The factum of grant of benefit of financial upgradation under the ACP scheme after completion of 12/24 years of regular service in the grade has also not been denied by the respondents. It is admitted by the respondents that the applicant was to be given the next higher scale w.e.f. 9.8.1999, the date on which the ACP scheme came into force. However, the applicant was not granted the said benefit under the above scheme as "the applicant was found guilty and a minor penalty of censure was imposed upon him". (Para 1 of the reply). In para 4.3 of the reply, the respondents have stated as under:-

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"It is wrong to say that since 6/9/1984 the applicant has been working smoothly and there is no cause of complaint to his superior regarding his work and conduct. Whereas a chargesheet was given to the applicant on the basis of the violation of provision of 2(111) Kh of Civil Service Medical Attendant Rule,1944 and a enquiry was conducted against the applicant. He was found guilty and a minor penalty of "Censure" was imposed upon him vide order No.44-1/99-Vigilance dated 5/9/2001, National Archives of India, Janpath, New Delhi (Annexure-RI). In this connection, it is submitted here that the financial upgradation is allowed to those employees who fulfill all the conditions required for promotion to the next higher grade after approval of Screening Committee. The case of the applicant was processed accordingly at the time of convening the first meeting of the Screening Committee for the purpose but his case was not considered as the vigilance case was pending against him. The vigilance case was finalized on 5/9/2001 and he was found guilty and a minor penalty of "censure" was imposed upon him vide order No.44-1/99-Vigilance dated 5/9/2001, National Archives of India, Janpath, New Delhi (Annexure-RI). The case of the applicant for grant of financial upgradation was again placed before the Screening Committee which was held on 14/5/2002 but the Screening Committee did not allow the same on the basis of penalty of "censure" imposed by the competent authority and

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his performance report was also not found satisfactory."

Further in para 4.5, the respondents have stated that the case for grant of financial upgradation under ACP scheme was placed before the Screening Committee but the Committee did not allow the financial upgradation. In para 5.3 it has further been stated that a chargesheet was given to the applicant on 20.1.2000 as per Ann.F3 and he was found guilty and a minor penalty of censure was imposed vide Ann.F1. In nutshell, the stand taken by the respondents in their reply is that at the time of the first meeting of the Screening Committee a vigilance case was pending and he was also awarded a penalty of censure. As such he was not allowed the benefit of financial upgradation under ACP scheme.

4. The applicant has filed rejoinder reiterating the submissions made in the OA. He has further stated that the order of ACP was circulated on 9.8.1999 and the applicant was entitled for first upgradation w.e.f. 9.8.1999 in the very first list on 20th March, 2000. As such the chargesheet issued subsequently and penalty of censure imposed after a period of more than 2 years could not have been formed basis for denying financial upgradation under the ACP scheme.

5. We have heard the learned counsel for the parties and gone through the material place on record.

5.1 The question which requires our consideration in the present case is as to whether the applicant could have been denied the benefit of financial upgradation under the

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ACP scheme by taking into consideration the disciplinary proceedings/penalty issued subsequent to the date when the applicant became entitled for the said benefit. As already stated above and admitted between the parties, that the applicant had completed 12 years of service as on 6.9.96 and he was to be given the next higher grade w.e.f. 9.8.99, the date on which the ACP scheme dated August 9, 1999 became operational. This fact is also admitted by the respondents in para 1 of their reply.

5.2 The ACP scheme has been placed on record as Ann.A3. In Para 6.3 by way of an illustration it is stipulated that 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. Thus, the case of the applicant for grant of ACP benefits had already attained maturity during the period April 1, 1999 to September 30, 1999 and as such the Screening Committee meeting was required to be held in the first week of January, 1999 in terms of para 6.3 of the said scheme. However, since the said OM was for the first time issued on August 9, 1999 and the meeting could not be held earlier to that date, as such the case of the applicant ought to have been considered by the Screening Committee in the first week of January, 2000 as per para 6.3 of the scheme which stipulates that 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. Admittedly, there was no chargesheet pending against the applicant on

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9.8.99 w.e.f which date even according to the respondents the applicant was entitled for financial upgradation as per ACP scheme. Further as per para 6.3 of the scheme, cases which attained maturity during the period April 1, 1999 to September 30, 1999, Screening Committee should be held in the first week of January, 1999 or at the most in the first week of January, 2000 and up to this date there was no chargesheet/vigilance case pending against the applicant. The chargesheet was given to the applicant on 20.1.2000 (Ann.R3) for the first time and a minor penalty was awarded to him on 5.9.2001 (Ann.F1), admittedly, after a lapse of 2 years when the applicant has become entitled for financial upgradaiton. The applicant has been denied the benefit of financial upgradation on account that there was vigilance case ~~was~~ pending and a penalty was imposed upon him.

5.3 At the time of arguments, a specific query was made to the learned counsel for the respondents as to whether adverse entries in the ACR of the applicant was recorded at the relevant time. The learned counsel for the respondents, on the instructions from the departmental official, has stated that since the applicant was a Class-IV employee, as such no ACRs are being written. Thus, except for vigilance case and a penalty of censure, nothing adverse has been placed on record by the respondents so as to justify non-grant of financial upgradation to the applicant under the ACP scheme. At this stage, it will be relevant to mention para 11 of Ann.A1 attached with the OM dated August 9, 1999 i.e. ACP scheme for Central Government Civilian Employees which provides as under:-

"In the matter of disciplinary/penalty

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proceedings, grant of benefits under the ACP scheme shall be subject to rules governing normal promotion. Such cases shall, therefore, be regulated under the provisions of relevant CCS (CCA) Rules, 1965 and instructions thereunder."

Now let us consider as to what are the rules governing normal promotion in the matter of disciplinary penalty proceedings.

5.4 It has been judicially settled by the Apex Court that promotion in disciplinary proceedings/criminal proceedings can be denied only when disciplinary proceedings/criminal proceedings are pending against the delinquent official and in such eventuality the sealed cover procedure should be adopted. What is the date from which the disciplinary proceedings/criminal proceedings can be said to have been commenced, it has been held that it is only from the stage when the charge-memo or charge-sheet is issued and not at an earlier stage. The sealed cover procedure has to be adopted only after the charge memo or chargesheet is issued. Pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. In this behalf reference may be made to the decision of the Apex Court in the case of Union of India etc.etc. vs. K.V.Jankiraman etc.etc., 1991 (5) SLF 602.

5.5 To the similar effect are the instructions issued by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) vide OM No.22011/4/91-Estt.(A) dated 14.9.1992 which stipulates that cases of Government servant of following category should be specifically brought to the notice of the Departmental Promotion Committee viz. (i) Government

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servants under suspension, (ii) Government servant in respect of whom a chargesheet has been issued and the disciplinary proceedings are pending and (iii) Government servants in respect of whom prosecution for a criminal charge is pending. The Departmental Promotion Committee shall assess the suitability of such Government servants alongwith other eligible candidates without taking into consideration the disciplinary case/criminal prosecution pending against them and the assessment of such Government servants shall be kept in sealed cover. In case the Government servant is exonerated he is to be granted promotion from the back date and in case he is held guilty in the disciplinary case/criminal prosecution, he is to be granted promotion from the subsequent date.

5.6 Applying the same principle in the present case in terms of para 11 of Ann. A ^{of ACP scheme} _{as reproduced above}, the disciplinary proceedings can be said to have been commenced only on 20.1.2000 when the charge memo in the disciplinary proceedings was issued to the applicant. The applicant was admittedly entitled for benefit of financial upgradation w.e.f. 9.8.1999 and on that date there was no proceedings pending against him. As such the benefit of financial upgradation cannot be withheld merely because some vigilance case was pending against the employee without there being any chargesheet. To deny such benefit there must be at the relevant time a charge memo already issued to the employee. Since the applicant was entitled for financial upgradation w.e.f. 9.8.1999 and his case for financial upgradation under ACP scheme was required to be considered by the Screening Committee in 1999 itself and at the most in the first week of January, 2000 in terms of para 6.3 of the ACP scheme and on that date the applicant

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was not served any charge memo, as such the disciplinary proceedings cannot be said to have commenced. In view of this, the case of the applicant could not have been rejected by the Screening Committee by taking into account the penalty of censure awarded in September, 2001 after a lapse of about 2 year and also taking into account the vigilance case, the chargesheet of which was issued on 20.1.2000. On repeated queries to the learned counsel for the respondents as to whether there are any instructions issued by the Government which stipulate that a Government servant who has been recommended for promotion/ACP by the DPC but in whose case disciplinary proceedings/criminal prosecution has been initiated/pending after recommendations of the DPC are received but before he is actually promoted can be denied promotion and he will be considered as if his case has been placed in the sealed cover by the DPC, the learned counsel for the respondents could not ^{bring} ~~bring~~ to our notice of this Tribunal ~~any~~ any such instructions. In the absence of any such instruction on this point, it cannot be held that the chargesheet issued and a penalty imposed after the date when the applicant became eligible for financial upgradation under ACP scheme could have been taken for consideration by the Screening Committee so as to reject the claim of the applicant.

5.7 Accordingly, the present OA is allowed. The respondents are directed to consider the case of the applicant for grant of financial upgradation in terms of ACP scheme (Ann.A3) without taking into consideration the charge memo dated 20.1.2000 (Ann.R3) and penalty of censure imposed on the basis of the said charge memo dated 5.9.2001 (Ann.E1). Such consideration shall be done within a period of 2 months from the date of receipt of this OA.

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6. The OA is accordingly disposed of with no order as to costs.



(M.L.CHAUHAN)

Member (J)



(S.K.AGRAWAL)

Member (A)