

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Decision : 13.07.2004

Original Application No.257/2003.

Harish Bulchandani S/o Shri R. S. Bulchandani, aged about 40 years, r/o 49-B, Sindhibari, Ajmer.

... Applicant.

v e r s u s

1. Union of India through Secretary, NCERT, Shri Arvindo Marg, New Delhi.
2. The Principal, Regional Institute of Education, Ajmer, Rajasthan.

... Respondents.

Mr. Anupam Agarwal counsel for the applicant.
Mr. Kapil Mathur proxy counsel for
Mr. L. K. Solani, counsel for the respondents.

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Hon'ble Mr. S. K. Agrawal, Administrative Member.
Hon'ble Mr. J. K. Kaushik, Judicial Member.

: O R D E R (ORAL) :

Shri Harish Bulchandani has invoked the jurisdiction of this Bench of the Tribunal assailing the orders dated 01.04.2003 (Annexure A-1) and 27/28.06.2002 (Annexure A-4) and has sought for their quashement with a further direction to grant the benefit of First ACP to the applicant from the year 2000 and also consider the case of the applicant for promotion to the post of Personal Assistant.



2. The abridged facts of this case necessary for resolving the controversy are that the applicant was initially appointed to the post of Stenographer Grade-III on dated 09.09.1985 and he continues to hold the same. The Fifth Pay Commission recommended the grant of two financial upgradations on completion of 12 years and 24 years under the Scheme of ACP and the same was acceptable to the respondent department. In pursuance with the Scheme, the applicant was found eligible for grant of the benefit, which were accordingly extended to the applicant and he was granted the grade in the pay scale of Rs.5500-9000 w.e.f. 17.11.2000 as enunciated in Annexure A-2 to the Paper Book. The applicant has been enjoying the same without any interpretation inasmuch as he was also extended the due benefits of pay fixation vide Annexure A-3.

3. The further case of the applicant is that subsequently an order came to be issued on dated 27/28.06.2002 (Annexure A-4) vide which the benefits earlier extended to him on account of ACP was ordered to be withdrawn and the consequential recovery was also ordered to be made on 10 equal monthly instalments from his salary. The order has already been given effect to and certain recoveries have been made as well as the benefits of ACP have been withdrawn from him.

4. The applicant got the matter represented through his Learned Counsel and a notice of admission of demand of justice was served on the respondents in response to which a letter dated 11.04.2003 came to be issued vide which the claim of the applicant has been negatived. The basic ground which has been raised in this case is that the applicant was entitled for the grant of ACP Scheme and the impugned orders have been issued in clear breach of principles of natural justice.



5. As regards the variances in the facts which has been averred in the reply, the applicant was offered promotion as per normal channel of promotion on 7.6.1999 but he did not join the offered post. Thus, he cannot be extended the benefit of ACP and the benefit earlier extended to him by mistake was ordered to be withdrawn. It is also submitted that no principle of natural justice has been violated and the applicant is not entitled for grant of financial upgradation under ACP Scheme because he had opted to stagnate on his own volition and refused to avail the opportunity of promotion which was offered to him.

6, We have heard the learned counsel for the parties and have anxiously considered the pleadings and the records of this case.

7. Learned counsel for the applicant has reiterated the facts and grounds raised in the OA and has submitted that a similar controversy came up for adjudication before a Co-ordinate Bench at Mumbai In OA No.129/2003 in the case of V. R. Patil & Ors. vs. Union of India & Ors. decided on 20.06.2003 and the issue has been already settled in favourof the employee-applicant. The ratio laid down in the said decision squarely covers on all fours the controversy involved in the instant case. Thus, the applicant is entitled to the similar relief.

8. Per contra, learned counsel for the respondents has also reiterated the defence as set out in the reply and has submitted that the applicant should thank to himself for creating the whole episode inasmuch as once he was offered promotion but refused. He should have accepted the same and if he has not accepted, no wrong can be fastened with the action of the respondents. As regards the judgement which has been relied upon by the

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learned counsel for the applicant, learned counsel for the respondents has submitted that it is for this Bench of the Tribunal to consider the same and, therefore, the OA deserves to be dismissed with costs.

9. We have considered the submissions made on behalf of both the parties. Before coming to the crux of the matter we would like to notice that as far as the factual aspects of the matter are concerned, there is hardly any quarrel. It is the admitted position of the matter that the applicant was granted with the benefits of ACP and the same was ordered to be withdrawn without issuance of prior notice or giving any pre-decisional hearing. It is also the admitted position of the case that the applicant was also entitled for grant of the ACP benefits but only the embargo was that he had refused the promotion at an earlier occasion. We may also clarify the position that the refusal of the promotion is permissible only when the promotion is coupled with transfer and a person cannot refuse a promotion if the transfer is not involved. In promotion, one gets the higher rank as well as there is a change in his functioning but in the upgradation of the ACP Scheme there is no change of the place or change of work, rather one gets the higher pay scale while sitting on the same Chair and Table and performing the same duties. Thus, there is a lot of difference between the effective promotion and the benefits of upgradation under ACP Scheme. Thus, the refusal to promotion can hardly make any difference and can hardly be equated with that of the ACP.

10. We have waded the decision which has been pronounced in V.R. Patil's case (supra) and find that the controversy involved in the instant case is squarely covered on all fours and there is hardly any adjudication required on the same. A copy of the same is taken on records of this case and we refrain from discussing the details afresh in this judgement. At this juncture we would only assert that independent of the aforesaid authority if we were to examine the matter

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separately we would have reached to the same conclusion. In this view of the matter, we have absolutely no hesitation in following the same.

11. Before parting with this case, we also notice that there has been a clear breach of principles of natural justice inasmuch as while passing the order for withdrawing the benefits of ACP, the applicant has not been given any hearing or a prior notice to him. Thus, there has also been a clear breach of principles of natural justice and the action of the respondents offends Article 14 of the Constitution of India and on this count also the impugned orders cannot be sustained. However, this issue is now only of academic interest in view of our aforesaid finding.

12. The upshoot of the aforesaid discussion is that the OA has substance and merits acceptance. The same stands allowed accordingly. The impugned orders dated 11.04.2003 (Annexure A-1) and 27/28.06.2002 (Annexure A-4) stand quashed with all consequential benefits. Any amount which has been recovered from the applicant shall be refunded to him. This order shall be complied with within a period of 3 months from the date of communication of the same. However, in the facts and circumstances of the case we make no order as to costs.


(J. K. KAUSHIK)
MEMBER (J)


(S. K. AGRAWAL)
MEMBER (A)

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