

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
Original Application No.523 of 2004

Bilaspur this the 18th day March, 2005

Hon'ble Mr. M.P. Singh, Vice chairman
Hon'ble Mr. Madan Mohan, Judicial Member

Smt. Geeta Das, W/o Sri G.C. Das,
Aged about 49 years, LDC,
in the office of Regional Controller of
Mines, Indian Bureau of Mines, Jabalpur.

Applicant

(By Advocate – Shri S.K. Nagpal)

VERSUS

1. Union of India
Through, The Secretary,
Ministry of Coal & Mines, Department of
Mines, New Delhi.

2. Controller General of Mines,
Indian Bureau of Mines, Indira Bhawan,
Civil Lines, Nagpur (Maharashtra)

Respondents

(By Advocate – Shri S.P. Singh)

ORDER

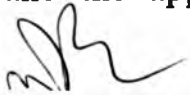
By M.P. Singh, Vice Chairman-

By filing this OA, the applicant has sought the following main reliefs:-

“i) direct the respondents to grant second Financial upgradation to the applicant under the ACP Scheme w.e.f. 19.9.2003 on completion of 24 years service taking into consideration her past continuous service as Asstt. Teacher in Dandkaranya Project w.e.f. 19.9.79 with all consequential benefits including arrears of pay and allowances.


ii) Award interest @ 12% per annum on the arrears of pay and allowances from the date the same become due to the date of actual payment.”

2. The brief facts of the case are that the applicant was initially appointed as Assistant Teacher in the pay scale of Rs.225-350 w.e.f. 19.9.1979 in Dandkaranya Project on adhoc basis for a period of 3 months. This adhoc appointment was extended from time to time without any break and the applicant was appointed on regular basis w. e. f. 23.4.1985.



Consequent upon shrinkage of the Dandkarnaya Project, the applicant was declared surplus and was offered appointment in the post of LDC in the Ministry of Coal and Mines, Indian Bureau of Mines, Nagpur. In accordance with the instructions issued by the Govt. of India, Department of Personnel and Training on 9th August, 1999(Annexure-A-9), the applicant was given first financial upgradation w. e. f. 9th August, 1999 under the ACP scheme. According to the applicant she is now entitled to the second financial upgradation w.e.f. 19.9.2003 on completion of 24 years of service. as she did not get any promotion ever since she joined her service w. e. f. 19.9.1979. It is stated by the applicant that her adhoc services were treated as regular for all purposes as she was granted annual increments, earned leave, maternity leave and was also given all benefits as are admissible to the regular employees. However, the respondents No.2, Sr. Administrative Officer in the office of respondent No.2 vide letter 20.2.2004 informed that the applicant was not entitled to the benefit of the past service rendered in the previous organization i.e. Dandakaranya Project and that she is entitled to grant of ACP to the post of LDC in Indian Bureau of Mines w.e.f. 14.9.1987. The applicant submitted a detailed representation dated 5.4.2004 (Annexure-A-11), which has been disposed of by the Sr. Administrative Officer by the impugned order dated 26.4.2004(Annexure-A-1). In the aforesaid letter dated 26.4.2004, it has been admitted that the date of grant of first ACP i. e. 9.8.1999 is in order but as regards the second ACP it has been stated that the applicant will be eligible for grant of the same on completion of 24 years in the year 2009. This implies that the date of her joining in Dandkaranya Project i. e. 19.9.1979 is not being taken into consideration for grant of the second ACP in spite of the fact that the applicant is in continuous service w. e. f. 19.9.1979 without any break. Hence, this OA.

3. The respondents in their reply have stated that the first financial upgradation granted to the applicant w. e. f. 9.8.1999 under the ACP scheme presuming the date of her initial appointment i.e. 19.9.1979 as Assistant Teacher on adhoc basis in DNK project was by mistake. It is stated by that the effective date of first financial upgradation will be 9.8.1999 after taking into consideration her regular appointment as



Assistant Teacher w.e.f. 23.4.85 and not her initial appointment as Assistant Teacher on ad-hoc basis w.e.f. 19.9.1979.

4. It is further, submitted by the respondents that after regularization with effect from 23.4.¹⁹⁸⁵~~1995~~ her entitlement for ACP has to be worked out as per the orders issued by the Government of India. In para 3.1 of the DOPT's OM dated 9.8.1999 (Annexure-A-9) it has been specifically mentioned that the benefit of ACP scheme will not be available to the adhoc employees. Further, para 3.2 of the said OM provided that "regular service for the purpose of the ACP scheme shall be interpreted to mean the eligibility service counted for regular promotion in terms of relevant Recruitment/ Service Rules". The applicant is presently in the pay scale of Rs.5000-8000 which was granted to her in the first financial upgradation. Now for the second financial upgradation, she will have to be considered for the pay scale of Rs.5500-9000 attached to the post of Superintendent. For considering promotion ^{from 2} in the feeder grade i.e. Head Assistant (pay scale of Rs.5000-8000) regular service of five years has been prescribed as per column 12 of the Recruitment Rules of the post of Superintendent. It is thus obvious that only regular service can be taken into consideration for promotion as well as for grant of financial upgradation under the ACP scheme. It is also stated by the respondents that as per the clarification issued by the DOPT, the applicant will be eligible for grant of second financial upgradation only in the year 2009 as already intimated to her. In view of these submissions, the respondents have submitted that the present Original Application deserves to be dismissed.

5. Heard the learned counsel of both the parties and perused the records carefully.

6. During the course of arguments, the learned counsel for the applicant has submitted that the period of service for the grant of ACP is to be taken into consideration from the initial date of appointment of the applicant i. e. from 19.9.1979. Although the appointment with effect from 19.9.1979 was on adhoc basis but it has been followed by regular appointment with effect from 23.4.1985. There was no break in service and this period of adhoc appointment of the applicant is required to be treated as regular for all purposes. Apart from this, Para 3.2 of the DOPT's scheme dated 9.8.1999

clearly stipulates that regular service for the purpose of ACP scheme will be the same as is counted for the purpose of regular promotion in terms of the relevant recruitment rules. The learned counsel for the applicant has drawn our attention to the recruitment rules Annexure-R-1 for the post of Superintendent. He has submitted that as per column 12 of the recruitment rules, five years regular service as Head Assistant is required for promotion to the post of Superintendent and the applicant has already completed five years regular service in the grade of Head Assistant from 9.8.1999 and the applicant is, therefore, eligible for benefit of second financial upgradation.

7. On the other hand, the learned counsel for the respondents has stated that the clarification given by the DOPT vide their letter dated 10.2.2000 (Annexure-R-2) in this regard is as follows:

Point of doubt

In the case of an employee appointed on adhoc basis and who is subsequently regularised, the adhoc service is counted towards increment. Whether the adhoc service may be counted for the ACP also.

Clarification:

No. In terms of para 3.2 of the Office Memorandum dated August 9, 1999(ACPS), only regular service which counts for the purpose of regular promotion in terms of relevant Recruitment/Service Rules, shall count for the purpose of upgradation under ACPS".

The learned counsel has, therefore, submitted that the applicant will be eligible for the benefit of second financial upgradation only on completion of 24 years of service from the date he was appointed on regular basis from 23.4.1985.

8. We have given careful consideration to the arguments advanced on behalf of both the parties. The undisputed facts of the case are that the applicant was appointed on 19.9.1979 on adhoc basis. Her services were regularized w.e.f. 23.4.1985 and thereafter, she was declared surplus and was redeployed in the post of LDC in 1987. As per para 3.2 of the DOPT's scheme dated 9.8.1999 the 'regular service' means the eligibility service counted for regular promotion in terms of relevant recruitment rules. It means that if an adhoc service is followed by regular service is counted for the purpose of regular promotion as per the recruitment rules, the same can

eligibility for

be counted for the purpose of second financial upgradation. In this case, we find that five years regular service is required for the Head Assistant for promotion to the post of Superintendent and, therefore, the contention of the learned counsel for the applicant that in terms of recruitment rules for the post of Superintendent the adhoc service rendered by the applicant from 1979 – 1985 can be counted is not correct and is rejected. As per the recruitment rules, it is patently clear that only regular service is required for the promotion of Head Assistant to the higher post of Superintendent and, therefore, as per the clarification given by the DOPT vide aforementioned OM dated 10.2.2000 and in terms of the provisions of the ACP Scheme dated 9.8.1999 only regular service is required to be counted. It is not in dispute that the applicant has been appointed on regular basis from 23.4.1985 and, therefore, she will be eligible for benefit of grant of second financial upgradation after putting in 24 years of service from 1985.

9. In view of this, the OA is without any merit and is accordingly dismissed. No costs.

(Madan Mohan)
Judicial Member

(M.P.Singh)
Vice Chairman

Rkr.

Issued
On 23.03.08
BS

पृष्ठान्त से ओ/प्या. जलपुर, दि.

(1) सचिव, जलपुर

(2) मास्टर श्री/मि. जलपुर

(3) प्रत्यक्ष श्री/मि. जलपुर

(4) बंधुमान, केंद्र. जलपुर

सूचना एवं आवश्यक कार्यवाही हेतु

23/3/05

S.K. Negpal Dv

S.P. Singh Dv