

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 9th day of March, 2009

ORIGINAL APPLICATION No.227/2006

CORAM:

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

K.B.Sharma
s/o Shri Kunjbihari Sharma
r/o House No.2312, Near Badi Ka Balaji,
Purani Basti, Jaipur
Presently working in the office of
Assistant Director,
National Archives of India,
Record Centre, 10A, Jhalana Doongari,
Jaipur.

.. Applicant

(By Advocate: Shri P.N.Jatti)

Versus

1. Union of India
through the Secretary to the Govt. of India,
Ministry of Culture,
Information and Broadcasting,
Shastri Bhawan,
Rejendra Marg,
New Delhi.
2. The Director General,
Archives of India,
Janpath, New Delhi.
3. The Assistant Director of Archives,
National Archives of India,
Record Centre, 10A Jhalana Doongari,
Jaipur

... Respondents

(By Advocate: Shri Rakesh Saharan, proxy counsel for
Mr. L.N.Boss)

O R D E R

Per Hon'ble Mr. M.L.Chauhan

The applicant has filed this OA thereby praying that direction may be given to the respondents to allow benefit of Assured Career Progression (ACP) scheme to the applicant in the pay scale of Rs. 5000-8000 and Rs. 5500-9000 of the post of Assistant Chemist Grade-II and Assistant Chemist Grade-I w.e.f. 9.8.99 and 4.5.2001 respectively.

2. Briefly stated, facts of the case are that the applicant was appointed as Preservation Assistant in the office of respondents in May, 1977. The Central Government introduced Assured Career Progression scheme for grant of financial upgradation after completion of 12 and 24 years of service in the grade. It is admitted case between the parties that the applicant was given first financial upgradation under ACP scheme vide office order dated 7.1.2000 (Ann.A3) w.e.f. 9.8.99 when the aforesaid scheme was introduced by the Government in the immediate higher scale of Rs. 4000-6000 (S-7) and second financial upgradation w.e.f. 4.5.2001 in the pay scale of Rs. 4500-7000 (S-8) vide letter dated 11.1.2005 (Ann.A4). Feeling aggrieved, the applicant made a representation dated 11.2.2005 (Ann.A5) to respondent No.2 (Ann.A5) claiming financial upgradation in the higher scale of Rs. 5000-8000 and Rs. 5500-9000 which was rejected by

W

the respondents, hence, the applicant has filed this OA thereby praying for the aforesaid relief.

3. The respondents in the reply have categorically stated that the applicant is not entitled to the benefit of ACP w.e.f. 9.8.1999 and 4.5.2001 of the posts of Assistant Chemist Grade-II and Grade-I as no promotional channel was available for the post of Preservation Assistant before 30.6.2001 and the promotional channel were opened to the post of Assistant Chemist Gr.II in the revised recruitment rules which are published on 30.6.2001, as such, the applicant who was working as Preservation Assistant in the pay scale of Rs. 3200-4900 (S-6) was rightly granted financial upgradation under the ACP scheme in the immediate higher pay scale of Rs. 4000-6000 (S-7) as per Government instructions and second upgradation under ACP scheme in the scale of Rs. 4500-7000 (S-8) as per Para 7 of the Department of Personnel and Training (DOPT) O.M. dated 9.8.99 (Ann.R1).

4. The applicant has filed rejoinder thereby reiterating the submissions made in the OA.

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

6. The ACP for Central Government employees was introduced by the Central Government on the

recommendations of the Fifth Central Pay Commission to deal with the problems of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues which scheme was notified vide GI, DOPT OM NO.35034/1/97-Estt.(D) dated 9.8.1999. The said scheme has been placed by the applicant with this OA as Ann.A2. The condition of grant of benefit under the ACP scheme find mentioned at Annexure-I of the scheme. It is also made clear in the scheme that any interpretation/clarification of doubt as to the scope and meaning of the provisions of the ACP scheme shall be given by the Department of Personnel and Training (Establishment 'D'). As per para 4, the first financial upgradation shall be allowed after 12 years of regular service and second ACP after 12 years of regular service from the date of the first financial upgradation subject to fulfillment of prescribed conditions. Para 5.1 of the scheme made it clear that two financial upgradation under the ACP scheme in the entire Government service career of an employee shall be counted against regular promotion availed from the grade in which an employee was appointed as direct recruit. In other words, two financial upgradation under the ACP scheme shall be available only if no regular promotion during the prescribed period i.e. 12 and 24 years have been availed by the employee and in case employee has already got one regular promotion, he shall qualify

for the second financial upgradation only on completion of 24 years of regular service under the ACP scheme. Para 7 deals with financial upgradation which has to be granted under scheme in the next higher grade.

7. In this case, the short question which requires our consideration is regarding interpretation to be given to Para 7 of the said scheme, which thus reads:-

"7. Financial upgradation under the Scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts without creating new posts for the purpose. However, in case of isolated posts, in the absence of defined hierarchical grades, financial upgradation shall be given by the Ministries/Departments concerned in the immediately next higher (standard/common) pay-scales as indicated in Annexure-II which is in keeping with Part-A of the First Schedule annexed to the Notification, dated September 30, 1997 of the Ministry of Finance (Department of Expenditure). For instance, incumbents of isolated posts in the pay-scale S-4, as indicated in Annexure-II, will be eligible for the proposed two financial upgradations only to the pay-scales S-5 and S-6. Financial upgradation on a dynamic basis (i.e. without having to create posts in the relevant scales of pay) has been recommended by the Fifth Central Pay Commission only for the incumbents of isolated posts which have no avenues of promotion at all. Since financial upgradations under the Scheme shall be personal to the incumbent of the isolated post, the same shall be filled at its original level (pay-scale) when vacated. Posts which are part of a well-defined cadre shall not qualify for the ACP scheme on 'dynamic' basis. The ACP benefits in their case shall be granted conforming to the existing hierarchical structure only".

The grievance of the applicant is that provision of Para 7 of the scheme, as reproduced above, has not been correctly applied in his case whereas according

to the respondents, the case of the applicant has been considered strictly in accordance with the provisions contained in para 7 of the scheme, as reproduced above.

8. We have given due consideration to the submissions made by the learned counsel for the parties and have also perused para 7 of the scheme as reproduced above. According to us, this para 7 consist of two parts. According to first part, financial upgradation under the scheme has to be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts without creating new posts for the purpose. The second part deals with the cases of isolated posts and as per later part of para 7, financial upgradation in respect of employees of such posts shall be given in the immediate higher (standard/common) pay scales as indicated in Annexure-II. Admittedly, the case of the applicant has been considered as per later part of para 7 of the scheme treating the post of the applicant as isolated post. The respondents have categorically stated that there was no promotional avenues available to the post of the applicant i.e. Preservation Assistant prior to 30.6.2001 when amendment in the recruitment rules to the post of Assistant Chemist Gr.II was notified vide Gazettee Notification dated 30.6.2001. Thus, the applicant who

14

was working as Preservation Assistant in the scale of Rs. 3200-4900 (S-6) was rightly granted financial upgradation in the pay scale of Rs. 4000-6000 (S-7) and then in the scale of Rs. 4500-7000 (S-8). Admittedly, the applicant was eligible for financial upgradation under the ACP scheme after completion of 12 and 24 years of service, as such, he was granted first financial upgradation w.e.f. 9.8.99 i.e. the date from which the scheme was made applicable and second upgradation w.e.f. 4.5.2001 when the applicant completed 24 years of service on the post of Preservation Assistant. At that time there was no promotional avenues available to the applicant, as such, the post of the applicant was treated as isolated post and on that basis the pay of the applicant has been fixed by the department rightly in the scale of Rs. 4000-6000 (S-7) and Rs. 4500-7000 (S-8) respectively.

9. As already stated above, ^{further} ~~the~~ question which requires our consideration is whether the post of Preservation Assistant can be said to be isolated post in terms of para 7 of the scheme, as reproduced above, or the applicant is entitled to financial upgradation of the higher post of Assistant Chemist Gr.II in terms of first part of para 7 of the scheme. The isolated posts have further been clarified in point No. 31 of

the OM dated 10.2.2000 issued by DOPT, which thus reads:-

"Isolated post is a stand alone post, having neither feeder grade nor promotional grade. As such, a post having no promotional grade but having a feeder grade and vice-versa shall not be treated as isolated post for the purpose of ACPS."

Thus, as per clarification issued by the DOPT, the isolated post is stand alone post, having neither feeder grade nor promotional grade. In this case, from the material placed on record, and which has been brought to our notice, it is clear that before 30.6.2001, there was no promotional avenues available to the post of Preservation Assistant and recruitment rules for the post of Assistant Chemist Gr.II in the grade of Rs. 5000-8000 were amended on 30.6.2001 whereby 'Preservation Assistant with 13 years of regular services in the grade possessing of matriculation qualification with science' has been made eligible for promotion to the aforesaid post. As already stated above, in this case the applicant was eligible for first financial upgradation under the scheme w.e.f. 9.8.99 and second financial upgradation w.e.f. 4.5.2001 i.e. prior to the amendment in the recruitment rules for the post of Assistant Chemist Grade-II, as such, it can safely be concluded that at the relevant time there was no promotional avenues available to the applicant. The Next question which requires consideration is as to whether the feeder

be

grade was available for this post held by the applicant. The post of Preservation Assistant belongs to Group-C category and in the absence of any material placed on record, it cannot be precisely concluded whether Group-D employees constitute feeder grade for the post of Preservation Assistant or not. Thus, in terms of clarification issued by the DOPT, it cannot be safely concluded as to whether at the relevant time the post of Preservation Assistant was an isolated post.

10. In view of what has been stated above, we are of the view that it is a case which requires reconsideration at the level of administrative authorities and if need be the matter can be referred to the Department of Personnel and Training (Estt. D) for clarification of doubt in terms of para 11 of the scheme as to whether the applicant is entitled to financial upgradation under the ACP scheme to the next higher grade of Assistant Chemist Grade-II which post has subsequently been made promotional post for the category of Preservation Assistant from June, 30, 2001 or whether the applicant is entitled to the financial upgradation only in the pay scale of Rs. 4000-6000 (S-7) and Rs. 4500-7000 (S-8) in terms of Annexure-II, forming part of the scheme thereby indicating standard/common pay scales. Ordered accordingly. Such an exercise shall be completed by the respondent No.2

within a period of three months from the date of receipt of a copy of this order. In case, the applicant wishes to make further representation, in that eventuality, it will be open for the applicant to make such representation within 15 days and in that case respondent No.2 may consider representation of the applicant alongwith observations made hereinabove and pass appropriate order within three months from the date of filing of such representation.

11. We wish to observe here that after amendment in the recruitment rules to the post of Assistant Chemist Grade-II, the junior persons who have become eligible for promotion to the post of Assistant Chemist Grade-II shall be entitled to the financial upgradation in the higher scale as compared to the applicant, who being senior has been allowed benefit in the lower pay scale thereby causing disparity in pay scale and this is one of the reasons, we have thought it proper to remit the case to respondent No.2 for reconsideration.

12. With these observations, the OA stands disposed of with no order as to costs.

13. Before parting with the matter, we also wish to notice the only judgment cited by the learned counsel for the applicant to substantiate his case. The learned counsel for the applicant has placed reliance upon the decision of the Apex Court in the case of State of Mizoram and anr. Vs. Mizoram Engineering



Service Association and anr., JT 2004 (5) SC 516 and argued that the applicant is entitled to the benefit of ACP of the higher post in terms of the ratio as laid down by the Apex Court in that case. We fail to understand how this judgment is applicable in the facts and circumstances of this case. That was a case regarding not granting pay scale recommended by the Fourth Central Pay Commission which has been accepted by the Government of India to the various officers of the Engineering services working in Mizoram, which report was also accepted by the Mizoram Government, solely on the ground that engineering service is an unorganized service in the State and in the absence of recruitment rules they are not extended pay scale at par with the Central Government employees of the corresponding category, even if the pay scale of the Fourth Central Pay Commission has been accepted by the Government. It was in that context, the judgment was rendered and the Apex Court held that members of the engineer services shall be entitled to the pay scale at par with the pay scale of the Central Government employees as recommended by the Fourth Central Pay Commission, which recommendation has been accepted by the Central as well as by the State Government.


(B.L. KHATRI)

Admv. Member


(M.L. CHAUHAN)

Judl. Member