

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION No. 318/2010

ORDER RESERVED ON 14.03.2014

DATE OF ORDER: 4.4.2014

CORAM :

**HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER
HON'BLE MR. M. NAGARAJAN, JUDICIAL MEMBER**

U.C. Jain son of Late Shri Umedi Lal Jain, aged about 62 years, resident of 63/122, Heera Path, Mansarovar, Jaipur. Retired from the post of UDC from Kendriya Vidhyalaya No. 5, Jaipur.

... Applicant

(By Advocate: Mr. Vinod Goyal)

Versus

1. Union of India through Commissioner, Kendriya Vidhyalaya Sangathan (KVS), 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
2. The Assistant Commissioner, Kendriya Vidhyalaya Sangathan (KVS), Regional Office, 92, Gandhi Nagar Marg, Bajaj Marg, Jaipur (Rajasthan).

... Respondents

(By Advocate: Mr. Hawa Singh)

ORDER

PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

The applicant has filed this OA praying for the following reliefs:-

"(i) By an appropriate order or direction, the respondents be directed to extend the benefit of Second Financial Upgradation under the ACP Scheme in the grade of 5500-9000 with all consequential benefits w.e.f. the due date including arrears thereof with 9% interest from the actual due date to the date of the retirement and thereafter the pensionary benefits be revised

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accordingly and arrears thereof be paid with 9% interest.

- (ii) By an appropriate order or direction in alternative the respondents be directed to extend the benefit of promotion on the post of Head Clerk after expiry of the debarred period in lieu of ACP, with all consequential benefits and as such the retiral benefits be revised accordingly and arrears thereof be paid accordingly with 9% interest.
- (iii) Any other order which appears to be just and correct in the interest of justice may also be passed."

2. The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant was promoted on the post of UDC in Kendriya Vidhyalaya Sangathan (KVS) on 19.03.1981.

3. The applicant was subsequently promoted as Headclerk on 29.10.1999 but due to some avoidable family circumstances, he did not accept the aforesaid promotion due to which he was debarred from next promotion for 05 years with effect from 29.10.1999 to 28.10.2004.

4. The applicant retired on 30.11.2008 holding the post of UDC till his retirement. Thus he was holding the post of UDC for almost 27 years but he was not extended the benefit of the ACP Scheme after the completion of 12 and 24 years of service.

5. The applicant was given the benefit of second ACP on 08.05.2007 which was subsequently withdrawn vide order dated 18.01.2008 on the ground that the applicant has received two promotions in the last 24 years.

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6. The learned counsel for the applicant submitted that in the last 24 years, the applicant was once promoted to the post of Headclerk, which the applicant refused. He submitted that the debarment period was over in 2004. Therefore, the applicant should have been allowed either second ACP or the promotion to the post of Headclerk after the period of debarment was over.

7. The learned counsel for the applicant submitted that in similarly situated case, one Shri G.D. Khatri and Smt. Chanda Rathore have been given the benefit of second ACP (Annexure A/9 and A/10).

8. The learned counsel for the applicant also submitted that this controversy has been recently settled by the Central Administrative Tribunal, Earkakulam Bench in the case of **N. Ratnasabhapathy Asari vs. Kendriya Vidyalaya Sangathan & Others (OA No. 947/2010 decided on 01.08.2012)**.

9. The respondents have filed their written reply. The learned counsel for the respondents submitted that in case two prior promotions on regular basis have already been received by an employee, no benefit in the ACP Scheme shall accrue to him. In the present case, the applicant was promoted from LDC to UDC and thereafter to the post of Headclerk. The applicant refused the promotion on the post of Headclerk and, therefore, as per the ACP

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Scheme, he is not entitled for the benefit of second ACP. As per the ACP Scheme, an employee itself is upgraded to the next higher scale in the 12th and 24th years in lieu of promotion and since the applicant has refused the promotion on the post of Headclerk, he is not entitled for the grant of second ACP even after the debarment period is over.

10. However, the learned counsel for the applicant admitted that the similar controversy has been settled by the Central Administrative Tribunal, Earnakulam Bench in the case of **N. Ratnasabhapathy Asari vs. Kendriya Vidyalaya Sangathan & Others (OA No. 947/2010 decided on 01.08.2012)** and this OA can also be decided in terms of the order of the Earnakulam Bench in that OA.

11. The learned counsel for the applicant has filed the rejoinder and the learned counsel for the respondents has filed the additional affidavit.

12. Heard the learned counsel for the parties, perused the documents on record and the case referred to by the learned counsel for the applicant.

13. The facts of the case are not disputed. The applicant received one promotion to the post of UDC on 19.03.1981. Subsequently, the applicant was promoted as Headclerk on

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29.10.1999 but he refused the promotion and he was debarred for 05 years with effect from 29.10.1999 to 28.10.2004. Now the question before the Tribunal is whether the applicant is entitled for promotion to the post of Headclerk or the second ACP from the date from which the period of debarment is over i.e. after 28.10.2004.

14. We have perused the order of the Central Administrative Tribunal, Earnakulam Bench in the case of **N. Ratnasabhapathy Asari vs. Kendriya Vidyalaya Sangathan & Others (OA No. 947/2010 decided on 01.08.2012)** and we are of the opinion that the facts & circumstances of that OA and the present OA are similar. Para No. 6 to 9 of the case of **N. Ratnasabhapathy Asari vs. Kendriya Vidyalaya Sangathan & Others (supra)** are quoted below:-

6. The ACP Scheme was implemented in the Kendrya Vidyalaya Sangathan with effect from 12.10.2000. It provides for two financial upgradations on completion of 12 years and 24 years of regular service, if no regular promotions during the prescribed period have not been availed by an employee. The applicant had availed first promotion on 29.07.1974. Thereafter, on four occasions he had refused to accept promotion as Head Clerk on account of his personal problems. His first refusal of promotion was in 1992 and the last refusal was on 29.10.1999 which resulted in his debarment from promotion for five years. He was eligible for consideration for promotion as on 29.10.2004. However, he was not offered promotion since then. As per para 10 of the ACP Scheme, period of debarment for regular promotion cannot be taken into account towards the required 12 years of regular service in the higher grade. As per averment of the respondents, the Department of Personnel and Training has clarified that an employee who has refused to accept the vacancy based promotion even prior to the date of introduction of the ACP Scheme is not eligible for benefits under the ACP Scheme as he has opted to remain in the same scale. There is no

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justification for debarring for ever, an employee from financial upgradation under the ACP Scheme on account of refusal to accept promotion when he is not debarred for promotion itself for ever. It is settled law that refusal of promotion before the ACP Scheme was introduced, cannot be held against the future grant of ACP benefits. The refusal of promotion by the applicant was before implementation of the ACP Scheme in the KVS with effect from 12.10.2010. At that point of time, the applicant was undergoing debarment from promotion. As the period of debarment entails non-consideration of grant of financial upgradation under the ACP Scheme, as per para 10 of the ACP Scheme, the applicant in fairness should be considered for grant of financial upgradation with effect from 24.12.2004, on the expiry of the period of debarment.

7. The decision of the Madras Bench of this Tribunal in O.A. No. 1158 of 2009 is applicable to the instant case. The relevant part of the order dated 24.09.2010 in the aforesaid O.A is extracted as under:

"6. It is seen that the said issue has already bee discussed by this Tribunal in detail in the O.A. 162 of 2007 filed by one P.C. Revathy and Others (to which one of us was a party). This Tribunal after taking into consideration the Mumbai and Ernakulam Bench of this Tribunal and also the Hon'ble High Court of Mumbai came out the following flow:

- a. When the promotions were declined there was no ACP Scheme envisaged at all,
- b. There was no offer of promotion when the Scheme came into being on 09.08.1999.

In the above decisions, it was held that the past refusals of promotion should not not be held against the future grant of ACP benefits. The refusals were all made by the applicants at such a time when there was no anticipation of the intended benefits under the ACP Scheme. Ultimately, the Tribunal agreed with the ratio of the above decisions and held in the O.A. 162 of 2007 to the following effect :

"For all these reasons, the respondents' stand, which they are now trying to reverse in their reply to this O.A, namely that applicants' declining promotion earlier to implementation of the ACP Scheme viz., 9.8.1999 will have impact cannot be sustained and the grant of the first ACP as on 9.8.1999 is legally sound and in accordance with the ACP which became effective from 9.8.1999, subject to their fulfilling other conditions for grant of ACP, without taking into consideration their declining prior to the introduction of the scheme namely 9.8.1999 and any benefit flowing thereafter after the grant of such first ACP with effect from 9.8.1999 will be conditioned by all other stipulations of the ACP



Scheme and issue necessary orders to that effect within a period of six weeks from the date of receipt of a copy of this order."

Further, we have also seen that the order passed by this Tribunal in O.A. 162 of 2007 has been upheld by the Hon'ble High Court in W.P. No. 35 of 2008 and finally confirmed in S.L.P. No. 21475 of 2008 by the Hon'ble Supreme Court.

7. In the said circumstances, we are of the view that the case of the present applicants are also covered by the decision rendered by this Tribunal in O.A. 162 of 2007 which has attained a finality by the judgement of the Hon'ble Supreme Court in 21475 of 2008. Accordingly, the respondents are directed to consider and grant the first financial upgradation under the ACP Scheme to the applicants as on 9.8.1999, subject to their fulfilling other conditions for grant of the said benefit, without taking into consideration their declining promotion prior to the introduction of the ACP Scheme and any benefit flowing thereafter after the grant of such first ACP with effect from 9.8.1999 will be conditioned by all other stipulations of the ACP Scheme and issue necessary orders to that effect within a period of six weeks from the date of receipt of a copy of this order.

8. With the above directions, the O.A. is allowed. No order as to costs."

8. Following the ratio of the decision of the Madras Bench of this Tribunal, we declare that the applicant is eligible for consideration for grant of financial upgradation with effect from 24.12.2004. The O.A. is allowed as under.

9. The Annexure A-11 order dated 01.12.09/15.12.09 is set aside. The respondents are directed to consider the applicant for grant of 2nd financial upgradation under the ACP Scheme from 24.12.2004 as per his promotional hierarchy with all consequential benefits. But the arrears of pay will be restricted to 3 years prior to 01.11.2010, the date of filing of this OA. His pensionary benefits should be revised accordingly. Appropriate orders in this regard should be issued within a period of 2 months from the date of receipt of a copy of this order. No costs."

15. Therefore, in view of the settled position of law, we also decide the present OA in terms of the decision taken by the Central Administrative Tribunal, Earkakulam Bench in the case of

N. Ratnasabhapathy Asari vs. Kendriya Vidyalaya Sangathan & Others (OA No. 947/2010 decided on

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01.08.2012). The respondents are directed to consider the applicant's case for grant of benefit of second ACP with effect from 29.10.2004, the date from which the debarment period for the next promotion was over. The applicant's pensionary benefits would be revised accordingly. The respondents are directed to undertake this exercise within a period of three months from the date of receipt of a copy of this order.

16. Consequently the OA is allowed with no order as to costs.

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(M. NAGARAJAN)
MEMBER (J)

AHQ

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MEMBER (A)