

19

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

OA No. 060/00443/14

Date of decision: 6.8.2015

**Coram: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)**

Subhash Chander son of Shri Ram Singh Yadav working as Store
Keeper, Central Sheep Breeding Farm, Hisar, Haryana

-Applicant

(By Advocate Shri D.R. Sharma)

-Versus-

1. Union of India through Ministry of Agriculture, Department of
Animal Husbandry Dairying and Fisheries, Krishi Bhawan, New
Delhi.
2. The Director, Central Sheep Breeding Farm, Hisar, Haryana.

-Respondents

(By Advocate Shri Ram Lal Gupta)

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ORDER

Mr. Sanjeev Kaushik, Member (J):

Challenge in this Original Application is to an order dated 17.12.2013, passed pursuant to decision taken in meeting held on 13.11.2013, whereby respondents have wrongly granted only 3rd MACP to the applicant in the pay scale of Rs.5200-20200+Grade Pay Rs.2800 by wrongly taking into the in-situ promotions given on 01.09.1993 as 1st promotion and 2nd promotion on 23.09.1999 with a further prayer to direct the respondents not to consider in-situ promotions, as promotions while granting benefit under the ACP/MACP Scheme for grant of financial upgradation.

2. The undisputed facts are that the name of the applicant was sponsored by the Employment Exchange for the post of Store Attendant and he was offered appointment as such on 07.09.1977. After completion of two years' probation he was confirmed on 27.06.1980 in the pay scale of Rs.196-232, which was revised to Rs.750-940 in 4th Central Pay Commission, Rs.2550-3200 in 5th Central Pay Commission and Rs.5200-20200 with Grade Pay Rs.1800 in the 6th Central Pay Commission. In the year 1986, the respondents notified the recruitment rules, governing the service conditions of the applicant. The services rendered by the applicant from 1977 to 1986 were treated as ad hoc and his services were regularized with effect from 1986. In the year 1993, applicant was

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granted pay scale of Rs.775-1025 on the same post of Store Attendant by giving him in-situ promotion, which was revised to Rs.2610-4000 in 5th Central Pay Commission and Rs.5200-20200 with Grade Pay Rs.1800 in the 6th Central Pay Commission. On the recommendation made by the Departmental Promotion Committee he was promoted to the post of Store Keeper in the pay scale of Rs.4000-6000 w.e.f. 23.09.1999 vide Office Order dated 23.09.1999. On the recommendation of the 5th Central Pay Commission the Central Government introduced Assured Career Progression (ACP, for short) Scheme vide DoP&T OM dated 09.08.1999 granting two financial upgradations to employees on completion of 12 and 24 years of regular service. This scheme remained in force from 09.09.1999 to 31.08.2008, when the nodal Ministry-DoP&T issued OM dated 10.02.2000, whereby clarifying that mobility under ACP Scheme is to be allowed in the existing hierarchy. Thereafter, on recommendation of the 6th Central Pay Commission the Central Government introduced Modified Assured Career Progression (MACP) Scheme vide DoP&T OM dated 19.05.2009, whereby granting three financial upgradations on completion of 10, 20 and 30 years regular service respectively. The MACP Scheme was made applicable from 01.09.2008. It is the case of the applicant that instead of granting 2nd and 3rd benefit under MACP Scheme on completion of 20 years service on 13.09.1997 and

22

30 years service on 12.09.2007 w.e.f. 13.09.2007, the respondents granted only 2nd MACP to applicant w.e.f. 23.09.2009, against which the applicant represented on 30.08.2010 to treat his service from the initial date, i.e., 13.09.1977, as regular, pursuant to which respondent no.1 issued OM dated 10.01.2012, thereby treating the service of the applicant from the date of his initial appointment for all purposes, including the grant of benefit under ACP/MACP. However, vide impugned order dated 17.12.2013, while accepting the decision in the meeting held on 13.11.2013, the respondents granted only 3rd MACP in the pay scale of Rs.5200-20200+Grade Pay Rs.2800 by wrongly taking into account the in-situ promotions given to the applicant on 01.09.1993 as 1st promotion and 2nd promotion on 23.09.1999. Hence the Original Application.

3. The respondents resisted the claim of the applicant by filing detailed written statement wherein they did not dispute what has been stated in the Original Application. They have, however, submitted that once he has been given in-situ promotions, therefore, the same has to be treated as promotions in relation to grant of financial benefits under ACP/MACP.

4. The applicant has filed rejoinder wherein apart from contradicting the averments made in the written statement, he has placed reliance upon an order passed by the Principal Bench of this Tribunal in OA no.685/2008 - **Ramesh Chandra Pal v. Union of**

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23

India & Others, decided on 21.05.2009, which has been affirmed by the Hon'ble High Court of Delhi by dismissing Writ Petition (Civil) No.13849/2009 on 04.08.2014.

5. We have heard learned counsel for the parties and perused the pleadings available on record.

6. The solitary contention at the hands of the applicants is whether in-situ promotion can be counted as promotion while considering the case of an employee for grant of financial upgradation on completion of 10/20/30 years service under MACP?

7. The nodal Ministry-DoP&T issued OM on 10.02.2000 whereby clarifying various points where doubts were raised and under point no.2 they have clarified that mobility under ACPS is to be allowed in the 'existing hierarchy'. As such, if any selection grade/in-situ promotion has been allowed to employees, which is not a part of hierarchy, it shall not be counted as promotion for the purpose of ACPS. The same reads as under:

2	Some employees have been allowed selection grade/in-situ promotions though these grades are not a part of the defined hierarchy. Whether this is to be considered as promotion for the purpose of ACPS? Also, what will be the situation if selection grade has been allowed in lieu of higher pay-scale?	Mobility under ACPS is to be allowed in the 'existing hierarchy'. As such, if any selection grade/in-situ promotion has been allowed to employees which is not a part of the hierarchy, it shall not be counted as promotion for the purpose of ACPS. For illustration sake, junior
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24

	<p>engineers of CPWD appointed in the grade Rs.5000-8000/- are allowed the scale of Rs.5500-9000/- on completion of five years of regular service and the scale of Rs.6,500-10,500/- on completion of fifteen years of regular service. The scale of Rs.5500-9000/- is not a part of the defined hierarchy for them. In such cases, the pay-scale which is not a part of the hierarchy may be treated to have been withdrawn. However, fall in pay resulting out of this shall be protected by granting personal pay in the aforesaid direct entry grade to be adjusted against future increments. Moreover, as per Condition No.13 of ACPS, such existing (previous) schemes would be discontinued with the adoption of ACPS. However, in the case of common category of posts, the existing hierarchy in relation to a cadre would mean the restructured grades recommended by the Fifth Central Pay Commission.</p>
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8. The above clarifies that if there is no element of pay scale of existing hierarchy post, then it cannot be considered as a promotion

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while considering the case for grant of financial upgradation under the MACP/ACP. The respondents have failed to point out that while granting in-situ promotions the applicant was given the pay scale of a higher post in the existing hierarchy. Therefore, their contention in rejecting his claim for grant of financial upgradation cannot be approved.

9. Similar proposition has also been considered by the Principal Bench in the case of **Ramesh Chandra Pal** (supra) and the Writ Petition filed at the hands of Union of India has been dismissed on 04.08.2014 holding that the clarification issued by DoP&T is clear and any in-situ promotion will not debar an employee for grant of financial benefit under MACP. The question posed by the Hon'ble High Court of Delhi in paragraph-3 and answer in paragraphs-9 and 10 read as under:

"3. The CAT, after considering the relevant facts, relied upon the clarification no.2 issued by the Department of Personnel and Training (DOPT) dated 10.02.2000 in respect of the ACP scheme and, after considering the other circumstances, held that the in situ promotion or financial upgradation could not be considered as first promotion and that, upon the respondent's completion of 24 years of regular service, the second financial upgradation was due and admissible to him."

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9. This Court further notices that in case of an employee who had been granted similar in situ promotion but with effect from 01.04.1991, i.e. Sh. Sahab Singh, the matter had reached this Court in W.P.(C) 16598-600/2006 at the behest of the UOI, who had suffered an adverse order. The Court on that occasion had endorsed an identical view of CAT in the following terms:

"We have heard learned counsel for the petitioner and apart from reiterating his submissions which were made before the Tribunal, the petitioner has not been able to satisfy us as to how the in situ promotion granted to the respondent in the year 1991 could be considered for the purpose of ACP scheme in view of the clarification issued by the DOP&T in its O.M. dated 10.2.2000 and the finding arrived at by the Tribunal that the post of 'Counter' is not in the hierarchy of the cadre of Group 'D' posts and that the in situ promotion granted to the respondent in 1993 was not to the post of 'Counter'.

We agree with the Tribunal in its reason that the case of the petitioner is covered by the clarification. We find no merit in this petition and the same is dismissed."

10. This Court is of the opinion that in view of the above material, the UOI has been unable to show that the benefit given to the original respondent, with effect from 01.04.1992, was not an in situ promotion W.P.(C) 13849/2009 Page 5 and was within the


1

regular hierarchy. Therefore, for the reasons mentioned in the present petition too has to fail."

10. In the light of the above, we are left with no option but to accept the Original Application. Accordingly, the impugned order is quashed and set aside. The respondents are directed to grant applicant 2nd and 3rd financial upgradations in the existing hierarchy as per his entitlement. Let the above exercise be completed within a period of two months from the date of receipt of a certified copy of this order.

11. No costs.


(SANJEEV KAUSHIK)
MEMBER (J)


(RAJWANT SANDHU)
MEMBER (A)

Chandigarh

Dated: 6.8.2015

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