

Reserved
(On 31.10.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 11th day of December 2018

Original Application No 330/01041 of 2010

Hon'ble Mr. Gokul Chandra Pati, Member – A
Hon'ble Mr. Rakesh Sagar Jain, Member – J

Dinesh Chandra, S/o Shri K.N. Saxena, R/o 302, Karolan Chaupla Road,
Bareilly – 243001.

. . .Applicant

By Adv: Sri T.S. Pandey

V E R S U S

1. Chairman & Managing Director, Bharat Sanchar Nigam Ltd. (BSNL), Government of India Enterprises, Corporate Office, Personnel – II Section, Bharat Banchar Bhawan, 4th Floor, Harish Chandra Mathur Lane, Janpath, New Delhi – 110001.
2. Chief General Manager Telecom UP (West), Telecom Circle, Shastri Nagar, Telephone Exchange, Garh Road, Meerut – 250005.
3. Chief General Manager, Telecom District, Dehradun.
4. General Manager, Telecom District, CTO Compound, Bareilly Cantt.

. . . Respondents

By Adv: Sri D.S. Shukla

ORDER

By Hon'ble Mr. Gokul Chandra Pati, Member – A

This OA has been filed with the prayer for the following reliefs:-

- “i. To issue a writ order or direction in the nature of certiorari quashing the order dated 26th October 2009 (Annexure A-1 to the OA) with a further order or direction in the nature of mandamus to provide 1st and 2nd benefit of ACP Schemes, as provided to other applicants Smt. R.A. Mutigikar and Smt. Rinkoo Jha of Bihar Circle vide order dated 25.08.2006 within a stipulated time.*
 - ii. To issue suitable order or direction as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.*
 - iii. To award the cost of the original application.”*
2. The applicant has a grievance since his claim for grant of ACP has been refused by the respondents. The applicant was appointed as Stenographer Grade-III on 25.10.1982. The applicant was given promotion as Personal Assistant Grade-II in 1989, 1990 and 1995, but he refused these promotions due to personal difficulties. After introduction of the

Assured Career Progression Scheme (in short ACPS) by the Department of Personnel and Training, Government of India (in short DOPT) vide order Dated 9.8.1999 (Annexure A-5), the respondents implemented the ACPS for the cadre of Stenographers vide order dated 12.9.2005 (Annexure A-9). The applicant's grievance is that although other similarly placed stenographers, after refusing promotion, were allowed the benefit of upgradation under ACPS, the applicant's case was not considered.

3. The applicant had submitted a representation dated 16.5.2007 for the benefit of ACPS, but it was rejected by the respondents vide order dated 28.1.2008 (Annexure A-15) on the ground that the applicant had refused promotion allowed to him 2-3 times, for which the ACPS benefits cannot be given to him. Being aggrieved, the applicant had challenged the order in OA No. 22/2009 which was disposed of this Tribunal vide order dated 10.9.2009 (Annexure A-19) by which the applicant was to submit a fresh representation which is to be disposed of by the respondents. Accordingly, the applicant submitted the representation dated 21.9.2009 (Annexure A-20), which was considered and rejected by the respondents vide order dated 26.10.2009 (Annexure A-1), which is impugned in this OA.

4. The respondents have filed their counter reply repelling the OA mainly on the following grounds:-

- (i) The applicant refused vacancy based promotions allowed to the applicant three times, including a regular promotion allowed vide order dated 30.7.1990 on the ground of domestic circumstances, for which he is not entitled for ACPS benefits as per the para 38 of the circular dated 18.7.2001 of the DOPT, copy of which has been enclosed at Annexure A-6 to the OA. The clarifications of the DOPT in para 38 of the circular dated 18.7.2001 state that in a case where an employee had refused promotion before introduction of ACPS, he cannot be said to be stagnating as he opted to continue in the existing grade.
- (ii) The OA is not maintainable due to delay and laches as the cause of action for the impugned order dated 26.10.2009 was long before the applicant approached the Tribunal and order dated 26.10.2009 was passed as per the order of the Tribunal.

5. We have heard learned counsel for the applicant, who besides reiterating the averments in the OA, stressed on the point that the promotion refused by the applicant were ad-hoc or temporary promotions which can be cancelled by the authority anytime. Hence, refusing such promotions should not be taken as disqualification for ACPS benefits. Learned counsel drew our attention to letter dated 21.04.2009 (Annexure A-16) by which the respondents decided to extend the ACP Scheme for the restructure cadre of the Stenographers of the Field units and argued that the applicant is entitled for the ACP benefit.

6. Learned counsel for the respondents reiterated the averments in the counter reply and submitted that the applicant had refused promotion three times, for which he will not be eligible for ACPS benefits as per the circular dated 18.7.2001 of the DOPT. He further submitted that the OA is barred due to delay and laches on the part of the applicant as stated in the counter reply.

7. We have considered the submissions of the learned counsels and also perused the pleadings of the parties. Before we proceed further, we would like to deal with the objection raised by the respondents on account of delay. Undisputedly, the applicant joined service w.e.f. 25.10.1982. Hence, he will be entitled for first ACPS benefit w.e.f. 9.8.1999 since by that time he had completed 12 years of service. There is nothing on record to show if the applicant had approached the authorities with his grievance or submitted any representation on this issue till he submitted his representation dated 16.5.2007, which is referred in the order dated 28.1.2008 (Annexure A-15) of the respondents. As stated in the OA, the respondents had decided to implement the ACPS for the stenographer cadre vide the circular dated 12.9.2005 (Annexure A-9). Even then, the applicant failed to raise his claim for first ACPS until 16.5.2007. The applicant would be eligible for second ACPS benefit w.e.f. 25.10.2006 after completion of 24 years. Hence, the representation dated 16.5.2007 of the applicant can be considered to be within time for second ACPS benefit. But for the purpose of first ACPS benefit, it is delayed. No application to condone delay has been filed by the applicant in this OA so as to consider the first ACPS benefit for the applicant. Hence, the claim of first ACPS benefit to the applicant is barred on account of delay and failure on the part of the applicant to raise his claim within time as stipulated under law.

8. In view of the discussions above, it is clear that the claim of the applicant for first ACPS benefit is hit by delay and laches and the same cannot be considered. But the claim for the second ACPS benefit, which became due on 25.10.2006, the applicant can be considered to have taken step within the stipulated time by submitting the representation dated 16.5.2007 which was rejected vide order dated 28.1.2008, which was challenged by the applicant in the OA No. 22/2009, which was disposed of with direction to the applicant to file fresh representation. Accordingly, the fresh representation dated 21.9.2009 has been rejected by the respondents in order dated 26.10.2009 (Annexure A-1) which is impugned in this OA. Hence, while the claim for first ACPS benefit cannot be considered due to delay and laches, the claim for second ACPS benefit on completion of 24 years of service is considered to be within time and it can be considered in this OA.

9. We have to decide if the averment of the respondents that the applicant is not entitled for ACPS benefit as he had refused promotions three times, is correct and acceptable. Admittedly, the promotions have been refused by the applicant in the year 1989, 1990 and 1995. Copies of these promotion orders are enclosed at Annexure A-2, A-3 and A-4 respectively. It is seen from the orders that except for the promotion order of 1990, other two promotions were on adhoc and officiating basis, which were liable to be cancelled anytime by the respondents. The guidelines of ACPS refer to only regular promotions. From the clarifications on ACPS issued by the DOPT vide circular dated 18.7.2001 (Annexure A-6) vide para 38, it is clear that an employee can be debarred for ACPS benefit if he refused a regular promotion. There is nothing in the guidelines for ACPS or subsequent circulars issued by DOPT, specifying that an employee will not be eligible for ACPS benefit for refusing adhoc or officiating promotion. But the promotion in 1990 was a regular promotion which was refused by the applicant and such promotion was prior to introduction of ACPS on 9.8.1999. Hence, the applicant's claim for first ACPS benefit is admissible. In any case, the claim for the first ACPS is not admissible in this OA due to delay and laches as discussed above. As per the clarifications issued by DOPT in para 38 of the circular dated 18.7.2001 (Annexure A-6), the applicant will be eligible for second ACPS benefit after 24 years of service plus the debarment period, if any. There is nothing on record to show if the applicant was debarred by the respondents for his refusal of promotion. Hence, the applicant would be

entitled for second ACPS benefit after completion of 24 years of regular service.

10. The issue can be examined from another angle also. As per the judgment of Mumbai Bench of the Tribunal in the case of Mr. Ganesh Bhavrao Shrote vs. Union Of India decided by Mumbai Bench of the Tribunal (indiankanoon.org/doc/31514590) vide order dated 5.8.2013 in the OA No. 91/2011, the promotion refused prior to instruction of ACPS cannot be a ground for not allowing ACPS benefit. It is held by this Tribunal in the OA No. 91 of 2011 as under:-

“7. The issue involved in this OA is whether the applicant will be entitled for first ACPs benefit under ACP Scheme, which came into effect on 09.08.1999. Admittedly, the applicant refused his promotion given to him vide order dated 30.07.1998. Serial No.38 being the clarification vide DoPT OM dated 18.07.2001 stipulates that where a promotion has been offered before the employee could be considered for grant of benefit under ACP Scheme, but he refuses to accept such promotion, then he cannot be said to be stagnating as he has opted to remain in the existing grade of his own volition. Serial No.38 with point of doubt and clarification is set out herein below-

S.No Point of doubt Clarification

38. A person has refused a vacancy-based promotion offered to him prior to his becoming eligible for financial upgradation under ACPs, on personal grounds. Will he be eligible for financial upgradation under ACPs?

A person had refused a regular promotion for personal reasons. He has since completed 24years' of service. Will he be entitled for 2nd financial upgradation?

The ACP Scheme has been introduced to provide relief in cases of acute stagnation where the employees, despite being eligible for promotion in all respects, are deprived of regular promotion for long periods due to non- availability of vacancies in the higher grade. Cases of holders of isolated posts have also been covered under ACPs, as they do not have any promotional avenues. However, where a promotion has been offered before the employee could be considered for grant of benefit under ACPs but he refuses to accept such promotion, then he cannot be said to be stagnating as he has opted to remain in the existing grade on his own volition. As such, there is no case for grant of ACPs in such cases. The official can be considered for regular promotion again after the necessary debarment period.

8. The learned counsel for the applicant heavily relied on the judgment of Bombay Bench of the Tribunal. The learned counsel has annexed Swamy's News of July, 2008 to the Rejoinder, wherein the judgment of the Bombay Bench passed in OA No.129/2003 has been discussed. It appears from the said Annexure that the Bombay Bench of the CAT held that if an employee has refused the promotion before the enforcement of the ACP Scheme, the facts would remain that he has actually not been given any financial upgradation which he could have been by a regular promotion. He remains on the scale of pay still stagnated. In view of the clear observation of the CAT Bench of the Bombay, the respondents clarification cannot be accepted. The Ernakulam Bench of the Tribunal in OA No.768 of 2005 considered Condition No.10 of the Scheme and held that Condition No.10 makes it amply clear that if an employee is accepting ACP benefit, he is deemed to have given unqualified acceptance for regular promotion on occurrence of vacancy subsequently. That precludes factoring of past refusals while giving ACP benefit. In that view, the refusal of an employee for regular promotion earlier to 09.08.1999 has no effect in the grant of promotion under ACP Scheme. The Bench subsequently considered the clarification given by the DoPT under clarification of Doubt No.38. It has been held by the Bench that the refusals were all made by the applicant at such a time when there was no anticipation of the intended benefits under

the ACP Scheme. The refusals should have had their injurious effect on the applicant on both the occasions, though it was all self invited by the applicant himself. But once they have been suffered, allowing them to continue in future also, would amount to punish them for the second time. The employee is not aware of the ACP Scheme when he refused promotion earlier to the introduction of ACP Scheme. The decisions of the Mumbai, Ernakulam Bench of the Tribunal and the High Court of Bombay state that when promotions were declined, there was no ACP Scheme and also there was no offer of promotion on 09.08.1999. In view of the above decisions, the eligibility for benefits under the ACP Scheme has to be reckoned on the actual date namely 09.08.1999. The CAT Bench held that declining promotion under ACP Scheme just because the applicants refused regular promotion earlier to 09.08.1999 is not sustainable. Hence, a direction was given to respondents to grant the applicants benefits under the ACP Scheme irrespective of the fact of their refusal of promotion earlier to 09.08.1999. Six weeks' time was given for implementation of the order."

The facts of the case in OA No. 91/2011 were that the applicant had refused promotion before introduction of ACPS and on that ground, no ACPS benefit was allowed to him. As per the order quoted above, the Tribunal, after referring to the findings of the Tribunal in similar cases, held that refusal of promotion prior to introduction of ACPS w.e.f. 9.8.1999 will not be a disqualification for being considered for ACPS benefits. The facts of the present OA being similar, the order in the OA No. 91/2011 will squarely apply to the present OA before us.

11. In view of discussions as above, we are unable to agree with the decision of the respondents to refuse the benefit of upgradation under second ACPS after completion of 24 years of regular service of the applicant. The OA is allowed and the impugned order dated 26.10.2009 (Annexure A-1) is set aside and quashed. The respondents are directed to consider the case of the applicant for second ACPS benefit for financial upgradation from the date when he had completed 24 years of regular service as per the rules and allow consequential benefits including the arrear of pay for the period he was deprived of such benefit. There will be no order as to costs.

(Rakesh Sagar Jain)
Member (J)

(Gokul Chandra Pati)
Member (A)

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