

Reserved
(On 30.07.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD

Dated: This the 20th day of August 2018

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

Original Application Number. 330/01439 of 2011

1. Bhagwati Saran, S/o V.N. Rastogi, R/o 150A/BB/1A, Meerapatti, Dhoomanganj, Allahabad. Presently posted as Assistant Accounts Officer in the office of PAG (A&E)-I, U.P., Allahabad.
2. Sarfaraz Hussain, S/o Late F. Uddin, R/o 216/1, Pura Manohar Das, Akbarpur, Allahabad Presently posted as Assistant Accounts Officer in the office of AG (A&E)-II, U.P. Allahabad.
3. Kailash Nath Maurya, S/o Late Sita Ram Maurya, R/o of 85 Sarai Taki, Jhunsi, Allahabad. Presently posted as Assistant Accounts Officer in the office of PAG (A&E)-I, U.P. Allahabad.
4. Ravindra Nath Tiwari, S/o Late R.S. Tiwari, R/o 858/1R Bagambhari Road, Allahabad, Presently posted as Assistant Accounts Officer in the office of PAG (A&E)-I, U.P. Allahabad.

.....Applicants.

By Adv: Shri S.J. Ishitaque & Ms. Saumya Mandhyan

VE R S U S

1. Union of India through Secretary, Ministry of Personnel, Public Grievances & Pension (Department of Personnel and Training), New Delhi.
2. Comptroller & Auditor General of India, 9, Deen Dayal Upadhyay Marg, New Delhi.
3. Accountant General (A&E)-I, U.P. Allahabad.
4. Dy. Accountant General (Administration), in the office of Principal Accountant General (A&E)-I U.P. Allahabad.

.....Respondents

By Adv: Shri R.K. Rai

O R D E R

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

The applicants have filed this OA with the following reliefs:-

- i. to set aside the orders dated 03.11.2011 passed by the respondent no. 3 (Annexure No. A-1, A-2, A-3 & A-4 to Compilation No. 1).*
- ii. to issue an order or direction in the nature of mandamus commanding the respondents to not to give effect to the orders dated 03.11.2011 (Annexure No. A-1, A-2, A-3 & A-4 to Compilation No. 1) and treat the applicants*

eligible for 3rd Financial Upgradation in PB2+GP 5400 under the Modified Assured Career Progression Scheme (MACPS) granted to the applicants on 26.08.2010 in view of office Memorandum dated 19.05.2009.

- iii. a suitable order or direction directing the respondents not to make any recovery from the salary of applicants pursuant to impugned order dated 3.11.2011 and continue paying salary to the applicants without making any sort of deduction there from month by month regularly in accordance with law.*
- iv. to issue any other suitable order or direction, which this Hon'ble court may deem fit and proper in the facts and circumstances of the case.*
- v. to award cost of the petition in favour of the applicants."*

2. The applicants were initially appointed as Clerks under the respondents and then promoted as Accountant in 1988 with pay scale of Rs. 1200-2040/- . Then they were selected as Section Officer in the Audit wing after passing the prescribed examination in 1991 and were posted on deputation to Audit wing under the respondents with the pay scale of Rs. 1640-2900/- . Then they were reverted back to their parent cadre in the Accounts wing in 1992 and were posted as Section Officers in the same pay scale they were enjoying in the Audit wing. The case of the applicants is that till 1992, they had availed two promotions, first as Accountant and second as Section Officer.

3. When the MACP Scheme was introduced w.e.f. 1.9.2008 by Government vide the DOPT OM dated 19.05.2009 (Annexure A-5), it was envisaged that every government servant with 30 years of service or more, are entitled to get three promotions or financial upgradations to next grade pay after 10, 20 and 30 years of service. Accordingly, the applicants represented and they were considered for third MACP benefit, treating that they had availed two promotions for which they will get one more upgradation benefit under MACP and they were sanctioned the benefit vide order dated 26.8.2010 allowing third financial upgradation benefit to the applicants w.e.f. 1.9.2008, raising their grade pay to Rs. 5400/- in Pay Band 2. However, vide order dated 18.4.2011 (Annexure A-11), the respondents withdrew the benefit of MACP with higher grade pay on the ground that the applicants were wrongly given the MACP benefit, since the applicants were given a promotion to Senior Accountant in the pay scale of Rs. 1400-2600/- in 1992 about four months prior to their promotion to the post of Section Officer in the Accounts wing. As per the guidelines of MACP, if any

government servant has refused any promotion, then financial benefit would not be available.

4. The applicants had challenged issue of the order dated 18.4.2011 cancelling the MACP benefit already sanctioned to them vide order dated 26.8.2010, by filing OA No. 563/2011, in which this Tribunal gave a direction to the respondents to issue a show cause notice and then, considering the reply of the applicant, suitable fresh orders to be passed by the respondents on this issue. Then the applicants were issued a show cause notice by the respondents, for which the reply was given. After considering the reply, the orders have been passed by the respondents cancelling the benefit of third upgradation under MACP Scheme granted to the applicants earlier on the ground that the applicants refused to honour their promotion to the grade of Senior Accountant vide order dated 1.1.1992, when they were on deputation in Audit wing.

5. These orders dated 3.11.2011 passed by the respondents no. 3 have been impugned in this OA. mainly on the ground that the promotion orders dated 1.1.1992 were never served on the applicants, hence, it will not be correct to say that they had refused the promotion.

6. The respondents, in the Counter Reply, have categorically stated that the applicants have refused the promotion to the post of Senior Accountant as in the promotion order it was mentioned that if the applicants fail to join by a specific date, then it will be deemed to be refused. Accordingly, it was considered to be a refusal of promotion by the applicants, for which they will not be entitled for MACP benefit as per the circular dated 19.5.2009. The applicants, in reply to the above contentions in the Counter Reply, reiterated their averment that they were never served with the referred promotion order and without serving the promotion orders it cannot be stated to be refusal on their part.

7. We heard learned counsels for both the parties who reiterated their respective stands in the pleadings. In addition, the applicant's counsel also submitted a copy of the judgment of this Tribunal in the case of Mr. Ganesh Bhavrao Shrote vs. The Union of India in OA No. 91/2011.

8. We have considered the submissions and gone through the pleadings on record. The issue to be decided in the case is whether the applicants by not honouring the order dated 1.1.1992 promoting the applicants to the post of Senior Accountant, have become ineligible for financial upgradation under MACP. Before proceeding further, it is observed that vide order dated 23.11.2011, this Tribunal stayed the recovery of excess amount paid to the applicant by way of third MACP already granted to them. But the Misc. Application under rule 4(5) of the CAT (Procedure) Rules, 1987 to allow the applicants to jointly file the OA is pending. Since undisputedly, the cause of action and reliefs sought are common for all the applicants, we allow the MA No. 3207/2011 under the rule 4(5) in this case.

9. Coming back to the main issue in this case, we will first examine if the order dated 1.1.1992 promoting the applicants to the post of Senior Accountant can be considered as a promotion or not. The meaning of "promotion" as per Oxford Dictionary is:

"The action of promoting someone or something to a higher position or rank or the fact of being so promoted."

10. Hon'ble Supreme Court in the case of Bharat Sanchar Nigam Ltd vs R. Santhakumar Velusamy & Ors (2011) 9 SCC 510 examined with reference to the decisions in different case laws as to what can be termed as promotion and has held as under:-

“17. We may next consider the concepts of ‘promotion’ and ‘upgradation’. In Lalit Mohan Deb, this Court explained the difference between a promotion post and a selection grade:

“7.....It is well recognized that a promotion post is a higher post with a higher pay. A selection grade has higher pay but in the same post. A selection grade is intended to ensure that capable employees who may not get a chance of promotion on account of limited outlets of promotions should at least be placed in the selection grade to prevent stagnation on the maximum of the scale. Selection grades are, therefore, created in the interest of greater efficiency.”

18. In Tarsen Singh vs. State of Punjab – 1994 (5) SCC 392, this Court defined ‘promotion’ thus :

“9.....Promotion as understood under the service law jurisprudence means advancement in rank, grade or both. Promotion is always a step towards advancement to a higher position, grade or honour.”

19. In S.S. Ranade the scope and meaning of the word ‘promotion’ was considered. The issue in that case was whether a Commandant (Selection Grade) held a higher rank than a Commandant and

consequently entitled to be superannuated at a later age of 58 years instead of 55 years. This Court, following the decision in Lalit Mohan Deb, held as follows:

"9.....Undoubtedly, a Commandant who becomes a Commandant (Selection Grade) secures a promotion to a higher pay scale. But it is a higher pay scale in the same post. The use of the word 'promotion' in Rule 6 and the Constitution of a Departmental Promotion Committee for selection of Commandant (Selection Grade) in Rule 7, do not necessarily lead to the conclusion that the promotion which is contemplated there is necessarily a promotion to a higher post. Promotion can be either to a higher pay scale or to a higher post. These two Rules and the use of the word 'promotion' there do not conclude the issue.

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14. In the present case, an element of selection is involved in granting selection grade because there is no automatic promotion to the selection grade pay scale. But this factor is not decisive. In the present case also, as in the above cases, Selection Grade posts are created entirely for the purpose of granting some relief to those who have very limited avenues of getting promotion to a higher post. That is why a higher pay or pay scale is granted in the same post. Thus, by its very nature, a selection grade post cannot be considered as a higher post for the purposes of Rule 9.

15.....Because the creation of a selection grade in the same post stands on a very different footing. By its very nature a selection grade provides a higher pay or a higher pay scale in the same post. The beneficiary of a selection grade does not thereby occupy a post which is higher in rank than the post earlier occupied by him."

(emphasis supplied)

On facts, this Court found that the respondent therein required a promotion which resulted in occupation of a post which was higher in rank than the post earlier occupied, to get the relief of longer service. This Court held that though his promotion from Commandant to Commandant (Selection Grade), resulted in a promotion to a higher pay scale, that was not sufficient to grant relief to the respondent therein as his promotion to selection grade did not involve advancement to a higher post.

20. In Fateh Chand Soni, this Court following Ranade defined 'promotion' thus:

"8. The High Court, in our opinion was not right in holding that promotion can only be to a higher post in the service and appointment to a higher scale of an officer holding the same post does not constitute promotion. In the literal sense the word "Promote" means "to advance to a higher position, grade, or honour". So also "Promotion" means "advancement of preferment in honour, dignity, rank or grade". [See: Webster's Comprehensive Dictionary, International Edition, p. 1009]. "Promotion" thus not only covers advancement to higher position or rank but also implies advancement to a higher grade. In service law also the expression "Promotion" has been understood in the wider sense and it has been held that "Promotion can be either to a higher pay scale or to a higher post."

(emphasis supplied)"

11. In the light of the above case law, promotion can be either to a higher pay scale or to a higher post. In this case admittedly, the applicants were enjoying a higher pay scale of Rs. 1640-2900 with

higher designation of Section Officer on 1.1.1992 when the promotion order dated 1.1.1992 to the post of Senior Accountant with pay scale of Rs. 1400-2600 was issued. Obviously, this promotion was actually not a promotion in terms of the law laid down by Hon'ble Apex Court as discussed in paragraph 10 above it did not involve any higher post or higher pay scale, since as per the order dated 1.1.1992 the applicants who were working in the post of Section Officer with higher pay scale were asked to go to a lower post of Senior Accountant. The facts indicated in the Show Cause notices issued to the applicant annexed at Annexure A-13 to A-16 would clearly establish that the order dated 1.1.1992 was not a promotion for the applicants who were already working at a higher pay scale. Hence, there is no case for refusal of promotion order by the applicant.

12. For the aforesaid reasons and in view of the fact that there is no case against the applicant to have refused a promotion order, the averment of the respondents that the applicants have refused the promotion to the post of Senior Accountant, is not based on correct appreciation of the fact and law.

13. Since this was the reason indicated by the respondents for cancelling the third MACP benefit to the applicants and without considering any other pleadings on record, we are of the considered view that the impugned orders are liable to be set aside and quashed. We order accordingly and direct the respondents to restore the MACP benefit already granted to the applicants vide order dated 26.08.2010 (Annexure A-10) within two months of receipt of a copy of a certified copy of this order and not to recover any amount from the applicants in this regard.

14. The OA is allowed accordingly. No costs.

(Rakesh Sagar Jain)
Member (J)

/pc/

(Gokul Chandra Pati)
Member (A)