

**Reserved**  
(On 28.08.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**ALLAHABAD BENCH**  
**ALLAHABAD**

Dated: This the **06<sup>th</sup>** day of **September** 2018

**Original Application No. 330/01469 of 2013**

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

Abhai Kumar Verma, S/o Late G.S. Verma, R/o House No. 17/262-21  
Param Hans Nagar Colony, Indrapur, Shivpur, Varanasi – 221003.

. . . Applicant

By Adv: Shri N.L. Srivastava

**V E R S U S**

1. Union of India through, Ministry of Textile, Udyog Bhawan, New Delhi – 110001 Through its Secretary.
2. Development Commissioner (Handicrafts), Ministry of Textile, West Block No. 7, R.K. Puram New Delhi – 110001.
3. Regional Director (Central Region), Office of the Development Commissioner (Handicrafts) Kendriya Bhawan, 7<sup>th</sup> Floor, Sector – H, Aliganj, Lucknow – 226001.
4. Assistant Director (H), Office of the Development Commissioner (Handicrafts) Marketing & Service Extension Centre, Ground Floor Akashdeep, V.D.A. Campus, Panna Lal Road, District Varanasi.
5. Deputy Director (CR), Office of the Development Commissioner (Handicrafts) Kendriya Bhawan, 7<sup>th</sup> Floor, Sector – H, Aliganj, Lucknow – 226001.

. . . Respondents

By Adv: Shri S. Srivastava

**O R D E R**

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

This Original Application (in short OA) has been filed with the following reliefs:-

- a. To quash the impugned orders dated 28.05.2013 and 19.09.2013 passed by the respondent No. 5 (Annexure A-1 and A-2 to the Original Application).**
- b. To issue a direction to the Respondent No. 2 to grant the 2<sup>nd</sup> Financial Upgradation under the A.C.P. Scheme 1999 to the Applicant with effect from 16.12.2004 with all consequential**

*benefits as he was already granted to similar situated Store Keeper-Cum-Clerk (Metal) namely Sri Bijay Kumar Chakraverti, Sri Vijay Kumar Mittal and Sri Phool Singh and 3<sup>rd</sup> Financial Upgradation under the M.A.C.P. Scheme with effect from 16.12.2010 with all consequential benefits as the respondents has already granted to Sri Phool Singh with effect from 16.12.2008 vide order dated 08.05.2012.*

- c. *To issue a direction to the Respondents to pay the arrears of salary to the applicant after granting the 2<sup>nd</sup> Financial Upgradation under the A.C.P. Scheme 1999 with effect from 16.12.2004 and 3<sup>rd</sup> Financial Upgradation under the M.A.C.P. Scheme with effect from 16.12.2010 alongwith 18% interest per annum.*
- d. *To issue any other suitable and equitable order or direction to the Respondents with the Hon'ble Tribunal may deem fit and proper in the circumstances of the present case."*

2. In this case the applicant was initially appointed as Store-cum-Clerk under the respondents on 08/16.12.1980 and his services were regularized w.e.f. 29.06.1985. The grievance of the applicant is that he was not given the benefit of 2<sup>nd</sup> ACP after completion of 24 years of service like other similarly situated employees who were given the benefit of 2<sup>nd</sup> ACP. It was mentioned that when the respondents did not take any action on the representation of the applicant, he filed OA No. 184/13 in which direction was given to the respondents to decide the representation by passing detailed reasoned and speaking order.

3. Thereafter, the respondents have considered and decided the representation and granted the benefit under the MACP Scheme to the applicant without granting 2<sup>nd</sup> Financial Upgradation w.e.f. 16.12.2004 under ACP Scheme, after completion of 24 years of service from the date of his initial appointment. It is also the case of the applicant that in the case of other similarly placed employees like Shri Phool Singh, Shri Vijay Kumar Mittal and Sri Bijay Kumar Chakraverti the 2<sup>nd</sup> ACP benefit was given. But in his case the same has been denied by the respondents.

4. In the Counter Affidavit (in short CA), the respondents have submitted that the case of the applicant is different from the case of Shri Phool Singh and Sri Bijay Kumar Chakraverti who were granted 2<sup>nd</sup> ACP w.e.f. 2002. It was also stated in CA that in the case of Shri Phool Singh, Shri Vijay Kumar Mittal and Sri Bijay Kumar Chakraverti, 2<sup>nd</sup> ACP was granted as per direction of Principal Bench of this Tribunal and after consultation with DOP&T and the benefit cannot be extended to the applicant without approval of DOP&T.

5. In the impugned order dated 19.09.2013, by which the representation of the applicant was rejected, following grounds have been mentioned by the respondents:-

- The DOP&T has clarified that the date of joining on the post on regular basis shall be counted for the purpose of ACP/MACP and service rendered on ad-hoc basis before regular appointment will not be counted for benefit of ACP/MACP. In the case of the applicant the date of entry into regular service has to be taken as 29.06.1985, so as 24 years will be completed on 29.06.2009 and by that time ACP Scheme was already replaced with the MACP Scheme w.e.f. 01.09.2008. Accordingly, he was granted 2<sup>nd</sup> Upgradation under MACP w.e.f. 01.09.2008 and benefit under ACP was not granted.
- The case of Shri Phool Singh was not similar to the case of the applicant, since he had joined w.e.f. 16.12.1978, where the applicant had joined on 16.12.1980. Therefore, his case is not similar.

6. Heard learned counsel for the applicant. In addition to the averments made in the OA he also filed copy of the order dated 14.02.2017 of Principal Bench of this Tribunal in OA No. 230 of 2014 – D.K. Gupta vs. Union of India and others. In this case D.K. Gupta was also Store Keeper-cum-Clerk like the applicant in the present OA before us. The cited judgment discussed the judgment of Phool Singh vs. Union of India and others in OA No. 183 of 2011 by which the benefit of temporary service was allowed for ACP/MACP. Accordingly, in the case of D.K. Gupta following direction was given:-

**“9. *In the light of the discussions in the preceding paras and for the reasons stated, the order dated 11.11.2013 (impugned) is quashed and respondents are directed to grant benefits of ACP / MACP to the applicant by counting his services w.e.f. 13.10.1978 when he was appointed as Store Keeper-cum-Clerk against a temporary post. OA is allowed. No costs.”***

As seen above, a direction was given to count the period from the date of initial appointment for the purpose of ACP / MACP and there was no direction to the respondents to allow 2<sup>nd</sup> ACP benefit w.e.f. a particular date, as prayed for in the present OA.

7. As per circular dated 09.08.1999 regarding ACP Scheme issued by DOP&T following conditions as Annexure 1 of the said circular are relevant and is quoted below:-

**“CONDITIONS FOR GRANT OF BENEFITS UNDER THE ACP SCHEME**

1. *The ACP Scheme envisages merely placement in the higher pay-scale/grant of financial benefits (through financial upgradation) only to the Government servant concerned on personal basis and shall, therefore, neither amount to functional/regular promotion nor would require creation of new posts for the purpose;*
2. ....
3. *The financial benefits under the ACP Scheme shall be granted from the date of completion of the eligibility period prescribed under the ACP Scheme or from the date of issue of these instructions whichever is later;*

4. *The first financial upgradation under the ACP Scheme shall be allowed after 12 years of regular service and the second upgradation after 12 years of regular service from the date of the first financial upgradation subject to fulfillment of prescribed conditions. In other words, if the first upgradation gets postponed on account of the employee not found fit or due to departmental proceedings, etc this would have consequential effect on the second upgradation which would also get deferred accordingly;*

.....  
.....”

8. From the above it is seen that the ACP Scheme is granted on personal basis and will not be required creation of any new post as it is simple Upgradation. Thus benefit of ACP is available from the date of completion of eligibility period or from the date of issue of this instructions (09.08.1999) whichever is later. Further para 4 as quoted above specifies that 2<sup>nd</sup> Upgradation would be available after 12 years of regular service from the date of 1<sup>st</sup> Upgradation, subject to fulfillments of prescribed condition. In other words, if 1<sup>st</sup> ACP benefit is allowed to an employee w.e.f. 09.08.1999 then the 2<sup>nd</sup> benefit would be available only after 12 years of regular service from the date of 1<sup>st</sup> Financial Upgradation i.e. 12 years after 09.08.1999.

9. In case of the applicant, the 1<sup>st</sup> Financial Upgradation under ACP Scheme was allowed on 09.08.1999. Hence, 2<sup>nd</sup> Financial Upgradation under ACP would not be available w.e.f. 16.12.2004 as requested by the applicant. As such the claim of the applicant is not sustainable with reference to the para 3 and 4 of the Annexure 1 of the guidelines of DOP&T date 09.08.1999.

10. If we apply this cited judgment of Principal Bench in this case of D.K. Gupta (supra), to the case of the applicant for the purpose of ACP /

MACP, then the years the date of his initial appointment i.e. 16.12.1980 would be counted. Even in case as discussed in para 7 and 8 above, the 2<sup>nd</sup> ACP benefit would not be available. How the respondents have granted 2<sup>nd</sup> ACP benefit to other similar cases has not been placed before us through the pleadings. It is noticed that in this case the relief prayed for is to count of the service from the date of initial appointment and one of the reliefs is for a direction to consider the 2<sup>nd</sup> ACP benefit w.e.f. 16.12.2004 for the applicant. Even if the date of initial appointment for the purpose of ACP is counted, the applicant will not be entitled for benefit of 2<sup>nd</sup> ACP w.e.f. 16.12.2004 as his 1<sup>st</sup> ACP was granted w.e.f. 09.08.1999 and 2<sup>nd</sup> ACP would be available after 12 years from the date of grant of 1<sup>st</sup> ACP as per discussions at para 7 and 8 above. Therefore, the 2<sup>nd</sup> ACP will not be admissible to the applicant, even after counting his services from the date of his initial appointment.

11. In view of the above, we are of the view that the applicant is not entitled for 2<sup>nd</sup> ACP as claimed in this light of guidelines of DOP&T as discussed above. Further, no rules or guidelines or any judgment is cited by the applicant in his support of his claim 2<sup>nd</sup> ACP w.e.f. 16.12.2004 when 1<sup>st</sup> ACP was sanctioned on 09.08.1999.

12. In view of the above discussions, there is no justification for this Tribunal to interfere in the matter and the OA lacks merit. Accordingly, the OA is dismissed. There is no order as to costs.

**(Rakesh Sagar Jain)**  
Member – J

**(Gokul Chandra Pati)**  
Member – A