

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-1247/2012

Reserved on : 05.05.2016.

Pronounced on : 17.05.2016.

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. Shekhar Agarwal, Member (A)

Dr. O.P. Verma,
S/o late Sh. R.P. Lal,
R/o B-101, Janak Residency,
Plot No.12, Sector 18A,
Dwarka, New Delhi-110078.

..... Applicant

(through Sh. L.R. Khatana, Advocate)

Versus

1. Central Council for Research in Homeopathy,
(through its Director General)
61-65, Institutional Area,
Opp. D-Block, Janakpuri,
New Delhi-110058.
2. Department of AYUSH,
(through its Secretary to the Govt. of India),
Ministry of Health & Family Welfare,
IRCS Annexe Building,
Red Cross Road,
New Delhi-110001.
3. Secretary to the Govt. of India,
Department of Personnel & Training,
North Block, New Delhi-110001.
4. Secretary to the Govt. of India,
Department of Expenditure,
Ministry of Finance,
North Block, New Delhi-110001.

.... Respondents

(through Sh. Sunil Narula, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

The applicant joined the respondent No.1 as a Librarian on 06.03.1987 in the pay scale of Rs. 1400-2300. On 15.06.1989, pursuant to decision of the

Governing Body of respondent No.4, the applicant was granted pay scale of Rs. 2000-3500. On 24.07.1990, Ministry of Finance issued O.M. No. 19(1)IC/86 whereby the report of the Review Committee on library staff constituted as per recommendations of the IV Central Pay Commission (CPC) was implemented by the Government of India. Pursuant to that the applicant was placed in the pay scale of Rs. 3000-4500 w.e.f. 12.02.1999. The grievance of the applicant is that the respondents have refused to extend the benefits of ACP Scheme to him, which came into existence w.e.f. 09.08.1999 on the ground that he has already availed of two promotions. The applicant made number of representations on 15.06.2009, 29.07.2009, 04.10.2010 and 17.08.2011 for grant of first ACP benefit in the pay scale of Rs. 14300-18300 w.e.f. 09.08.1999. However, the same have been rejected by the impugned order dated 31.07.2012. Hence, the applicant has approached this Tribunal by filing this O.A. seeking the following relief:-

- “(A) That this Hon'ble Tribunal may be pleased to call for the relevant records pertaining to the controversy herein for better appreciation of the issue involved.
- (B) That this Hon'ble Tribunal may be pleased to declare the impugned Order dated 31.07.2012 as wrong, illegal, arbitrary, perverse, unjust, unreasonable discriminatory and mala fide in law and quash and set aside the same and direct the respondents to give effect to the Screening Committee's recommendations made in its meeting held on 28.4.2010 and give the benefit of first financial upgradation to the applicant under the ACP Scheme to the scale of pay of Rs.14,300-18,300 [with replacement PB 4 Rs.37000-67000/- + GP Rs.8700/- as per 6th CPC] as recommended by the duly constituted Screening Committee, with effect from 9.8.1999 and pay him the consequential arrears of pay and allowances etc. with 12% interest thereon.
- (C) Pass any such other or further order or direction as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of this case.
- (D) Award cost of the O.A. to the Applicant.”

2. The contention of the applicant is that the grant of higher pay scale of Rs. 2000-3500 to the applicant w.e.f. 15.06.1989 was an upgradation and should not be counted against promotion insofar as grant of ACP benefit is concerned. Similarly, grant of the pay scale of Rs. 3000-4500 to him w.e.f. 12.02.1999 was only fitment in new pay scales granted to the Library staff pursuant to the recommendations of IV CPC and should not again be counted as promotion for the purpose of ACP benefits. Learned counsel for the applicant drew our attention to Para-5.1 of the conditions for grant of benefits under the ACP Scheme issued as Annexure-I to their O.M. dated 09.08.1999 by which ACP Scheme came into existence. The aforesaid para reads as under:-

"5.1 Two financial upgradations under the ACP Scheme in the entire Government service career of an employee shall be counted against regular promotions (including in-situ promotion) and fast-track promotion availed through limited departmental competitive examination availed from the grade in which an employee was appointed as a direct recruit. This shall mean that two financial upgradations under the ACP Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee. If an employee has already got one regular promotion, he shall qualify for the second financial upgradation only on completion of 24 years of regular service under the ACP Scheme. In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him."

2.1 Learned counsel argued that it is clear from the above that only regular promotions have to be counted for considering grant of benefits under ACP Scheme. The promotions granted to the applicant were merely upgradations and cannot be regarded as regular promotions since no DPC was held and there was no element of selection in the same.

2.2 Learned counsel also drew our attention to O.M. No. 19(1)/IC/86 dated 24.07.1990 (pages-152 to 156 of the paper-book) to say that new pay scales introduced as a result of recommendations of IV CPC were implemented. Through this O.M. the applicant's placement in the pay scale of Rs.3000-4500

was only a fitment in the new pay scales, which cannot be regarded as a promotion. He drew our attention to para-3.3 of this O.M., which provides as follows:-

“In case of grades where the scales of pay have been revised and the existing incumbents are placed in revised scale, the pay in the revised scales may be fixed in terms of the provisions of Fundamental Rules 23 read with rule 22(a)(ii).”

He emphasised that the pay fixation was made under the FR cited above contrary to pay fixation done under FR-22(I)(a)(1), which is applicable for cases of promotion.

3. In their reply, the respondents have stated that the applicant was initially appointed as a Librarian on 06.03.1987 in the pay scale of Rs.1400-2300 (Group-C). The pay scale of the applicant was revised w.e.f. 15.06.1989 to Rs. 2000-3500 (Group-B) to bring it at par with the pay scale of Librarian in National Institute of Homeopathy (NIH), Kolkatta. Further, on re-categorisation of the Library Grade-III pay scale of Rs. 2000-3500 of applicant's pay was further revised to next higher pay scale of Rs. 3000-4500 to bring it at par with the Library and Information Officer w.e.f. 05.02.1999. Respondents have admitted that the ACP Scheme was extended to the employees of respondent No.4 also. Regarding the case of the applicant, they have submitted that although Screening Committee of the department had recommended grant of ACP benefit to the applicant, the competent authority decided to consult DoP&T and Department of Expenditure on this issue. Accordingly, DoP&T were first consulted and they have opined that both the placements in higher pay scales granted to the applicant have to be treated as promotions for the purpose of ACP benefits. As such, the applicant having already availed of two promotions within a period of 12 years of his joining service on 06.03.1987 would not be entitled to any benefit

under the ACP Scheme. The Department of Expenditure has also concurred with the views of DoP&T. Accordingly, respondent No. 4 have rejected the representations of the applicant vide their order dated 31.07.2012.

4. We have heard both sides and have perused the material on record. The facts of the case are not in dispute. The applicant has been placed in higher pay scales once w.e.f. 15.06.1989 and again w.e.f. 12.02.1999. Thus, we have to decide whether both or any of these placements can be counted as upgradation and not as regular promotion for the purpose of determining eligibility of the applicant for grant of ACP benefits. We have looked at both these placements one by one.

4.1 The first of these placements was done w.e.f. 15.06.1989 vide Office Order No. 572/89 available at page-151 of the paper-book. According to the same Governing Body of the Central Council for Research in Homeopathy accorded its approval for upgradation of the post of Librarian from the existing pay scale of Rs.1400-2300 to Rs.2000-3500. Governing Body also approved grant of the revised pay scale to the incumbent of the post i.e. the applicant himself. The applicant has claimed that he was upgraded and not promoted as there was no element of selection in this placement. The respondents have opined that this has to be treated as a promotion for the purpose of ACP benefits. The reason for the same has been given by them in the impugned order itself. According to them as per the pay scales approved for Library staff the pay scale of Rs.2000-3500 is available on promotional post to those working in the pay scale of Rs.1400-2600 (pre-revised) on completion of 03 to 08 years of service. Thus, since the applicant has moved to a pay scale, which requires higher eligibility service, his placement as such, has to be treated as a promotion.

5. We have considered the submissions of both sides. We find considerable merit in the arguments advanced by the respondents for the reasons stated hereunder:-

There cannot be any dispute that the applicant was holding an isolated post as defined in Clarification No.31 (Page-174 of the paper-book). According to this, isolated post is a standalone post, having neither feeder grade nor promotional grade. Further, vide Clarification No. 10 (page-169 of the paper-book), for the purpose of ACP benefits, those holding isolated posts have to be dealt with in the manner given in this Clarification. It reads as follows:-

"S.No.	Point of doubt	Clarification
10.	For isolated posts, the scale of pay for ACPs as recommended by the Pay Commission may be implemented and not the standard/common pay-scales indicated vide Annexure-II of the Office Memorandum dated August 9, 1999.	For isolated posts, the scales of pay for ACPs shall be the same as those applicable for similar posts in the same Ministry/Department/Cadre except where the Pay Commission has recommended specific pay-scales for mobility under ACPs. Such specific cases may be examined by respective Ministries/Departments in consultation with the Department of Personnel and Training. In the case of remaining isolated posts, the pay scales contained in Annexure-II of the Office Memorandum dated August 9, 1999 (ACPS) shall apply."

Thus for deciding the pay scale to be granted to those holding an isolated post similar posts in the same Ministry/Department/Cadre have to be seen. It is also not disputed that Government of India have adopted a uniform hierarchical structure for all the Library staff working in different Ministries. This structure is given in Clarification No. 19 of the same O.M. According to this, the following pay scales have been adopted for bringing about upward mobility and securing uniformity on Library staff:-

"Library and Information Assistant 1400-2600 5000-8000
Sr. Library and Information Assistant 1640-2900 5500-9000

Assistant Library and Information Officer 2000-3500 6500-10500
Library and Information Officer 3000-4500 10000-15200
Director (Library and Information) 4500-5700 14300-18300"

The applicant moved from pay scale of Rs.1400-2600 to the pay scale of Rs.2000-3500, which is two stages above in the hierarchy. If this is treated as upgradation and ignored for the purpose of ACP benefits then the applicant would get a benefit, which would be denied to Library staff working in other Ministries where promotional posts as per this structure exist. This would be discriminatory and would go against the principles of 'equal pay for equal work' as Library staff of other Ministries having the same qualifications and experience and doing the same type of work would lag behind the applicant. This obviously cannot be permitted. Hence, in our opinion, the respondents were right in treating this placement as promotion.

The argument of the applicant that there was no element of selection in the aforesaid placement and, therefore, it was only an upgradation also cannot be accepted. Such an argument is valid only when the entire cadre is placed in a higher scale without any element of selection. However, in the case of the applicant it is not denied that he was the only person in the respondents department holding this post. Hence there could not have been any selection possible.

As far as second upgradation granted to the applicant was concerned, it is clear from the O.M. dated 24.07.990 relied upon by the applicant himself that the pay scale of Rs.2000-3500 was available for the post of Asstt. Library and Information Officer, whereas the pay scale of Rs.3000-4500 was next in the hierarchy and was available to those holding the post of Library and Information Officer. Further, according to the same memorandum, Libraries had been categorised into various categories and in Libraries of category-2 post of Asstt.

Library and Information Officer only was available in the pay scale of Rs.3000-4500. The scale of Rs.3000-4500 was available to Library and Information Officer in Category-3 Libraries. Further, para-4.2 of the same O.M. states as follows:-

"In case the existing incumbent (viz. Librarian Incharge) is in a lower scale of pay than the scale determined based on the categorisation, he may be considered for appointment in the higher scale provided he fulfils the recruitment in the higher scale provided he fulfils the recruitment qualifications laid down for that post in Annexure-I to this O.M. subject to the provisions of para 4.3."

According to the above para, existing incumbent of the post on re-categorisation of the library could be awarded higher pay scale, provided he fulfilled the recruitment qualifications laid down for that post.

6. In the instant case, as is obvious from communication dated 12.02.1999 (page-157) the applicant was granted higher pay scale after the Library of CCRH itself was re-categorised as Library Group/group-III and the applicant was found to be fulfilling the conditions laid down in the O.M. of Ministry of Finance, Department of Expenditure dated 24.07.1990. Thus, again the applicant moved to a promotional post in the hierarchy in which the requirement of experience/eligible service was higher. Consequently, respondents cannot be faulted for treating this as a promotion.

7. Thus, we are of the opinion that both placements in higher scales granted to the applicant were promotions and there was no infirmity in the action of the respondents. O.A. is dismissed being devoid of merit. No costs.

(Shekhar Agarwal)
Member (A)

(Justice Permod Kohli)
Chairman

/Vinita/