

Central Administrative Tribunal
Principal Bench
New Delhi

M.A.No.1291/2014
in
O.A.No.757/2013

Order Reserved on: 19.04.2016
Order pronounced on 25.04.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri Shekhar Agarwal, Member (A)

Umesh Chandra & Ors. .. Applicants

(By Advocate: Shri Yogesh Sharma)

Versus

Union of India & Others Respondents

(By Advocate: Sh. S.M.Arif and Shri M.R.Zunedi for Shri Sameer
Agrawal for R-1)

O R D E R (on MA)

By V. Ajay Kumar, Member (J):

The applicants in OA No.757/2013 filed the present MA under Rule 24 of the Central Administrative Tribunal (Procedure) Rules, 1987 with the following prayer(s):

- (i) Pass an appropriate order directing the respondents to examine the case of the applicants to extend the benefit of Hon'ble Patna Bench Judgement dated 07.09.2009 in O.A.No.514/2002 in compliance of the Judgement of this

Tribunal dated 04.03.2013 in OA No.757/2013 at an early date.

- (ii) Pass an order of initiating the contempt of court proceedings against the respondents if necessary in case of not implementing the judgment dated 04.03.2013 in OA No.514/2002.

2. The applicants filed OA No.757/2013 for issuance of directions to the respondents to grant financial up-gradation under ACP Scheme. This Tribunal, after hearing both sides, by order dated 04.03.2013 disposed of the OA as under:

"2. This Original Application has been filed by the applicants against the inaction on the part of the respondents in not granting the benefit of 1st Financial Upgradation under Assured Career Progression Scheme (CAP for short) on completion of 12 years of service in the pay scale of Rs.8000-13500/- by way of extending the benefit of judgment dated 07.09.2009 passed by the Patna Bench of this Tribunal in OA no.514/2012, upheld by the Hon'ble High Court of Patna vide judgment dated 25.08.2010 in CWJC no.6451/2010 and further upheld by the Hon'ble Apex Court in SLP No.CC-20212/2010 decided on 10.01.2011. The applicants have, therefore, filed this Original Application seeking the following relief(s):-

- "(i) That the Hon'ble Tribunal may graciously be pleased to pass an order directing the respondents to consider the case of the applicants for granting first financial upgradation under ACP Scheme on completion of 12 years of service in the grade of Rs.8000-13500/- from due date and granting 2nd financial upgradation on completion of 24 years of service in the pay scale of Rs.10000-15200/- from due date will all consequential benefits including the fixation of pay and arrears of difference of pay and allowances with interest, by way of extending the benefit of judgment dated 07.09.2009 passed by Hon'ble Patna Bench in OA No.514/2002.
- (ii) That the Hon'ble Tribunal may graciously be pleased to pass an order declaring to the effect that the while action of the respondents not extending

the benefit of judgment of Patna Bench to the applicants only for the reason that the applicants were not the party before the Patna Bench is illegal, arbitrary and discriminatory in the eyes of law.

- (iii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicants."

3. We are of the considered view that this OA can be decided at the admission stage itself by directing the respondents to consider the case of the applicants in the light of the aforesaid judgement of the Patna Bench of this Tribunal in OA 514/2002 decided on 07.09.2009 as upheld by the Hon'ble High Court of Patna and the Apex Court. The relevant part of the said order of the Patna Bench of this Tribunal reads as under:-

"5. On perusal of this clarification given by the DOPT, Shri S.K. Tiwari, learned counsel for the respondents concedes that the up-gradation granted to the Engineering Assistants and the Sr. Engineering Assistants earlier have to be ignored while considering grant of ACP promotions to the applicants.

6. The next point which was argued by both the counsels was that if the applicants have to be granted ACP then what should be the scale in which they should be granted ACP. Both the sides agreed that since 6500-10500 is the pay scale of Assistant Engineer, the ACP promotion should be in the pay scale of the next post in the hierarchy i.e. the post of Assistant Executive Engineer i.e. Rs.8000-13500.

7. The learned counsel for the applicant also quotes from the DOPT circular dated 10.2.2000 mentioned earlier clarifying the points under ACP Scheme. In this order it has been clarified that the mobility under ACP is to be allowed under existing hierarchy.

8. After hearing both the counsels and after perusing the records, we have come to the conclusion that the applicants are entitled for grant of ACP promotion and this promotion should be granted in the pay scale of Assistant Executive Engineer i.e. Rs.8000-13500.

9. This O.A. is, therefore, allowed. The respondents are directed to grant the

applicants the pay scale of Rs.8000-13500 as and when they have completed 12 years service in the pay scale of Rs.6500-10500. The arrears should also be paid to the applicants. The respondents are directed to issue orders regarding ACP promotion to the applicants within a period of two months from the date of receipt of a copy of this judgment. The arrears may be calculated and paid to them within one month thereafter.

10. With these directions, this OA stands disposed of. No costs."

3. The respondents, in pursuance of the aforesaid orders, constituted a Screening Committee for consideration of the cases of the applicants and others for granting of ACP benefits, and vide Annexure CA-2 - Speaking Order dated 13.10.2015 denied the claim of the applicants by stating that the applicants are not similarly situated like the applicants in OA No.514/2002 in **Akashwani & Doordarshan Diploma Engineers Association through its President vs. Union of India & Others**, dated 07.09.2009 of the Patna Bench.

4. It is seen that the respondents vide the said speaking order dated 13.10.2015, considered the claims of various others who are the applicants in various OAs before different benches of this Tribunal and in respect of the same number of CPs were filed. It is also seen that considering the said speaking orders, this Tribunal closed various identical CPs by granting liberty to the petitioners therein to question the speaking order dated 13.10.2015, in accordance with law.

5. Shri Yogesh Sharma, the learned counsel appearing for the petitioners strenuously submitted that once this Tribunal directed the

respondents to extend the benefits granted to the applicants in OA No.514/2002 dated 07.09.2009 of the Patna Bench, the respondents cannot deny the benefits granted to them to the petitioners herein by distinguishing the cases of the petitioners from that of the applicants in the said OA, at this belated stage.

6. Per contra, Shri S.M.Arif, the learned counsel appearing for the respondents would submit that this Tribunal while disposing of the OA No.757/2013 not adjudicated the entitlement of the applicants for granting of ACP benefits independently and on the other hand summarily disposed of the OA of the applicants by directing the respondents to extend the benefits of OA No.514/2002 of the Patna Bench to the petitioners herein also. Since number of OAs were disposed of by various Benches of this Tribunal in the same manner, basing on the said orders of the Patna Bench, and the Honble High Court of Patna in a Writ Petition filed in OA No.514/2002 of the Patna Bench of this Tribunal, modified the Order of the CAT, Patna Bench and directed to consider the granting of benefit of ACP Scheme to the applicants in OA No.514/2002. Accordingly, the Screening Committee constituted by the respondents, considered the cases of each applicant in each OA, including the petitioners herein, as per rules for granting of ACP Scheme benefits and passed the said speaking order dated 13.10.2015. The relevant paragraphs of the same read as under:

"7. Whereas the order of the Hon'ble Tribunal was challenged before the Hon'ble High Court, Patna, observing that *"on merits, there is no dispute that the tribunal has correctly appreciated the clarification contained in DOPT OM dated 10.2.2000 which is fully discussed in para 4 of the*

impugned order of the learned CAT, Patna Bench dated 7.9.2010 in OA No.514/2002". The operative para of the Hon'ble High Court verdict dated 25.8.2010 was as under:

"We find some substance in the submissions advanced on behalf of petitioners that the learned Tribunal in paragraph 9 of the impugned order should have directed the authorities only to consider the case of the applicants for grant of benefits under the ACP on completing 12 years of service in accordance with scheme of ACP and the clarification contained in DOPT dated 10.2.2010 (sic)(2000). In our view also the learned Tribunal should not have issued a general direction to cover cases of all the individuals because under the ACP Scheme cases of individuals require consideration. Now once the doubts relating to cases of the employees have been cleared, they are directed to consider the grant of benefit of ACPS to the applicants before the Tribunal within a period of 3 months from today in accordance with law and the observations made in this order and the order of the learned Tribunal."

8. Whereas the Hon'ble High Court had modified the order of CAT, Patna and directed to consider the grant of benefit of ACPS to the applicants of OA No.514/2002 before the Tribunal within a period of 3 months in accordance with law and the observations made in its order and the order of the learned Tribunal, the Screening Committee examined the cases keeping view the order of the Hon'ble Patna High Court which had attained finality. The Committee, after examination of the service details of the applicants of the OAs/CPs as mentioned in para 1 & 2 above and the service details of other EAs, SEAs & AEs from North Zone whose details were placed before it for consideration, observed that subsequent to the grant of upgraded pay scales by the Ministry of I&B vide its order dated 25.2.1999, two categories of EAs, SESs and AEs exist in Prasad Bharati. These are:

- i. **Category-I.** Those who had not accepted the upgraded payscales granted by the Ministry of I&B but were granted the pay scale of Rs.6500-10500 through court verdict in OA No.85/1997 linked with OA No.662/2004 before the Patna Bench of CAT as replacement scale for IV CPC pay scales for EAs, SESs and AEs w.e.f. 1.1.1996. and,
- ii. **Category-II.** Those who had accepted the upgraded payscales of Rs.6500-10500, Rs.7450-11500 and Rs.7500-12000 respectively in the psots of EA, SEA and AE w.e.f. 1.1.1996 vide Ministry of I&B order dated 25.2.1999.

9. Whereas, after deliberations, the Screening Committee also noted that:

- a. Since all the employees except EAs mentioned in category II above are enjoying higher payscales than their counterparts (category I) who had not accepted these scales, so they are not similarly situated with applicants of OA No.514/2002 as far as their payscales are concerned.
- b. Once a higher payscale has been granted to an employee on his promotion in the hierarchy and he has accepted it, no additional benefit in the form of financial upgradation under the ACP Scheme can be granted to him as per the ACP Rules.
- c. All the 1832 employees whose data has been placed for consideration have been granted upgraded pay scales as per Ministry of I&B order dated 25.2.1999 so they are not similarly situated as in the case of the applicants of OA No.514/2002 (Category-I). Shri B.K.Roy, SEA who was an applicant of OA No.514/2002 and had initially opted for upgraded pay scales granted by the Ministry of I&B as per its order dated 25.2.1999, subsequently opted for the scales as per category-I, only then he was granted the benefits under the ACP Scheme.
- d. None of the applicants of the above mentioned OAs & CPs filed before various Tribunals have apparently disclosed before the Hon'ble Tribunals that they are beneficiaries of upgraded payscales as per Ministry of I&B order dated 25.2.1999 and, therefore, are not similarly placed with the applicants of OA No.514/2002 on this count.
- e. The applicants of CP No.68/2015 filed by Shri Joginder Singh and 15 others and CP No.197/2015 filed by Shri Pradeep Galhotra and 60 others are also beneficiaries of upgraded payscales granted by the Ministry of I&B vide order dated 25.2.1999 and as such they belong to category-II described in para 8 above and therefore they are not entitled for upgradation under the ACP Scheme.

10. Whereas the Committee after careful examination of the service details and detailed deliberations found that the cases of all the candidates placed before it including the applicants of OAs & CPs listed in para 1 & 2 above falls under Category II mentioned in para 6 above and therefore they are not similarly placed as compared to the applicants of OA No.514/2002. Therefore, the Committee did not find them fit for further financial upgradation in the payscale of Rs.8000-13500 under the ACP Scheme as they have already been granted the benefits existing in the promotional hierarchy.

11. Whereas the recommendations of the Screening Committee has been accepted by the competent authority."

7. We find merit in the contentions of the learned counsel for the respondents. This Tribunal having found no contumacious act on the

part of the respondents had already closed number of CPs in identical matters by granting liberty to the petitioners therein to question the speaking order dated 13.10.2015, if so advised, in accordance with law.

8. In the aforesaid circumstances and in view of the substantial compliance of the orders of this Tribunal, the MA is dismissed. However, the petitioners are at liberty to question the orders now passed by the respondents, if so advised, in accordance with law. No costs.

(Shekhar Agarwal)
Member (A)

(V. Ajay Kumar)
Member (J)

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