

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

OA No.2467 /2012

MA. No.115/2014

New Delhi, this the 21th day of July, 2016

Hon'ble Mr. P.K. Basu, Member (A)

Hon'ble Dr. Brahm Avtar Agrawal, Member (J)

Mr. Krishan Singh Balyan

S/o Shri Harbans Lal

R/o R-6/94, Raj Nagar,

Ghaziabad.

.... Applicant

(By Advocate : Mr. Rajeev Sharma)

Versus

The Controller General of

Defence Accounts,

UlanBatar Road,

Palam, Delhi Cantt.Delhi

..... Respondent

(By Advocate : Dr.C.S.Khan)

ORDER (ORAL)

Hon'ble Mr. P.K. Basu, Member (A)

Heard the learned counsel for the applicant.

2. The only issue is whether the applicant is entitled for ACP Scheme from 09.08.1999 or from the date he actually passed the written examination held on 29.04.2002. This matter came up before this Tribunal earlier vide OA No. 3109/2003 in which vide order dated 03.06.2004 the OA had been allowed, impugned order set aside and respondents were directed to accord to the applicant benefit of ACP scheme w.e.f. 09.08.1999 till 29.04.2002. This order was passed primarily on basis of the fact that first examination that took place after decision taken by the respondents to implement ACP Scheme was on 29.04.2002. RA No. 325/2004 in OA No.

3109/2003 was also filed in this regard, which was dismissed. Thereafter, the matter came up before the Hon'ble High court vide W.P. (C) No. 18774/2004. The Hon'ble High Court vide order dated 20.12.2010, allowed the said writ petition. This was done on the basis of representation by the petitioner in the writ petition, namely the respondent in the present OA, that departmental examinations were held in Nov.,1999, Sept., 2000, Sept. 2001, and thereafter in April 2002.

3. In this regard the relevant circular of DOP&T dated 04.01.2002 is quoted as below:-

“DOP&T has clarified that as a special case the employees who qualify the trade test in first attempt after 09.08.1999 may be allowed benefit of ACP from 09.08.1999 only and not from the date of passing of trade test.”

4. The applicant has obtained information under RTI dated 24.11.2011 about the examinations held between 1994 to 2002, whereby dates are mentioned as below:-

Year	Date of Examination
01/94	17 th to 21 th Jan 1994
08/1995	21 th to 25 th August 1995
10/1996	9 th to 15 th October,1996
09/1997	15 to 19 Setember,1997
09/1998	7 th to 11 th September,1998
11/1999	15 th to 19 November, 1999
09/2000	25 th to 29 th September, 2000
09/2001	17 th to 21 th September, 2001
06/2002	3 rd to 7 th June 2002
2003	No examination held.

5. ACP Scheme was adopted by the respondents only in March, 2002. In view of the orders passed, the claim of the applicant is that since the first time the examination was held after adoption of ACP Scheme by the respondent was in April, 2002, which the applicant cleared, in accordance with the DOP&T the circular dated 04.01.2002, the applicant is entitled to get benefit of financial upgradation under the ACP Scheme from 09.08.1999.

6. Learned counsel for the respondents first raised preliminary objection that this MA No.115/2014 seeking restoration of the main Original Application No.2467/12 is not maintainable at all. He further states that the applicant himself withdrew the said OA initially which is recorded in order dated 30.07.2012 and thereafter the applicant approached the Hon'ble High Court vide Writ Petition(C) No. 5604/13, which was also dismissed as withdrawn by the petitioner on 13.11.2013.

7. We, however, note that while dismissing the writ petition, the Hon'ble High Court permitted the petitioner to file an application in OA No.2467/12, pointing out the circumstances under which the petitioner was misled to withdraw OA No.2467/12, and directed that the Tribunal shall decide the application as per its jurisdiction.

8. In view of the clear directions of the Hon'ble High Court we are not inclined to accept contention of the respondents that this MA is not maintainable. The whole issue revolves around only one fact i.e. when was the first examination was held after adoption of ACP Scheme by the respondents? As stated, the ACP Scheme it was adopted by the respondents in March, 2002 and the first examination held after 3rd April, 2002 was on 29.04.2002. The applicant cleared that examination.

9. Learned counsel for the respondents, however, stated that as per DOP&T circular dated 10.02.2000 all promotions norms have to be followed for promotion under ACP Scheme and that for the promotion to the post of Senior Auditor passing of departmental examination is mandatory and since the applicant had not passed the departmental examination as on 09.08.1999 he could not be grant promotion w.e.f. 09.08.1999.

10. Whether or not the ACP scheme would be applicable in the respondents organization was not known either to the applicant or to the respondents before its adoption in April, 2002. Therefore, the only opportunity which the applicant could have been availed off to pass the test, for qualifying for upgradation under ACP, is the first examination held on 29.04.2002 after adoption of the ACP Scheme. Therefore, in view of spirit of the DOP&T's circular dated 04.01.2002, the applicant would be eligible for ACP upgradation w.e.f. 09.08.1999.

11. The OA is, therefore, allowed with a direction to the respondents to grant to the applicant benefit of ACP from 08.09.1999 till 24.4.2002 with arrears and consequential benefits in respect of retiral dues.

The OA is disposed of with above directions. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member A)

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