

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

OA 2512/2012

This 11th day of September, 2015.

Hon'ble Mr. Justice Syed Rafat Alam, Chairman
Hon'ble Mr. P.K.Basu, Member (A)

Parvinder Pal Monga
S/o Shri Yashpal
R/o B-127, Ashoka Enclave, Piragarhi
Delhi – 110 087

.... Applicant

(By Advocate: Shri Yogesh Sharma)

VERSUS

1. Delhi Development Authority through
The Commissioner (P)
Vikas Sadan, New Delhi
2. The Deputy Director (P-IV)
Delhi Development Authority
Vikas Sadan, New Delhi
3. The Deputy Director (P-III)
Delhi Development Authority
Vikas Sadan, New Delhi

.... Respondents

(By Advocate: Shri Manish Garg)

Order

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

The applicant was appointed to the post of Assistant Fitter on work charge basis w.e.f.10.03.1977. He was taken on regular basis in regular establishment with effect from 10.03.1982. Vide order dated 17.07.1984, the post of Assistant Fitter was re-designated as Fitter Grade-II in the pay scale of Rs.950-1400/3050-4590.

2. In the year 1988, the respondents invited applications from the concerned staff for appointment to the post of Lower Division Clerk (LDC) to which the applicant applied. He was appointed as LDC as a departmental

candidate w.e.f.03.06.1988 in the pay scale of Rs.950-1500/3050-4590. The applicant served on the same post of LDC till his retirement on 30.04.2010.

3. The respondents did not include the period of service that the applicant rendered in work charged establishment for the purpose of granting benefit of Assured Career Progression (ACP), but counted the same only w.e.f.03.06.1988 i.e. the date of his appointment to the post of LDC. He was, thus, granted the benefit of 1st upgradation under the ACP Scheme after 12 years that is w.e.f.03.06.2000 in the grade of Rs.4000-6000/- vide order dated 07.08.2001. Later on, vide circular dated 13.07.2010, the respondents decided to count the services rendered by employees in work charged cadre for the purpose of granting the benefit of ACP Scheme.

4. The applicant's case is that the applicant was appointed on 10.03.1977 as Assistant Fitter, which was subsequently re-designated as Fitter Grade-II in the grade pay of Rs.950-1400 (revised pay scale of Rs.3050-4590) and ultimately retired from the same post of LDC without any promotion and, therefore, he is entitled for grant of 1st financial upgradation w.e.f.09.08.1999 (the date from which ACP Scheme became effective) and 2nd upgradation on completion of 24 years of service under ACP Scheme w.e.f.10.03.2001 and 3rd upgradation under MACP Scheme on completion of 30 years of service w.e.f.01.09.2008 (the date from which MACP became effected).

5. The respondents vide order dated 15.02.2011 granted only 2nd upgradation under the MACP scheme w.e.f. 01.09.2008 i.e. after 20 years of becoming LDC, without counting the previous service of applicant.

6. Aggrieved, the applicant filed OA No.2993/2011 seeking the benefit of 2nd financial upgradation and the Tribunal vide order dated 26.8.2011 directed the respondents to look into the grievance of the applicant. Thereafter, the respondents passed the impugned order dated 24.04.2012 rejecting the claim

of the applicant. In continuation of the impugned order dated 24.04.2012, DDA issued subsequent order dated 05.01.2015 reiterating their earlier stand that as per clarification no.6, Annexure-5, clarification with regard to OM dated 10.02.2000 issued by Department of Personnel and Training, the applicant is not entitled for counting of service rendered by him prior to his appointment to the post of LDC for the purpose of grant of financial upgradation under ACP Scheme.

7. Being aggrieved by the impugned order, the applicant has filed this OA with the following prayers :-

- “(i) That the Hon’ble Tribunal may graciously be pleased to pass an order of quashing the impugned order 24.04.2012 declaring to the effect that the same is illegal and arbitrary.
- (ii) That the Hon’ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 15.2.2011 (A/2) on respect of the applicant to the extend by which the applicant has been granted only 2nd financial upgradation under MACP scheme w.e.f.1.9.2008, and consequently pass an order directing the respondents to count the work charged service w.e.f.10.3.77 to 10.3.1982 as well as his service w.e.f.11.3.1982 to 2.6.1988 to the post of Assistant Fitter as qualifying service for the purpose of granting the benefits of ACP/MACP schemes.
- (iii) That the Hon’ble Tribunal may further graciously be pleased to pass an order directing the respondents to review the first financial upgradation to the applicant after counting the work charge service and consequently pass an order directing the respondents to grant of first financial upgradation to the applicant w.e.f.09.08.1999 and 2nd upgradation on completion of 24 years service under ACP Scheme w.e.f.10.03.2001 and 3rd upgradation under MACP Scheme on completion of 30 years of service w.e.f.01.09.2008, with all the consequential benefits including the arrears of difference of pay and allowances and revision of retirement benefits with arrears and interest.
- (iv) Any other relief which the Hon’ble Tribunal deem fit and proper may also be granted to the applicant.”

8. According to the learned counsel for the applicant the pay scale of Rs.950-1400 & 950 -1500 were merged w.e.f.01.01.1996 and replaced by the new pay scale of Rs.3050-4590 and our attention was drawn to

clarification No.1 issued in this regard with reference to OM dated 10.02.2000, which reads as under :-

"Since the benefits of upgradation under ACP Scheme (ACPS) are to be allowed in the existing hierarchy the mobility under ACPS shall be in the hierarchy existing after merger of pay scales by ignoring the promotion. An employee who got promoted from lower pay scale to higher pay scale as a result of promotion before merger of pay scales shall be entitled for upgradation under ACPS ignoring the said promotion as otherwise he would be placed in a disadvantageous position vis-a vis the (not legible) in the merged grade."

Therefore, it is argued that the change in pay scale from Rs.950-1400/- to 950-1500/- on moving from the post of Fitter Grade II to LDC should be ignored because of the merger for the purpose of ACP in view of the above clarification.

9. Learned counsel also drew our attention to the following clarification No.4-6 to emphasis the point that if a Government servant has been appointed to another post in the same pay scale either as a direct recruit or on absorption (transfer) basis or first on deputation basis and later on absorbed (on transfer basis), it should not make any difference for the purpose of ACPS :-

"The benefits under ACPS are limited to higher pay scale and do not confer designation, duties and responsibilities of the higher post. Hence, the basic criterion to allow the higher pay scale under ACPS should be whether a person is working in the same pay scale for the prescribed period of 12/24 years. Consequently, so long as a person is in the same pay scale during the period in question, it is immaterial whether he has been holding different posts in the same pay scale. As such, if a Government servant has been appointed to another post in the same pay scale either as a direct recruit or on absorption (transfer) basis or first on deputation basis and later on absorbed (on transfer basis), it should not make any difference for the purpose of ACPS so long as he is in the same pay scale. In other words, past promotion as well as past regular service in the same pay scale, even if it was on different posts for which appointment was made by different methods like direct recruitment, absorption (transfer)/deputation, or at different places should be taken into account for computing the prescribed period of service for the purpose of ACPS"

10. Further, our attention was drawn to clarification no.8 to emphasis the points that in case relevant Recruitment Rules prescribed a promotion quota

to be filled up on the basis of departmental examination, in such a situation past regular service shall also be counted for further benefits, if any, under the Scheme:-

Point of doubt	Clarification
8. Appointment on the basis of limited departmental examination, by which an employee joined a new service should be treated as promotion or not. For example, in case of Group 'D' employees appointed as LDCs or Grade 'D' Stenographers appointed from amongst LDCs should be treated as direct recruits or not in the respective higher grades.	If the relevant Recruitment Rules provide for filling up of vacancies of Stenographers, Grade 'D'/ Junior Stenographers by direct recruitment, induction of LDCs to the aforesaid grade through Limited Departmental Competitive Examination may be treated as direct recruitment for the purpose of benefit under ACPS. However, in such cases, service rendered in a lower pay scale shall not be counted for the purpose of benefit under ACPS. The case of Grade 'D' employees who become LDCs on the basis of departmental examination stand on different footing. In their case, relevant Recruitment Rules prescribe a promotion quota to be filled up on the basis of departmental examination. Therefore, such appointments shall be counted as promotion for the purpose of ACPS. In such situations, past regular service shall also be counted for further benefits, if any, under the Scheme.

11. The learned counsel for the respondents primarily reiterated the arguments that have been incorporated in the impugned order dated 24.04.2012 to reject the applicant’s claim. We quote below the relevant portion of the order :-

“Whereas, in this context, the following clarification issued by the DOP&T (Clarification No.6) refers :

“xxxxxxx past promotion as well as past regular service in the same pay scale, even if it was on different posts for which appointment was made by different methods like direct recruitment, absorption (transfer)/deputation, or at different

places should be taken into account for computing the prescribed period of service for the purpose of ACPS. Also, in case of absorption (transfer)/deputation in the aforesaid situations, promotions earned in the previous/present organizations, together with the past regular service shall also count for the purpose of ACPS. However, if the appointment is made to higher pay scale either as on direct recruitment or on absorption (transfer) basis or first on deputation basis and later on absorbed (on transfer basis), such appointment shall be treated as direct recruitment and past service/promotion shall not count for benefits under ACPS.

Whereas, as per the aforesaid clarification, so long as a govt. servant is in the same pay scale even if he was on different posts for which appointment was made by different methods or at different places, past regular service should be taken into account or on absorption (transfer basis), such appointment shall be treated as direct recruitment and past service/promotion shall not count for benefit under ACPS.

That the pay scale of Fitter Gr.II was 950-1400/- (pre-revised) while the post of LDC carries a pay scale of 950-1500/- (pre-revised). Although minimum of the pay scale of both the posts Fitter Gr.II and LDC are the same, yet maximum of the pay scale of both the posts are different. As such, both the posts can not be said on the same pay scale.

And therefore whereas, the appointment of Shri Parvinder Pal Monga to the post of LDC was in the higher pay scale, Shri Parvinder Pal Monga is not entitled to the benefit of counting his past service rendered on the work-charged establishment for the purpose of ACP benefit and office orders dated 21.5.2010 are not applicable in his case.

From the records, it has also transpired that you had been promoted to the post of LDC under 15% quota of Departmental Examination, therefore, prima facie, it appears that the benefit of 1st ACP granted earlier is also erroneous. In view of this your case is under review and the decision as taken will be conveyed to you."

12. It would appear from the above that his prayer has been rejected primarily based on clarification no.4-6, which we quote below in its totality:-

6.An employee appointed initially on deputation to a post gets absorbed subsequently, whether absorption may be termed as promotion or direct recruitment. What will be the case if an employee on deputation holds a post in	The benefits under ACPS are limited to higher pay scale and do not confer designation, duties and responsibilities of the higher post. Hence, the basic criterion to allow the higher pay scale under ACPS should be whether a person is working in the same pay scale for the prescribed period of 12/24
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<p>the same pay scale as that of the post held by him in the present cadre? Also, what will be the situation if he was holding a post in the parent cadre carrying a lower pay scale?</p>	<p>years. Consequently, so long as a person is in the same pay scale during the period in question, it is immaterial whether he has been holding different posts in the same pay scale. As such, if a Government servant has been appointed to another post in the same pay scale either as a direct recruit or on absorption (transfer) basis or firsts on deputation basis and later on absorbed (on transfer basis), it should not make any difference for the purpose of ACPS so long as he is in the same pay scale. In other words, past promotion as well as past regular service in the same pay scale, even if it was on different posts for which appointment was made by different methods like direct recruitment, absorption (transfer) / deputation, or at different placed should be taken into account for computing the prescribed period of service for the purpose of ACPS. Also, in case of absorption (transfer)/deputation in the aforesaid situations, promotions earned in the previous/present organizations, together with the past regular service shall also count for the purpose of ACPS. However, if the appointment is made to higher pay scale either as on direct recruitment or on absorption (transfer) basis or first on deputation basis and later on absorbed (on transfer basis), such appointment shall be treated as direct recruitment and past service/promotion shall not count for benefits under ACPS.</p>
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13. The respondents' argument is that though minimum pay scale of both the posts i.e. Fitter Gr.II and LDC was Rs.950/-, yet maximum of the pay scale of both the posts was different i.e.Rs.1400/- for Fitter Grade II and Rs.1500/- for LDC and, as such, both the posts cannot be said to be in the same pay scale. Therefore, going by clarification no.6, as quoted above, his

appointment on a higher post will be treated as a direct recruitment and his past service will not count for the benefit under the ACP Scheme.

14. Heard the learned counsels for the parties and perused the relevant rules.

15. The whole issue revolves only around on one aspect as to whether his appointment as LDC should be treated as direct recruitment on a higher pay scale or whether both the pay scale should be treated as the same. The fact is that the pay scales were technically different, however, they were both merged and given the pay scale of Rs.3050-4590 and, clarification no.1 quoted above, clearly states that if the promotion has taken place before merger then such promotion shall be counted for the purpose of ACP. Therefore, even if the pay scale is treated different because of maximum limit being different, since there was a merger and merger has to be ignored for the purpose of ACP, on a constructive reading of clarification nos.1, 4, 5, 6 & 8, we conclude that the appointment as LDC should not debar the applicant from entitlement for upgradation under the ACP Scheme including his past service, and in view of the clarification dated 13.07.2010, we are of the opinion that for the purpose of ACP/MACP the service of the applicant as work charged employee w.e.f.10.03.1977 to 10.03.1982 as well as his regular service as Assistant Fitter w.e.f.11.3.1982 to 2.6.1988 should be treated as qualifying service.

16. In view of our above discussion, we allow the OA and quash the impugned orders dated 05.01.2015 and 24.4.2012 and direct the respondents to review the 1st and 2nd financial upgradation of the applicant under ACP and 3rd financial upgradation under MACP counting his work charged service w.e.f. 10.3.1977 to 10.3.1982 as well his service as

Assistant Fitter w.e.f.11.03.1982 to 2.6.1988 as qualifying service for the purpose of granting the benefits of MACP Scheme. Such review and orders thereupon shall be completed within a period of three months from the date of receipt of a copy of this order.

No costs.

(P.K.Basu)
Member (A)

(Syed Rafat Alam)
Chairman

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