

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 1969/2012

New Delhi this the 26th day of October, 2015

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

1. Shri Bishan Dass, Age 58 years
S/o Late Shri Nagin Chand
Resident of Type-II/295, Press Colony
Mayapuri, Ring Road,
New Delhi-110064
Working as Offset Plate Maker
Govt. of India Press
Mayapuri, Ring Road
New Delhi-110064

2. Shri Hari Ram Tobaría, Age 62 years
S/o Late Shri Kishania
Resident of RZ-262, Brahmpuri,
Pankha Road, Nangal Raya,
New Delhi-110046
Retired as Offset Plate Maker
Govt. of India Press
Mayapuri, Ring Road
New Delhi-110064

... Applicants

(Through Shri R.N. Singh, Advocate)

Versus

1. Union of India
Ministry of Urban Development
Nirman Bhawan, New Delhi-110011
(Through Its Secretary)

2. Directorate of Printing
Ministry of Urban Development
Nirman Bhawan, New Delhi-110011
(Through Its Director)

3. The Manager,
Government of India Press
Ring Road, Mayapuri,
New Delhi-110064

... Respondents

(Through Shri Amit Anand, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

The applicants were appointed as Compositor Grade-II in the pay scale of Rs.110-180 with effect from 10.10.1972 and 11.09.1972 respectively. The posts of Compositor Grade-II and I had been declared surplus in the year 1996 due to new modernization technology of Press. The applicants thereafter underwent training of Offset Plate Maker (OPM). They qualified the trade test and having been selected by DPC, were redeployed/ appointed to the post of OPM in the pay scale of Rs.1320-2024 (revised pay scale of Rs.4000-6000) with effect from 27.09.1996. The applicants were granted financial upgradation under the Assured Career Progression Scheme (ACPS) in the pay scale of Rs.4500-7000/- with effect from 9.08.1999. Their pay has been revised as per 6th CPC recommendations in PB-1 (Rs.5200-20200) plus Grade Pay Rs.2800/-. Respondents have counted their service for the purpose of grant of financial upgradation under ACP/ MACP Scheme from the date of their redeployment i.e. 27.09.1996, treating the redeployment of the applicants to the post of OPM as direct recruitment. In fact, for the reason that this was to be treated as direct recruitment the respondents later held that they were not even entitled for the first financial upgradation under the ACPS, which was given to them with effect from 9.08.1999. However, the respondents agree that the applicants are entitled for first financial upgradation under Modified Assured

Career Progression Scheme (MACPS) with effect from 1.09.2008, the date of implementation of MACPS.

2. The respondents vide their letter dated 16.09.2011/13.03.2012 have, in fact, replied to one of the applicants Shri Bishan Dass, explaining the position for rejecting his claim for first and second financial upgradation in the pre-revised pay scales of Rs.4500-7000 and Rs.5000-8000. Similarly, vide memorandum dated 2.02.2012, addressed to the applicant, this has been reiterated. Being aggrieved by the action of the respondents, the applicants have filed the instant OA seeking the following reliefs:

- (i) Call for the relevant records of the respondents;
- (ii) Declare the Memorandum No.A-43013/27/RRP/2008-Estt.I/1107 dated 13.03.2012 and Memorandum No.A-43013/27/RRO/2008-Estt.I/949 dated 2.02.2012 [Annexure – A (colly) impugned] and letter No.A-43013/27/RRP/2008-Estt.I/628 dated 16.09.2011 (Annexure A-1 impugned) as illegal, arbitrary and consequently quash the same;
- (iii) Declare the action of the respondents in depriving the applicants from the benefit of financial upgradations under ACP and MACP Schemes by ignoring their past service as Compositor Gr.II prior to their redeployment as Offset Plate Maker and counting such past service of similarly placed persons redeployed to other posts as illegal, arbitrary and discriminatory;

- (iv) Declare that the respondents cannot exclude the services rendered by the applicants prior to their being redeployed as Offset Plate Maker while counting their service for the purposes of grant of benefits under the ACP and MACP Schemes;
- (v) Declare that the appointment of the applicants in the grade of Offset Plate Maker is neither a promotion nor a direct recruitment of the applicants in their grade and the applicants are entitled for grant of financial upgradation by counting their past service as Compositor Gr.II and all consequential benefits, viz. arrears of pay, pension and interest on such arrears;
- (vi) Direct the respondents to release the arrears of leave encashment, gratuity etc. of applicant No.2 after re-fixation of his pay and pension on grant of benefits of ACP and MACP Schemes;
- (vii) Oder exemplary cost against the respondents and in favour of the applicants.

3. The applicants' case is that in OA No.16/2010, **Government of India Press Workers Union and others Vs. Union of India and others**, Compositor Grade-II who had opted for the post of Key Board Operator (KBO), after passing a training course and trade test, were appointed as KBOs. They were granted first upgradation under ACPS in the pay scale of Rs.5000-8000 but this was later withdrawn treating the reconstituted cadre as direct recruits. The Tribunal vide order dated 2.02.2011 allowed the OA and held that past service should be counted for the purpose of ACP. However, this was in

the background that Lino and Mono Operators were conferred this benefit and on reorganization, common appointment orders were issued not only for Compositor Grade II but also for Lino Operators and Compositor Grade I.

4. Similarly, the applicants rely on order of this Tribunal dated 9.01.2012 in OA 4223/2010, **Shri Kanwar Chand and others Vs. Union of India and others**. This OA was also allowed relying on order passed by this Tribunal in OA 16/2010 (supra) as the applicants in this OA were treated as similarly placed as the applicants in OA 16/2010.

5. Reliance on behalf of applicants was also placed on the order of this Tribunal in OA 1456/2013, **Sh. Onkar Singh Dhaka and others Vs. Union of India and others**, para 5 whereof reads as follows:

"5.At best, since this re-deployment was in a higher pay scale, it could have been counted as a financial upgradation/ promotion for the purpose of ACP/ MACP benefit. Accordingly, the respondents themselves have rightly granted them the benefit of second ACP with effect from 9.08.1999. This has been done after taking into account their past services rendered before their redeployment. The same treatment should have been extended to them for the third MACP benefit as well."

6. According to the respondents, only KBO/ PTS/ DTP Operators who have been redeployed to the post from different streams have been allowed counting of past service for the purpose of ACP Scheme. Redeployment to the post of OPM from the post of Compositor Grade II i.e. from lower grade to higher grade is to be treated as direct recruitment and past service of

these employees will not be counted for the purpose of ACPS. As per order of Directorate of Printing the post of OPM has been treated as direct recruitment with effect from 27.09.1996. It is further mentioned that the applicants joined the post of Compositor Grade II in the pay scale of Rs.110-180 (pre-revised) with effect from 10.10.1972 and 11.09.1972 and thereafter they have been redeployed from the post of Compositor Grade II with the pay scale of Rs.950-1500. Before their redeployment, their basic pay in the pay scale of Rs.950-1500 was Rs.1475/-. After their redeployment to the post of OPM in the pay scale of Rs.1320-2040 (revised to Rs.4000-6000) with effect from 27.09.1996, their pay was fixed under FR 22 (i) (a) (i) with the basic pay of Rs.1530/-.

7. The respondents’ further stand is that this particular issue has been answered in clarification no.4 of DoP&T OM dated 10.02.2000, which reads as follows:

4	In a case where a person is appointed to a post on transfer (absorption) basis from another post, whether 12 years and 24 years of service for the purpose of ACPS will count from the initial appointment or otherwise.	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. Also, in case of absorption (transfer)/deputation in the aforesaid situations, promotions earned in the previous/present organisations, 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. Needless to say, in cases of transfer on administrative ground, involving only change of station within the same department, the service rendered in the same grade at two stations may count for ACPS, as such transfers are within
5	Whether a Government servant, who is direct recruit in one grade and subsequently joins another post again as direct recruit, is eligible for first financial upgradation under ACPS after completion of 12 years of service counted from the first appointment or from the subsequent second appointment as direct recruit?	
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 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?	

		the same organisation, ordered generally for administrative/personal considerations and the service rendered in the earlier station counts as eligibility service for promotion.
--	--	--

and that since in this case, the reorganization included redeployment to a higher pay scale, such appointment shall be treated as direct recruitment and past service shall not be counted for the purpose of benefit under ACPS.

8. We have heard the learned counsel for the parties and gone through the pleadings available on record.

9. The order of the Tribunal in OA 16/2010 (supra) was in a similar case of redeployment of Compositor Grade II and Compositor Grade I along with Lino Operator and Mono Operator. They had challenged the withdrawal of the pay scale of Rs.5000-8000 in OA 384/2001 and OA 388/2001. Both the OAs were dismissed vide order dated 27.08.2001. However, later the Lino and Mono Operators filed a review and the Tribunal gave direction to the respondents to reconsider their case and the respondents gave them the benefit by directing that their past service would count for computing the total service for grant of ACP benefits.

10. In OA 16/2010, the Tribunal, based on decision in the case of Lino Operator and Mono Operators, directed that even in the case of applicant i.e. Compositor, the same computing of past service should be done. In OA 4223/2010 (supra), the Tribunal looked at the issue and again directed that past service rendered by the applicant should be counted.

11. The only issue to be decided here is whether appointment on redeployment of these Compositors as OPM should be treated as direct recruitment or not. In our opinion, in view of the two orders of the Coordinate Benches in OA 16/2010 and OA 4223/2010 (supra), there is no escape but to grant the same benefit to the applicants in the present case, otherwise it will tantamount to discrimination.

12. Therefore, we allow this OA and quash and set aside the impugned orders dated 13.03.2012, 2.02.2012 and 16.09.2011. The respondents are directed to count past service as Compositor Grade II rendered by the applicants prior to their being redeployed as OPM for grant of benefits under ACP/ MACP Schemes. While granting such ACP/ MACP benefits, their pay will be fixed on notional basis and arrears will be payable only from 26.05.2012, when this OA had been filed. Entitlement for leave encashment, gratuity and pension will be worked out based on this notional fixation of pay. This exercise should be completed within a period of three months of the receipt of a certified copy of this order. No costs.

(P.K. Basu)
Member (A)

(Syed Rafat Alam)
Chairman

/dkm/