

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. No. 2008/2011

with

O.A. No. 3319/2012

M.A. No. 2772/2012

New Delhi, this the 1st day of August, 2016

HON'BLE MR. P.K. BASU, MEMBER (A)
HON'BLE DR. BRAHM AVTAR AGRAWAL, MEMBER (J)

O.A. 2008/2011

Virender Pal Singh,
S/o Shri Hari Singh,
R/o 1723, Delhi Govt. Flats,
Gulabi Bagh, Delhi-110007.

.. Applicant

(By Advocate: Shri Ajesh Luthra)

Versus

1. Govt. of NCT of Delhi,
Through the Chief Secretary,
5th Floor, Delhi Sachivalaya,
New Delhi.
2. The Principal Secretary (Services),
GNCT of Delhi,
7th Level, 'B' Wing,
Delhi Secretariat, I.P. Estate,
New Delhi.
3. The Director,
Directorate of Education,
Govt. of NCT of Delhi,
Old Sectt., Delhi.

4. The Director,
Directorate of Training & Technical Education,
GNCT of Delhi, Muni Maya Ram Marg,
Pitampura, Delhi. .. Respondents

(By Advocate : Shri Vijay Pandita)

O.A. 3319/2012

1. Kuldeep Kumar,
S/o Shri Om Prakash,
R/o 9-B, Samay Vihar Apartment,
Sector-13, Rohini, Delhi-85.
2. Manmohan K.
S/o Shri M.M. Krishnan Chettiar,
R/o 631, Type-B, D.D.A. Flats,
Timarpur, Delhi-54.
3. Jagjeet Singh Dahiya,
S/o Shri Sultan Singh Dahiya,
R/o 93, Amit Apartments,
Sector-13, Rohini, Delhi-85. .. Applicants

(By Advocate: Shri Ajesh Luthra)

Versus

1. Govt. of NCT of Delhi,
Through the Chief Secretary,
5th Floor, Delhi Sachivalaya, New Delhi.
2. The Principal Secretary (Services),
GNCT of Delhi,
7th Level, 'B' Wing,
Delhi Secretariat, I.P. Estate, New Delhi.
3. Union of India,
Through its Secretary,
Ministry of Home Affairs,
North Block, New Delhi.

4. Union of India,
Through its Secretary,
Ministry or Personnel, Pension & Grievances,
Department of Personnel & Training (DoP&T),
North Block, New Delhi.
 5. The Medical Superintendent,
Sanjay Gandhi Memorial Hospital,
GNCT of Delhi,
Mangol Puri, Delhi-83.
 6. The Director,
Directorate of Education,
GNCT of Delhi,
Old Secretariat, Delhi.
- .. Respondents

(By Advocate : Shri B.N.P. Pathak for R-1, 2, 5 & 6 and
Shri Rajinder Nischal for R-3 & 4)

ORDER (ORAL)

By Hon'ble Mr. P.K. Basu

OA 2008/2011

The prayer of the applicant in this case is that he be granted 2nd ACP w.e.f. 01.07.2006 in the light of O.M. dated 01.11.2002 issued by the Ministry of Home Affairs. The O.M. dated 01.11.2002 is a clarificatory office memorandum in which the following clarification has been made:

“The undersigned is directed to state that cadre officials in various grades including LDC, UDC, Assistant, Steno Grade ‘D’, Steno Grade ‘C’ have been accorded with the financial upgradation under the ACP scheme after completion of 12/24 years of regular service. For the purpose of calculation the 12/24 years of regular service, this Ministry has so far been taking the

date of actual appointment in service as the date of commencement of the regular service and accordingly ACP benefit has been given on completion of 12/24 years from the date of actual appointment in the respective grade. However, DOPT, Establishment-D have now clarified that for the purpose of ACP scheme, the regular service will have to be the same as counted for regular promotion and that the regular service/residency service will have to commence from the 1st July of the year following the year of examination. In other words, the regular service in respect of direct recruitment will commence from the 1st July of the year following the year of examination and in respect of seniority quota/departmental examination candidates the regular service will commence from the 1st July of the Select List year in which they have been included. It has, therefore, become essential to review all cases of ACP upgradation and predate/postpone the date accordingly.”

Clearly, this clarification is a communication by Ministry of Home Affairs of clarification made by the Department of Personnel & Training (DoP&T).

2. The case of the applicant is that he appeared in the Clerks Grade & Stenographers Examination in 1981 and, therefore, as per this clarification, his service for the purpose of ACP should be counted from 1st July of the subsequent year, i.e. 01.07.1982. Adding 24 years, he has arrived at the date of 01.07.2006, from which he has claimed the 2nd financial upgradation under ACP Scheme.

3. The Govt. of NCT of Delhi in their reply have stated that the actual appointment of the applicant is on 01.08.1983 and, therefore, he is entitled to 2nd financial upgradation under ACP Scheme w.e.f. 01.08.2007 after completion of 24 years of service.

4. In reply to para 4.6, GNCT of Delhi has clarified that the O.M. dated 01.11.2002 is addressed to All Cadre Units under the Ministry of Home Affairs and, therefore, it does not apply to GNCT of Delhi at all. However, in the same para, it is clarified that GNCT of Delhi follows the guidelines issued by DoP&T in connection with the grant of financial upgradation under ACP/MACP Scheme duly endorsed by Finance Department, GNCT of Delhi.

5. It is also argued on behalf of GNCT of Delhi that before his due date for upgradation, i.e. 01.08.2007, the applicant was put under suspension on 03.08.2006 (revoked on 17.08.2007) as a criminal case had been registered against the applicant as an accused. Therefore, in view of the pending criminal case, in any case, he cannot be considered for 2nd financial upgradation under ACP Scheme.

6. Union of India through an affidavit has clarified that O.M. dated 01.11.2002 is only applicable for the cadre units of Ministry of Home Affairs and that this O.M. is not applicable to Grade-III DASS employees, i.e. the applicant.

7. There is no dispute that ACP guidelines have been made applicable to the employees of GNCT of Delhi. Therefore, there are two issues in this matter; whether the O.M. dated 01.11.2002 will

be applicable in the case of the applicant and; whether the criminal case pending against him would deny him financial upgradation under ACP Scheme.

8. As regards O.M. dated 01.11.2002, it is basically a clarification issued by the DoPT about the ACP Scheme. We are of the view that once ACP has been adopted, the Govt. cannot have double standards with respect to two sets of employees. Therefore, we reject this argument of the respondents that O.M. dated 01.11.2002 does not apply in the applicant's case.

9. As regards the criminal case, the facts are that once the date of promotion is stated to be 01.07.2006, this will not debar the applicant from consideration of the financial upgradation under ACP Scheme in view of the judgment of the Hon'ble Supreme Court in the case of **Union Of India Etc. vs K.V. Jankiraman, 1991 AIR SC 2010**, as nowhere the respondents have stated that the charges have been framed against the applicant in the criminal case or that a charge sheet has been issued to him in any departmental proceedings.

10. In view of the above, the O.A. is allowed, with a direction to the respondents to grant 2nd financial upgradation to the applicant w.e.f. 01.07.2006 as per O.M. dated 01.11.2002, within a period of

three months from the date of receipt of a certified copy of this order. No order as to costs.

O.A. 3319/2012

Since we have allowed the prayer in O.A. 2008/2011 above, the prayer in this O.A. automatically stands allowed, with a direction to the respondents to grant 2nd financial upgradation to the applicants w.e.f. 01.07.2008, as they appeared in the Clerks Grade Examination conducted by SSC in 1983.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

/Jyoti/