

**Central Administrative Tribunal
Principal Bench**

OA No.2224/2014

**Order reserved on :01.11.2017
Order pronounced on :10.11.2017**

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)**

Fateh Singh Chauhan
S/o Sri Surjan Singh Chauhan,
Aged about 68 years,
Post Retired Auditor,
R/o House No.315, Street 14,
Vijay Park Extension,
Dehradun, Uttarakhand.Applicant

(By Advocate: Ms. Sumita Hazarika)

Versus

1. Union of India,
Through Secretary,
Ministry of Defence,
Government of India,
New Delhi-110001.
2. The Controller General of Defence Account,
Airport Road,
Sport View, Delhi Cantt.
New Delhi-110010.
3. Principal Controller of Defence Accounts,
(Air Force),
Dehradun,
Uttarakhand. ...Respondents

(By Advocate :Shri Hanu Bhaskar)

ORDER

Hon'ble Ms. Nita Chowdhury, Member (A)

This Original Application has been filed by the applicant
claiming the following reliefs:-

“(i) Direct the respondents to grant to the applicant and second promotion/financial upgradation under the Assured Career Progression Scheme w.e.f. the completion of 24 years from the date of his first promotion in 1981;

(ii) Issue a time-bound direction to the respondents for granting the second promotion/financial upgradation from the date of his entitlement under the ACP Scheme and to revise his retirement dues accordingly;

(iii) Direct the respondents to pay compound interest on the arrears of the difference in pay payable to the applicant from 2004 onwards; and

(iv) Pass such other order or orders as this Hon’ble Tribunal deems fit and proper in the interest of justice”.

2. Facts, in brief, are that the applicant joined the department as Lower Division Clerk (LDC) on 20.02.1969. On 22.06.1981, i.e., after completion of 12 years, he was promoted as Auditor. Thereafter, on 1.4.1987, on the recommendations of the Pay Commission, the post of Auditor in the Audit and Accounts Department of all the Ministries was restructured and the post of Auditor was upgraded to Sr. Auditor. He further submits that he has received only one promotion throughout his career. He was denied second promotion under the Assured Career Progression Scheme (ACP Scheme) as the up-gradation was granted w.e.f. 1.4.1987 from the post of Auditor to Sr. Auditor which was wrongly described as promotion. According to the ACP Scheme, Government employees are entitled to 2 promotions; first after 12 years and second after 24 years of service. Thus he pleaded that this promotion was introduced over and above regular promotion which is based on availability of posts. The promotion under ACP gives financial up-gradation by placing the incumbent in a higher pay

scale without promoting them or creating any new post. The next promotional post from the post of Sr. Auditor was Supervisor in the pay scale of Rs.6500-10500 but the same was subject to qualifying the departmental exam and availability of vacancies. Applicant has qualified in the said examination conducted in 2005. He has further submitted that although he secured 38 marks but was not given the said post. Further, out of 20 persons who had cleared the aforesaid exam, 11 were granted promotion under pick and choose method and he is one who has been left out. Thereafter, he filed representation on 14.08.2007 which was rejected vide order dated 20.09.2007.

3. Being aggrieved by the inaction of the respondents, applicant filed OA No.199/2008 before the Central Administrative Tribunal, Allahabad Bench raising all the grounds raised in the present OA. The said OA was dismissed on 30.11.2012 (Annexure P-10) on the ground that since applicant had got two promotions viz. as Auditor and Sr. Auditor, he is not entitled for any relief. Thereafter, he filed an appeal before the Hon'ble High Court of Uttarakhand at Nainital in Writ Petition (SC) No.69/2013. After hearing the parties, the W.P. was dismissed on 26.09.2013 (Annexure P-11). Dissatisfied by the order of the Hon'ble High Court, he filed an appeal before the Hon'ble Supreme Court in Special Leave to Appeal (Civil) CC 7127/2014 which too was dismissed on 07.05.2014 (Annexure P-12).

4. The applicant has relied on the following judgments to substantiate his claim:-

- (i) Hukum Chand Gupta Vs. ICAR 2012 (12) SCC 666.
- (ii) OA No.3606/2013 – Subhash Kumar Ghosh and Others Vs. U.O.I. and Others.
- (iii) Judgment of the Hon'ble High Court of Madras in W.P. No.28508 of 2010 – D. Daniel Appadurai Vs. U.O.I. & Others.

He has thus prayed that the OA be allowed.

5. The respondents have filed their reply and pleaded that this OA is hopelessly barred by time. They have also submitted that applicant is claiming grant of ACP/promotion after the completion of 24 years from 1981 and to revise his retirement dues accordingly. The applicant stood retired on 31.08.2007 and further he having availed two promotions in 1981 and 1987 is not entitled to any relief. They have also pleaded that his OA lacks the territorial jurisdiction to decide this OA at the Principal Bench, as he has not filed any application under Section 25 of the Administrative Tribunals Act, 1985.

6. They have further submitted that applicant was appointed as LDC on 20.02.1969. On 22.06.1981, he was promoted as Auditor and on 01.04.1987 he was further promoted as Sr. Auditor as per 4th CPC. The promotions were in the normal course of service. Since he has availed the said promotions, he was not entitled to any benefit under the ACP Scheme which was instituted in 1999. He

superannuated on 31.08.2007. Further, he appeared in the Supervisor (Accounts) Examination held in 2005 and had obtained 38 marks (cut-off being 35 marks for ST candidate) and thus qualified in the said examination but could not be appointed in the absence of vacancies.

7. Further, he has filed OA No.199/2008 in the Central Administrative Tribunal, Allahabad Bench which was dismissed vide order dated 30.11.2012 (Annexure P-10) observing that since he had already obtained 2 promotions, therefore, not entitled for any benefit under the ACP Scheme. The said order was challenged by the applicant in the Hon'ble High Court of Uttarakhand at Nainital in W.P. (SB) No.69/2013 which was dismissed on 26.09.2013 (Annexure P-11). Thereafter, the said order was challenged in the Hon'ble Supreme Court in SLP (Civil) No.7127/2014 which was dismissed on 07.05.2014 (Annexure A-12). Thus, they have raised the plea of res judicata as the applicant had earlier claimed the same reliefs, as claimed in the present OA, in OA No.199/2008 (supra) which already stands dismissed and upheld upto the Hon'ble Supreme Court and attained finality.

8. Respondents further submitted that applicant was initially appointed as LDC on 20.02.1969. On 22.06.1981, he was promoted to the post of Auditor and as Sr. Auditor on 01.04.1987. Post of Auditor and Sr. Auditor are two different posts having different pay scales/pay bands/level. Promotion of an employee from the post of

Auditor to Sr. Auditor is a regular promotion and not a mere an upgradation as stated by applicant. They have thus prayed that the OA be dismissed.

9. We have heard the learned counsel for the parties, perused the pleadings, gone through the record and various judgments.

10. The learned counsel for the applicant said that he wants to give some additional material and on 08.11.2017, he has furnished the following papers:-

(i) OM No.F.5(32)-EIII/86.Pt.II dated 12.06.1987 of the Ministry of Finance, Department of Expenditure with regard to restructuring of Accounts Staff in Organised Accounts Cadres.

(ii) Judgment of the Hon'ble High Court of Judicature at Bombay, Nagpur in W.P. 559-2008 – U.O.I. & Another Vs. Shri Eknath Walgu Humne decided on 29.09.2009.

(iii) Judgment of the Central Administrative Tribunal, Madras Bench in OA No.335/2007 – V. Venkatraman Vs. U.O.I. & Others decided on 26.08.2008 and order passed by the Hon'ble Supreme Court in CC 9422/2011 decided on 19.10.2010.

(iv) Judgment of the Hon'ble High Court of Judicature at Patna in Civil Writ Jurisdiction case No.2261/2017 in The UOI and Others Vs. Binit Kumar Verma decided on 15.05.2017.

(v) Judgment of the Hon'ble High Court of Madras in W.P. No.s23527/2015 and connected cases in S. Vijaylakshmi and Others Vs. U.O.I. & Others decided on 13.03.2017.

(vi) Judgment of the Central Administrative Tribunal in OA No.3167/2015 in Ranjan Bhar Vs. U.O.I. & Others decided on 15.09.2017.

11. We may mention that all these points mentioned above have been considered by us, but they will not support the case of the applicant in any way. No new fact or discovery of any new and important material or evidence has been disclosed in the papers/judgments given on 08.11.2017.

12. Further, we may mention that applicant had earlier challenged the very same facts before the Allahabad Bench of the Tribunal in OA No.199/2008 which was dismissed on the ground that since he had got two promotions after being initially promoted as LDC on 20.02.1969 and thereafter got two promotions as Auditor on 22.06.1981 and as Sr. Auditor on 01.04.1987. The operative part of the said order reads as under:-

“5. Arguments were heard and documents perused. It is not denied that the applicant entered the service as LDC and got two promotions, viz., Auditor and Senior Auditor (See Annexure A-6 representation dated 14.08.2007 refers). It is also not disputed that the applicant had secured only 38 marks but declared pass. Vide para 4 of Annexure A-3, the minimum marks for qualifying in the examination by the general candidates is 40. This goes to show that the applicant has been considered as ST candidate for qualifying in the examination. And, as per the respondents, which cannot be wrong, there are other ST candidates who had passed the examination earlier and who could not be promoted under the category due to non availability of vacancies. In so far as those who had been granted higher pay scale, obviously, in their case, since they had been initially appointed as UDC/Auditor, they are entitled to be grant of second financial upgradation, which is not available to the applicant since he had entered the service as LDC and obtained two promotions. Though a feeble objection had been made in the pleadings by the applicant that of those who have been granted financial upgradation, some of them did not qualify in the examination at the material point of time, the same has to be

ignored in view of the fact that the same is not proximately connected with the claim of the applicant.

6. In view of above, we find no merit in the OA and the same is accordingly dismissed. No costs".

The applicant had challenged the said order upto Hon'ble Supreme Court but the same was dismissed. Hence, he cannot raise the same ground in this OA because it will be hit by principles of res judicata. Therefore, the instant OA is not at all maintainable on the analogy of principle of constructive res judicata as envisaged under Explanation IV of Section 11 of The Code of Civil Procedure, 1908 (hereinafter to be referred as "CPC") which postulates that "any matter which might and ought to have been made ground of defence or attack in such former suit, shall be deemed to have been a matter directly and substantially in issue in such suit". Explanation-V further posits that "any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused".

13. In this view of the matter, the relief claimed in instant OA cannot be entertained. The applicant is estopped from filing the present OA on account of his own act and conduct. Hence, this OA is hit by principle of constructive res judicata & estoppels, and is not at all legally maintainable.

14. Further, we may mention that applicant is claiming benefit of ACP Scheme wherein financial benefit is allowed after 12 years and 24 years. As he has got two promotions, he is not entitled for any

benefit. Had he worked till MACP came into existence in 2009 effective from 01.08.2008, then he might have got some benefit but he superannuated on 31.08.2007, hence no relief can be granted.

15. We will be failing in our duty if we don't consider the judgments relied upon by the applicant. In **Hukum Chand's case** (supra), the Hon'ble Supreme Court held as under:-

“18. In the case of State of Tripura & Ors. Vs. K.K. Roy[3] this Court again observed that “it is not disputed that the other States in India/Union of India having regard to the recommendations made in this behalf by the Pay Commission introduced the Scheme of Assured Career Promotion in terms whereof the incumbent of a post if not promoted within a period of 12 years is granted one higher scale of pay and another upon completion of 24 years if in the meanwhile he had not been promoted despite existence of promotional avenues.”

19. As noticed earlier, the ACP Scheme was introduced in the ICAR by making the necessary provision in the statutory Service Rules. Admittedly, Shri J.I.P. Madan has been given the benefit under the ACP Scheme. Therefore, the decision taken by the respondent was within the purview of the Service Rules and can not be said to be arbitrary. That being so, the claim made by the appellant is clearly misconceived”.

Finally, the Hon'ble Supreme Court dismissed the aforesaid case. Thus it will be no help to the applicant.

16. Similarly he has relied upon the judgment of the Hon'ble High Court of Madras in the case of **D.Daniel Appadurai's** (supra), wherein applicant has got only one promotion. Hence Hon'ble High Court had directed the respondents to give him benefit of 2nd ACP. But again, this case will not help the applicant in any way as he had already got two promotions.

17. Further, he has relied on the judgment passed in OA 3606/2013 by the Central Administrative Tribunal on 15.10.2014. In that case it was held that since the applicants therein had claimed benefit of both ACP and MACP, hence that OA was allowed,

whereas applicant in this OA has claimed benefit of only ACP. Thus he cannot derive any benefit from the said judgment.

18. Thus seen from any angle, no relief can be granted to the applicant. Accordingly, this OA is dismissed. No costs.

(Nita Chowdhury)
Member (A)

(V. Ajay Kumar)
Member (J)

Rakesh