

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

OA 3876/2014

Reserved on: 20.10.2016
Pronounced on: 25.10.2016

Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Smt. Vijay Laxmi, aged 60 years
D/o Late Shri Harichand Midha
R/o House No.352, Sector-12
R.K. Puram, New Delhi-110022

....Applicant

(Through Shri B.L. Wanchoo, Advocate)

Versus

1. Union of India through
the Secretary to Govt. of India,
Ministry of Statistics & Programme Implementation,
Sardar Patel Bhawan,
New Delhi-110001.
 2. Director General
Ministry of Statistics & Programme Implementation,
National Sample Survey
 3. Additional Director General
NSSO (FOD) HQs Office
Level 4 to 7, East Block `8`
R.K. Puram, New Delhi-110066
- Respondents

(Through Shri Satish Kumar, Advocate)

ORDER

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

The applicant joined as Lower Division Clerk (LDC) in
National Sample Survey Organization (NSSO) on 12.05.1976.
She was promoted as Upper Division Clerk (UDC) on

11.05.1988. Next, she was given an offer of promotion to the post of Investigator on 15.07.1997, which she declined due to family compulsions. In accordance with Department of Personnel and Training (DoP&T) instructions dated 22.07.1997, the applicant was debarred for a period of one year for promotion from 15.07.1997 upto 16.07.1998.

2. The Assured Career Progression Scheme (ACPS) was introduced with effect from 9.08.1999 and the applicant was granted second upgradation under ACPS in the pay scale of Rs.4500-7000 with effect from 16.08.2001 on completion of 24 years of service.

3. The applicant is aggrieved because the respondents issued office order dated 3.04.2003 by which second upgradation under ACP already granted to the applicant was withdrawn by the respondents on the ground that the applicant had declined the offer of promotion to the post of Investigator in the year 1997. The applicant superannuated on 30.06.2014. The applicant filed representations and in her last representation dated 26.09.2014, she has drawn the attention of the respondents to the order of the Chandigarh Bench of the Tribunal in **Smt. Santosh Tokhi Vs. UOI**, OA No.489/CH/2009 wherein a similarly placed employee and from the same department, has been restored the pay scale granted under ACPS and later withdrawn, just as in the case of the applicant.

4. Apart from Smt. Santosh Tokhi (supra), the applicant also relies on order of this Tribunal of the Bombay Bench in **Ganesh Bhavrao Shrote Vs. Ministry of Earth Sciences**, OA No.91/2011, where similar relief has been granted. The relevant portion of the order is reproduced below:

"In view of the above, refusal for promotion earlier to 9.08.1999, has no effect on the grant of financial benefit under ACP Scheme. Hence the clarification given to Doubt No.38 by DoP&T cannot be accepted in this case as the applicant herein refused promotion earlier to the coming of ACP Scheme. In that view refusal of grant of 2nd financial upgradation under MACP Scheme amounts to punishing him for the second time. Hence the eligibility of benefits under ACP Scheme has to be reckoned on the actual date namely 9.08.1999. Hence declaiming promotion earlier to 9.08.1999 is no reason to deny the first ACP introduced on 9.08.1999. Hence a direction was given to respondents to grant the applicant benefit under the ACP Scheme irrespective of the fact of their refusal for promotion earlier to 9.08.1999."

5. The applicant has prayed for the following reliefs:

- (i) To direct the respondents to produce relevant official records.
- (ii) To direct the respondents to restore the pay scale of Rs.4500-7000 granted to the applicant w.e.f. 12.05.2000 under 2nd ACP and later withdrawn w.e.f. 19.08.2003.
- (iii) To direct the respondents to pay all consequential benefits accruing on refixation of pay and allowances on restoration of pay scale of Rs.4500-7000 w.e.f. 19.08.2003.
- (iv) To further direct the respondents to pay all consequential pensionary benefits on refixation of the pay scale of Rs.4500-7000 w.e.f. 19.08.2003.

6. The applicant drew our attention to withdrawal order dated 3.04.2003, wherein name of one Shri D.C. Jain also appeared along with the applicant. The same Shri D.C. Jain approached the Jabalpur Bench of the Tribunal in OA No.219/2012 and vide order dated 12.05.2015, the said OA was disposed of with direction to the respondents to restore the benefit of second ACP allowed to the applicant therein vide order dated 7.11.2000 with effect from 20.11.1999 and grant him arrears of salary in consequence of it. It is, therefore, prayed that similar relief may be granted to the applicant herein.

7. Respondents in their reply, first of all, raised the question of limitation as provided for under Section 21 of the Administrative Tribunals Act 1985. It is stated that the purported cause of action arose on 3.04.2003 whereas the instant OA has been filed on 30.10.2014 and hence, it is liable to be dismissed on the ground of delay itself. It is also stated that repeated representations would not give new lease of life to the applicant to overcome the bar of limitation. In this regard, reliance is placed on **S.S. Rathore Vs. State of Madhya Pradesh**, AIR 1990 SC 10, **State of Haryana and others Vs. Miss Ajay Walia**, JT 1997 (6) SC 592, **State of Punjab Vs. Gurdev Singh**, (1991) 4 SCC 1, **UOI Vs. Ratan Chandra Samanta**, JT 1993 (3) SC 418 and **Ex. Capt. Harish Uppal Vs. UOI**, JT 1994 (3) SC 126. It is thus prayed that this OA is not

maintainable on the ground of limitation and should be dismissed.

8. On merits of the case, it is stated that the applicant did not accept his promotion on 15.07.1997 and, therefore, she was debarred for promotion till 16.07.1998. The respondents considered the applicant's prayer for grant of second financial upgradation and granted her the upgradation based on Screening Committee recommendations, initially. However, vide Department of Personnel and Training OM No.35034/1/97-Estt.(D) (Vol. IV) dated 18.07.2001 vide Point No.38, it was clarified that the ACP Scheme has been introduced to provide relief in cases of acute stagnation where the employees, despite being eligible for promotion in all respects, are deprived of regular promotion for long periods due to non-availability of vacancies in the higher grade. However, where a promotion has been offered before the employee could be considered for grant of benefit under ACPS but he refuses to accept such promotion, then he cannot be said to be stagnating as he has opted to remain in the existing grade on his own volition. As such, there is no case for grant of ACPs in such cases. The official can be considered for regular promotion again after the necessary debarment period. It is stated that in view of this clarification and a later clarification dated 23.01.2003 by the DoP&T on the same lines, the applicant and similarly placed officials were found to have been erroneously granted financial upgradation as they, on their own volition, had opted to remain in the existing

grade. This error was rectified vide order dated 3.04.2003. The respondents, therefore, pray that both on the ground of limitation and in view of the express provision that those who refused to accept promotion, would not be considered for upgradation under ACPS, her case deserves to be dismissed.

9. The respondents have placed before us a copy of letter dated 11.02.2003 from respondent no.1 to respondent no.3 enclosing advice of DoP&T in the matter. It basically stipulates that once a regular promotion has been refused, there is no provision to grant upgradation under ACP.

10. Learned counsel for the respondents also stated that once the matter was settled in 2003, judgment of the Jabalpur Bench of the Tribunal cannot be a cause of action to raise a fresh claim.

11. Respondents further referred to OM dated 18.07.2001 relating to ACP, especially to clarification no.38, in which the following has been provided:

S.No.	Point of doubt	Clarification
		The ACP Scheme has been introduced to provide relief in cases of acute stagnation where the employees, despite being eligible for promotion in all respects, are deprived of regular promotion for long periods due to non-availability of vacancies in the higher grade. Cases of holders of isolated posts have also been covered under ACPS, as they do not have any promotional

		avenues. However, where a promotion has been offered before the employee could be considered for grant of benefit under ACPS but he refuses to accept such promotion, then he cannot be said to be stagnating as he has opted to remain in the existing grade on his own volition. As such, there is no case for grant of ACPS in such cases. The official can be considered for regular promotion again after the necessary debarment period.
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12. We have heard the learned counsel for the parties, gone through the pleadings available on record and judgments cited by either side.

13. The original cause of action clearly arose when the respondents issued order dated 3.04.2003. The applicant slept over the matter for 11 years and there is no application for condonation of delay either. Only submission made in the OA is that the grievance relates to pay and allowances, which is a recurring cause of action.

14. In view of the judgments cited by the respondents, clearly there has been unprecedented delay in filing of OA, which cannot be condoned and the OA is not maintainable on the ground of limitation itself.

15. Even on merits, the respondents have demonstrated that ACP guidelines do not permit ACP benefits in case an employee who has refused to accept promotion on being offered.

16. In view of the position explained in explanation 38 in OM dated 18.07.2001, no case for grant of upgradation under ACP is made out. Even, in the case of Shri D.C. Jain (supra), in para 5 of its order, the Tribunal had noted that "where a promotion has been offered before the employee could be considered for grant of benefit under ACPS, but he refuses to accept such promotion, then he cannot be said to be stagnating as he has opted to remain in the existing grade on his own volition. As such there is no case for grant of ACPS in such cases. In this view of the matter, the claim of applicant No.2 is not sustainable."

17. In case of the applicant, he was offered promotion on 15.07.1997 i.e. before the second ACP became due on 12.05.2000. Even in D.C. Jain (supra), the Tribunal held that applicant no.2, Shri K.R. Khan's claim is not sustainable as he was promoted as Investigator in June 1998 but subsequently sought reversion to the post of UDC, on which he was reverted with effect from 15.09.1988 i.e. before the ACP was due.

18. In view of above discussion, the OA is neither maintainable

on limitation nor on merits. It is, therefore, dismissed. No costs.

(Raj Vir Sharma)
Member (J)

(P.K. Basu)
Member (A)

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