

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

OA No.3755/2016

Reserved on: 26.10.2018
Pronounced on:

Hon'ble Ms.Praveen Mahajan, Member (A)

1. Bachan Ram , Aged 61 Years,
S/o Sh. Sadari Ram,
Retired Chargeman, from
Field Gum Factory, Kanpur,
Presently R/o plot No.222, Sanik Enclave,
Sector-I, Mohan Garden,
Uttam Nagar,
New Delhi.

2. Bharat Ram, Aged 68 Years,
S/o Late Sh. R.N. Ram,
Retired Supervisor NT, from
Field Gum Factory, Kanpur,
Presently R/o A-30, Nanke Park,
Matiyala Road, Uttam Nagar,
New Delhi-59. Applicants

(By Advocate: Shri Yogesh Sharma)

Versus

1. Union of India through the Secretary,
Department of Defence Production,
Ministry of Defence, Govt. of India
South Block,
New Delhi.

2. The Chairman,
Ordnance Factory Board,
Ministry of Defence,
10A, Shahid Khudi Ram Boss Road,
Calcutta.

3. The General Manager,

Field Gum Factory,
Distt. Kanpur (U.P.).

..... Respondents

(By Advocate: Ms. Harvinder Oberoi)

ORDER(ORAL)

Through the medium of the OA the applicant has sought the following relief:-

"(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 29.03.2016 (Annex.A/1 Colly) declaring to the effect that the same are illegal, arbitrary and discriminatory and consequently pass an order directing the respondents to treat the appointment of the applicants to the post of LDC as a fresh/direct appointment for the purpose of granting the financial benefits of the judgments dated 17.12.12 and dated 10.10.2013 passed by Chandigarh Bench in OA No.468-CH-2011 and in OA No.1399-CH-2013 and further pass an order directing the respondents to grant 2nd financial upgradation on completion of 24 of service under ACP scheme w.e.f. 23.1.2005 in the scale of Rs.5000-8000 (Grade Pay of Rs.4200/- w.e.f. 1.1.1996) to both the applicants and the 3rd financial upgradation to the applicant No.1 w.e.f. 23.1.2011 in Grade pay of Rs.4600/- under MACP scheme from due date with all the consequential benefits including the revision of retirement benefits with arrears of difference with interest.

(ii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicants along with the costs of litigation."

2. The brief facts of the case are that the applicant No.1 was initially appointed to the post of Lab 'B' on 23.12.1976 in Field Gun Factory, Kanpur. He was appointed to the post of Daftry on 2.1.1978 and to the post of Record Supplier on 8.11.1979. The applicant No.2 was also initially appointed to the post of Lab Attendant w.e.f. 19.9.1979. Both the applicants were appointed to the post of LDC on direct recruitment basis w.e.f. 23.1.1981 from Industrial Establishment to Non-Industrial Establishment. The applicant states there was no provision in the recruitment rules for promotion from

the Industrial Establishment to Non-Industrial Establishment and the applicants were appointed as LDC after qualifying the examination conducted by the respondents. Subsequently, on 19.9.1994 the applicants were promoted to the post of Supervisor in the pay scale of Rs.4000-6000/-. The applicant No.1 was promoted to the post of Chargeman w.e.f. 1.10.2010 in the Grade Pay of Rs.4200 (Rs.5000-8000/-) and retired from the service on 30.11.2014. The applicant No.2 retired on 09.8.1999.

3. The Govt. of India introduced ACP scheme for granting two financial upgradations to the Govt. servants on completion of 12 and 24 years of services in case of not receiving any promotion. Subsequently, on 1.9.2008 the MACP scheme was introduced for granting 3rd financial upgradation on completion of 10, 20 and 30 years of service. Both the applicants were due for 2nd financial upgradation on completion of 24 years of service w.e.f. 23.1.2005 i.e. from the date of appointment as LDC, since the applicants had already got their promotion to the post of Supervisor prior to 09.08.99. The applicant states that the respondents treated the appointment of the applicants to the post of LDC as promotion only because the post of LDC was in a higher pay scale. Otherwise, their appointment as LDC, was not made on the basis of seniority nor is there any provision available in recruitment rules for such 'promotion' to the post of LDC. The applicants aver that they were appointed as LDCs after qualifying an examination against the direct recruitment posts. This has wrongly been treated by the respondents as promotion instead of fresh recruitment and the applicants have not

been granted the due financial upgradation on completion of 24/30 years of the service as LDC under ACP/MACP scheme.

4. It is submitted that the applicants are entitled for financial upgradation under ACP/MACP as under:-

Applicant No.1

- (i) 2nd financial upgradation on completion of 24 of service under ACP scheme w.e.f. 23.1.2005 in the scale of Rs.5000-8000(Grade pay of Rs.4200/- w.e.f. 1.1.1996).
- (ii) 3rd financial upgradation on completion of 30 of service under MACP scheme w.e.f. 23.1.2011 in the Grade Pay of Rs.4600/-.

Applicant No.2

- (i) 2nd financial upgradation on completion of 24 of service under ACP scheme w.e.f. 23.1.2005 in the scale of Rs.5000-8000(Grade pay of Rs.4200/- w.e.f. 1.1.1996)

5. It is further mentioned that an identical situation, similarly placed employee, Sh. C.S. Naidu who was appointed as LDC in the same appointment order dated 23.1.1981, was granted his due financial upgradation w.e.f. 2005 in the year 2009/10. This fact was brought to the notice of respondents through representation dated 19.2.2011 of applicant No.1, who was informed that the matter is under consideration with the Ordnance Factory Board. When no decision was received, the applicant made further representations on 26.8.2012 and 07.06.2013, and received similar replies. The applicant then sought information through RTI Act wherein he was

again informed that the matter is pending with the Ordinance Factory Board.

6. Some similarly situated persons, appointed to the post of LDCs, approached CAT Chandigarh in OA-468/CH/2011 seeking the relief of financial upgradation under the ACP scheme. The OA was allowed vide order dated 17.12.2012 with the following observations:

“ We have not been made able to persuade ourselves to agree with the plead raised on behalf of the respondents. Annexure A/4 cannot be appreciated in isolation and it has to be appreciated in conjunction with Annexure R/2 whereby applications for the relevant placement had been invited. The mere fact Annexure A/4 mentions expression, promotions/appointments in the subject would not outweigh the plea raised on behalf of the applicants which (Plea) is cemented by the contents of Annexure R/2.

5. In the light of the above discussions, we would allowed the O.A. with a direction to the respondents to grant to the applicants both the ACPs on a finding that the grant of placement to them as LDCs came about by way of fresh appointment and no by way of promotion.”

The aforementioned judgment of the Tribunal has been implemented by the respondents by treating appointment of the applicants to the post of LDC as fresh appointment. Accordingly they have been granted financial upgradation under the ACP scheme. The applicant has further relied upon another decision in the case of **Ajit Singh & Ors. Vs. UOI & Ors.**-1399/CH/2013 decided by Chandigarh Bench in favour of the applicants on 10.10.2013.

7. The applicants submit that they are similarly situated persons, appointed in the same manner, as the applicants in OAs.468/CH/2011 and OA-1399/2013. They submitted their legal notice to the competent authority for seeking similar benefits by considering their appointment to the post of LDC as fresh

appointment. The applicant filed an OA No.4685/2015 in PB CAT which was decided on 23.12.15 directing the respondents to consider the legal notice in 90 days. After examining their case, the respondents have rejected the claim of the applicants on 29.03.2016 without taking into account the issues considered in judgment of the Chandigarh Bench.

8. In the counter affidavit, the respondents have taken a preliminary objection that the OA is barred by limitation as per CAT Act, 1985. Respondents contend that mere representation and legal notice cannot be a ground to extend the limitation as per Hon'ble Supreme Court's judgment in Sabarwal's case.

The respondents further contend that as per the existing SRO No.(14)E dated 14.05.1989 of LDC there is a provision to fill 10% vacancies in the post of LDC from Group 'D' employees of the department. The applicants appeared in the departmental exam and got promoted. It is stated that the case of C.S.Naidu referred to by the applicant in the OA is also under review.

9. During the course of hearing, learned counsel for the applicant Shri Yogesh Sharma, reiterated the issues already raised in the OA - relying upon the judgments of Chandigarh Bench. Per contra, learned counsel for the respondents Ms.Harvinder Oberoi argued that the OA is hit by limitation and the judgments cited by the applicant are not applicable to him.

10. I have gone through the facts of the case and considered the rival submissions. The issue has been dealt with at length in OA 468-CH-2011 dated 17.12.2012, and OA No. 1399/2013. The applicants

in the said OA were similarly placed as the applicants in the current OA. The financial upgradation to those applicants, (similarly placed), were granted under the ACP and MACP scheme. It was held that appointment to the post of Lower Division Clerk from Group D, through departmental examination, was a fresh appointment and not, a promotion. I am not impressed by the argument advanced by the respondents that these are judgments in persona – since the issue involved pertain to policy interpretation and is not limited to redressal of an individual grievance.

11. Following the same rationale, as adopted in OA No.468/2001 and OA No.1399/2013, I direct the respondents to treat the appointment of the applicant to the post of LDC as fresh appointment for the purpose of grant of financial upgradation under ACP/MACP scheme. The impugned order dated 29.03.2016 is accordingly set aside. The benefits of judgments dated 17.12.2012 and 10.10.2013 passed by Chandigarh Bench in OA No. 468/2001 and OA No. 1399/2013 may be granted to both the applicants (if they are similarly placed) with all consequential benefits. Both the applicants may be given their respective dues, from respective dates, as mentioned in the relief claimed by them. The arrears of difference of pay may also be granted, as per law. However, I am not inclined to grant any interest on the same. OA is disposed of with these directions. No costs.

**(Praveen Mahajan)
Member(A)**

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