

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

Order reserved on: 05.10.2018

**ORIGINAL APPLICATION NO. 060/01094/2017
& M.A. No. 1389/2017**

Chandigarh, this the 18th day of October, 2018

...

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MRS. AJANTA DAYALAN, MEMBER (A)**

...

Sant Ram son of Sh. Raja Ram, age 59 years, resident of House No. 2053, Sector 25-D, Chandigarh (Group-C).

....APPLICANT

(By Advocate: Shri R.P. Rana, Advocate)

VERSUS

1. Union of India through its Secretary to Ministry of Industries, Govt. of India, Udyog Mantralaya, New Delhi.
2. The Director General, National Productivity Council, Utpadkta Bhawan, 5-6, Institutional Area, Lodi Road, New Delhi-11003.
3. The Regional Director, National Productivity Council, SCO No. 40, Sector 7-C, Madhya Marg, Chandigarh.

....RESPONDENTS

(By Advocate: Shri Suresh Verma)

ORDER

AJANTA DAYALAN, MEMBER (A)

The present Original Application (O.A.) has been filed by the applicant feeling aggrieved by order dated 28.1.2016 (Annexure A-1) and order dated 5.5.2017 (Annexure A-2) praying for quashing of these orders. The applicant has also prayed for his pay fixation on promotion w.e.f. 24.1.2014 from the post of MTS to the post of Clerk-cum-Typist alongwith consequential benefits.

2. The applicant was appointed as Peon and joined as such on 6.1.1984 in the scale of Rs. 196-232. The pay scale was revised to Rs. 750-940 w.e.f. 1.1.1986. As per the policy of the respondent department for Group-C & D employees, as he could not get any promotion within 10 and 20 years of service, he was placed in the pay scale of Rs. 800-1150 w.e.f. 6.1.1994 on completion of 10 years of service and in the pay scale of Rs. 3050-4590 with effect from 6.1.2004 after completion of 20 years of service. The pay scale of Rs. 3050-4590 was revised to Rs. 5200-20200 plus 1900 grade pay w.e.f. 1.1.2006.

3. The applicant passed the Hindi test in 1997 and also qualified the typing test on computer in 2005. As the applicant was not being promoted, he approached the Lok Adalat of CGIT Chandigarh. The dispute was disposed of vide order dated 28.7.2008 that whenever any vacancy in class III is available, the name of the applicant will be considered for promotion on priority basis. This settlement was forwarded by respondent no. 3 to respondent no. 2 vide letter dated 22.10.2008. The applicant made representations from time to time for his promotion as the vacancies become available. However, the respondents vide order dated 26.6.2014 promoted one employee namely Om Parkash as Hindi Typist who was junior to the applicant, being at serial no. 24 in the seniority list and had joined the department only in 1997, whereas the applicant had joined in 1984 and was at serial no. 3 in the seniority list. The applicant challenged the promotion of Om Parkash as Hindi Typist in O.A. NO. 60/00993/2014 which was

disposed of vide order dated 15.9.2015 (Annexure A-3) whereby the impugned order dated 26.6.2014 was set aside and the respondents were directed to consider the claim of the applicant for promotion as Clerk-cum-Typist within one month.

4. In compliance of direction of the Tribunal, the respondents issued order dated 16.10.2015 (Annexure A-4) promoting the applicant as Clerk-cum-Typist w.e.f. 24.1.2014. Letter dated 3.12.2015 (Annexure A-5) was also issued by the respondents assigning the duties which indicated higher level of responsibilities. The counsel for the applicant argued that the pay of the applicant was accordingly to be fixed by giving one increment as per FR 22 (I). However, the pay of the applicant was not so fixed and no option was sought from him at the time of his promotion whether he wants his pay fixed from the date of promotion or from the date of accrual of his annual increment. Representation of the applicant dated 30.11.2015 and dated 19.1.2016 elicited internal correspondence within the respondent department vide letter dated 28.1.2016 stating that the applicant is not entitled to the said pay fixation benefit. Copy of this letter was obtained from the respondents by the applicant and he again made representation dated 10.2.2016 and also got legal notice dated 10.4.2017 served on respondents vide Annexures A-6 to A-9.

5. The applicant's case is that though he was placed in the pay scale of Rs. 800-1150 w.e.f. 6.1.1994 and in the pay scale of Rs 3050-4590 w.e.f. 6.1.2004 due to stagnation in promotion, this placement was within the Group-D category and there was no

promotion to higher post and no promotional benefits were given to him. He was also not given benefit of FR 22 C at that time. As he has now been promoted from Group-D to Group-C and is discharging duties of higher nature and responsibility as is evident from letter dated 3.12.2015 of the respondent department, his pay is now required to be fixed under FR 22 (1) (a). He has also quoted the case of **B.D. Verma vs Union of India** – SLJ 1988 (2) page 581 that when an employee has been promoted to the higher post in the same pay scale carrying the duties of higher responsibility, his pay is required to be fixed on his promotion.

6. The respondents have argued that in compliance of the order of this Tribunal dated 15.9.2015 in O.A. No. 60/993/2014, the applicant has been promoted as Clerk-cum-Typist w.e.f. 24.1.2014. It has been clarified by the respondents to the applicant at the time of his promotion itself that there will be no increase in his pay due to promotion since he was already drawing the pay scale after availing the 2nd financial upgradation after 20 years of service. Further, it is argued that after availing 2nd financial upgradation under Next Higher Scale Scheme, which is like ACP Scheme of Government of India, the applicant was already in the pay scale of PB-2 of Rs. 5200-20200 plus 1900 GP. Hence after promotion from MTS to Clerk-cum-Typist, he was given the same pay scale though his designation was changed. As regards the higher duties and responsibilities on promotion, the scope was limited as erstwhile Group-D category was merged with Group-C after implementation of the 6th Pay Commission recommendations. It is also stated that

though the work allocation was informed to him but in practice, the applicant was not shouldering higher responsibilities. It is also stated that as per administrative instructions no. 365/97 dated 18.9.1997, FR 22C was replaced by FR 22(i) (a) 1 though the contents remain the same and the option is to be exercised only once - either at the time of change of scale or at the time of promotion. The department has stated that no option was obtained from him at the time of change of scale as the date of promotion was not known at that time and the promotional benefits would not be foregone due to uncertainty of promotion. Further, it is stated that the respondent department has a post of Junior Assistant in the next scale with grade pay of Rs. 2400 which is the promotional post for Clerk-cum-Typist. As the applicant is only Clerk-cum-Typist, he cannot be granted grade pay of this post.

7. The respondents have further stated that all similarly situated employees are being treated alike and after change of pay scale under financial upgradtions, their pay has not been refixed after their promotion.

8. They have also categorically stated that under the MACP Scheme of Government of India, in para 4 of Annexure-1 on page 4 the following provisions is made:-

“There shall, however, be no further fixation of pay at the time of regular promotion if it is in the same grade pay as granted under MACPS. However, at the time of actual promotion if it happens to be in a post carrying higher grade pay than what is available under MACPS, no fixation would be available and only difference of grade pay would be made available. After availing financial upgradation under MACPS, if the Government servant gets his regular promotion in the hierarchy of his cadre, he will only be granted the difference of grade pay. No additional increment will be granted at this stage.”

Further, Department of Personnel & Training Office Memorandum no. 35034/3/2008-Estt. (D) (Vol. II) New Delhi 110001 dated the 4.7.2017 (Annexure R-1) clarification regarding MACPS also corroborates the same as follows:-

“There shall however be no further fixation of pay at the time of regular promotion/grant of Non functional scale if it is in the same grade pay as granted under MACPS. However, at the time of actual promotion/Non Functional Scale, if it happens to be in a post carrying higher grade pay than what is available under MACPS, no pay fixation would be available and only difference of grade pay would be made available.”

The respondents have thus averred that the pay of the applicant was rightly fixed on his promotion. He was allowed usual increment w.e.f. 1.7.2015 since he got promoted on 24.1.2014 and the increment could not be given before completion of 6 months from the effective date of promotion i.e. 24.1.2014.

9. The applicant has filed rejoinder wherein he has reiterated his earlier submissions and has basically pleaded that the Government of India ACP and MACP Schemes are different from the Scheme of respondent department as 3rd stage upgradation is not available in their Scheme and accordingly O.M. dated 4.7.2017 Annexure R-1 is not applicable to the applicant. It is also pleaded that the respondents have quoted administrative instructions dated 18.9.1997, but these have not been placed on record. The applicant has reiterated that his pay fixation needs to be made after granting him one increment with effect from date of his promotion from 24.1.2014 as he was performing duties of higher nature and responsibilities.

10. We have heard the learned counsels for the opposing parties, gone through the pleading available on record and given our thoughtful consideration to the matter.

11. The issue for consideration before us is whether in case where government employees is first granted benefit of financial upgradation due to lack of promotion and is later promoted, the pay fixation needs to be done again at the time of promotion. Other issue like whether the applicant was actually performing the higher duties assigned to him or these were only in namesake is not relevant to the decision in the case as the duties were assigned by the respondent department through a formal order and if the duties actually performed by him are at variance with these duties, then the department itself would be at fault. The pleading that ACP and MACP Schemes of Government of India and the Scheme of the respondent department are different as the respondent department allows only 2 financial upgradations whereas MACP Scheme of Government of India allows 3 financial upgradations, is correct to this limited extent. However, the basic concept of financial upgradation schemes and the principles followed therein do not change because of these variations in the details of the Scheme. The basic concept is that financial upgradations are allowed to a government servant so that he does not lose out financial benefits due to lack of promotion. Hence, the schemes allow the government servants to get the benefit of financial upgradation that he would have got had he been promoted but could not be promoted due to lack of promotional avenues.

Accordingly, financial upgradations are usually made in the higher post in the hierarchical order of the post government servant was holding. It is true that he would still not be performing duties of higher level and so would not be equivalent to the persons promoted on regular basis on issues such as number of employees working under him etc. But, after financial upgradations, he would at least not be at monetary loss vis-a-vis pay and allowances as well as his other entitlements like travelling allowance etc. Having once been granted financial upgradations due to lack of promotion, the employee would obviously not be entitled to benefit of refixation of pay on grant of actual promotion. Hence, both ACP and MACP Schemes contain specific provisions to the effect that no further pay fixation would be required to be done on grant of actual promotion if financial upgradation has already been granted to the government employee in that scale and grade pay. This logic will work equally for respondent department's financial upgradation Scheme. It stands to logic as the employee cannot get two benefits of pay fixation - first under financial upgradation because he could not get promoted and thereafter again on his actual promotion.

12. The fact that earlier the applicant was granted financial upgradations within Group-D category whereas Clerk-cum-Typist post is in Group-C category is not relevant. The applicant was promoted to this post in 2014 when Group-C & D categories were merged post implementation of 6th Pay Commission recommendations. Even otherwise, the erstwhile Group-D category itself was not a single entity or cadre. There were number of

promotional levels even within Group-D category and the same is the case for Group-C category. The respondent department has clearly stated that the next level is of grade pay Rs. 2400 for the post of Junior Assistant which is the promotional post for Clerk-cum-Typist and hence this grade can obviously not be granted to the applicant who is only a Clerk-cum-Typist.

13. The respondent department has also clarified that all other employees who have been financially upgraded and later promoted have been treated like the applicant. Hence, we see no reason to make an exception for the applicant. If relief is granted to him, it will upset the basic principle that is being followed by the respondent department. It will also upset hierarchal structure being followed by the department as he would then be getting salary of the post of Junior Assistant which is the promotional post for him whereas he is presently only a Clerk-cum-Typist.

14. Even the case quoted by the applicant in his favour i.e. B.D. Verma (supra) does not help him. This case does not refer to financial upgradations already granted and the treatment in such cases.

15. This O.A. is also time barred. The M.A. No. 60/1389/2017 has been filed by the applicant seeking condonation of delay of 227 days. However, this delay is worked out with reference to rejection of the claim of applicant on 5.5.2017. This, however, is incorrect as the applicant could have approached the Tribunal in case his representation was not decided within 6 months by the respondent department. Section 21 of the Administrative Tribunals Act, 1985 is

very clear in this regard and takes into consideration all these contingencies such as when the department does not take a decision on the representation of the applicant. The applicant must be in receipt of his pay every month and would obviously be aware of the amount of pay being drawn by him and as such, he cannot plead ignorance to this fact. The cause of action therefore arose immediately after 24.1.2014 when the applicant was promoted and his pay was fixed and so he should have approached the Tribunal 6 months thereafter and not in September 2017 when the O.A. was filed. The reasons for condonation of delay are only reiteration of facts of the case and different representations made by him and do not at all explain as to why he failed to approach the Tribunal in time. We, therefore, find the claim to be time barred with no sufficient cause for filing O.A. belatedly. Consequently, M.A. No. 60/1389/2017 stands dismissed.

16. In view of all the above observations, we find the O.A. to be time barred by limitation as well as devoid of merits. Hence we find no reason to interfere in the impugned order and dismiss the O.A. as well as M.A. No costs.

(AJANTA DAYALAN)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 18.10.2018
`SK'

