

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O. A. No. 260/00871 OF 2013
Cuttack, this the 25th day of May, 2018

CORAM
HON'BLE MR. S. K. PATTNAIK, MEMBER (J)
HON'BLE DR. M. SARANGI, MEMBER (A)

.....

Sri Chandra Sekhar Behera,
aged about 61 years,
Son of Sri Ananat Charan Behera, retired UDC,
O/o the Institute of Hotel Management Catering Technology
& Applied Nutrition, Bhubaneswar-751007 and
resident of Qr. No. E/4, IHM Staff Qrs.,
Unit-IX, Bhubaneswar-751022.

...Applicant

(By the Advocate- M/s. A. K. Mohanty, D. K. Mohanty, P. K. Kar)

-VERSUS-

Union of India Represented through

1. Secretary, Ministry of Tourism, Government of India, Tusa Complex, New Delhi-110001.
2. The Principal, Institute of Hotel Management Catering Technology & Applied Nutrition, VSS Nagar, Bhubaneswar-751007.
3. The Chairman, Board of Governors, Institute of Hotel Management Catering Technology & Applied Nutrition, VSS Nagar, Bhubaneswar-751007.

...Respondents

(By the Advocate- Mr. S. Behera)

.....

O R D E R

S. K. PATTNAIK, MEMBER (J):

The applicant, Sri Chandra Sekhar Behera, a retired Upper Division Clerk, O/o Institute of Hotel Management Catering Technology & Applied Nutrition, Bhubaneswar, has filed this second round of

litigation with the following prayers:

“A) To quash the office order dated 20.11.2013 (as per annexure A/15) regarding withdrawal of 2nd financial up-gradation granted to the applicant and consequently to quash Annexure A/16 which was pursuant to Annexure A/15 for being illegal, irregular and not sustainable in the eye of law.

B) To direct the respondent No. 2 to refund the amount of Rs. 2807/- which has been illegally recovered from the salary of the applicant for the month of May, 2012 with simple interest @ 18% p.a from 01.06.2012 till the date of actual refund.

C) To issue any other order or orders, direction or directions as it deems fit and proper in the interest of justice.

D) To order and direct the cost of litigation be paid to the applicant by the respondent No. 2 for unnecessarily dragging the applicant in to this unwarranted and avoidable litigation.”

2. Undisputedly, the applicant, who was a Matriculate, was initially appointed in the Institute as LDC on 28.02.1980 and, thereafter, promoted to the post of UDC on 05.05.1986. He was not sanctioned the first financial upgradation because of his promotion to UDC. However, after completing 24 years of service, he was granted second financial upgradation under ACP to the scale of pay of Rs. 4500-7000/- w.e.f. 27.02.2004 vide order dated 22.11.2005. The ACP Scheme was replaced by MACP w.e.f. 01.09.2008, accordingly, the third financial upgradation was granted to the applicant after completion of 30 years of service, i.e. on 27.02.2010. While the matter stood thus, vide order dated 07.05.2012 (Annexure-A/8), the second financial upgradation granted to the applicant under ACP was withdrawn w.e.f. 27.02.2004 thereby reducing

his pay from Rs. 5375/- to Rs. 5300/- and the applicant was allowed second financial upgradation under MACP Scheme w.e.f. 01.09.2008 in addition to grant of third financial upgradation under MACP w.e.f. 27.02.2010. Being aggrieved, the applicant had filed O.A. No. 453/2012. As the withdrawal of the second financial upgradation under ACP was without complying with the principle of natural justice, this Tribunal disposed of the O.A. on 22.08.2013 with direction to the Respondents to act upon only after complying with the principle of natural justice. Consequently, the applicant was given opportunity but finally the Respondents rejected the representation of the applicant vide impugned order under Annexure-A/15 dated 20.11.2013 and, consequential order under Annexure-A/16 dated 20.11.2013. Hence, this O.A.

3. The Respondents filed counter contesting the case of the applicant in the light of the stand taken in the impugned order under Annexure-A/15 dt. 20.11.2013 and it would be suffice to quote the relevant portion of the order under Annexure-A/15 dt. 20.11.2013, which runs thus:

“This has reference to your representation dated 12th Nov. 2013 the point wise reply to your submission is as follows:-

1. It is not a fact that you were appointed as LDC on 25/02/1980, you were appointed as Typist-cum-Clerk on 27th February, 1980. You were promoted to the post of UDC on 5th May 1986 as per the Recruitment Rules i.e. Recruitment Rules 1984 as Graduation was not required as educational qualification. Since you were promoted to the Post of UDC during the first 10 years of your regular service, there was no need to consider financial up-gradation under ACP Scheme.

2. *On completion of 24 years of service i.e. on 27.02.2004 you were granted second financial up-gradation to the next higher scale of Pay of Rs. 4,500-7,000/- under ACP Scheme when Recruitment and Promotion Rules 2003 was in operation. As informed in our earlier letter No. 1266 dated 06.11.2013, next higher scale is only applicable to isolated posts and not to the post you held as the same is having defined hierarchy in the Institute. Since you did not possess required qualification i.e. Graduation for promotion to the next higher post according to the existing hierarchy of the Institute at the time of your becoming eligible for 2nd financial up-gradation i.e. on 27.02.2004, allowing you the next higher scale of pay was found erroneous on subsequent examination in compliance to audit objections and hence withdrawn.*

3. *In fact MACP scheme came into force with effect from 01.09.2008 which provides three financial up-gradations during service period of an employee ie. After completion of 10, 20 and 30 years of service to those who have not otherwise financially benefited during this period. Since you were promoted to the post of UDC on 5th May, 1986 having consequential financial benefits against ten years of your regular service and your 2nd ACP allowed erroneously to the next higher pay scale was withdrawn, two more financial up-gradation have been allowed through increase in pay (by raising 3% in the total pay in pay band) and grant of next two grade pays i.e. Rs. 2,800 and Rs. 4,200/- with effect 01.09.2008 and 27/02/2010 respectively making a total of 03 financial up-gradations for your 30 years of service in this Institute as per the provision.*

4. *You have not interpreted correctly the adjudication of Hon'ble Tribunal which has not held withdrawal of 2nd financial up-gradation allowed earlier w.e.f. 27/02/2004 under ACP Scheme as wrong. Hon'ble Tribunal has quashed orders dated 7th and 24th May, 2012, as the same were issued without hearing your submissions and issue of a reasoned order before withdrawal.*

Your submission dated 12th November, 2013 are not in conformity with ACP rules and hence not found satisfactory to allow 2nd Financial Up-gradation to the

next higher scale of pay of Rs.4,500-7,000/- with effect from 27.02.2004, as it will be gross violation of ACP Rules.

Therefore, withdrawal of next higher scale of pay of Rs. 4,500-7000/- allowed under 2nd financial up-gradation as communicated by this office order No. 270 dated 07.05.2012 and order No. 554 dated 24.05.2012 are being amended accordingly and issued afresh according to ACP rules. Copies of which will be sent to you also.

With the above and reasoned official positions the matter is disposed off in compliance to the Hon'ble Tribunal's order dated 22nd August 2013. "

4. Admittedly, the applicant did not fulfill the eligibility educational qualification for holding the promotional post to the scale of pay meant for the post granted to him under second financial upgradation under ACP on 27.02.2004. Under the ACP Scheme, second financial upgradation shall be available if no regular promotion during prescribed period, i.e. 12 and 24 years, has been availed of by the employee. The clarification issued by the Govt. of India, Department of Personnel and Training vide O.M.No. 35034/1/97-Estt(D) Vol. IV dt. 18.07.2001 provides that in terms of condition No. 6 of Annexure-1 to DoP&T O.M. dt. 09.08.1999 only those employees who fulfill all promotional norms are eligible to be considered for the benefit under the ACP Scheme. As per the Scheme, stipulations and conditions specified in the Recruitment Rules for promotion to next higher grade would need to be met even for grant of the benefit of financial upgradation under ACP. As the applicant did not possess the eligibility criteria as provided in the Recruitment Rules, grant of second financial upgradation under ACP Scheme is

dehors the ACP Scheme. In the case of ***Kumar Bajaj & Ors. Vs. UOI & Ors. [W.P.(C) No. 1302/2002]***, the Hon'ble High Court of Delhi has observed as under:

“8. We agree with the view taken by the Tribunal, more so when the Tribunal has come to a conclusion that the educational qualification of degree from a recognized University is pre-requisite for promotion. That apart perusal of the writ petition shows that the petitioners are not denying the fact that a degree from a recognized University is pre-requisite for promotion. Their case in the writ petition is primarily is that persons junior to them with a degree qualification have been given the benefit of Second Financial Upgradation. It is a circumstance which has arisen because of the peculiar condition laid down in the Recruitment Rules and the ACP Scheme, as framed by the Government of India. No benefit of Second Financial Upgradation would accrue to the petitioners under the ACP scheme, in view of the fact that they do not possess requisite educational qualification for promotion”. (emphasis supplied)

5. In view of the position stated above, we do not find any illegality in the order impugned calling for our intervention. However, as the payment made to the applicant is not attributable to him and since the applicant is a Class III retired employee, there shall be no recovery as it would cause financial hardship to him.

6. As a result, this OA is disposed off accordingly. Parties to bear their own costs. No costs.

(M. SARANGI)
Member (Admn.)

(S.K.PATTNAIK)
Member (Judl.)