

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.747 of 2012

Reserved on: 26.10.2018

Order pronounced on: 31.10.2018

Between:

N.D. Mallikarjuna Serma, S/o. Late N.V. Anjaneya Sarma,
Aged 67 years, Retd. Assistant Accountant,
R/o. No. 42-23/37, Gayathri Nagar (East),
MJ Colony, Street No.2, Moulali, Hyderabad – 500 040.

...Applicant

And

1. Union of India, Rep. by the Secretary,
Department of Atomic Energy,
Anushakthi Bhawan, C.S.M. Marg, Mumbai – 400 039.
2. The Chief Executive, Nuclear Fuel Complex,
ECIL Post, Hyderabad – 500 062.
3. The Administrative Officer, Nuclear Fuel Complex,
ECIL Post, Hyderabad – 500 062.

...Respondents

Counsel for the Applicant ... Dr. P.B. Vijays Kumar

Counsel for the Respondents ... Mr. V. Vinod Kumar, Sr. CGSC

CORAM:

Hon'ble Mr. B.V. Sudhakar ... *Member (Admn.)*
Hon'ble Mr. Swarup Kumar Mishra ... *Member (Judl.)*

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

The OA is filed for not granting the second financial upgradation in the pay sale of Rs.7450-11500 in the grade of Assistant Accounts Officer w.e.f. 09.08.1999.

2. Facts of the case as per the OA are that the applicant joined the respondent department as UDC on 31.12.1970. He was promoted to the post of Assistant Account on adhoc basis w.e.f. 11.11.1974 and continued to work in the said cadre till 15.07.1987 with intermittent breaks. Thereafter, he was reverted back to the post of UDC. Subsequently, he was appointed to officiate as Senior Accounts Clerk on 27.11.1989. On being reverted to the post of UDC w.e.f. 14.07.1987, the applicant approached this Tribunal in OA No. 417/1988 praying for regularization in the post of Assistant Account. The OA was allowed ordering that the applicant should be regularized in the grade, if need be, by giving him exemption to pass relevant test in relaxation of rules. The respondents have promoted him as Assistant Accountant w.e.f. 14.06.1990 and accordingly, he continued as Assistant Accountant without any further promotion. The respondents vide letter dt. 17.11.1999, as per the version of the applicant, have stated that creation of Senior Accounts Clerk cadre was not justified and it should be treated as wasting cadre. Therefore, based on the said letter, it is evident that the applicant has got only one promotion to the post of Assistant Accountant. Hence, he is entitled for second financial upgradation under ACP Scheme w.e.f. 9.8.1999 since he has completed 24 years of service on 31.12.1994 by ignoring his appointment as Senior Accounts Clerk vide proceedings dated 15.12.1989. The applicant represented on 20.01.2000, but it was turned down vide letter dated 17.08.2001 by the respondents on grounds that he has earned two promotions – one as Senior Accounts Clerk as on 27.11.1989 and another as Assistant Accountant w.e.f. 14.06.1990. Aggrieved by the rejection, the present OA has been filed. Further, the applicant relies upon the DOPT OM dt. 18.07.2001, which states as under:

“Where all the posts are placed in a higher scale of pay with or without a change of the designation without requirement of any new qualification

holding the post in the higher grade, not specified in the Recruitment Rules for the existing post and without involving any change in responsibilities and duties, then placement of all the incumbents against such upgraded posts is not treated as promotion/ upgradation.”

Based on the above, when he represented on 15.09.2001, the respondents rejected his claim quoting DOPT OM dated 18.07.2001 claiming that he got two promotions and challenging the rejection order, the applicant moved this Tribunal in OA No. 349/2003, which was disposed on 09.06.2005 as not pressed for on ground that the grievance of the applicant has been redressed. The main grievance of the applicant is that the said pay scale was given as per the periodical increase in the pay and that his claim to the pay scale of Rs.6500-10500 was revised by order dated 7.3.2005 with retrospective effect from 01.01.1996. The applicant moved the Hon'ble High Court in WP No. 21932/2006 wherein he was directed to make a representation vide order dated 14.07.2008. Accordingly, the applicant made a representation on 19.06.2009, which was rejected by the respondents. Hence, he has filed the present OA.

3. The contention of the applicant is that his appointment in the post of Senior Accounts Clerk was not placement in a higher scale of pay and should not be treated as promotion. Further, as per the respondents order dt. 17.11.1999 the Senior Accounts Clerk has been declared as a wasting cadre. As per the ACP Scheme, he is entitled for second financial upgradation after putting in 24 years of service w.e.f. 09.08.1999.

4. The respondents stated that the applicant was initially appointed as UDC on 30.12.1970 in the pay scale of Rs.1200-2040 (pre-revised). The respondents have restructured the accounts cadre and introduced a new grade of Senior

Accounts Clerk in the scale of Rs.1400-2300 (pre-revised). UDCs are required to be qualified in the departmental examination to get promoted as Senior Accounts Clerk. The applicant qualified in the written examination for the post of Senior Accounts Clerk, which was redesignated as Accounts Assistant. He was extended the pay fixation benefit under FR 22(I)(a)(1) at the time of his promotion to the post of Senior Accounts Clerk from 27.11.1989. Further as per the orders of this Tribunal in OA 417/88, the applicant was appointed in the grade of Assistant Accountant w.e.f. 14.06.1990 even without the applicant qualifying in the departmental examination. Thus, the applicant has secured two promotions namely as Senior Accounts Clerk and Assistant Account, the scale of pay of the post of Assistant Account being Rs.1640-2900. It is evident that the financial jump has been obtained by the applicant and therefore, he is not eligible for financial upgradation under ACP Scheme.

5. Heard learned counsel and perused the records.

6. Facts of the case reveal that the applicant was appointed as UDC in the pre-revised scale of Rs.1200-2040. Thereafter, he passed written examination for the post of Senior Accounts Clerk in the scale of pay of Rs.1400-2300/-. He availed the pay fixation under FR 22(I)(a)(1) w.e.f. 27.11.1989. The applicant had approached this Tribunal in OA No. 417/1988 and pursuant to the order of this Tribunal he was promoted as Assistant Accountant w.e.f. 14.06.1990 in the scale of Rs.1640-2900. The contention of the applicant that as per the DOPT OM dt. 18.07.2001, the promotion to Senior Accounts Clerk should not be reckoned. This claim of the applicant does not hold good for the reason that the applicant has written the departmental examination and thereafter, he was promoted as Senior Accounts Clerk in a higher pay scale. In other words, it is a superior position to UDC involving higher responsibilities and higher pay.

DOPT has clarified vide OM dt.18.07.2001 against doubt No. 35 which reads as under:

“Clarification: Where all the posts are placed in a higher scale of pay, with or without a change in the designation, without requirement of any new qualification for holding the post in the higher grade, not specified in the Recruitment Rules for the existing post, and without involving any change in responsibilities and duties, then placement of all the incumbents against such upgraded posts is not be treated as promotion/ upgradation. Where, however, rationalization/ restructuring involves creation of a number of new hierarchical grades in the rationalized set up and some of the incumbents in the pre-rationalized set up are placed in the hierarchy of the restructured set up in a grade higher than the normal corresponding level taking into consideration their length of service in existing pre-structured/ pre-rationalized grade, then this will be taken as promotion/ upgradation.”

Thus, even as per the clarification given, the promotion as Senior Accounts Clerk has to be considered while granting financial upgradation. The claim of the applicant that the Senior Accounts Clerk is a dying cadre in no way comes to the rescue of the applicant since he has availed the financial benefit by working in the said cadre and making it personal to him. The motive of the ACP Scheme is to provide financial upgradation whenever there is stagnation. In case of the applicant, there is no stagnation and on the contrary, he got one promotion through departmental examination and the other one through the intervention of this Tribunal. Hence, the claim of the applicant for second financial upgradation is not justified.

7. Therefore, the OA fails and hence, is dismissed with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (JUDL.)

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 31st day of October, 2018

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