

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

ORIGINAL APPLICATION NO. 1041 OF 2013

Jabalpur, this Wednesday, the 3rd day of October, 2018

HON'BLE MR.NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR.RAMESH SINGH THAKUR, JUDICIAL MEMBER

Ram Vishal Pandey S/o Shri Sahdeo Pandey, Aged about 57 years,
Hindi Translator, Central Administrative Tribunal, Jabalpur
R/0 1728/5, Lane No.2, Anand Bhawan Road, Kanchanpur,
Jabalpur (M.P.)-482004 **- APPLICANT**

(Applicant in person)

Versus

1. Union of India through
The Secretary to Govt. of India, Department of Personnel
& Training, North Block, New Delhi-110 001

2. The Principal Registrar, Central Administrative Tribunal,
61/35, Copernicus Marg, New Delhi, PIN-110 001

3. The Joint Registrar, Central Administrative Tribunal,
15, CARAVS, South Civil Lines,
Jabalpur (M.P.) PIN-482001 **- RESPONDENTS**

(By Advocate – Shri S.K.Mishra)

(Date of reserving the order:03.08.2018)

ORDER

By Ramesh Singh Thakur, JM-

The applicant is aggrieved by denial of benefit of financial up-gradation under Assured Career Progression Scheme (hereinafter referred to as 'the ACP Scheme') in PB-3 Grade Pay Rs.5400/- of Assistant Director (O.L.).

2. The applicant had initially prayed for the following reliefs in this

Original Application:

“(8) Relief Sought

It is, therefore, prayed that the hon’ble Tribunal may kindly be pleased to order:-

(8.1) To quash the impugned clarification letter dated 04.07.2012 (Annexure A-1) issued by the Respondent No.1 along with all consequential Orders and pay fixation (Annexure A/2, A/3 and A/4) issued by the Respondents in pursuance thereof.

(8.2) To quash the impugned Order dated 21-03-2011 (Annexure A-5) which has illegally granted ACP in PB-2 Grade Pay Rs.4800/- in place of Rs.5400/-.

(8.3) To order the Respondents to Grant 1st up-gradation to the Applicant, in the revised pay structure PB-3 Grade Pay Rs.5400/- of Astd. Director (O.L.) w.e.f. 31-10-2007 in the hierarchy of Official Language posts as applicable in all Central Govt. offices on the basis of the recommendations of 5th and 6th CPC and orders of Govt. and pay arrears thereof.

(8.4) Any other direction which the hon’ble Tribunal may consider proper in the interest of justice to Applicant”.

However, subsequently through an MA No.200/00574/2014 he prayed for and was allowed to delete aforementioned relief clauses **(8.1)** & **(8.2)** and in their place was permitted to insert following relief clauses:

“(8.1) Issue suitable directions to Respondent No.1 against their clarification dated 04-07-2012 (Annexure A/1) which spoiled the very concept and spirit of ACP and which both the Respondent No.2 and Respondent No.3 interpreted arbitrarily.

(8.2) To declare DOP&T letter dated 12-05-2014 (Annexure A/48) unconstitutional to the extent it denies ACP in the hierarchy and promotional hierarchy defined by 5th and 6th CPC for Official Language posts for all central govt. offices”.

3. The brief facts of the case are that the applicant was working as Junior Hindi Translator in Gun Carriage Factory, Jabalpur. He joined the Central Administrative Tribunal, Jabalpur Bench on deputation on the post of Hindi Translator on 31.10.1995 (Annexure A-6) in the pay scale of Rs.1640-2900. After implementation of the recommendations of the 5th Central Pay Commission (for brevity 'CPC') his pay was revised to Rs.5500-9000 w.e.f. 01.01.1996. He was permanently absorbed in Central Administrative Tribunal with effect from 30.10.1998 vide order dated 16.11.1998 (Annexure A-6 colly.). After implementation of the recommendations of the 6th CPC, the Hindi Translators of the Central Administrative Tribunal were granted the revised Pay Band PB-2 and Grade Pay of Rs.4600/- in terms of the order dated 03.10.2010 issued by the DoPT (Annexure A-8). The DoPT vide order dated 22nd June, 2012 (Annexure A-17) accorded sanction of creation of additional 17 posts - 1 post of Assistant Director (Official Language) in PB-3 Grade Pay Rs.5400/-, 13 posts of Jr.Hindi Translator in PB-2 GP Rs.4200/- and 3 posts of Hindi Typist in PB-1 GP Rs.1900/- in Central Administrative Tribunal.

3.1. The Govt. of India vide O.M. dated 09.08.1999 (Annexure A-31) introduced the Assured Career Progression (for brevity 'ACP') Scheme based on recommendations of the 5th CPC in order to give financial relief to such government servants who face problems of genuine stagnation

and hardship due to lack of adequate promotional avenues. In terms of the said scheme, benefits are to be granted from the date of completion of 12 years of service, in the next higher grade in accordance with the existing hierarchy in a cadre/category of post without creating new posts for the purpose in terms of Para 7 of the ACP Scheme.

3.2. The applicant submits that the matter of hierarchy in case of isolated posts has been clarified in Point of Doubt No.10 of Annexure to OM dated 10.02.2000 (Annexure A-40) that “for isolated posts the scale of pay shall be same as those applicable for similar posts in the same Ministry/Department/cadre except where the Pay Commission has recommended specific pay scales for mobility under ACPs”. The DoPT is the same Ministry/Department for the employees of CAT, as per 5th CPC’s report (Annexure A-26). Hence, the applicant is entitled for the upgradation in the pay scale/grade pay of similar official language posts in DoPT i.e. under CSOLS which is uniformly applicable to all Central Government offices.

3.3 The applicant has further stated that DoPT has clarified the matter of upgradation in case of isolated posts vide Annexure to OM dated 18th July,2000 (Annexure A-36) – Point No.44 giving the example of an isolated post of Stenographer in pay scale Rs.4000-6000 in a non-secretariat office, where there was no promotional post, while there were two grades i.e. of Rs.5000-8000 (Steno Grade-II) and Rs.5500-9000

(Steno Grade-I) in the hierarchy of stenographers in other subordinate offices. It has been clarified that such isolated stenographer will be allowed 1st financial upgradation in the pay scale of Rs.5000-8000 as available in other subordinate offices and not in the immediate next pay scale of Rs.4500-7000. It has been further clarified in the last line of the said letter that *“A similar approach can be adopted in respect of all other isolated posts belonging to common categories for which pay commission has similarly recommended a uniform grade structure which has been accepted and notified...or agreed by the Govt., subsequently. If such an isolated post is in a Central Ministry/Department, then the structure as recommended and accepted for similar common category posts in Central Ministry/Departments may be adopted. If the isolated post is in a non-secretariat organization, then the uniform hierarchy as recommended for similar posts in the non-Secretariat organization may be followed”*.

3.4. The DoPT has further clarified the hierarchy applicable for ACP in Point No.56. As clarified, if the 5th CPC has recommended for adoption of uniform grade/cadre structure for certain cadre, it may be that in larger organizations, all hierarchical levels may be created, but in smaller organizations all levels may not have been introduced. In such cases, “in respect of common category posts, if the Govt. has accepted uniform standard hierarchical structure then ‘existing hierarchy’ in relation to such

common categories shall be the standard hierarchy as approved by the Government and not the hierarchy in a particular office, which for functional consideration may not have all the grades. If such financial upgradation are allowed keeping such local hierarchy in view, it will result in vast disparities in entitlement under ACPS for identical category of posts, which can not be justified". Similarly in case of Official Language posts, the 5th CPC has recommended a uniform hierarchy for all Central Govt. Offices and the Government has accepted the recommendations, but in many offices all the grades of hierarchy are not available, as in Central Administrative Tribunal, but the upgradation should be in the standard hierarchy as recommended by 5th CPC.

3.5. The applicant has further contended that the matter of merger of pay scales, where the feeder and promotional grades are merged, has been considered and clarified in Point of Doubt No.1 of Annexure to DoPT OM dated 10.02.2000 (Annexure A-35) that "Since the benefits of upgradation under ACP Scheme (ACPS) are to be allowed in the existing hierarchy, the mobility under ACP shall be in hierarchy existing after merger of pay scales by ignoring the promotion". It has been further clarified that "an employee who got promoted before merger of pay scales shall be entitled for upgradation under ACPS ignoring the said promotion as otherwise he would be placed in a disadvantageous position vis-a-vis the fresh entrant in the merged grade".

3.6 The applicant submits that in case of official language posts the hierarchical grades are well defined in all Central Govt. offices since creation of these posts by 4th CPC, 5th CPC and 6th CPC. The Ministry of Finance vide their OM dated 24th November, 2008 (Annexure A-33 colly.) has directed that w.e.f. 01.01.2006, all Ministries/Departments etc. are required to grant the revised pay scales approved for various posts in CSOLS to similarly designated Official Language posts existing in their subordinate offices.

3.7 The applicant contends that instead of granting the ACP on 31.10.2007 (i.e. on completion of 12 years) the respondents granted him the said benefit w.e.f. 01.09.2008 (after completion of 12 years & 10 month) by converting ACP into MACP.

3.8 The respondents granted 1st upgradation to the applicant under the ACP Scheme w.e.f. 31.10.2007 in pre-revised pay scale Rs.6500-10500 and granted the PB-2 GP Rs.4800/- vide order dated 21.03.2011 (Annexure A-5). Thereafter, the applicant vide his representation dated 07.07.2011 (Annexure A-41) requested for 1st ACP promotion in PB-3 GP Rs.5400/- as per the hierarchy of Grade Pay for official language posts in all Central Govt. offices. Since the same has not been granted, he has filed this Original Application.

3.9 During the course of arguments the applicant has further submitted that during the pendency of this Original Application, he has already retired on attaining the age of superannuation on 31.05.2016. He further submitted that initially the respondents had granted him the benefit of financial upgradation in the Grade Pay of Rs.5400/-, however, subsequently they had withdrawn it by making a huge recovery of Rs.3,36,632/- from his DCRG vide order dated 31.05.2016 (Annexure A-57).

4. As regards the request of the applicant to grant him first financial upgradation under ACP in the Grade Pay of Rs.5400/- in PB 3 applicable to the post of Assistant Director (OL) in the hierarchy of official language posts is concerned, the respondents have stated that the same is not admissible as the post of Assistant Director (OL) was created in CAT only in the year 2012 vide DOPT OM dated 22.06.2012 as such he can not be granted Grade Pay of Rs.5400/- in PB 3 under ACP w.e.f. 31.10.2007.

5. Heard the learned counsel for the parties and carefully perused the pleadings of the respective parties and the documents annexed therewith.

6. It is an admitted fact that the applicant was appointed on the isolated post of Hindi Translator on 31.10.1995 (Annexure A-6) on deputation and he was permanently absorbed on the said post in Central

Administrative Tribunal with effect from 30.10.1998 vide order dated 16.11.1998 (Annexure A-6 colly.). Accordingly, for the purposes of grant of financial upgradation under the ACP Scheme the applicant had completed 12 years regular service on 31.10.2007 and, therefore, he was entitled for 1st financial upgradation under the ACP Scheme. In terms of the said scheme, benefits are to be granted from the date of completion of 12 years of service, in the next higher grade in accordance with the existing hierarchy in a cadre/category of post without creating new posts for the purpose in terms of Para 7 of the ACP Scheme. In Point of Doubt No.10 of Annexure to OM dated 10.02.2000 (Annexure A-35) it has been clarified that “for isolated posts the scale of pay shall be same as those applicable for similar posts in the same Ministry/Department”. In the hierarchy, the next post for promotion to the Hindi Translator/Sr.Translator in the DoPT, at the relevant point of time, was of Assistant Director (Official Language) in the Grade Pay of Rs.5400/- in PB 3, as is evident from Annexure-A-53. However, the respondents had earlier granted him the benefit of financial upgradation in PB-2 Grade Pay of Rs.5400/-. We are fortified in our view by the decision of this Tribunal at Principal Bench in the matters of **Shri Ram Prasad Vs. Union of India and others**, OA No.2536/2008 decided on 19.05.2009 (Annexure A-56), wherein it has been clearly held that “applying the rationality of the clarification on Doubt 10, we find that for the isolated posts, the scales of

pay for ACPs shall be in the same as those applicable for similar posts in the same Ministry/Department/Cadre. Thus, the standard/common pay scale given in Annexure of ACP Scheme OM dated 09.08.1999 will not be applicable". Further, the Lucknow Bench of this Tribunal in the matters of **A.K.Rai Vs. Union of India and others**, Original Application No.6 of 2007 decided on 01.07.2009, has directed that the benefits given to Hindi Translators in CSOLS should also be extended to the applicant in the said case, who is similarly placed like the present applicant.

7. In the result, the Original Application is allowed. The respondents are directed to grant the benefit of 1st financial upgradation under the ACP Scheme to the applicant in the grade pay of Rs.5400/- (PB-3) w.e.f. 31.10.2007 and grant him all consequential benefits within a period of 90 (ninety) days from the date of receipt of a copy of this order. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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