

*Reserved***CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**
JABALPUR**Original Application No.200/00226/2011**Jabalpur, this Thursday, the 8th day of February, 2018**HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER**
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBERKsheer Sagar Raikwar
S/o Shri B.L. Raikwar
Aged about 51 years
R/o 41 Vasundhera Colony
Teela Jamalpura
Bhopal -462001 (M.P.)
(By Advocate –**Shri Vijay Tripathi**)**-Applicant****V e r s u s**1. Union of India,
Through its Secretary
Ministry of Defence
South Block
Defence Production
New Delhi 1100012. Engineer-in-Chief Branch
Army Headquarter
Kashmir House
New Delhi 1100113. Chief Engineer
Headquarter Central Command
Lucknow (UP) 2260024. Commander Works Engineer
Military Engineering Services
Bhopal Zone, Sultania Infantry Lines
Sultania Road Bhopal 462001
(By Advocate –**Shri Manish Chourasia**)
(Date of reserving the order : 01.02.2018)**- Respondents**

ORDER**By Navin Tandon, AM:-**

The applicant is aggrieved with his non-promotion as Upper Division Clerk (for brevity 'UDC') and also in not giving the benefit under the Assured Career Progression (for brevity 'ACP') and Modified Assurance Career Progression Scheme (for brevity 'MACP'). Hence, the Original Application.

2. The brief facts of the case are that the applicant was initially appointed against a Group 'D' post. After appointment as Group 'D' employee, he had participated and qualified in the Limited Departmental Competitive Examination (LDCE) for the post of UDC under 10% departmental quota. Pursuant to it, he was appointed as Lower Division Clerk vide order dated 24.11.1987. Thereafter he was promoted to UDC vide order dated 06.12.2003 but the same was not given effect. The applicant has neither been provided the benefit of regular promotion as UDC nor has he been given benefit of upgradation/promotion under ACP and MACP schemes without any valid reason.

3. The applicant in this Original Application has sought for the following reliefs:-

"8(i) Summon the entire relevant record from the respondents for its kind perusal.

8(ii) Upon holding that the inaction of the respondents in not promoting the applicant as UDC is bad in law, direct the respondents to promote the applicant as UDC with effect from 20.06.1995 in the pay scale of Rs.4000-6000/- (pre-revised)

8(iii) Command the respondents to promote the applicant under ACP and MACP schemes from the day of his entitlement under the aforesaid schemes with all consequential benefits including arrears of pay along with interest.

8(vi) Any other order/orders, which this Hon'ble Court deems, fit proper.

8(v) Award cost of the litigation in favour of the applicant.”

4. Learned counsel for the applicant submits that on participation of LDCE exam for the post of UDC (sic. LDC) he was reappointed as LDC vide order dated 24.11.1987. The next promotional post from LDC is UDC. Vide order dated 20.07.1995 (Annexure A-1), he was considered by the DPC for the post of UDC. However, the same has not been given effect to by the respondent-department. In the year 1997, he was again considered by the DPC for the post of UDC but the same was again not given effect to by the respondents. Vide order dated 06.12.2003 he was considered and recommended by the DPC for the said post and his name was placed at serial No.103 in the list. However, this order was also not given effect to in respect of the applicant.

4.1 Learned counsel for the applicant further submits that a false complaint was lodged against the applicant alleging that he does not belong to Scheduled Tribe community. The respondent-department has referred the matter to High Power Committee. On verification, Committee found the complaint is frivolous and the complaint was withdrawn by the respondent-department.

4.2 The applicant has preferred representation dated 02.03.2009 (Annexure A-5). However, no action has been taken by the respondents. He submits that in the serving and pay certificate issued on 03.12.2010 (Annexure A-6) by the respondent-department he has been shown as LDC. Further he has neither been given any benefit of regular promotion as UDC nor he has been given benefit of financial upgradation even after implementation of the MACP scheme w.e.f.01.09.2009.

5. Learned counsel for the respondents in their reply submitted that the applicant was initially appointed as Peon on 09.06.1981. The applicant has declared himself as Scheduled Tribe in the attestation form. He was promoted to LDC under reservation quota on 24.11.1987.

5.1 A complaint was lodged on 14.01.1997 against the applicant stating that he does not belong to Scheduled Tribe community and certificate produced by him is false. The respondent-department

has requested the District Organizer, Tribal Welfare, Collectorate Bhopal to confirm the authenticity of the said certificate. On 17.06.1998 (Annexure R-3), Collector Bhopal came to the conclusion that the said caste certificate dated 12.12.1979 issued to the applicant by the District Organiser, Tribal Welfare Bhopal is wrong/false. Thereafter, a disciplinary action against the applicant was initiated vide letter dated 31.07.1998 under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 for producing a false certificate.

5.2 Being aggrieved by the order dated 17.06.1998, the applicant filed a Writ Petition No.2664/1998 before the Hon'ble High Court of Madhya Pradesh. The Hon'ble High Court vide its order dated 07.03.2000 had directed the applicant to appear before the High Level Inquiry Committee on 27.03.2000 and place his views. However, the applicant did not appear. Thereafter the respondent-department has filed a Contempt Petition No.66/2003 against the applicant for not following the order dated 07.03.2000. Vide order dated 22.01.2004, the Hon'ble High Court directed the applicant to appear before the High Level Inquiry Committee on 26.04.2004 and thereafter, the Committee shall fix the dates as convenient to the applicant and finalize the matter by the end of Jun 2004. After examining the case of the applicant by the High Level Inquiry

Committee, vide letter dated 16.03.2004 (Annexure R-9) it came to a conclusion that the caste certificate should be cancelled and all the facilities provided to the applicant on the basis of that certificate should be deprived of. In this context, the office of Collector Bhopal (Tribal Welfare) Bhopal vide order dated 26.10.2006 has cancelled the applicant's Scheduled Tribe Caste Certificate issued on 12.12.1979 (Annexure R-10).

5.3 Learned counsel for the respondents submits that the applicant has already been dismissed from service on 08.09.2012. Therefore, he cannot be given any financial upgradation under ACP or MACP Schemes as per Rule 24 of the Central Civil Services (Pension) Rules, 1972.

6. Heard the learned counsel for the applicant as well as the respondents. We have also carefully gone through the pleadings and documents annexed therewith.

7. The applicant was appointed as Peon in the year 1981, he was given promotion to the post of LDC in the year 1987 against the ST reservation quota. The applicant was dismissed from service on 08.09.2012 due to production of fake caste certificate at the time of his initial appointment. As per Rule 24 of the CCS(Pension) Rules, 1972, the dismissal or removal of a government servant from service or post entails forfeiture of his service. Also, grant of

benefit under MACP scheme is subject to rules governing normal promotions. Hence the applicant is not entitled for financial upgradation under ACP/MACP scheme as the disciplinary action was taken against the applicant in the year 1998.

8. Accordingly, this Original Application is dismissed being devoid of merit. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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