

Reserved
CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.258 of 2011

Jabalpur, this Friday, the 03rd day of August, 2018

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

Shri M.M.Paul, S/o Krishanlal, aged about 59 years,
Canteen Bearer, Telecom Factory, Wright Town,
Jabalpur-482002, R/o N/100, Type II, Residential colony,
Telecom Factory, Wright Town, Jabalpur-482002 **-Applicant**

(By Advocate –Shri S.K.Mishra)

V e r s u s

1. The Chairman cum Managing Director,
Bharat Sanchar Nigam Ltd. Statesman House,
Barakhambha Road, New Delhi-110001
2. The Chief General Manager, Telecom Factories Circle
Jabalpur, Telecom Factory, Wright Town, Jabalpur-482002
3. The Chairman Canteen Managing Committee,
Telecom Factory, Wright Town Jabalpur-482002 **- Respondents**

(By Advocate –Shri S.P.Singh)

(Date of reserving the order:-30.01.2018)

O R D E R

By Ramesh Singh Thakur, JM

The applicant is against the denial of ACP I and II promotion
as per hierarchy of post by EO No. 157/JB/2005-06 which is
annexed as Annexure A-9.

2. The applicant has sought for the following reliefs in this O.A.

“8(i) ACP I promotion to the applicant w.e.f. 09.08.89 in the CDA pay scale of 3050-4400 having corresponding IDA pay scale of Rs. 4550-6550 with payment of arrears.

(ii) CDA pay scale of 4000-6000 having corresponding IDA pay scale 5700-8100 under ACP II promotion w.e.f. 04.11.2005 as per hierarchy of the post with payment of arrears. “by quashing the EO No. 0157/JB/2005-2006 dated 21.11.2005 (Annexure A-9) and Letter No. EC-3/BSNL/JB/0607- dated 04.04.2006 (Annexure A-11) in respect of the applicant.

(iii) Any other relief which this Hon’ble Tribunal deems fit including the cost of this O.A.”

3. The case of the applicant is that he was appointed as Bearer in the departmental canteen of Telecom Factory, Wright Town, Jabalpur with effect from 14.08.1980. Subsequently, the applicant along with the entire canteen employees were declared as Central Government employees with effect from 04.11.1981 vide Government of India Ministry of Communication P&T Board order No. 20.07.1981 TFS dated 04.11.1981 (Annexure A-1). Thereafter vide order dated 07.10.1983 (Annexure A-2), the pay scale of the canteen employees were sanctioned by the Hon’ble President of India. Accordingly, the applicant being bearer was placed in the pay scale of 196-3-220-EB-232. As per recommendations of 4th Pay Commission the applicant was placed

in the pay scale of Rs. 750-940/-. Thereafter as per 5th Pay Commission the applicant was placed in the pay scale of 2610-3540 with effect from 01.01.1996.

4. That, 5th pay commission recommended Assured Career Progression Scheme (ACP) under which two promotions known as ACP I & II were recommended to each employees, who did not get any promotion in general line of promotion after 12 years and 24 years service respectively.

5. The Central Govt. accepted the recommendation of the 5th Pay Commission and accordingly the department of Personnel and Training , New Delhi issued office memorandum dated 09.08.1999 (Annexure A-3) laying down the detailed procedure and condition for implementation of ACP Scheme, which was forwarded by the DoT, New Delhi for implementation vide letter dated 24.11.1999 (Annexure A-4). Then under condition 7 of the office memorandum it has been laid down that financial up gradation under the scheme shall be given to the next higher grade in accordance with the hierarchy in the cadre/category of posts without creating new post for the purpose. However, in the case of isolated posts in the absence of defined hierarchy grade, financial upgradation shall be given by the Ministries of Departments concerned the immediately next higher pay scales.

6. The applicant submits that above order is clearly applicable to the employees of statutory departmental canteen of Telecom Factory Wright Town Jabalpur including the applicant.

7. That as per clarification issued by the Department of Telecom vide order dated 01.08.2001 (Annexure A-5) against serial No. 6, the following hierarchy for the canteen post in the scale of 2610-3540 has been prescribed for promotion to ACP I & II :

First ACP after 12 years of service -3050-4590

Second ACP after 24 years of service -3200-4900

8. That the department of Defence Production vide order dated 29.10.2001/02.11.2001 (Annexure A-6) has given the pay scale of Rs. 3050-4590/- and Rs. 3200-4900/- to the bearer in the canteen in ACP I & II respectively. But in Telecom Factory Wright Town, Jabalpur as per letter dated 25.11.2003 (Annexure A-7), following pay scale was given.

ACP I on completion of 12 years service – 2650-4000

ACP II on completion of 24 years service – 2750-4400

9. Prior to 5th Pay Commission, the government introduced 20% selection grade/Situ Promotion Scheme, for those employees who do not get any promotion during the service period. Accordingly, the applicant was given 20% selection grade Situ

promotion and was placed in the higher, pay scale of 775-1150 of pre-revised scale having corresponding revised scale of Rs. 2650-4000/- with effect from 10.09.1997 vide letter dated 10.09.1997 (Annexure A-8).

10. It is submitted by the applicant that the respondent department has denied ACP-I promotion in lieu of above 20% selection grade promotion which has been counted as one promotion. The applicant was given only ACP-II promotion in the IDA pay scale of 4250-130-6200 which is a corresponding CDA scale of 2750-4400 vide letter dated 21.11.2005, which was not as per hierarchy of the post as clarified vide order dated 01.08.2001 (Annexure A-5). So the counting of 20 % selection grade Situ promotion as one promotion for the purpose of ACP promotion is contrary to the clarification issued under the department of Personnel and Training, New Delhi vide letter dated 10.02.2000 (Annexure A-10), whereby it has been clarified that “mobility under ACP is to be allowed in the existing hierarchy as such if any selection grade/Situ promotion has been allowed to employees which is not a part of the hierarchy, it shall not be counted as promotion for the purpose of ACPs”.

11. So the applicant was not given 20% selection grade promotion with effect from 09.08.1999 in the pay scale of 3050-

4590 and second ACP in the pay scale of Rs. 4000-6000/- with effect from 04.11.95 as no post carrying pay scale of Rs. 3200-4900/-is available in Telecom Factory, Wright Town, Jabalpur.

12. That from 01.10.2000 BSNL was formed and services of employees of Department of Telecom including the applicant were transferred to BSNL and they were finally absorbed in BSNL with the same service conditions as were applicable to them as DoT employees prior to their absorption in BSNL. Accordingly, the BSNL adopted all rules and service regulations framed by the Central Govt. for its employees. Therefore, office memorandum dated 09.08.1999 which is annexed as Annexure A-3 and clarification issued subsequently as Annexure A-5 are equally applicable on the BSNL employees including the applicant.

13. That, the BSNL adopted IDA pay scales to its employees corresponding to CDA pay scales. There is no post carrying CDA pay scale of Rs. 3200-4900 in canteen of Telecom Factory, Wright Town, Jabalpur. The next higher post available as per hierarchy is 4000-6000. So the applicant is entitled for the following pay scales under ACP-I and ACP-II promotion:-

	CDA Pay scale	IDA Pay scale
ACP I	3050-4590	4550- 6550
ACP II	4000-6000	5700-8100

14. The applicant represented to the General Manager, Telecom Factory, Jabalpur for grant of proper pay scales in the promotion under ACP but his representation was turned down by respondent No.2 vide letter dated 04.04.2006 (Annexure A-11). The Union of the applicant has also made representation dated 12.09.2003 (Annexure A-12) to the respondent NO.2 which was also turned down vide order dated 25.11.2003 (Annexure A-7).

15. The respondents department have filed their reply and as per preliminary submissions it has been submitted that the claim of ACP on completion of 24 years of service with effect from 04.11.2005 has been decided in accordance with the clarification and guidelines received from BSNL time to time and the applicant is not entitled for the relief as prayed by him.

16. It has been specifically submitted by the replying respondents that the applicant was initially appointed as bearer in the departmental canteen of TF, Jabalpur with effect from 14.08.1980 and thereafter the canteen employees were declared as Central Government Employees with effect from 04.11.1981. Later on 5th CPC was implemented and a revised and upgraded pay scale of 2610-3540 was allowed with effect from 01.01.1990 vide DoT letter dated 26.02.1998 (Annexure R/1).

17. The applicant got in-situ promotion in the next higher pay scale of Rs. 2650-4000/- (corresponding to pre-revised Rs.775-1150) with effect from 10.09.1997 under 20% promotional scheme as per order dated 10.09.1997 (Annexure A-8). It has been noted that the scale of Rs. 2650-4000/-is a part of hierarchy as per nationalization discussed in the subsequent paras. Hence, the promotion under 20% scheme is treated as ACP-1 being part of hierarchy and subsequently the applicant was allowed ACP II on completion of 24 years of service vide order dated 21.11.2005 with effect from 04.11.2005 (Annexure A-9).

18. It has been further submitted by the replying respondents that as per 5th Pay Commission recommendation ACP under which two promotions known as ACP-1 and II were recommended to each employee on completion of 12 years and 24 years of service. It was for those who did not get any promotion and those who had already availed any one up-gradation/promotion after initial appointment would be eligible for ACP-II only on completion of 24 years of service. The applicant had already availed in-situ promotion in scale falling under defined hierarchy as per ACP Scheme. Hence, allowed ACP-II only, on completion of 24 years of service. Factually, in light of different past CPCs and up-gradation etc. the clarifications issued vide letter No. 7-1/99-TFS dated

01.08.2001 was referred again to BSNL Co ND vide this office letter No. EC-3/BSNL/JB/Vol-II/2000-01 dated 4th January 2002 (Annexure R-2) for re-clarification. The matter was examined in detail in DoT. Vide letter dated 12.02.2002 (Annexure R-3), all the Telecom Factories were advised to rationalize the designation of canteen employees and recommended as under :-

- a. 1st ACP in the pay scale Rs. 2650-4000 and
- b. 2nd ACP in the pay scale Rs. 2750-4400(applicable to applicant).

19. The applicant was already in the pay scale of Rs. 2610-3540 (up-graded) with effect from 01.01.1996 in accordance with DoT letter dated 26.02.1998 (Annexure R-1) and subsequently in the next higher pay scale of Rs. 2650-4000 w.e.f. 10.09.1997 under 20% promotional scheme vide letter dated 10.09.1997 (Annexure A-8). It has been submitted that the scale of 2650-4000 is the part of hierarchy as per rationalization. Hence, promotion under 20% scheme is treated as ACP-1 being part of hierarchy and subsequently, the applicant was allowed ACP-II on completion of 24 years of service vide order dated 04.11.2005 with effect from 01.11.2005 (Annexure A-9).

20. The applicant was given 20% selection grade in-situ promotion and placed in higher pay scale of Rs. 775-1150 of pre-revised scale having corresponding revised pay scale of Rs. 2650-

4000 w.e.f. 10.09.1997 (Annexure A-8). This scale is a part of defined hierarchy.

21. Since the applicant had already availed in-situ the pay scale of Rs. 2650-4000 w.e.f. 10.09.1997 under in-situ hence allowed 2nd ACP in the pay scale of Rs. 2750-4400. The clarification given in Annexure A-5 under point 6 is not applicable. Factually, in the light of different past CPCs and up-gradations etc. the clarification issued vide letter dated 01.08.2001 was referred to BSNL CO ND vide letter dated 04.01.2002 (Annexure R-1) for re-clarification. The matter was examined in detail and all the Telecom Factories were advised to rationalize the designations of canteen employees (Annexure R-3).

- a. 1st ACP in the pay scale Rs. 2650-4000 and
- b. 2nd ACP in the pay scale Rs. 2750-4400.

22. The applicant has filed rejoinder and has submitted that the pay scale of 2650-4000 was given to the applicant in-situ promotion which is the part of hierarchy and hence the promotion is treated as ACP I is contrary to the clarification issued by the Department of Telecom, New Delhi as per Annexure A-5 so the applicant is entitled to the pay scale of Rs. 3050-4590 on ACP I and 3200-4900 on ACP II as per hierarchy of the post. In-situ promotion the applicant has been given pay scale of 2650-4000

which is not as per hierarchy hence it can not be treated as ACP I promotion as per clarification issued by Department of Personnel and Training New Delhi vide Annexure A-10. It has been further submitted that as per clarification issued vide Annexure A-5 which is specifically in respect of the canteen employee of Telecom Factory Jabalpur which has not been superseded by any subsequent order. The clarification issued under Annexure R/3 is contrary to the condition No. 7 of Annexure A-1 of DoPT dt. 09.08.1999. As per order issued under Annexure R-3, the next higher post available in Telecom Factory Jabalpur as per hierarchy is in the pay scale of 3050-4590. Hence, the pay scale of 2650-4000 cannot be the promotional post as per hierarchy for the purpose of ACP I. The order of the Department of Defence is relevant to show that hierarchy has been determined on the basis of availability of post in the higher grade as per condition No.7 laid down in Annexure A-1 of DoPT ND order dated 09.08.1999(Annexure A-3).

23. Moreover, the hierarchy is to be determined as per availability of post in next higher grade. No post carrying pay scale of 2650-4000 operates in canteen of Telecom Factory, Wright Town, Jabalpur. The next higher post of cook in the pay scale of Rs. 3050-4590 is available hence the applicant is entitled for the pay scale of 3050-4590 as per hierarchy under ACP I.

24. We have heard the learned counsel for the parties and perused the pleadings annexed therewith. We have also gone through the documents attached with the pleadings.

25. In the instant case, the main issue is regarding the grant of ACP after 12 years of service as per 5th Pay Commission recommendation. The contention of the applicant is that the Central Govt. has accepted the recommendation of the 5th pay commission and accordingly DoPT New Delhi has issued office memorandum dated 09.08.1999 (Annexure A-3) and has laid down the different procedure and conditions for implementation of ACP. The said notification was forwarded by DoT for implementation vide order dated 24.11.1999 (Annexure A-4). As per condition 7 of this memorandum financial up gradation shall be given to the next higher grade in accordance with the hierarchy in the cadre/category of post and in case of isolated post or in the absence of defined hierarchy grade financial upgradation shall be given by the ministries of Departments concerned, the immediately next higher pay scales.

26. On the contrary the respondent department has submitted that on completion of 24 years of service the applicant was granted II ACP with effect from 04.11.2005.

27. It is admitted by the replying respondents that the applicant was initially appointed as a bearer with effect from 14.08.1980 and thereafter the canteen employee were declared as Central govt. employees with effect from 04.11.1981. Later on, as per 5th pay commission revised pay scale of 2610-3540 was allowed with effect from 01.01.1996 vide letter dated 26.02.1998 (Annexure R-1). As per Annexure A-8 under 20% promotion scheme the applicant was given in-situ promotion in the next higher pay scale of Rs. 2650-4000 and his scale is a part of hierarchy. It is also clear that as per 5th pay commission ACP under which two promotions known as ACP I and ACP-II were recommended on completion of 12 and 24 years of service. It is also clear that it is for those who did not get any promotion and those who had already availed any one promotion/up-gradation after initial appointment would be eligible for ACP-II only on completion of 24 years of service.

28. Admittedly the applicant was in the pay scale of Rs. 2610-3540 with effect from 01.01.1996. As per Annexure A-5 for the canteen post the hierarchy would be as follows:

“For the post in the scale of 2540-3200 the first up-gradation would be 2610-3540 and II upgradation in the scale of 3050-4590 and for those in the scale of Rs. 2610-3540, the first ACP would be in the pay scale of Rs. 3050-4590” and second ACP would be 3200-4900.

29. So as he was in the pay scale of 2610-3540, the applicant is to be placed in ACP-I on completion of 12 years in the scale of Rs. 3050-4590 and on completion of 24 years in the scale of 3200-4900 but as per Annexure A-7 the respondent department has granted pay scale of 2650-4000 on completion of 12 years and 2750-4400 on completion of 24 years which is contrary to Annexure A-5.

30. Resultantly, in view of the above, this Original Application is allowed and Annexure A-9 dated 21.11.2005 qua the applicant and Annexure A-11 dated 04.04.2006 are quashed and set aside and the respondents are directed to pay ACP-I promotion to the applicant in CDA pay scale of Rs. 3050-4590/- with effect from 09.08.1999 and ACP-II in CDA pay scale of Rs. 3200-4900/- with effect from 04.11.2005 with payment of arrears within a period of 60 days from the date of receipt of a certified copy of this order.

(Ramesh Singh Thakur)
Judicial Member
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(Navin Tandon)
Administrative Member