

**Central Administrative Tribunal
Chandigarh Bench
(Circuit Bench at Srinagar)**

**OA No.062/00817/2018 &
MA No.062/01021/2018**

Decided on : 17.09.2018

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. P. Gopinath, Member (A)

Farooq Ahmed Baba
S/o Ghulam Ahmed Baba,
R/o Mirakabad, Shalimar,
Srinagar, Kashmir,
Designation: Store keeper,
Regional Research Institute Unani,
Medicine,
Srinagar,
Kashmir.

... Applicant

(By Mr. Shafayat Siddiqui, Advocate)

Versus

1. Union of India through Secretary, Government of India, (Ministry of Health and Family Welfare, Department of Ayush), Red Cross Building, Red Cross Road, New Delhi.
2. Director General, Central Council for Research in Unani Medicine (Ministry of Health and Family Welfare, Govt., of India, Janak Puri, New Delhi.
3. Assistant director (Incharge), Regional Research Institute Unani Medicine, Naseem Bagh, Srinagar, (Ministry of Health and Family Welfare, Govt., of India, Janak Puri, New Delhi).

... Respondents

(By Mr. Nasir A. Bhat, Advocate)

ORDER (Oral)

P. Gopinath, Member(A) :

The facts giving rise to filing of the Original Application (OA) are that the applicant joined service as Lab Attendant in 1979. He was appointed as GDA in 1984. He was then promoted as Upper Division Clerk (UDC)/Store Keeper, in the pay scale of Rs.4000-6000. He was also promoted as Assistant, vide order dated 5.11.2015, which was declined by him. The applicant was granted 2nd financial up-gradation in the pay scale of Rs.5000-8000 (pre-revised) under the Assured Career Progression (ACP) Scheme w.e.f. 10.12.2008 and pay of the applicant was fixed accordingly. However, the respondents passed an order dated 12.10.2017 (Annexure A), ordering withdrawal of the benefits granted under ACP Scheme to him and consequential recovery also.

2. The applicant seeks quashing of impugned order, Annexure A, and also seeks issuance of direction to the respondents to conduct meeting of the Departmental Promotion Committee (DPC) for promotion to the post of Junior Administrative Officer and Assistant and consider the case of the applicant for such promotion from due date.

3. The stand taken by the respondents is that ACP Scheme was introduced w.e.f. 1.8.1999 and was replaced by Modified Assured Progression Scheme (MACP) w.e.f. 1.9.2008. Thus, applicant could not be granted benefit under ACP Scheme w.e.f. 10.12.2008 as the scheme was no longer in operation. Grant of benefit under the ACP Scheme being an administrative error, was corrected by the respondents by passing the impugned order, Annexure A. In so far as promotion of the applicant is concerned, it is submitted that the applicant was promoted as Assistant but since he refused to join, he has forsaken his promotion and he remains in the list of UDCs and can be promoted only when vacancy becomes available thereafter.

4. We have heard learned counsel for both the sides at length and examined the material on file.

5. A perusal of record, does not leave any manner of doubt, in our mind, that indeed the ACP Scheme remained in operation w.e.f. 1.8.1999 to 31.08.2008, and MACP replaced it w.e.f. 1.9.2008. Thus, the applicant could not be granted benefit of ACP Scheme w.e.f. 10.12.2008. Therefore, grant of that benefit to the applicant, indeed, was an administrative error only, which can always be corrected by the administrative

authorities and in doing so, they have not committed any error. Further the respondent has granted him benefit under MACP Scheme w.e.f. 10.12.2008 as that was the scheme in operation on the said date. Thus, we uphold the re-fixation of pay of the applicant. However, if any amount has been paid in excess to the applicant, in pursuance of the grant of ACP Scheme the same shall not be recovered from him, as he is admittedly a Group C employee and there was no mis-representation on his part nor was any fraud attributed to him. In such like cases, the recovery of excess amount paid to an employee is not permissible, in view of law laid down in the Hon'ble Apex Court judgment in STATE OF PUNJAB VS. RAFIQ MASIH (WHITE WASHER), (2014) 8 SCC 883.

6. The O.A. stands disposed of in above terms. The parties are, however, left to bear their own costs.

(P. Gopinath)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

HC*