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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00498/2014

Tuesday this the 15th day of January, 2019

C O R A M :

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER

1. P.A.Sunny, S/o.late PD Antony,
Working as UDC, Office of the Executive Engineer,
CPWD Trichur Central Division.
Residing at Parakkal House, Palam Stop,
Cherpu PO, Trichur – 680 561.
2. M.Suresh, S/o.C.S.Menon,
Working as LDC, Office of the Executive Engineer,
CPWD Trichur Central Division.
Residing at Mayampurathu,
11/599/21, Indira Nagar, Kuttumukku,
Ramavarmapuram PO, Trichur – 680 631. ...Applicants

(By Advocate M/s.B.S.Krishnan Associates & Mr.Joseph Sebastian)

v e r s u s

1. Union of India
represented by the Secretary to the Government of India,
Ministry of Urban Development,
Nirman Bhavan, New Delhi – 110 011.
2. Department of Personnel and Training,
represented by its Secretary,
North Block, New Delhi – 110 001.
3. The Director General,
Central Public Works Department,
Nirman Bhawan, New Delhi – 110 011.
4. The Chief Engineer, Southern Zone V,
Central Public Works Department,
CGO Complex, Thiruvananthapuram – 695 522.

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5. The Superintending Engineer,
Calicut Central Circle, CPWD,
MS Baburaj Road, Kallayi,
Calicut – 673 003.
6. The Executive Engineer,
Trichur Central Division, CPWD,
Mundassery Memo Building,
Chembukavu, Trichur – 680 020. ...Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

This application having been heard on 8th January, 2019, the Tribunal on 15th January, 2019 delivered the following :

ORDER

Per : HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

O.A.No.180/498/2014 is filed by Shri.P.A.Sunny and Shri.M.Suresh, Applicant Nos.1 and 2 respectively working as Upper Division Clerk (UDC) and Lower Division Clerk (LDC) in the Central Public Works Department (CPWD) of the Ministry of Urban Development respectively. They function under the 6th respondent presently. They are aggrieved by the clarification issued by the 2nd respondent, Department of Personnel and Training (DoPT) and communicated to them vide Annexure A-1 order of the 6th respondent. By Annexure A-1 order the 3rd respondent is proposing to recover the extra amount paid to the applicants on the basis of the Assured Career Progression Scheme (ACPS). The reliefs sought in the O.A are as follows :

1. Call for the records relating to the issue of Annexure A-1 and quash the same.
2. Call for the records relating to the clarification issued by the 2nd respondent, in pursuance of the judgment of this Hon'ble Tribunal in O.A.No.934/2012 and quash the same.

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3. Direct the respondents to grant the applicants the consequential benefits of ACP, as if Annexure A-1 has not been issued at all.
4. Award cost of and incidental to this application.
5. Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

2. The 1st applicant had qualified in the Clerks Grade Examination conducted by the Staff Selection Commission on 3.7.1983 and was issued order of appointment by the Ministry of Urban Development on 13.3.1985. On 24.5.1985 he joined as a LDC in the Central Secretariat Clerical Service Cadre (hereinafter called CSCS Cadre). He joined as LDC in CPWD on 9.10.1987 as a part of the scheme under which 20% of the vacancies in that organization are reserved for LDC belonging to CSCS Cadre or any service or any office under the Central Government. The 2nd applicant joined CSCS Cadre on 30.3.1990 under the Ministry of Health and Family Welfare and he joined CPWD from the CSCS Cadre on 4.10.1995.

3. Both were beneficiaries of the interpretation of 'approved service' under Rule 2(c) of the Central Secretariat Clerical Service which states as follows :

“In respect of an officer recruited directly to that grade, period or periods of service rendered in that grade, but for his being on leave or otherwise not being available, from first July of the year, following the year in which the examination for direct recruitment was held, provided that where there is a delay of more than three months in the appointment of any candidate, such delay is not due to any fault on his part”.

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4. Thus the approved service of the applicants in the CSCS Cadre started from 1.7.1984 and 1.7.1989 respectively. While working in the present subordinate service the 1st applicant was granted first financial upgradation under the ACP Scheme with effect from 9.8.1999 on introduction of ACP Scheme. Later on completion of 24 years, of service the second financial upgradation under the ACP Scheme was also given to the 1st applicant on 12.8.2008. This was based on a clarification obtained from the Ministry of Urban Development vide letter dated 6.9.2010, a copy of which is available at Annexure A-2. The 2nd applicant was granted first financial upgradation under the ACP Scheme on completion of 12 years of service with effect from 1.7.2001; a copy of the said order is available at Annexure A-3.

5. As per DoPT OM dated 10.2.2000 in clarifications presented as Frequently Asked Question (FAQ) if a government servant is appointed to another post in the same pay scale either as a direct recruit or on absorption (transfer basis) or on deputation, this should not make any difference for the purpose of granting ACP Scheme so long as he is in the same pay scale. A copy of the relevant pages of the DoPT OM is at Annexure A-4. The same was reiterated in Point No.6 of subsequent OM issued by the DoPT dated 18.7.2001 (Annexure A-5).

6. It is claimed by the applicants that the same benefits of financial upgradation under the ACP Scheme reckoning the past services in entirety

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were being enjoyed by all those who had been transferred to subordinate cadre from CSCS Cadre. As matter stood thus the respondents issued notices for recovery of alleged excess amount paid to four colleagues of the applicants who were working in Kochi and Trivandrum Electrical Divisions of CPWD. Aggrieved they approached this Tribunal by filing O.A.No.934/2012. This Tribunal disposed of the said O.A vide order dated 21.6.2013, a copy of which is available at Annexure A-6. The applicants are aggrieved by Annexure A-1 order by which the 6th respondent proposes to recover the excess amount stated to have been paid on account of the erroneous grant of financial upgradation under the ACP Scheme. This is stated to be on the basis of the clarification issued by DoPT which is annexed to Annexure A-1 by the 6th respondent. It is alleged that the clarification issued by the DoPT is in violation of earlier clarification issued in respect to ACP Scheme. The respondents chose to recover amounts from the applicants whereas similarly placed LDCs and UDCs working in other CPWD offices are continuing to enjoy the benefits of ACP Scheme considering their approved service, which is 1st July of the year, from the year following the year of the qualifying examination.

7. In the reply statement filed on behalf of the respondents the averments made in the O.A have been countered. As per DoPT notification No.12/5/94-CS II dated 18.1.1995 (Annexure R-1) counting of approved service on the basis of first July of the following year of the examination for granting

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financial upgradation is applicable only to those who were initially appointed in the CSCS Cadre and who are in the CSCS Cadre service as on 1.2.1995. It is further affirmed that the clarification issued by the DoPT dated 10.2.2000 and 18.7.2001 are not applicable to the present applicants in the light of clarification issued by DG CPWD dated 11.12.2013. These individuals who got transferred to the subordinate service on their own request the ACP benefit will be allowed in the promotional hierarchy of the subordinate service and they will be guided by the service rules applicable to the subordinate service.

8. While disposing of O.A.No.934/2012 this Tribunal had stayed the recovery of excess amount paid vide its order dated 21.6.2013 with a direction to get clarification from DoPT as to whether the applicants who originally belonged to CSCS Cadre are entitled or not to the concession in respect of approved service. In compliance to the above order, Annexure R-1 clarification has been furnished stating that the CSCS Rules were amended as per DoPT Notification dated 18.1.1995 making approved service concept applicable to those officials who are in the CSCS Cadre as on 1.2.1995.

9. The order in O.A.No.934/2012 has been fully complied with and the contention that Annexure A-1 order is illegal is baseless. The Tribunal had stayed the recovery only awaiting clarification from DoPT and such clarification has been to the effect that the approved service concept would

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be applicable only to those officials who are in the CSCS Cadre as on 1.2.1995.

10. Heard Shri.Joseph Sebastian, learned counsel for the applicant and Shri.Thomas Mathew Nellimoottil, learned counsel for the respondents. All records and pleadings have been examined.

11. The matter lies in a narrow compass. As a part of the service benefits applicable for CSCS Cadre, it had been ordered that concept of approved service would enable them to count the service as commencing from 1st July of the succeeding year of the selection examination. Although the ACP Scheme has been evolved as a part of a financial upgradation, it is undisputed that DoPT is the authority for all service matters, a view reiterated by the Apex Court in **Mukundla v. Pritpal Singh (2012) 13 SCC 340**. The earlier O.A has been disposed of by this Tribunal in accordance with the above premise directing the respondents to seek clarification from DoPT. We do not have any record of such clarification having been obtained from the DoPT except a copy of the note file annexed along with copy of the impugned order wherein it is stated that the facility would be available to members of the CSCS Cadre only as long as they remain in that service. From the further noting of CS II Division of DoPT which is at Annexure A-1/8 a conclusive picture emerges. The said clarification reads as follow :

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“2. It may be mentioned in this connection that CSCS Rules were amended vide this Department's notification No.12/5/94-CS.II dated 18th January, 1995 to include the approved service concept and which was made effective from 1.2.1995. As per the CSCS Rules, this Rule is applicable only to those officials who are in the Central Secretariat Clerical Cadre Service (CSCS) at that time when the orders were made effective ie. 1.2.1995. As stated by Estt.(D) in their note dated 23.9.2013 (para 4), the terms of the service rules shall be applicable as long as they remain in that service.”

12. Thus DoPT Notification No.12/5/94-CS.II dated 18th January 1995, a copy of which is available at Annexure R-1 is of cardinal importance. It lays down that 'approved service' in relation to any grade applies *“in respect of an officer recruited directly to that grade, period or periods of service rendered in that grade, but for his being on leave or otherwise not being available, from **first July of the year**, following the year in which the examination for direct recruitment was held, provided that where there is a delay of more than three months in the appointment of any candidate, such delay is not due to any fault on his part”*.

13. It is further stated that the said rules offering the facility will come into force from 1.2.1995. On an examination of the service record of the 2nd applicant the following is seen :

| Sl. No. | Name & Designation | Year of SSC Exam. | Date of joining in CSCS Cadre | Date of joining in Subordinate service in CPWD | Effective date of financial upgradation |
|---------|--------------------|-------------------|-------------------------------|--|---|
| 1 | P.A.Sunny UDC | 1983 | 05/24/85 | 10/09/87 | 08/12/08 |
| 2 | M.Suresh LDC | 1988 | 03/30/90 | 10/04/95 | 07/01/01 |

14. Thus it is seen that the first applicant Shri.P.A.Sunny who joined CSCS Cadre on 24.5.1985 and who left for joining the Subordinate service on 9.10.1987 cannot claim any benefit as he was not in CSCS Cadre on 1.2.1995, the date mentioned in Annexure R-1 Notification. Thus he cannot have a case that he is eligible for the advantageous interpretation of the approved service concept.

15. In the case of the 2nd applicant Shri.M.Suresh, he joined CSCS Cadre on 30.3.1990 and left that cadre to join CPWD on 4.10.1995 which means he was in the CSCS Cadre when the concept of approved service came into force on 1.2.1995. Thus he is eligible for the favourable interpretation.

16. Under these circumstances, we set aside Annexure A-1 *qua* the 2nd applicant. The 2nd applicant is not to be proceeded against in the manner as explained in the impugned order. In so far as the 1st applicant is concerned, advantageous interpretation of 'approved service' has no applicability. The respondents will be free to proceed against the 1st applicant as per Annexure A-1 order. The O.A is disposed of with the above directions. No costs.

(Dated this the 15th of January 2019)

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures in O.A. No.180/00498/2014

1. **Annexure A1** : Office order of the 6th respondent dated 26.3.2014 along with the clarification issued by the 2nd respondent in pursuance of the Tribunal's order in OA 934 of 2012.
2. **Annexure A2**: Copy of the order dated 6.9.2010 of the Under Secretary, Government of India, Ministry of Urban Development granting 2nd ACP to the 1st applicant.
3. **Annexure A3**: Copy of office order No.41 of 2011 dated 19.10.2011 granting 1st ACP to the 2nd applicant.
4. **Annexure A4**: Copy of the relevant pages of the DoPT office memorandum dated February 10, 2000.
5. **Annexure A5**: Copy of the relevant pages of the order dated 18th July, 2001 of the DoPT.
6. **Annexure A6**: Copy of the order dated 21.6.2013 in OA 934/12 passed by CAT, Ernakulam.
7. **Annexure A7**: Copy of the information collected under Right to Information Act from the different offices of CPWD.
8. **Annexure A8**: Copy of the OM No.35034/I/97-Estt(D) dated 9.8.1999.
9. **Annexure A9**: Copy of the OM No.35034/3/2008-Estt.(D) (Vol.II) dated 1.11.2010.
10. **Annexure A10**: Copy of the OM No.35034/1/97-Estt(D) dated 4.10.2012.
11. **Annexure A11**: Extract of CPWD Manual Vol I Section 2 – Recruitment page 31.
12. **Annexure A12**: Extract of GOI Decision No.4 under FR22.
13. **Annexure A13**: Relevant page of the Central Secretariat Clerical Service Rules, 1962.
14. **Annexure A14**: Copy of the RTI Information issued by the Ministry of UD dated 22.3.2013.
15. **Annexure A15**: Copy of the RTI Information dated 2.5.2013.

- 16. Annexure A16:** Copy of the RTI Information dated 21.5.2013.
 - 17. Annexure A17:** Copy of the RTI Information dated 6.5.2014.
 - 18. Annexure A18:** Copy of the OM No.A-31016/3/99-Ad.I (B) dated 31.10.2002.
 - 19. Annexure A19:** Extract of Rule 26 of CCS Pension Rules, 1972.
 - 20. Annexure A20:** Copy of order dated 9.9.2016 in OA No.310/01428/2016.
 - 21. Annexure R1:** Copy of DoPT Notification No.12/5/94-CS II dated 18.1.1995.
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