

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 661/2015

Reserved on: 06.02.2019
Pronounced on: 14.02.2019

**Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhyaya, Member (A)**

Ghasi Ram Yadav son of Shri Hari Singh Yadav, aged about 53 years, resident of A-77, Mahesh Nagar, 80 Feet Road, Jaipur and presently working Assistant Engineer (Civil), Central Public Works Department, Office of Chief Engineer (NZ-III), Sector-10, Nirman Bhawan, Vidhyadhar Nagar, Jaipur.

...Applicant.

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India through its Secretary, Central Public Works Department, Ministry of Urban Development, Nirman Bhawan, New Delhi.
2. Director General (Works), Central Public Works Department, First Floor, Nirman Bhawan, New Delhi-110011.
3. Additional Director General (NR), Central Public Works Department, Sewa Bhawan, R.K.Puram, New Delhi-110066.
4. Chief Engineer (NZ-III), Central Public Works Department, Sector-10, Nirman Bhawan, Vidhyadhar, Jaipur.
5. Government of India through Secretary, Department of Personnel & Training, North Block, New Delhi-110001.

...Respondents.

(2)

(By Advocate: Shri N.C.Goyal for R-1 to R-4)

ORDER

Per: A. Mukhopadhyaya, Member (A):

The limited issue under dispute in this Original Application, (OA), is with regard to whether the period of service to be taken into consideration for grant of financial upgradation under the erstwhile Assured Career Progression, (ACP), Scheme, (Annexure A/4), includes a period of strike treated as "**no work no pay**" and whether such period should be construed as constituting a break in service under FR 17A of the Fundamental Rules.

2. The undisputed facts of the case are that the applicant joined service with the respondents on 31.08.1984 and thereafter, after his participation in an All India Strike in CPWD between 14.07.1987 to 19.08.1987, (37 days), this strike period was decided to be treated as a "**no work no pay**" period vide OM dated 16.10.1987; (Annexure A/3). Later, the applicant received his first financial upgradation under the erstwhile ACP Scheme vide OM dated 14.12.2000, (Annexure A/6), on completion of 12 years of service. After this, he was given the second financial upgradation, this time under the Modified Assured Career Progression, (MACP), Scheme which was notified vide DoP&T OM of 19.05.2009, (Annexure A/7), and given effect to from the earlier date of 01.09.2008. While this second financial

(3)

upgradation was granted to the applicant with effect from 01.09.2008, i.e. the date on which the MACP Scheme came into effect, he was not given the benefit of the second financial upgradation under its predecessor ACP Scheme although, (according to the applicant), he completed 24 years of service on 31.08.2008. The applicant contends that this was based on the incorrect premise of considering his aforementioned 37 day strike period of "**no work no pay**" service as a break in service even for the purposes of counting the total period of service rendered by him for grant of ACP upgradations. In support of his contention that this strike period of 37 days does not constitute a break in service in terms of Fundamental Rules, (FR-17A), the applicant relies upon the order issued by the respondents in this regard on 16.10.1987, (Annexure A/3), and points out that this order merely states that the period of strike, (i.e. 37 days), "**will be treated as no work no pay**" and does not state that any other disability or adverse consequences such as not counting this towards total period of service with the respondents would flow from the same. The applicant also draws attention to DoP&T OM of 18.07.2001, (Annexure A/5), in which under heading of "**Doubt 49**" a specific clarification has been given on whether any period(s) of break in service under FR 17A declared during the career of an employee will have any adverse effect on his getting financial upgradation under the ACP Scheme. The clarification issued in this regard reads as under:

(4)

"Clarification – Break in service under FR 17A incurs only specific disabilities as specified in the relevant FR. It does not affect the normal regular promotions. Consequently, it will have no effect on financial upgradation under the ACP Scheme."

3. The applicant states that in view of the aforementioned clarification, even if the strike period of 37 days is treated as a break in service by the respondents, it will not affect the counting of this period towards service rendered for the purposes of granting him ACP upgradation. In these circumstances, having joined service on 31.08.1984, he completed 24 years of service on 31.08.2008 and therefore, is clearly eligible for the second financial upgradation under the erstwhile ACP Scheme in addition to what he is subsequently entitled to under the successor MACP Scheme which came into effect on 01.09.2008. Finally, the applicant also cites the judgment dated 24.03.2015 passed by the Ernakulum Bench of this Tribunal in OA No.252/2013 which *in turn* refers to the order dated 06.11.2013 of the Madras Bench of this Tribunal in OA 818/2011; (Annexure A/16 refers). The applicant draws attention to para-7 of the judgment passed by the Madras Bench of this Tribunal. It was held that "**in such cases, the retrospective application of O.M. dated 19.5.2009 take away the vested rights of the Applicants under ACP Scheme will certainly be contrary to law laid down by Apex Court that amendments in the rules with retrospective effect affecting prejudicially the person who**

had acquired rights are *ultra vires* to Constitution cases are Ex. Capt. K.C. Arora and another v. State of Haryana and others [1984 (2) SLR 97]. As observed by Madras Bench of the Tribunal in OA No.818/2011, the Applicants who have completed 24 years of service becoming eligible for 2nd ACP by April, 2009 would have been got such benefits had their cases been subjected to Screening Committee within."

4. In view of the aforementioned rulings, the applicant states that even if the strike period of 37 days is taken to be a break in service by the respondents, since the applicant nevertheless completed 24 years of service with the respondents before 19.05.2009, (i.e. the date on which the MACP Scheme was actually notified), therefore, he cannot have his vested rights under the ACP Scheme taken away by the retrospective application of OM dated 19.05.2009 notifying the MACP Scheme as per law laid down by the Apex Court in the **Ex. Captain K.C.Arora** case; (supra).

5. In view of the foregoing, the applicant states that he is aggrieved by the action of the respondents in denying him the second financial upgradation under the ACP Scheme with effect from 31.08.2008 and seeks the following relief:-

(6)

- (i) The respondents be directed to allow benefits of second financial upgradation under ACP Scheme w.e.f. 31.08.2008 in the Grade Pay of Rs.6600 and further to allow Grade Pay of 7600 on account of third financial upgradation by modifying memo dated 27.07.2015 (Annexure A/15) by quashing note dated 15.06.2015 (Annexure A/1) with all consequential benefits including arrears of pay and allowances with due fixation of pay.
- (ii) The respondents be further directed to act as per provisions of ACP Scheme and further clarifications at Annexure A/4 and A/5 and to allow second financial upgradation under ACP Scheme and to take note of requisite service for promotion as per recruitment rules with all consequential benefits.
- (iii) Any other order, direction relief be passed which is deemed fit in the facts and circumstances of the case.

6. In reply, the respondents contend that the strike period of 37 days was declared as *dies non* by the competent authority and cannot be considered as a period of regular service within the meaning of the rules. Therefore, the action of the respondents in not counting this period for the purposes of granting ACP upgradations is fully justified. Accordingly, in terms of the earlier ACP and presently operating MACP Schemes, the applicant has correctly been given the benefits of first, second and third financial upgradations on 09.08.199, (under the ACP Scheme), and thereafter on 01.09.2008, (under the MACP Scheme when it came into effect), and finally with effect from 07.10.2014; (Annexure A/15 refers).

(7)

7. Learned counsels for the parties were heard and both reiterated the points and arguments made in the application and the reply to the same respectively. On consideration of these arguments and the material on record, the position that emerges is that a plain reading of the "**no work no pay**" order relating to the disputed 37 day strike period, (Annexure A/3), clearly supports the applicant's contention that the order does not visit any adverse consequences other than not granting pay for the strike period upon the applicant. There is no specific mention of the period being treated as "**dies non**" or again being considered as a "**break in service**" for any purposes. Thus, there seems to be no reason available on record to warrant non-consideration of this period as a period of regular service for ACP upgradations, contrary to the assertions made by the respondents in this regard. Also, for the sake of argument, even if this period is not considered to be one of regular service thus constituting a break in service in terms of FR 17A, the clarification provided by the DoP&T OM of 18.07.2001, [(Annexure A/5) – Clarification of Doubt 49], makes it clear that these 37 days are to be counted towards service rendered for the purposes of grant of ACP upgradations. Finally, the respondents have not specifically contested the position argued by the applicant, (Annexure A/16 refers), that the retrospective application of the OM of 19.05.2009 cannot take away the vested rights of the applicant

under the ACP Scheme with retrospective effect. By this yardstick also, the claim of the applicant for grant of second financial upgradation under the erstwhile ACP Scheme with effect from 31.08.2008 as also subsequent benefits through consequent amendments in the date from which the third MACP was to be granted to him, (Annexure A/15), is valid under law.

8. Accordingly, this OA is allowed. The respondents are directed to allow the benefits of second financial upgradation under the ACP Scheme to the applicant with effect from 31.08.2008. The respondents are further directed to modify their order dated 27.07.2015, (Annexure A/15), treating the 37 day period of strike as a period of regular service rendered by the applicant for the purposes of grant of financial upgradation under the ACP/MACP Scheme in terms of the clarification issued on Doubt 49 in DoP&T OM No.35034/1/97-Estt. (D) (Vol.IV) dated 18.07.2001; (Annexure A/5). The entire exercise of refixing of pay of the applicant accordingly and payment of arrears as become due as a consequence may be completed within a period of two months from the date of receipt of a certified copy of this order.

9. There will be no order on costs.

(A.Mukhopadhyaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

/kdr/