

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 043/00317/2016

Date of Order: This, the 06th day of February 2019

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

THE HON'BLE MR. NEKKHOMANG NEIHSIAL, ADMINISTRATIVE MEMBER

Shri Tashi T.N. Bhutia
Son of late Tshering Bhondup
Working as Superintendent in the
Office of the Chief Commissioner
Central Excise, Customs and Service Tax
Shillong Zone, NER, Pin – 793001.

...Applicant

By Advocates: Mr. M. Chanda, Mrs. U. Dutta and Ms. S. Begum

-VERSUS-

1. The Union of India
Represented by the Secretary
Government of India
Department of Revenue, New Delhi – 1.
2. The Chief Commissioner
Central Excise, Customs and Service Tax
Crescens Building, M.G. Road
Shillong – 793001.
3. The Commissioner
Of Central Excise and Service Tax
Morellow Compound, M.G. Road
Shillong – 793001.
4. The Additional Commissioner
Central Excise
Customs and Service Tax
Crescens Building, M.G. Road
Shillong – 793001.

... Respondents

By Advocate: Mr. S.K. Ghosh, Addl. CGSC

ORDER (ORAL)**MANJULA DAS, MEMBER (J):**

By this O.A., applicant makes a prayer for setting aside letter dated 26.05.2016 and for a direction to declare that he is legally entitled to Grade Pay of Rs. 4,800/- w.e.f. 22.02.2008 in the relevant pay band on account of 1st ACP.

2. Mr. M. Chanda, learned counsel appearing on behalf of the applicant submitted that applicant was initially appointed as a direct recruit Inspector on 22.02.1996 under the Commissionerate of Customs and Central Excise, Shillong. The applicant while serving as Inspector attained his eligibility for grant of 1st and accordingly, he is entitled to get the 1st financial upgradation w.e.f. 22.02.2008 on completion of 12 years of service. However, the respondent authority by order dated 26.05.2016, granted benefit of 1st financial upgradation under the MACP Scheme w.e.f. 10.05.2013 on the ground that vigilance case was pending and minor and major penalty was imposed upon the applicant on 29.02.2012 and 10.05.2012 respectively.

3. Learned counsel further submitted that from the very date of entitlement of the 1st financial upgradation, no such proceeding was initiated by the respondent authority. First disciplinary proceeding was initiated on 13.01.2011 and second was initiated on 25.01.2011. Thus, there is no bar apropos entitlement of 1st ACP w.e.f.

22.02.2008. However, the respondent authority by misinterpreting debarred the applicant from genuine entitlement of the 1st ACP.

4. On the other hand, Mr. S.K. Ghosh, learned Addl. CGSC for the respondents submitted that although the applicant has attained eligibility for 1st ACP on 22.02.2008, but due to vigilance enquiry against him since 2008, his 1st ACP due on 22.02.2008 was deferred. The applicant submitted representation on 20.12.2012 to the Deputy Commissioner for grant of his ACP and MACP and similar representation was also submitted on 01.02.2013 to the Commissioner. But the applicant did not file any representation to the Chief Commissioner, who is the competent authority to decide the eligibility of ACP to the applicant. His 1st ACP was not considered in DSC meeting held on 06.11.2008 because the applicant was not free from vigilance enquiry in terms of Govt. of India, Department of Personnel and Training O.M. No. 11012/11/2007-Estt.(A) dated 14.12.2007.

5. We have heard the learned counsel for the parties, perused the pleadings and all the documents. The main plank of the argument of the learned counsel for the applicant is that applicant's entry grade in the service is 22.02.2008 and as per ACP Scheme dated 09.08.1999, the applicant is entitled to get the 1st financial upgradation w.e.f. 22.02.2008 on completion of 12 years of service.

However, the respondent authority vide order dated 26.05.2016 granted benefit of 1st financial upgradation under the MACP Scheme w.e.f. 10.05.2013 on the ground that vigilance case was pending and minor and major penalty was imposed upon the applicant on 29.02.2012 and 10.05.2012 respectively. The same has been admitted by the respondents in their written statement as well as argument that the applicant has attained his eligibility for the 1st ACP on 22.02.2008. There is no record to show anything adverse remarks against the applicant on the D.C.C. meeting held on 06.11.2008.

6. In view of the above, it is justified that the case of the applicant is deserved to be considered by granting the benefits of 1st ACP w.e.f. 22.02.2008. Accordingly, we direct the respondents to grant the benefits of 1st ACP w.e.f. 22.02.2008 with all consequential benefits immediately. Consequently, the impugned order No. II(24)2/PER/CCO/SH/2014 dated 26.05.2016 is hereby quashed and set aside.

7. O.A. stands disposed of to the extent as indicated above.
No order as to costs.

(NEKKHOMANG NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)