

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No.4492/2018

Reserved On: 07.12.2018

Pronounced on: 13.12.2018

**HON'BLE MR. V. AJAY KUMAR, MEMBER (J)
HON'BLE MS. ARADHANA JOHRI, MEMBER (A)**

Smt. Vimla Ghosh
78 years, Group-C
R/o 924, Sector 21-C
Faridabad, Haryana.

.....Applicants

(By Advocate: Shri R. Satish Kumar)

Versus

1. Ministry of Defence,
Through its Secretary,
South Block,
Cabinet Secretariat,
Raisina Hill,
New Delhi-110011.
2. The Director General NCC
West Block No.IV,
R.K. Puram,
New Delhi-110066. .. Respondents

(By Advocate: Shri Vijendra Singh for respondents)

ORDER

By Hon'ble Mr. V. Ajay Kumar, Member (J)

The applicant, an Under Officer Instructor, and retired as such on 30.09.2001, filed the OA seeking the following reliefs:-

"(i) To quash and set aside the Speaking Order dated 06.10.2017 passed by the Respondent;

(ii) To hold and declare that the applicant was entitled to the pay scale of 5500-175-9000 in the First ACP as per the 5th Pay Commission recommendation which was approved by the respondent;

(iii) To hold and declare that in the Second ACP the applicant is entitled to pay scale of Rs.6500-200-10500 (Earlier Rs.1640-2900); and

(iv) Pass any other order/s as deemed fit and proper in the facts and circumstances of the case".

2. Heard R. Satish Kumar, the learned counsel for the applicant and Shri Vijendra Singh, the learned counsel for the respondents on receipt of advance notice and perused the pleadings on record.
3. A bare perusal of the OA and the documents annexed thereto, reveals that the applicant had filed an OA No.2596/2001 before the Principal Bench of this Tribunal asking for relief on several counts. A Coordinate Bench of the Tribunal in its order dated 28.09.2001 had directed the respondents to consider the representation of the applicant including averments made in the OA as part of the representation and take a decision on various issues by passing a speaking and reasoned order. One of the issues related to grant of benefit under the ACP Scheme. The respondents passed the following order regarding this part of her request:

"(d) Benefit under ACP Scheme – The request for second financial upgradation on completion of 24 years of service to the scale of Rs.5500-9000/- was considered as per the instructions contained in DOP&T OM 35034/1/97-Estt.(D) dated 09.08.1999 and it was found that Smt. Ghosh did not have the requisite years of service since she was regularly appointed in the grade of SMI only on 09.05.1984. It is clarified that her service w.e.f. 29.05.1969 till 08.05.1984 do not count towards reckonable service for grant of financial upgradation under ACP Scheme".

4. In the second round of litigation, the applicant filed an OA No.1636/2003 before the Tribunal. It was observed in the order dated 20.04.2004 that the applicant was asking for multiple relief,

which was not permitted under Rule 10 of CAT (Procedure) Rules. The Tribunal then took up one of the issues for adjudication in the abovementioned OA with liberty to the applicant to file a fresh OA for other issues for which relief had been sought.

5. In the third round of litigation, the applicant filed OA No. 1592/2006 assailing the order dated 11.01.2002 of the Directorate General, NCC, Ministry of Defence, Government of India and sought for consideration of her case for grant of benefit under ACP Scheme.

The said OA was disposed of on 24.08.2007 as under:-

“7. The respondents are directed to consider the applicant’s case for upgradation under ACP Scheme as per the provisions of the Scheme by reckoning her service from 1969 onwards for this purpose and for consequential benefits. The above order should be complied with as early as possible preferably within a period of three months from the date of receipt of a copy of this order. No costs”.

6. Alleging non-implementation of the orders of this Tribunal in OA No. 1592/2006 dated 24.08.2007, the applicant filed CP No.202/2008, which was disposed of, by order dated 07.05.2010, as under:-

“Learned counsel for respondents produces a copy of letter dated 05.05.2010 wherein it has been advised whether the dismissal of SLP by the Apex Court is to be appealed through a Review Petition or to implement the order dated 24.08.2007 passed in OA 1592/2006.

2. In these circumstances, we direct respondent to comply with our directions in true letter and spirit within a period of four weeks from today filing which we would be constrained to call for alleged contemnor.

3. With this, CP stands disposed of. Notice is discharged. However, liberty is accorded to the applicant to revive it at appropriate stage”.

7. MA No.3063/2015 filed in OA No.1592/2006 was dismissed as withdrawn with liberty to file a fresh OA on the question of scale of pay, by an order dated 26.07.2016.

8. Thereafter, the applicant filed O.A. No.2244/2017 and the same was disposed of, by an order dated 12.07.2017, as under:-

“Heard learned counsel for the applicant.

The applicant has filed this OA seeking the following reliefs:

“i) To hold and declare that the applicant is entitled to Second ACP from 09.08.1999.

ii) to hold and declare that applicant is entitled to pay scale of 6500-200-10500 (earlier Rs. 1640-2900) from 09.08.1999 along with consequential benefits.

iii) To allow the OA with cost in favour of the Applicant and against the Respondents.

iv) To pass suitable directions to Respondents to forthwith pay to the Applicant full arrears from 09.08.1999 alongwith 15% interest p.m. till the payment in full and final.

v) Any other orders may also be passed as this Hon’ble Tribunal may deem fit and proper in the existing facts and circumstances of the case.”

2. It is submitted that the applicant made number of representations ventilating his grievances. However, no representation is filed which was addressed to the concerned respondent.

3. Accordingly, this OA is disposed of without going into the merits of the case by permitting the applicant to make a detailed representation ventilating her grievances to the second respondent within two weeks from the date of receipt of a certified copy of this order and on receipt of such a representation from the applicant, the second respondent shall consider the same and pass appropriate reasoned and speaking order thereon within ninety days in accordance with law. No costs.

A copy of the OA, be enclosed to this order".

9. In compliance of the said orders of this Tribunal, the respondents passed the impugned Annexure A-1 Speaking Order dated 06.10.2017, challenging the same, the applicant filed the instant OA.

10. The respondents, vide the impugned Speaking Order dated 06.10.2017 stated that the concerned representation submitted by the applicant in terms of the order of this Tribunal in OA No.2244/2017 is unambiguous and does not specify anywhere as to what the applicant is seeking from the department. A perusal of the Annexure A-13 representation dated 22.07.2017, filed by the applicant along with the OA fully supports the contention of the respondents. The respondents, vide the impugned order further stated that all the queries of the applicant were already clarified vide their orders dated 15.10.2014 and 09.04.2015, however, they reiterated the same as an information to the applicant in the same order.

11. It is seen that the applicant filed the OA No.2244/2017 seeking granting of second ACP from 09.08.1999 in the pay scale of Rs.6500-10500 but there was no prayer of any sort with regard to the granting of first ACP in the pay scale of Rs.5500-9000 in the said OA, but the applicant, for the first time, i.e., after a lapse of 17 years from the date of her retirement, seeking for granting of first

ACP in the pay scale of Rs.5500-9000, through the instant OA. It is not in dispute that the applicant was granted the first ACP, from the due date, in the pay scale of Rs.5000-8000 and claiming for granting of first ACP benefit in the pay scale of Rs.5500-9000, after a long lapse of time, that too for the first time, in the fourth round of litigation, is not maintainable. Once the applicant is not entitled for the first ACP in the pay scale of Rs.5500-9000, she is not entitled for the consequential second ACP in the pay scale of Rs.6500-10500. Further, a careful examination of the above referred facts clearly indicate that the applicant is reagitating the same issues which were answered and denied long before, by continuously filing one OA after another.

12. In the circumstances, we do not find any merit in the OA and accordingly the same is dismissed. No costs.

(ARADHANA JOHRI)
Member (A)

(V. AJAY KUMAR)
Member (J)

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