

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

O.A.No. 1201/2013

Dated Friday, the 7th day of June, 2019

PRESENT

Hon'ble Mr.R.Ramanujam, Administrative Member

&

Hon'ble Mr.P.Madhavan, Judicial Member

1.P.Radhakrishnan,

2.D.Manjini.

....Applicants

By Advocate M/s. V. Ajayakumar

Vs

1.Union of India, rep by

The Government of Puducherry,

through the Secretary to Government for Finance Department,

Chief Secretariat, Puducherry.

2.The Director,

Directorate of Accounts and Treasuries,

Puducherry.

....Respondents

By Advocate Mr. R. Syed Mustafa

(Order: Pronounced by Hon'ble Mr.R.Ramanujam, Member(A))

Heard. The applicants have filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

""To call for the records of the respondents with No. 3-2/DAT/S.K.Estt./MACPS/2009/35 dated 22.03.2013 and with No. 8-3/DAT/S.K.Estt./2006/75 dated 09.07.2013 and to quash the same and consequently to direct the respondents to grant ACP to the applicants with effect from 01.09.1991 the pay scale of Rs. 5200-20200 with grade pay of Rs. 2400/- as the first ACP on completion of 12 years and the pay scale of Rs. 9300-34800 with grade pay of Rs. 4200 with effect from 01.09.2003 and the applicants completed 24 years of service with all other consequential benefits including arrears of wages and to pass such other or further orders in the interest of justice and thus render justice."

2. The applicants are aggrieved that they had not been granted ACP from the relevant dates on the ground that they had not passed the departmental examination on Accounts which was mandatory for grant of ACPs/promotion to higher levels. It is submitted that the applicants had passed the departmental test on 22.11.2008 & 23.10.2010 respectively albeit long after the due dates of ACP. Even if the applicants had not passed the departmental examination, standing orders of the General Administration Department provide for grant of exemption in the case of those who were above 50 years of age and who had failed in atleast 5 attempts to pass the test but had a record of service to merit the concession. Reference is made to Annexure A-1 GO Ms.No.110/73-(Exam) dated 27.08.1973 in this regard.

3. The respondents have filed a reply stating that the applicants clearly failed to qualify in the Accounts test and accordingly they were not entitled to ACP on their due dates. Although the applicants had passed the examination subsequently on 22.11.2008 & 23.10.2010 respectively, by that time the MACP Scheme had been introduced w.e.f 01.09.2008 in supercession of the previous ACP Scheme. Accordingly, the applicants had been granted three financial upgradations as per the MACP Scheme. As for exemption from passing the Accounts test, it is stated that the competent authority had taken a decision not to allow such exemption in the case of ACP. The DOPT, by an OM dated 10.02.2000 emphasized that all promotion norms had to be fulfilled for grant of financial upgradation under ACP scheme and that no upgradation shall be allowed if an employee failed to qualify the departmental skill test prescribed for the purpose of regular promotion.

4. We have considered the matter. It appears that the applicants fulfilled the age criterion prescribed in Annexure A-1 GO for grant of exemption from passing the departmental test. It is not contended by the respondents that the applicants' record of service were not such as to merit the concession. The respondents have placed reliance on an OM of the DOPT dated 10.02.2000 regarding non upgradation for employees who failed to qualify the departmental/skill test prescribed for promotion. However, a copy of the DOPT OM is not seen attached to the reply. It is also not clear whether the applicants fulfilled the conditions prescribed in

the 1973 GO prior to the issue of the OM by DOPT in 2000 and if so, the OM would have retrospective effect.

5. On further perusal, It is also seen that the applicant had alleged that a similarly placed employee one M.M.Balan, Store Keeper, Grade III had been allowed the exemption from passing the departmental test and granted consequential benefits. Accordingly, the applicants could not be discriminated against. The reply filed by the respondents is silent on the alleged discrimination.

6. We are unable to appreciate the stand of the respondents that a person could be considered for promotion in relaxation of the conditions of passing the departmental test but no such relaxation is possible for grant of upgradation. It sounds somewhat illogical that even after failing the departmental test, a person could be promoted to a higher post which involves discharge of higher responsibilities and greater competence but he would not be eligible for upgradation which merely confer a financial gain without such promotion. To a pointed query from the Bench as to whether the applicants would receive any additional financial benefits if their request is granted as they have now been granted three upgradations in accordance with the MACP scheme, neither side is able to provide a clear answer.

7. In view of the above, we deem it appropriate to direct the competent authority to consider the relief sought by the applicants in terms of the facts of the case, the date of issue of the relevant DOPT

order, its applicability in terms of the dates from which the applicants had become eligible to be considered for exemption and whether the applicants' service record was such that they could be granted exemption and pass a reasoned and speaking order within a period of three months from the date of receipt of a copy of this order.

8. OA is disposed of in the above terms. No costs.

(P.MADHAVAN)
MEMBER(J)
M.T.

07.06.2019

(R.RAMANUJAM)
MEMBER (A)