

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O.A.No.260/00148/2017

Reserved on : 10.04.2019
Pronounced on: 14.05.2019

CORAM:

**HON'BLE MR.GOKUL CHANDRA PATI, MEMBER (ADMN.)
HON'BLE SWARUP KUMAR MISHRA, MEMBER (JUDL.)**

Benudhar Mahalik, aged 58 years, S/o. Late Gobinda Mahalik, Vill/Po.Pingua, Ps. Nihal Prasad, District Dhenkanal at present working as Administrative Officer CSIR Institute of Minerals & Materials Technology (IMMT) PO. RRL Campus, Acharya Vihar, Bhubaneswar-751013, District Khordha, Odisha.

...Applicant

By the Advocate(s)-M/s.D.K.Mohanty, S.Nayak

-VERSUS-

1. Union of India represented through its Secretary, Ministry of Finance, Department of Expenditure, Govt. of India, New Delhi-110002.
2. Joint Secretary (Admn.), Council of Scientific & Industrial Research Anusandhan Bhawan, 2 Rafi Marg, New Delhi-110 001.
3. Director General, Council of Scientific & Industrial Research Anusandhan Bhawan, 2 Rafi Marg, New Delhi-110001.
4. Director, CSIR- Institute of Minerals and Materials Technology, PO. RRL, Bhubaneswar-751013.

...Respondents

By the Advocate(s)- Mr.A.Pradhan
Mr.B.R.Mohapatra

ORDER

GOKUL CHANDRA PATI, MEMBER(A)

The OA is filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

- (i) To quash the order of communication to the applicant dt. 16.01.2014 dt. 29.06.2015, dt. 10.12.2015 and 30.01.2017 under Annexure-A/5, A/7, A/9 & A/12.

- (ii) To direct the Respondents for issuing orders for grant of financial benefits under the 1st ACP Scheme w.e.f. 09.08.1999 as per the DoP&T OM No. 35034/1/87-Estt.(D) dated August 9, 1999 and subsequent fixation of his pay after the grant of ACP as provided under the rules with 12% interest;
- (iii) And pass any other order(s)/direction(s) to the Respondents to fix of his pay in each promotional grade, within a stipulated time as this Hon'ble Court feels deem fit and proper to meet the ends of justice;
- (iv) And to allow this OA with costs."

2. The applicant was initially appointed as Junior Stenographer and then he was selected for Senior Stenographer and appointed as such on 7.8.1986 as a direct recruit. Thereafter, he was selected for the next higher post of PS under promotion on 13.7.1995, but he had to refuse the promotion due to family problems. He was again selected for promotion to the post of PS on 12.11.1997, but he could not avail the same due to family problems. The applicant submitted a representation on 22.1.2001 for being considered the benefit of financial upgradation under the Assured Career Progression (in short ACP) Scheme, which has been launched w.e.f. 9.8.1999 and since he had already completed 12 years of service. The applicant was promoted to the post of PS again on 26.2.2001 which was accepted by him. He is aggrieved since the respondents are not allowing him the benefit of the ACP Scheme w.e.f. 9.8.1999 in the light of the order dated 26.10.2007 of Madras Bench of the Tribunal in the case of P. Revathy vs. Union of India and others (Annexure-A/10).

3. On rejection of his case by the respondents, the applicant approached this Tribunal in OA No.100/2016, which was disposed of vide the order dated 27.4.2016 (Annexure-A/11), setting aside

the rejection order which was not a speaking order and directing the respondents to reconsider the matter as per law. Accordingly, the respondents have passed the impugned order dated 30.1.2017 (Annexure-A/12), rejecting the case of the applicant for allowing him the ACP benefit w.e.f. 9.8.1999 on the ground that he had refused promotion earlier twice.

4. In the OA, the applicant relies upon the order dated 26.10.2007 (A/10) of Madras Bench of this Tribunal. It is seen that there was no mention of the Madras Bench order by the applicant in OA No. 100/2016, which was disposed of by order dated 27.4.2016 (A/11) on the ground that the order passed by the respondents was not a speaking order.

5. Counter filed by the respondents stated that the matter was referred to the DOPT for clarification. The DOPT clarified that the ACP Scheme is meant for providing benefit to the employees who are deprived due to non-availability of vacancies of promotional posts. If an employee refuses promotion, it cannot be stated that he was stagnating as he opted for such stagnation. Hence, no ACP benefit can be given. But he may be considered for regular promotion after the debarment period due to refusal of promotion.

6. The applicant filed Rejoinder, in which the order of CAT Bombay Bench on a similar matter in OA No. 129/2003 was cited. Similarly, it was stated that in OA No. 768/2005, CAT Ernakulam Bench had held that refusal of promotion prior to 9.8.1999 would be of no effect on entitlement for the ACP benefit. It is stated that in view of these orders of the Tribunal, the applicant is also entitled for the ACP benefit w.e.f. 9.8.1999.

7. We have heard learned counsels for both the parties and considered the pleadings on record. The question to be decided in this case is whether the applicant is entitled for the ACP benefit w.e.f. 9.8.1999 in view of the order dated 26.10.2007 of Madras Bench of the Tribunal (Annexure-A/10).

8. It is noticed that the applicant had first represented for redressal of his grievance on 22.1.2001 (Annexure-A/3) and then no action was taken by the applicant to remind the respondents or approach the Tribunal. The cause of action for the applicant arises when the respondents did not allow the benefit of the ACP Scheme which was launched on 9.8.1999. As revealed for the OA, the first step taken by the applicant was to submit a representation on 22.1.2001 (A/3) and then no action was taken by him till he approached the Tribunal till 2013, when he submitted another representation dated 13.8.2013, referring to the representation dated 22.1.2001 and then dated 27.11.2014 (Annexure-A/6 series). Another representation dated 13.3.2015 referred to the decision of Bombay Bench of the Tribunal. These representations were considered and rejected vide order dated 29.6.2015 (A/7) of the respondents. The order dated 29.6.2015 was challenged in the OA No. 100/2016 which was disposed by quashing the order dated 29.6.2015 and remanding the matter to the respondents for reconsideration of the applicant's case.

9. It is seen that in para 5.1 (C) of the Counter, it is stated that the applicant was promoted to the post of PS in which he had joined on 26.2.2001. This specific averment has not been denied by the applicant. He now claims the benefit w.e.f. 9.8.1999 by virtue of

the order of Madras Bench of the Tribunal. If he would have been allowed the benefit of ACP Scheme, then he would have been allowed the benefit of the pay scale applicable for the promotional post of PS w.e.f. 9.8.1999. It is seen that the applicant first raised the issue of his promotion/upgradation vide his representation dated 22.1.2001 (Annexure-A/3) and he was promoted on 26.2.2001 to the promotional post of PS. It is observed that the fact that the applicant was allowed promotion w.e.f. 26.2.2001 and he had joined in that post, has not been mentioned in the OA. Nor was it mentioned in the earlier OA No. 100/2016 as the order dated 27.4.2016 does not mention anything about it. Hence, the applicant has not been very clear on the facts of the case.

10. In order to take the benefit of an order of a coordinate Bench of the Tribunal, it is important for the applicant to have moved the appropriate authority/forum within time to get the benefit of the Tribunal's order. The order of Madras Bench cited by the applicant was 26.10.2007 and after that, the applicant first submitted the representation to the authorities in 2013, i.e. after about 6 years from the order of Madras Bench of the Tribunal. There is no reason for such delay in approaching the authorities and then delay in approaching the Tribunal in 2016 through the OA No. 100/2016 and the ground of the order of Madras Bench was not raised before the Tribunal in OA No. 100/2016 as the order dated 27.4.2016 of the Tribunal does not mention about such ground. The question of parity as per the order of Madras Bench of the Tribunal has been raised in this OA, for which it is necessary to examine whether such claim of the applicant is within time as per the section 21 of

the Administrative Tribunal Act, 1985. As stated earlier, the applicant has approached the authorities after 6 years from the date of order of Madras Bench, for which there is no explanation of delay. In the case of the State of U.P. and others vs. Arvind Kumar Srivastava and other reported in (2015) 1 SCC (L&S) 191 at paragraphs 22.1, 22.2 and 22.3 it was held by Hon'ble Apex Court as under:-

"22.1 The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3 However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularization and the like (see K.C. Sharma V. Union of India). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it

can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence."

11. Perusal of order dated 26.10.2007 of Madras Bench of the Tribunal shows that it was applicable for the employee who was refused the benefit of the ACP scheme due to his refusal for promotion post prior to 9.8.1999 and it was not the case that the concerned employee had been allowed promotion subsequently. The guidelines of the DOPT have not been modified by the Tribunal's order dated 26.10.2007. Hence, we are of the view that the order dated 26.10.2007 can be considered to be a judgment in rem. Therefore, to get the benefit of the said judgment, the applicant should have taken appropriate steps within stipulated time for moving this Tribunal for enforcing his right. He delayed by about 6 years in approaching the respondents and then he approached this Tribunal in OA No. 100/2016 after 9 years of the order of Madras Bench of this Tribunal. Hence, applying the ratio of the judgment of Hon'ble Apex Court in the case of Arvind Kumar Srivastava (*supra*), the applicant is not entitled to raise the claim due to limitation and delay, particularly since he was promoted to the level of PS w.e.f. 26.2.2001 after his first representation on 22.1.2001.

12. In view of the discussions above, we are not inclined to interfere in the matter. The OA is accordingly dismissed with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(JUDL.)

(GOKUL CHANDRA PATI)
MEMBER(ADMN.)

