

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 941 of 2014

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Purna Chandra Mohanty, aged about 58 yhears, S/o Late Bankanidhi Mohanty, resident of Nabakalebar Road, PS – Kumbharpada, Dist- Puri, Odisha, at present working as Senior Accountant, Office of Principal Accountant General (A&E), Odisha, Puri Branch, Puri, Odisha.

.....Applicant

VERSUS

1. Union of India, represented through Comptroller & Auditor General of India, Pocket-9, Deendayal Upadhaya Marg, New Delhi- 110124.
2. Principal Accountant General (A&E), Odisha, Bhubaneswar, Dist. – Khurda, Odisha.
3. Deputy Accountant General (Works Accounts & Forests), Odisha, Office of the Principal Accountant General (A&E) Odisha, Puri Branch, At-Shree Vihar Marg, Puri-752003, Odisha.
4. Shri S.Venugopalam, Asst. Audit Officer, Office of Accountant General (Audit-1), Odisha, Bhubaneswar, Dist-Khurda, Odisha.

.....Respondents.

For the applicant : Mr.K.C.Kanungo, counsel

For the respondents: Mr.S.K.Patra, counsel

Heard & reserved on : 30.7.2019

Order on : 26.8.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

In this OA, the applicant who initially appointed as Divisional Accountant on probation under the respondent No. 3 vide order dated 18.9.1979 (Annexure-A/2). Due to failure to pass the departmental examination, he was issued a show cause notice for termination of service. The applicant replied with a request to be adjusted in the post of Auditor with a lower pay scale than the post of Divisional Accountant. The competent authority, vide order dated 21.9.1982 (Annexure- A/3), offered him the appointment against the post of Auditor as applied by him and he joined against the said post on 25.9.1982. Then he came over to Accounts wing and

was posted as Accountant. He was also promoted to the post of Senior Accountant on 7.1.1988.

2. Thereafter, the applicant was granted the benefit of 2nd financial upgradation to the scale of Rs. 6500-10500/- w.e.f. 27.9.2006 after completion of 24 years of service taking his appointment as Auditor/Accountant on 25.9.982. He was granted 3rd MACP benefit w.e.f. 28.9.2012 after completion of 30 years of service in the post of Auditor/Accountant (Annexure-A/6). Then the applicant represented on 14.10.2011 to take into account the period of his service from 26.9.1979 till 25.9.1982 as Divisional Accountant for the purpose of ACP Scheme. He submitted another representation on 14.10.2012 (Annexure-A/8) requesting for the above benefit. But vide order dated 21.11.2013 (Annexure-A/9), the representation was rejected. Being aggrieved, he has filed this OA with the following prayer for reliefs:-

"Your Lordship may be graciously pleased to quash Annexure-A/9 for the end of justice.

AND

Be further pleased to hold that the applicant is entitled to the 2nd financial upgradation under ACPS to the scale of Rs.6500-10500/- w.e.f. 27.9.2003 with arrear for the ends of justice.

AND

Be further pleased to hold that the applicant is entitled to the 3rd financial upgradation under MACP with grade pay of Rs.5400/- w.e.f. 28.9.2009 with arrear for the ends of justice.

AND

Be further pleased to direct the respondents to fix the pay of the applicant in the appropriate higher pay scale (Rs.6500-10500/-) w.e.f. 27.9.2003 by extending the 2nd financial upgradation under ACPS with periodical increment from time to time with arrear for the ends of justice.

AND

Be further pleased to direct the respondents to extend higher Grade Pay with periodical increments and arrears by extending the 3rd financial upgradation under MACPS w.e.f. 28.9.2009 for the ends of justice.

AND

Be further pleased to direct the respondents to pay the interest on the arrears till the actual payment is made for the ends of justice.

AND

Be further pleased to pass any other/further order(s) or direction (s) as deemed fit and proper in the circumstance of the case.

AND

The cost of the application may kindly be allowed."

3. The counter has been filed by the respondents from which it appears that there is no dispute as far as the basic facts are concerned. It is mentioned that as per para 7.5 of CAGs MSO (Admn.) the applicant's service as Divisional Accountant (Probationer) was terminated on 25.9.1982 and he was appointed

as Auditor as a direct recruit on the same date vide order at Annexure A/4 and was subsequently designated as Accountant. It was stated that for the purpose of counting qualifying service for the purpose of pension, his service as Divisional Accountant (Probationer) can be taken into account, but for the purpose of ACP, MACP scheme, his service as Divisional Accountant (Probationer) cannot be counted, since he was not confirmed in the said post due to failure to complete the probation period. The applicant had given the example of respondent No.4 in para 4.9 of the OA in whose case his service rendered in State Government was counted by the respondents for the purpose of ACP. It is clarified in para 9 of the counter that such financial upgradation was allowed wrongly to respondent No.4 and action has been taken separately to rectify the error. It was further submitted that the pay scale of Divisional Accountant and the Accountant/Auditor cadre are different as they carried two different scales of pay.

4. Rejoinder has been filed by the applicant denying the averments in the counter. It is submitted that as per the MSO (Admn) of the CAG, if a direct recruit fails to pass the departmental examination within the period of probation he will be removed from service if fully deserving of retention, will be offered upper division vacancy in the Audit office. It was submitted that this provision implies continuity of service of the applicant. It was also pointed out that the service of the applicant was never terminated while appointing him as Auditor on 21.9.1982 (Annexure A/3). It is further submitted that the clause No. 39 of OM dated 18.7.2001 (Annexure A/11) is applicable in this case since the applicant had been retained in the cadre of Auditor as per MSO 319.

5. We have heard learned counsel for the applicant as well as the respondents. Learned counsel for the applicant argued that the applicant was entitled for the benefit of his service as Divisional Accountant as it has been counted for pension and in view of the DOPT OM dated 18.7.2001 (Annexure A/11). Learned counsel for the respondents filed a copy of the OM of the DOPT dated 10.2.2000 regarding clarifications on the ACP scheme. While drawing our attention to para 5 of the said circular, he states that it is applicable to the

case of the applicant. He also filed a copy of the MSO of the CAG. Learned counsel for the applicant on the other hand relied on the DOPT OM dated 18.7.2001 (Annexure A/11) point No.39 which he stated to be applicable in the case of the applicant.

6. We have considered the matter with reference to the submissions and available records. Para 39 of the DOPT OM dated 18.7.2001 (Annexure A/11) states as under :

Sl.No	Point of doubt	Clarification
39	An employee is appointed to a lower grade as a result of unilateral transfer on personal request in terms of FR 15(2). Will the period of service rendered in the higher post count for the purposes of ACPS?	Condition no. 14 of the ACPS (DoP&T O.M. dated 9.8.1999), inter-alia, states that in case of transfer including unilateral transfer on request, regular service rendered in previous organisation shall be counted along with regular service in the new organisation for the purposes of getting financial upgradation under the Scheme. This condition covers cases where a unilateral transfer is to a lower post. However, financial upgradations under the ACPS shall be allowed in the hierarchy of the new post.

7. Learned counsel for the respondents on the other hand relied on DOPT OM dated 10.2.2000 . Point No. 5 states as under :

Sl.No.	Point of doubt	Clarification
4.	In a case where a person is appointed to a post on transfer (absorption) basis from another post, whether 12 years and 24 years of service for the purpose of ACPS will count from the initial appointment or otherwise.	The benefits under ACPS are limited to higher pay scale and do not confer designation, duties and responsibilities of the higher post. Hence, the basic criterion to allow the higher pay scale under ACPS should be whether a person is working in the same pay scale for the prescribed period of 12/24 years. Consequently, so long as a person is in the same pay scale during the period in question, it is immaterial whether he has been holding different posts in the same pay scale. As such, if a Government servant has been appointed to another post in the same pay scale either as a direct recruit or on absorption (transfer) basis or first on deputation basis and later on absorbed (on transfer basis), it should not make any difference for the purpose of ACPS so long as he is in the same pay
5.	Whether a Government servant, who is direct recruit in one grade and subsequently joins another post again as direct recruit, is eligible for first financial upgradation under ACPS after completion of 12 years of service counted from the first appointment or from the subsequent second appointment as direct recruit? An employee appointed initially on deputation to a post gets absorbed subsequently, whether absorption may be termed as promotion or	

6.	<p>direct recruitment. What will be the case if an employee on deputation holds a post in the same pay-scale as that of the post held by him in the present cadre? Also, what will be the situation if he was holding a post in the parent cadre carrying a lower pay-scale?</p>	<p>scale. In other words, past promotion as well as past regular service in the same pay scale, even if it was on different posts for which appointment was made by different methods like direct recruitment, absorption (transfer)/deputation, or at different places should be taken into account for computing the prescribed period of service for the purpose of ACPS. Also, in case of absorption (transfer)/deputation in the aforesaid situations, promotions earned in the previous/present organisations, together with the past regular service shall also count for the purpose of ACPS. However, if the appointment is made to higher pay-scale either as on direct recruitment or on absorption (transfer) basis or first on deputation basis and later on absorbed (on transfer basis), such appointment shall be treated as direct recruitment and past service/promotion shall not count for benefits under ACPS.</p> <p>Needless to say, in cases of transfer on administrative ground, involving only change of station within the same department, the service rendered in the same grade at two stations may count for ACPS, as such transfers are within the same organisation, ordered generally for administrative/personal considerations and the service rendered in the earlier station counts as eligibility service for promotion.</p>
----	--	--

8. From the OM dated 10.2.2000 it is clear that when an employee is absorbed in a different cadre on transfer or absorption his previous service can be counted as long as both the posts are in the same pay scales. But if the appointment is made to higher pay scale such appointment shall be treated as direct recruitment and past service and promotions will not be counted for the benefit of ACP Scheme. It does not clarify the situation as to what will happen if the employee is adjusted in a pay scale which is lower than the original pay scale which he was drawing prior to absorption. However, the learned counsel

for the respondents argued that the counting of previous service is permissible if the scales in both the posts are same and it is not the case for the applicant.

9. In the clause 39 of the DOPT OM dated 18.7.2001 (Annexure A/11) relied upon by the learned counsel for the applicant deals with the point if an employee is appointed to a lower grade as a result of unilateral transfer on own request as per FR 15(2) in that case it has been clarified that the regular service rendered in the previous organisation shall be counted along with the regular service in the new organisation for the purpose of getting benefit of ACP under the scheme.

10. Coming back to the present case it is an undisputed fact that the previous posting of the applicant was not a regular service. Since he was under probation as Divisional Accountant and he could not clear the prescribed departmental examination for Divisional Accountant. As stated in clarification of the DOPT in OM dated 18.7.2001 in clause 39, the previous regular service is to be counted for ACP/MACP. Since his previous service as Divisional Accountant was not regular, it cannot be counted for the purpose of ACP/MACP benefit. The example of respondent No.4 will not be helpful for the applicant since it is stated in the counter that it was wrongly given and separate action is being taken by the respondents to rectify the mistake.

11. In view of the above, the prayer made in the OA to allow the benefit of 2nd ACP after taking into account the service rendered as Divisional Accountant (Probationer) cannot be accepted in terms of the rule and guidelines of the DOPT and this matter does not call for any interference.

12. The OA is accordingly dismissed with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath