

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/46/2013

Date of Reserve:16.04.2019

Date of Order:28.06.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Sri Nihar Ranjan Mishra, aged about 47 years, S/o. Bamadev Mishra, resident of Village-Ramakumarpur, PO-Somepur, Dist-Cuttack, Odisha – at present working as Lower Division Clerk, Office of the Executive Engineer, Civil Construction Wing, All India Radio, PO-Sainik School, Bhubaneswar-751 005, Dist-Khurda, Odisha.

...Applicant

By the Advocate(s)-M/s.K.C.Kanungo
C.Padhi

-VERSUS-

Union of India represented through:

1. The Secretary, Government of India, Ministry of Information & Broadcasting, Shastri Bhawan, New Delhi-110 001.
2. Director General, All India Radio, Akashvani Bhawan, Parliament Street, New Delhi-110 001.
3. Station Director, All India Radio, P.K.Parija Marg, Cuttack, Dist-Cuttack, Odisha.
4. Executive Engineer (C), Civil Construction Wing (CCW), All India Radio, PO-Sainik School, Bhubaneswar-751 005, Dist-Khurda, Odisha.

...Respondents

By the Advocate(s)-Mr.S.B.Mohanty

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the A.T.Act, 1985, the applicant has sought for the following reliefs:

- i) ...to direct Respondent No.3 to predate/antedate the counting of service for the purpose of financial upgradation under ACP Scheme, 1999 w.e.f. dt. 01.07.1992 as per the guideline at Annexure-A/6, A/8, and A/11 for the ends of justice.
- ii) Be further pleased to quash Annexure-A/16.
- iii) Be further pleased to quash Annexure-A/17 (to the extent it denies/rejects the claim of the applicant to

predate/antedate the counting of service for the purpose of financial upgradation under ACP Scheme, 1999.

- iv) Be further pleased to modify Annexure-A/20 to the extent the applicant is concerned by substituting the date 21.10.2014 by 1.7.2012 for the ends of justice.
- v) Be further pleased to hold that Annexure-A/19 to the extent the applicant is concerned is legal and justified for ends of justice.
- vi) Be further pleased to direct Respondent No.3 to pass appropriate order for revision pay fixation of the applicant consequent upon antedating the first financial upgradation of the applicant under ACP scheme, 1999 w.e.f. Dt.01.07.1992 for the ends of justice.
- vii) Be further pleased to direct the Respondent No.3 to grant 2nd financial upgradation under MACP, 2008 to the applicant w.e.f. Dt.01.07.2012 with arrears for the ends of justice.
- viii) Be further please to direct the Respondent No.3 to pay interest on the arrear out of antedating the financial upgradation of the applicant under ACP Scheme, 1999 from Dt.01.07.2004 till the actual payment is made for the ends of justice.
- ix) Be further pleased to issue any other/further order(s) or direction(s) as deemed fit and proper in the circumstances of the case".

2. The factual matrix of the O.A. is that consequent upon his qualifying the Clerk Grade Examination, 1991, the applicant was appointed as Lower Division Clerk (in short LDC) in which post he joined on 21.10.1994 in the Ministry of Home Affairs, Government of India. His request for transfer to any Central Government Offices located in Orissa having been considered and acceded to, the applicant joined as LDC with effect from 6.5.1996 under the Respondent-Department. However, by a subsequent order dated 03.09.1996 (A/4) issued in pursuance of Directorate General, AIR, New Delhi order dated 12.02.1996, the conditions of appointment of the applicant stood modified as follows:

1. The post is in the General Central Services Group 'C' non-Gazetted Ministerial.
2. He will be governed by the Central Civil Services Rules, 1965 framed by Govt. Of India and amended from time to time.
3. He will be on probation for a period of two years from the date of his joining the post at this office, if not already completed probation.
4. He will have to forgo his seniority in the C.S.C.S. Cadre and his seniority in AIR in Orissa zone, shall be counted from the date he joins duty at Civil Construction Wing, All India Radio, Balasore Sub-Division.
5. xx xx xx
6. He will have to tender Technical resignation from the C.S.C.S. Cadre.

3. Based on the recommendations of 5th Central Pay Commission, the Government of India introduced Assured Career Progression (in short ACP) Scheme for the Central Government Civilian Employees vide Office Memorandum dated 09.08.1999 with a view to granting two financial upgradations on completion of 12 & 24 years regular service to overcome lack of adequate promotional avenues. Accordingly, the applicant was granted 1st financial upgradation under the ACP Scheme with effect from 21.10.2008.

4. Grievance of the applicant is that by virtue of Office Memorandum dated 31.10.2002 (A/6) issued by the Ministry of Home Affairs, he is entitled to get 1st financial upgradatiojn under the ACP Scheme by reckoning his regular service inasmuch as he is a direct recruit and the aforementioned Office Memorandum provides for grant of financial upgradation under the ACP scheme to the cadre officials reckoning regular service in respect of direct recruitment with effect from 1st July of the year following the year of examination. According to applicant, since he had appeared Clerk Grade

Examination in the year 1991, his service for the purpose of grant of financial upgradation under the ACP Scheme is reckonable with effect from 01.07.1992 as per the relevant Recruitment Rules of CS&CS Cadre, Ministry of Home Affairs.

5. Ventilating his grievance applicant submitted several representations which did not yield any fruitful result. However, on the detailed report submitted by Respondent No.4 to Respondent No.2, the latter considered the same in consultation with the Ministry of Personnel & Training and accordingly, applicant was intimated a favourable decision in his favour vide A/11 dated 5.4.2012. In the meantime, vide order dated 29.04.2015 (A/19), the applicant was granted 2nd MACP with effect from 01.07.2012 by reckoning the commencement of regular service with effect from 1.7.1992. While the matter stood thus, without any rhyme or reason and without even any show cause notice, the Respondent No.3 vide order dated 09.06.2015 (A/20) modified the order dated 29.04.2015(A/19) by treating the date of commencement of regular service for the purpose of ACP & MACP with effect from 20.10.1994 and in effect, granted the 2nd MACP with effect from 20.10.2014. The applicant submitted representations to the authorities and thereafter has approached this Tribunal in this O.A. praying for the reliefs as mentioned above.

6. Opposing the prayer of the applicant, respondents have filed a detailed counter. According to respondents, the DG, AIR vide his letter No.3206/7/2012-8-II dated 25.03/05.04.2013 has clarified as follows:

"Regular service for the purpose of ACP Scheme shall be interpreted to mean his eligibility service counted for regular promotion in terms of relevant Recruitment Rules. According, administrative staff such as LDCs, UDCs and Head Clerk/Assistant/Accountant/SSKs etc. working in different AIR/DDK may be granted financial upgradation under ACP

Scheme counting 12/24 years regular service as per their date of joining in Government Service. The clarification given in Para-1 on Ministry of Home Affairs letter No.A-31016/99-ad.I (B) dated 01.11.2002 applies to CSS/CSS cadre where provisions to this effect exist in the service rules. Also in case of transfers including unilateral transfer on request, the regular service in his/her in the previous organization shall be counted along with his/her regular service in his/her new organization for the purpose of giving financial upgradation under the scheme. Hence, the employee is eligible for 2nd ACP after completing 24 years from the date of joining in the government service".

7. It is the contention of the applicant that the respondents vide order dated 29.04.2015 (A/19) had granted 2nd MACP with effect from 01.07.2012 having regard to his commencement of regular service with effect from 1.7.1992 but without any rhyme or reason and without even any show cause notice, the Respondent No.3 vide order dated 09.06.2015 (A/20) modified the order dated 29.04.2015(A/19) by treating the date of commencement of regular service for the purpose of ACP & MACP with effect from 21.10.1994 and in effect, granted the 2nd MACP. On the other hand, it has been submitted by the respondents that by virtue of order dated 29.04.2015 commencement of regular service with effect from 01.07.1992 had wrongly been mentioned as per the information provided by the Civil Construction Wing, Bhubaneswar and the said order was therefore, superseded by order dated 09.06.2015 counting his regular service from 21.10.1994, i.e., the date with effect from which the applicant had actually joined service. Respondents have also filed additional affidavit to which the applicant has filed a counter.

8. Heard the learned counsels for both the sides and perused the records. We have also gone through the Office Memorandum dated 9th August, 1999(A/5) whereby the Government of India in the Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training) introduced the ACP Scheme for the Central Government Civilian Employees

vis-a-vis the Office Memorandum dated 31.10.2002 (A/6) issued by the Government of India, Ministry of Home Affairs on the subject of grant of financial upgradation to the cadre officials of MHA under the Assured Career Progression Scheme. For the sake of clarity, some of the relevant rules as embodied in Office Memorandum dated 9.8.1999 issued by the DOP&T for grant of financial benefit under the ACP Scheme as well as the Office Memorandum issued by the Ministry of Home Affairs are extracted hereunder:

"Office Memorandum dated 09.08.1999:

- 3.2. 'Regular Service for the purpose of the ACP Scheme shall be interpreted to mean the eligibility service counted for regular promotion in terms of relevant Recruitment /Service Rules.

Conditions for grant of Benefits under the ACP Scheme:

3. The financial benefit under the ACP Scheme shall be granted from the date of completion of the eligibility period prescribed under the ACP Scheme or from the date of issue of these instructions whichever is later:
- 5.2. Residency periods (regular service) for grant of benefits under the ACP Scheme shall be counted from the grade in which an employee was appointed as a direct recruit:
14. In case of an employee declared surplus his/her organization and in case of transfers including unilateral transfer on request, the regular service rendered by him/her in the previous organization shall be counted along with his/her regular service in his/her new organization for the purpose of giving financial upgradation under the Scheme; ..."

"Office Memorandum dated 31.10.2002:

"Subject: Grant of financial upgradation to the cadre officials of MHA under the Assured Career Progression Scheme – Date of effect – reg:

The undersigned is directed to state that the cadre officials in various grades including LDC, UDC, Assistant, Steno Grade 'D', Steno Grade 'C' have been accorded with the financial upgradation under the ACP Scheme after completion of 12/24 years of regular

services. For the purpose of calculating the 12/24 years of regular service, this Ministry has so far been taking the date of actual appointment in service as the date of commencement of the regular service and accordingly, ACP benefit has been given on completion of 12/24 years from the date of actual appointment in the respective grade. However, DOPT, Establishment-D have now clarified that for the purpose of ACP scheme, the regular service will have to be the same as counted for regular promotion and the regular service/residency service will have to commence from the 1st July of the year following the year of examination. In other words, the regular service in respect of direct recruitment will commence from the 1st July of the year following the year of examination and in respect of seniority quota/departmental examination candidates, the regular service will commence from the 1st July of the Select List year in which they have been included. It has therefore, become essential review all cases of ACP upgradation and predate/postpone the date accordingly.

2. All the Cadre Units are requested to kindly review all cases of financial upgradation under ACP scheme given to the cadre officials posted in their respective Cadre Units and provide the information in the revised proforma taking the 1st July of the appropriate year as the date of commencement of regular service and accordingly indicate the date of completion of 12/24 years respectively. This information may kindly be provided at the earliest so that the revised orders of financial upgradation may kindly be provided at the earliest so that the revised orders of financial upgradation under ACP scheme could be issued by the Cadre Controlling Authority in respect of these officials".

9. From the above recital of facts, the short point to be decided in this O.A. is whether the applicant is entitled to the benefit of 1st financial upgradation under the ACP Scheme having his regular service taken into account as counted for regular promotion, the regular service/residency service being from 1st July of the year following the year of examination.

10. It is the contention of the respondents that the Office Memorandum (cited supra) issued by the Government of India, Ministry of Home Affairs is applicable to CSS/CSCS (Central Secretariat Service) and not to the case of the applicant. In other words, they have pointed out that had the applicant been under the Ministry of Home Affairs, he would have been entitled to the benefit as claimed by him. In this connection, it is to be noted that by virtue of

order dated 03.09.1996 (A/4) issued in pursuance of Directorate General, AIR, New Delhi order dated 12.02.1996, the conditions of appointment of the applicant have been altered. As quoted above, on his technical resignation from C.S.C.S. cadre, the post now held by the applicant in the Respondent-Organization is in the General Central Services Group 'C' non-Gazetted Ministerial. Therefore, consequent upon his joining as LDC on transfer with effect from 06.05.1996, was no longer in the Central Secretariat Clerical Service cadre due to the reason that lien with his parent Ministry ceased to operate by dint of his technical resignation.

11. On the other hand, by filing a reply to the additional affidavit of the respondents the applicant has brought to the notice of this Tribunal that for the purpose of grant of benefit under the ACP Scheme, the respondents have reckoned 1st July of the year following the year of examination in respect of their own employees belonging to the Clerk. In this connection, the applicant has annexed copies of OM No.A-23023/12009-Admn.IV dated 27.02.2002 and letter No.32(2)/2013-G(RTI)/5253 dated 19.11.2013 along with an order dated 03.07.2007 of Prasar Bharati, AIR, Kolkata vide A/23 and A/24 and has submitted that it would be discriminatory if the applicant being a similarly situated person is not equally treated.

12. We have considered the rival submissions threadbare and also perused the materials on record. It is seen that vide order dated 03.07.2007, a number of incumbents in the respondents-organization who had passed the relevant Clerk Grade Examinations their services for the purpose of grant of 1st ACP has been taken into account with effect from 1st July of the year following the year of passing the examination. It is also seen that one D.N.Yolmo, LDC who had passed the examination in the year 1991 has been granted the 1st ACP

with effect from 01.07.2004 having regard to the 1st July of the year following the year of passing the examination which benefit in case of the applicant has been denied by the respondents. This, in our considered opinion amounts to discrimination which does not stand to judicial scrutiny.

13. For the reasons discussed above, we quash and set aside order dated 09.06.2015 (A/20) and are of the considered view that the order dated 29.04.2015(A/19) so far as it relates to the applicant holds good. Accordingly, the respondents are directed to implement the order dated 29.04.2015(A/19) so far as applicant is concerned and grant him the consequential benefits accrued thereon. This exercise shall be completed within a period of 120 days from the date of receipt of this order.

14. In the result, the O.A. is allowed as above, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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