

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 611 of 2012

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

Baidhar Nayak, aged about 61 years, S/o Late Indramani Nayak, Asst. Manager (Retired), A.G. Departmental Canteen, at present R/o Vill-Bhaminipur, PO – Rajas, PS – Balipatna, Dist. – Khurda, Odisha.

.....Applicant

VERSUS

1. Union of India represented through Comptroller and Auditor General of India, Pocket-9, Deendayal Upadhyay Marg, New Delhi-110124.
2. Principal Accountant General (A&E), Orissa, Bhubaneswar, Dist. – Khurda, Odisha.
3. Senior Deputy Accountant General (Adm), Office of the Principal Accountant General (A&E) Orissa, Bhubaneswar, Dist.- Khurda, Odisha.
4. Director of Canteen, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pension, Lok Nayak Bhawan, Khan Market, New Delhi – 3.

.....Respondents.

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

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

Heard & reserved on : 12.7.2019

Order on : 25.7.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant Sri Baidhar Nayak has filed this OA seeking the following reliefs under section 19 of the Administrative Tribunals Act, 1985:-

"Your Lordship may be graciously pleased to quash Annexure A/7 for the ends of justice.

AND

Be further pleased to direct the respondents to grant the benefit of first financial upgradation of pay under ACP Scheme upgrading/fixing the basic pay of the applicant from the pay scale from Rs.3200-Rs.4900 to Rs.4000/- Rs.6000/- (Pre-revised) with all arrears w.e.f. 9.8.99 till dt. 22.12.2004 and thereafter revision of pay scale Rs.5000/- to Rs.8000/- till dt 25.9.2007 and second upgradation w.e.f. dt. 26.9.2007 to dt. 30.4.2011 in the pay scale of Rs.5500/- Rs.9000/- (pre-revised) and with interest till the actual payment is made for the ends of justice.

AND

Be further pleased to direct all consequential benefits such as pay revision and other benefits in the new Pay Rules, 2008 and in terms of Annexure A/9 (PB-2-Rs.9300/- - 34,800/- with grade pay of Rs.4200/-) and arrear thereof till dt. 30.4.2011 and interest thereof till the actual payment is made for the ends of justice.

AND

Be further pleased to quash the order at Annexure A/5 or in the alternate direct the respondents to modify Annexure A/5 to the extent the applicant is concerned by extending two financial upgradation by revising the pay scale under the ACP scheme, 2000 for the ends of justice.

AND

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

AND

For such kind act, the applicant shall as in duty bound ever pray."

2. The facts in brief are that the applicant was an employee of the canteen under the respondents since 1.2.1965. He was treated as Central Government employee w.e.f. 26.9.1983. He was promoted as Assistant Manager vide order dated 19.3.1984 (Annexure-A/1) w.e.f. 25.9.1983. Government of India introduced the Assured Career Progression Scheme (in short ACP Scheme) w.e.f. 9.8.1999 and vide order dated 25.7.2000 (Annexure-A/2), the ACP Scheme was extended to the canteen employees with the stipulations that the service will be counted from 26.9.1983 or actual appointment on regular pay scale whichever is later and progression will be as per the promotional hierarchy given in the Annexure to that order. It was also clarified that first and second up-gradation will be allowed after 12 and 24 years of regular service subject to parameters fixed in this regard. Vide the OM dated 9.5.2001 (Annexure-A/3), it was clarified that the service rendered as well as promotions earned prior to 26.9.1983 will be ignored while considering financial up-gradation of the canteen employees. The revised hierarchy of posts for promotion of canteen employees was circulated vide the OM dated 10.4.2006 of the DOPT (Annexure-A/4).

3. The applicant is aggrieved since he was not allowed the ACP benefit on the ground that he was promoted as Assistant Manager and he was allowed third MACP benefit w.e.f. 1.9.2008 vide order dated 1.9.2009 (A/5). He submitted a representation dated 6.4.2010 for grant of ACP benefit after ignoring the promotion as Assistant Manager which was allowed w.e.f. 25.9.1983 which was prior to 26.9.1983 and hence, it is to be ignored. He retired from service on 30.4.2011 and then he filed OA No. 507/2011 which was disposed of directing the respondents to consider his representation. Then the respondents have passed the order dated 27.10.2011 (Annexure-A/7),

which is impugned in this OA. One of the ground taken by the applicant is that in an earlier case of Madhu Pati vs. Union of India & others decided by the Tribunal on 26.4.2012 (Annexure-A/8) in the OA No. 433 of 2010, in which it was held that the promotions prior to 26.9.1983 was to be ignored as per the OM dated 9.5.2001(A/3) and the respondents were directed to consider the benefit of ACP to the applicant in that OA. the applicant in the present OA claims similar benefit on the ground that he is similarly situated as Sri Madhu Pati in OA No. 433 of 2010.

4. The respondents have resisted the OA by filing Counter stating that the promotion to the post of Assistant Manager retrospectively from 25.9.1983 vide order dated 19.3.1984 (A/2) was wrongly given to the applicant as such promotion is to be prospective. It is stated that the applicant was allowed pay fixation benefit prospectively w.e.f. 1.5.1984 and not from retrospective date (i.e. 25.9.1983). hence, it was averred that the applicant was not entitled for first ACP benefit. It is further stated that after completion of 24 years of service of the applicant, certain changes in the recruitment rules were contemplated and it was anticipated that the norms for promotion to higher promotional post will undergo changes, for which, second ACP benefit could not be considered. In the meantime, the ACP scheme was modified to MACP Scheme w.e.f. 1.9.2008 for which no promotion norms are applicable. Hence, the applicant was allowed the 2nd financial up-gradation under MACP Scheme w.e.f. 1.9.2008 and the applicant will not be able to get the benefit of 3rd MACP after completion of 30 years of service since by that time he had retired from service on 30.4.2011.

5. We heard learned counsels for both the parties. Applicant's counsel argued that the order of the Tribunal in the case of Sri Madhu Pati (supra) will squarely apply to the present case and hence, the present applicant, being similarly placed as Sri Madhu Pati, is entitled for similar reliefs. The respondents' counsel submitted that the respondents have challenged the order of the Tribunal in the case of Sri Madhu Pati before Hon'ble High Court in W.P. (C) No. 21649 of 2012. Hence, it was argued that the cited judgment has not reached finality.

6. Having regard to the submissions by both the parties and the pleadings on record, the following relevant questions need to be answered in this OA:-

- (i) Is the judgment of the Tribunal in the case of Sri Madhu Pati (supra) applicable to the present OA as claimed by the applicant?
- (ii) If the answer to the issue no. (i) above is no, then is the applicant entitled for the benefit as claimed in the OA?

7. Learned counsel for the applicant argued vehemently that the order dated 26.4.2012 of this Tribunal in OA No. 433 of 2010 in the case of Sri Madhu Pati (supra) is applicable to the present applicant who is similarly placed as the applicant in OA No. 433/2010. It is noticed that the respondents in the impugned order dated 27.10.2011 (A/7) as well as in para 7 of Counter that the applicant was wrongly allowed promotion as Assistant Manager w.e.f. 25.9.1983 by the canteen management, but he was allowed the benefit of higher pay with prospective effect w.e.f. 1.5.1984. Such contentions of the respondents have not been controverted by the applicant with support of the documents relating to such promotion. In absence of any other documents on record before us, we have to accept the averment in the Counter that the applicant was allowed the benefit of promotion w.e.f. 1.5.1984 and not retrospectively from 25.9.1983. The order dated 26.4.2012 (A/8) of the Tribunal in OA No. 433/2010 reveals that the applicant in that OA was allowed the benefit of promotion w.e.f. 25.9.1983, where as the present applicant was allowed actual benefit of promotion w.e.f. 1.5.1984 although his order was also from 25.9.1983. hence, the cited case is factually distinguishable for which the order dated 26.4.2012 in OA No. 433/2010 will not be applicable to the present OA before us. The question no. (i) of para 6 above, is answered accordingly in negative.

8. It is admitted by the respondents that the applicant was entitled for 2nd up-gradation under ACP Scheme after completion of 24 years of regular service i.e after 26.9.2007. But his case could not be taken up in view of the circular at Annexure-1 to the Counter stating that the Recruitment rules for the canteen employees will undergo further changes. It was stated by the respondents that anticipating changes in the rules, the case of the applicant could not be considered for 2nd ACP. In this regard the following averments in para 9 of the Counter are relevant:-

"That with regards to the averments made in para 4.6 of the Original Application, it is humbly submitted that as stated in para 7 above, the applicant was not eligible to get first financial upgradation under ACP Scheme. The Recruitment Rule for Canteen Employees was revised vide Director of Canteen DOPT OM dated 14.2.2007. In this context, the respondent No.1 vide circular No. 449/Welfare/24-Can/02 dated 9.12.2009 has communicated that the existing Recruitment Rules might undergo changes and hence to wait the new/revised Recruitment Rule for recruitment to any post in the Departmental Canteen. Copy of the letter dated 9.12.2009 is annexed as Annexure-1 for kind appreciation of the Hon'ble Tribunal. It is clearly mentioned in Para-6 of Annexure to OM dated 9.8.1999, that an official has to satisfy the promotional norm prescribed in respective Recruitment Rule to be eligible for the benefits under ACP Scheme. Copy of the OM dated 9.8.1999 is annexed as Annexure-2 for kind appreciation of the Hon'ble Tribunal. By the time, the applicant had completed 24 years of service, changes in the existing

Recruitment Rule were being excepted and for which the 2nd financial upgradation in favour of the applicant could not be considered....."

9. The respondents in their pleadings have not clarified as to why the case of the applicant could not be considered as per the revised rules as per the DOPT OM dated 14.2.2007, referred in para 9 of the counter taking into accounts the hierarchy of promotional posts circulated vide the OM dated 10.4.2006 (Annexure-A/4). The reason furnished by the respondents that they anticipated further revision of the recruitment rule in view of the letter at Annexure-1 of the Counter does not stand to reason, since there is no such direction in the letter at Annexure-1. It is seen that in the letter at Annexure-1 was issued in the context of recruitment to various posts and it was instructed that such recruitments are to wait till revision of the recruitment rules. There is nothing in the letter at Annexure-1 which stated that pending revision of the recruitment rules, no benefit under the ACP Scheme should be allowed to the employees who are otherwise eligible as per the extant rules. Hence, we are unable to accept the averments of the respondents for not allowing the benefit of 2nd up-gradation under the ACP Scheme and hold the applicant to be entitled for the same. The question no. (ii) of para 6 is answered accordingly.

10. In view of the reasons discussed above, we set aside the order dated 27.10.2011 (Annexure-A/7 to the OA) and direct the respondents to consider the case of the applicant for the benefit of 2nd financial up-gradation under the ACP Scheme after completion of 24 years of regular service of the applicant in accordance with the rules and promotional norms and hierarchy as applicable to the applicant as on the date he completed 24 years of regular service and to decide the matter by passing a speaking order copy of which is to be communicated to the applicant within four months from the date of receipt of a copy of this order. It is clarified in case the applicant is found eligible for the benefits under ACP Scheme as stated above, then the benefits allowed to the applicant in respect of 2nd upgradation under MACP w.e.f. 1.9.2008 will be adjusted as per the rules against the said benefits to be allowed under the ACP scheme.

11. The OA is allowed in part as above. No order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath