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**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA**

OA No. 497/2013

Date of Order: 01.09.2015

PRESENT:

THE HON'BLE MR. JUSTICE G. RAJASURIA, JUDICIAL MEMBER

THE HON'BLE MS. JAYA DAS GUPTA, ADMINISTRATIVE MEMBER

.....

Bishwajit Mukherjee, son of Late Harendra Prasad Mukherjee aged about 52 years working as Supervisor non technical in the Rifle Factory, Ishapore, Section E.M., Personal No. 170433 and residing at National Park (East), Naihati Po. Naihati (Near Jhumur Kala Kendra), Pin Code No. 743 165, 24 Parganas (North).

.....Applicant

For the Applicant: Mr.P.Mukherjee, Counsel

-Versus-

1. The Union of India service through the Secretary, Ministry of Defence, Department of Defence Production, South Block, New Dehi-110 001.
2. The Chairman, Ordnance Factory Board/ Director General, Ordnance Factories, 10 A, Sahid Khudiram Bose Road, Kolkata-700001.
3. General Manager, Rifle Factory, Ishapore, Po. Ishapore, Nababganj, Pin Code No. 743 144, 24 Parganas (North).

.....Respondents

For the Respondents : Mr.S.K.Ghosh, Counsel.



ORDER

JUSTICE G. RAJASURIA, JM:

Heard both.

2. This OA has been filed seeking the following reliefs:

"(a) A direction upon the respondents and specially upon the respondent no.3 to grant Second ACP to the applicant after 24 years from the date of his initial appointment i.e. with effect from 11.12.2003 with all consequential benefits attached thereon within such time as may kindly be ordered by this Hon'ble Tribunal.

(b) The impugned order dated 19.06.2012 (Annexure-A/7) refusing to grant the applicant the benefit of ACP-II contrary to the principle of the rule as has been applied case of Shri Mantu Chandra Deb be set aside and/or quashed.

(c) The principle adopted by the same respondents in issuing order for grant of ACP -II after completion of 24 years of service vide Rifle Factory order part II No. 334 dated 15.2.2001 (Annexure-A/9) in case of Mantu Chandra Deb hereto as had been adopted, be also adopted by the same respondents in granting ACP-II to the applicant.

(d) Any other order and/or orders be passed, as may be deemed fit and proper under the facts and circumstances of the case.

(e) Costs and incidental expenses be paid to the applicant."

(Extracted as such)

3. The facts as stood transpired from the records as well as submission made by both sides could succinctly and precisely be set out thus.

4. The applicant was appointed on 11.12.1979 as Labour 'B'. Subsequently, he was posted as Labour A w.e.f. 12.09.1994 and he



was thereafter posted as Examiner (Semi Skilled) on 11.55.1998. On the side of the Respondents they would try to use some nomenclature in their communication dated 19.06.2012 (Annexure-A/7) differently by treating the posting of the applicant as Lab. Semi Skilled as promotion, but the applicant did not agree to it. The Applicant admittedly appeared at the LDCE and got himself promoted to the post of LDC w.e.f. 21.09.1998. Thereafter, he was transferred to the post of Store Keeper w.e.f. 08.03.1999 which cannot be termed as promotion. Instead of dilating further on the controversy which both sides tried to put forth before this CAT we would like to extract hereunder para No. 6.11 of the objection filed by the Respondents:

"6.11. The applicant was earlier given MACP II to the grade pay of Rs. 2000 in PB-1 (Rs. 5200-20200) with effect from 01.09.2008 and MACP III to the grade pay of Rs. 2400 in PB -1 (Rs. 5200-20200) with effect from 11.12.2009 vide Factory Order Pt. II No. 4884 dated 11.12.2009 in accordance with instructions/clarifications on ACP/MACP issued by DoP&T and OFB stated in earlier paragraph(s), his promotion from Labourer B (pay scale of Rs. 750-950) to Labourer A (pay scale of Rs. 800-1150) carrying the same grade pay of Rs. 1800 with effect from 01.01.2006 has been ignored for the purpose of ACP/MACP with effect from 01.01.2006. Consequently, as on 01.01.2006 he has virtually got only one promotion. He has been found eligible for ACP II in the pay scale of PB 1 9Rs. 5200-20200) with grade pay of Rs. 2400/- with effect from 01.01.2006 for having completed 24 years of service. MACP II and III granted to him earlier have been reviewed in the light of above clarification. After review, he has been granted ACP II in the pay scale of PB 1 (Rs. 5200-20200) with grade pay of Rs. 2400/- with effect from 01.01.2006 and MACP III in the pay scale of PB 1 (Rs. 5200-20200) with grade pay of Rs. 2800/- with effect from 11.12.2009."

5. A mere running of the eye over it, would show that the Respondents after initial narration of the facts and the stand taken in

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the matter clearly and categorically pulling no punches would submit that the applicant got only one promotion and as such there is no need to further discuss on the point as to whether by that time the applicant got two promotions or one promotion. Then the question arises as to what was his eligibility to get the second ACP and at what time. At this juncture we would like to extract hereunder the gist of the ACP scheme.

"3.1 While in respect of these categories also promotion shall continue to be duly earned, it is proposed to adopt the ACP Scheme in a modified form to mitigate hardship in cases of acute stagnation either in a cadre or in an isolated post. Keeping in view all relevant factors, it has, therefore, been decided to grant two financial upgradations [as recommended by the Fifth Central Pay Commission and also in accordance with the Agreed Settlement dated September 11, 1997 (in relation to Group 'C' and 'D' employees) entered into with the Staff Side of the National Council (JCM)] under the ACP Scheme to Group 'B', 'C' and 'D' employees on completion of 12 years and 24 years (subject to condition no.4 in Annexure-I) of regular service respectively. Isolated posts in Group 'A', 'B', 'C' and 'D' categories which have no promotional avenues shall also qualify for similar benefits on the pattern indicated above. Certain categories of employees such as casual employees (including those with temporary status), ad-hoc and contract employees shall not qualify for benefits under the aforesaid Scheme. Grant of financial upgradations under the ACP Scheme shall, however, be subject to the conditions mentioned in Annexure-I.

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.

6. A plain reading of the aforesaid excerpt would show that a Government servant is entitled to THE second ACP after completion of 24 years of continuous service from the initial appointment irrespective of the fact whether during 24 years of service the applicant got one promotion OR NOT. As such that cited para exactly fits into the case

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of the applicant. Accordingly it is clear that despite the fact that the applicant has got his first promotion as LDC by passing the LDCE, he is entitled to second ACP on completion of 24 years of service as on 11.12.2003. This clear facts was failed to be taken note of by the respondents and because of that alone there was lot of correspondence emerged between parties.

7. The ratiocination adhered to by the respondents that the second ACP was to be given w.e.f. 1.1.2006 is neither here nor there and it cannot be countenanced by any standard at all. It is well known that the MACP came into effect so to say w.e.f. 1.9.2008. As such till 31.8.2008 ACP alone was in vogue and in such a case if the matter is visualized it is clear that the applicant after getting his first promotion in 1998 he did not get any second promotion upto 31.8.2008. Our discussions supra would show that he completed his continuous 24 years of service by 10.12.2003 and a such from 11.12.2003 onwards he was entitled to the second ACP and the pay scale applicable as on that date was only on the basis of the recommendation of the 5th CPC. But we could se from the counter that from 1.1.2003 onwards second ACP was given as per the pay scale granted on the basis of the 6th CPC. The Respondents, are, therefore, directed to calculate accordingly and fix the pay and the consequences would accordingly follow.

8. This OA is accordingly disposed of. No costs.

(Jaya Das Gupta)
Admn. Member

(Justice G.Rajasuria)
Judicial Member