

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

LIBRARY

OA. 350/01680/2014

Date of Order: 18.2.2016

Present : Hon'ble Mr. Vishnu Chandra Gupta, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

Tapan Das
Vs.
Health & F. W.

For the Applicant : Mr. JK Lahiri, Counsel

For the Respondents : Ms. P. Goswami, Counsel

ORDER

Per Mr. Vishnu Chandra Gupta, JM:

The following reliefs have been sought for in this OA by the petitioner:

"8(a) Set aside the impugned speaking order dated 29.10.2014 and letter no. C-18011/01/2013-PH(H) dt. 13 November 2014 issued by Deputy Director (Admin) and undated speaking order issued by Respondent No. 5 to the extent repugnant to the settled principles of law and direction passed by Hon'ble Tribunal in OA. 147 of 2013.

(b) Direction to the Respondents to admit all claims under the representation dt. 01.09.2014 and release them to the applicant within specific time frame with interest.

(c) The cost of litigation for harassing and forcing the applicant to file the present application by passing the impugned speaking orders.

(d) Any other order as may be deemed appropriate by the Hon'ble Tribunal."

2. Heard learned counsel for the parties and perused the records.

3. In pursuance of the order passed by this Tribunal, the petitioner was granted liberty to make his grievance ventilated by moving a representation to the competent authority. The competent authority thereafter passed a speaking order (Annexure A-4) and communicated the same to the petitioner. The petitioner dis-satisfied with the order, filed the present OA.

4. The brief facts are that the petitioner entered into service as Group 'D' post on 01.05.1974 in APHO, Kolkata as temporary field worker with class VII pass educational qualification. Subsequently, he submitted un-attested, un-authentic photo copy of transfer certificate dated 18.05.1977 which alleged to have been issued by the Head Master of the Institute mentioning therein that he was reading in Class X and passed

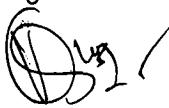
(D. W.)

the Annual Examination for promotion to the Class XI relating to the year 1973 and he left from the school on 03.03.1973. The birth certificate was not filed when he was temporarily appointed as a field worker on 01.07.1974. After lapse of 20 years by a letter dated 28.08.2012, addressed to the Director General of Health Services, PH IH Section, Nirman Bhawan, New Delhi regarding his qualification but service book was not verified for non production of original documents. As such he was treated to be a employee as per the service record as Class VII pass.

5. When he was granted ACP in 1999 his pay was upgraded and in 2nd ACP he was awarded taking into consideration the matriculation which was applicable to the incumbent who passed matriculation. In view of the clarification by the Ministry of Personnel, Public Grievances and Pensions, June 1, 2001 it was made clear that the second financial upgradation on completion of 24 years of regular service shall be allowed at least to the pay scale of Rs. 2750-70-3800-75-4400 (S-4). However, where Group 'D' civilian employees of the Central Government are Matriculates and are eligible for promotion to the post of Lower Division Clerk (LDC), the second financial upgradation in their case shall be allowed at least to the pay-scale of Rs. 3050-75-3950-80-4590(S-4).

It is made absolutely clear that the benefit of additional upgradation of Rs. 3050 – 4590 would only be available to the Civilian Employees of Central Government of they clear Matriculation and only than would be eligible for promotion to the post of LDC. Admittedly, the service record of the petitioner does not reveal that he is a Matriculate as such he is not eligible to get the additional benefit conferred to those who passed Matriculation.

6. Para 4 of the said clarification clearly indicates that certain Ministries/Departments/ Organizations, Group 'D' employees initially recruited at S-2/S-3 level have been allowed financial upgradation under the ACP Scheme in the LDC grade (S-5) even without possession of prescribed educational qualification viz. matriculation. Such upgradation has been allowed erroneously, as in terms of the Condition No. 6 of the ACP Scheme notified on August 9, 1999, fulfillment of all promotional norms (including educational qualification, if any, specified in the relevant Recruitment Rules/Service Rules), prescribed for grant of regular promotion, is an



essential requirement for grant of financial upgradation in the hierarchical grades. Such cases should, therefore, be reviewed and excess payments already made be recovered forthwith.

7. The learned counsel for the petitioner has cited the following judgments:

(i) **Bhagwan Shukla S/o Sh. Sarabjit Shukla vs. Union of India & Ors.** in

Appeal (Civil) 5447 of 1994 dated 05.08.1994

(ii) **Joydev Mondal vs. the Mayor** in WP No. 1161 of 2005, dated 13 July,

2010.

(iii) **Ashutosh Banerjee vs. Union of India & Ors.**, 2004 (1) SLJ 105 CAT

dated 23.07.2002.

All the three judgment does not relate to the controversy in question and cannot extend any help to the petitioner in the matter. The clarification is of the order under which the upgradation was given and recovery of the amount has already been passed in pursuance of that ACP circular so it cannot be said that it is being made on the basis of subsequent order. Hence petition lacks merit.

8. Accordingly, the petition is dismissed. There shall be no order as to costs.

(Jaya Das Gupta)
Member (A)

18/11/16
(Vishnu Chandra Gupta)
Member (J)

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