



CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

No. OA 1843 of 2010

Date of order : 2.3.2016

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Mr. P.K.Basu, Administrative Member

ANIL KR. DAS

VS

UNION OF INDIA & ORS. (CPWD)

For the applicant : Mr.S.K.Dutta, counsel

For the respondents : Ms. M.Bhattacharya, counsel

O R D E R

Ms. Bidisha Banerjee, J.M.

Heard Id. Counsel for the parties.

2. The grievance of the applicant in this OA would be that despite an order passed by this Tribunal in OA 414/04 on 29.2.08 directing the respondents to grant 2<sup>nd</sup> ACP to the applicant from the date he was due i.e. on completion of 12 years of regular service as LDC with all consequential benefits, the respondents on 31.7.08 communicated to the applicant that the DPC which met on 7.5.08 having found him not fit for grant of 2<sup>nd</sup> ACP on the basis of his ACRs the same could not be granted. The communication dated 31.7.08 is therefore under challenge in the present OA.

3. We have perused the materials on record.

4. We have noted the following facts :

The applicant was appointed as a Peon, a Group 'D' post in CPWD on 7.2.1966. He was promoted to the post of LDC w.e.f. 11.4.90 and superannuated from service on 30.11.02 without getting any further promotion beyond that of LDC. Since he had rendered 24 years of service and had got only one promotion i.e. to that of LDC he was given 2<sup>nd</sup> financial upgradation in the scale of Rs.2750-4400 from 9.8.99 which was lower than the scale of LDC that he was enjoying as on the material date i.e. scale of Rs.3050-4590. As the

ACP was granted in a lower scale, it was ~~withdrawn~~ subsequently, aggrieved with such order the applicant preferred OA 414/04.

In the said OA this Tribunal found that having rendered more than 12 years of service from 11.4.90 i.e. the date of promotion to LDC he was entitled to ACP to the scale of Rs.4000-6000 the corresponding scale of UDC. This Tribunal observed as under :

*"In the applicant's case a condition for grant of a second ACP giving him financial upgradation to the post of UDC are fully met. He has rendered more than 12 years of regular service after being appointed as LDC in 1990. There has been no mention by the respondents before this Tribunal that any departmental proceeding or vigilance case was pending against him. In the absence of any such allegation it has to be presumed that he was otherwise fit to be financially upgraded as per ACP scheme., That he was otherwise fit for upgradation is further proven by the written submission by the respondents in terms of which it has been stated that he was granted a second ACP which was subsequently withdrawn as the pay scale given to him was lower than that what he was already enjoying as LDC."*

This Tribunal accordingly allowed the OA and mandatorily directed the respondents to grant ACP from the date "he was due" with all consequential benefits.

5. The respondents in their reply would emphatically admit that the applicant was wrongly granted the pay scale of Rs.2750-4400 as 2<sup>nd</sup> ACP which was subsequently withdrawn since he had already got the promotion as LDC in the higher scale of Rs.3050-4590/-. The respondents have further disclosed that the direction of the Tribunal had to be "logically" followed by granting ACP through a DPC considering his annual performance as LDC, the 2<sup>nd</sup> ACP had to be allowed on the basis of his performance as Peon. The DPC found him unfit on the basis of ACRs written on the basis of performance of LDC, and therefore the applicant was not entitled to 2<sup>nd</sup> ACP in the grade of Rs.4000-6000.

6. We have considered the rival contentions. We have noticed that upon receiving the communication dated 31.7.08, impugned in the present OA, the applicant filed a contempt proceeding which was dropped.

7. In our considered opinion once this Tribunal passed a mandatory order directing the respondents to grant the ACP benefits it was not open for the respondents to violate the order without getting it reversed on appeal. They had

no authority to sit over the directions. Furthermore, the denial of ACP was on un-communicated adverse remarks.

8. In such view of the matter we would dispose of the OA with a direction upon the respondents to comply with the orders passed in the earlier OA and to pass appropriate orders within three months from the date of communication of this order, extending such benefits as the applicant<sup>4</sup> would be entitled to in terms of the earlier direction.

8. No order is passed as to costs.

(P.K.BASU)  
MEMBER (A)

(BIDISHA BANERJEE)  
MEMBER (J)

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