



CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 849 of 2012

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

PRADIP KR. BASU

VS

UNION OF INDIA & ORS. (NCSM)

For the applicant : Ms. T. Das, counsel

For the respondents : Mr. A.K. Lahiri, counsel
Mr. L.K. Pal, counsel

Heard on : 28.1.2016

Order on : 4.3.16

O R D E R

Ms. Bidisha Banerjee, J.M.

Aggrieved due to denial of benefits under ACP scheme the applicant would file this application seeking the following relief :

- a) A direction upon the respondent authorities to produce all records, office note and ACRs in original in respect of the applicant from the year 2004 onwards.
- b) A direction upon the respondent authorities to grant financial upgradation to the applicant under the ACP scheme w.e.f. 20.1.07 counting the year of completion of 12 years of regular service in the post of Publication Officer with all consequential benefits and in pension including 12% interest on the arrear amount for deliberately delaying payment of financial upgradation.

2. The admitted facts that could be culled out from the pleadings of the parties would be as under :

The applicant was appointed as Private Secretary on 17.1.1986 in the National Council of Science Museum. In the year 1995, he was promoted to the post of Publication Officer which post was an ex-cadre post. The applicant retired from service w.e.f. 29.2.12. The applicant was given benefits of MACPs only w.e.f. 1.9.2011.

The respondents have contended that his performance was not satisfactory and he was communicated the adverse remarks "lacks initiative and drive" by the Director of Nehru Science Centre, Mumbai and he was asked

to improve his performance. He did not make any representation so far as the said adverse remarks were concerned. The applicant was given promotion to the post of Publication Officer in the year 1995. MACP was adopted by the National Council of Science Museums w.e.f. 2008. His case was considered in 2009 but he was not recommended for financial upgradation w.e.f. 1.9.08. His case was further considered but not recommended even w.e.f. 1.9.2009 as also for MACPs w.e.f. 1.9.2010.

He never raised any grievance against the decision of the authorities in not allowing him the benefit of MACPs for consecutive 3 years i.e. w.e.f. 1.9.08, 1.9.09 and 1.9.2010. It was only after being conferred with the benefit w.e.f. 1.9.2011, he agitated that he was entitled to ACP w.e.f. 1.9.07.

3. It would be the specific contention of the respondents that having not agitated the matter at the relevant time the applicant acquiesced. He was also guilty of delay and acquiescence in view of the decision rendered by the Hon'ble Apex Court in ***U.P. Jal Nigam & Anr. -vs- Jaswant Singh & Anr. [2007 (1) SCC (L&S) 500]***. That apart it has been contended that the claim was a belated one since the cause of action arose in 2007 whereas the application was filed in 2012.

4. In the said decision (supra) ***U.P. Jal Nigam & Anr. -vs- Jaswant Singh & Anr. [2007 (1) SCC (L&S) 500]*** it was held as under :

"when a person is not vigilant of his rights and acquiesces with the situation, and the acquiescence prejudices, or there is a change of position on the part of the party allegedly violating the rights, such person's writ petition cannot be heard after the delay on the ground that same relief should be granted as was granted to persons similarly situated, but who were vigilant of their rights."

5. Ld. Counsel for the applicant would vociferously submit that the applicant was entitled to ACP on 20.1.07 having completed 12 years of regular service. He preferred representations on 2.6.08 and further on 1.6.09 to the DG NCSM for such grant. On 19.6.0-9 the NCSM replied to the representation dated 1.6.09 stating that the same could not be taken up at the juncture due to administrative reasons.

6. We have heard Id. Counsel for the parties and perused the materials on record. We have also perused the written notes of submissions.

7. We have found no justification on the part of the respondents in regard to non-extension of ACP benefits to the applicant when the same was due. The respondents have not come out clear why the ACP benefits could not be granted at the material time, whether it was due to administrative difficulties that occurred during the transition period from ACP to MACP or was it due to adverse ACRs. The respondents have also not come out clear why the applicant was deprived of MACPs for three consecutive years. They have cited a decision rendered in **U.P. Jal Nigam** (supra) which propounds that a person who is not vigilant of his rights and acquiesce with the situation would not be entitled to any relief after a delay on the ground that similarly situated persons who were vigilant of their rights have been granted such relief. A careful reading of the decision would show that such acquiescence should prejudice the other party, and not otherwise. If the applicant was entitled to ACP or MACP from 2008 which grants were personal to him he would prejudice none. Moreover since no reason is assigned by the respondents of such deprivation, the applicant would be entitled to get his due in accordance with law, if not from any one at least from a Court of Law. Further, the disposal of representation dated 1.6.09, on 9.6.09 would manifest that the authorities^B could not confer the ACP due to administrative difficulties^{that D} and the applicant was not guilty of laches or acquiescence. His claim for ACP was never formally rejected by the authorities, therefore it would be unfair to say or suggest that the applicant failed to challenge the decision of the authorities in disallowing the benefits.

8. Accordingly we dispose of the OA with a direction upon the authorities to consider the grievance of the applicant as highlighted in his representation and pass a reasoned and speaking order on the same within a period of three months justifying denial of ACP/MACP from due date.

9. The OA is accordingly disposed of. No order is passed as to costs.

~~WU IV~~
(P. R. BASU)
MEMBER (A)

B. Banerjee
(BIDISHA BANERJEE)
MEMBER (J)

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