

- O.A. 350/200/2018
M.A. 350/138/2018



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA

PARTICULARS OF THE APPLICANT:

Swapna Mallick, wife of S. C. Mallick, aged about 63 years, worked as Ex-Senior Supervisor, residing at 60, B. D. H. Road, 1st floor, Kidderpur, Kolkata 700 023, West Bengal

.... APPLICANT

V E R S U S

- (i) The Union of India, through the Secretary, Ministry of Home Affairs, North Block, New Delhi - 1
- (ii) The Secretary, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, New Delhi - 1
- (iii) The Director, Directorate of Census Operations, West Bengal Jagannath Bhavan, 1B, 199, Sector, Saltlake City, Kolkata 700 106

.... RESPONDENTS

CENTRAL ADMINISTRATIVE TRIBUNAL
 KOLKATA BENCH
 KOLKATA

No.O A.350/200/2018

M.A.350/138/2018

Date of order : 04.07.2019

**Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
 Hon'ble Dr. Nandita Chatterjee, Administrative Member**

**SWAPNA MULLICK
 VS.
 UNION OF INDIA & ORS.**

For the applicant : Mr. A. Chakraborty, counsel

For the respondents : Mr. B.P. Manna, counsel

ORDER

Bidisha Banerjee, Judicial Member

The applicant in this O.A. has sought for the following reliefs:-

"i) Office Order being file no.A-13/19/2013-AD iii(Pt)/1039) dated 02.09.2016 issued by Respondent no.1 cannot be sustained in the eye of law and same may be quashed;

ii) An order do issue directing the respondents to grant benefit of 2nd ACP in the Grade Pay of Rs.5400 instead of Rs.4600/- with effect from 19.01.2008 and 3rd MACP in the grade pay of Rs.6600/- with effect from and to grant arrears."

2. Since the applicant is a retired employee and the relief if granted, may result in enhancement of his pension amount, the M.A. seeking condonation of delay in preferring the O.A. is allowed.

3. Admitted facts of the O.A. are that the applicant joined as Data Entry Operator in 1984 in the pay scale of Rs.4500-7000/-. She was granted first ACP in the scale of Rs.5000-8000/- as attached to the post of Junior Supervisor w.e.f. 09.08.1999 and second ACP in the pay scale of Rs.5500-9000/- as attached to the post of Senior Supervisor w.e.f.

19.01.2008. Her representation for second ACP in the Grade Pay of Rs.5400/- and 3rd MACP in the Grade Pay of Rs.6600/- has not been considered by the authorities.

4. The applicant is aggrieved by an order dated 02.09.2016 which reads as under(extracted with emphasis for clarity):-

"To
The Controlling Officer,
All DCOs

Sub : Regarding forwarding of applications for granting of 2nd ACP in PB-3, Grade Pay Rs.5400/- to Senior Supervisors/DEOs who do not possessed degree as per the RRs for the post of Assistant Director(Data Centre) reg.

Respected Sir/Madam,

It is come to notice that many of DCOs such as DCO Maharashtra vide their letter no.A32015/01/2015-16/ACP(dde)/622(2) dated 12/08/2016 and DCO West Bengal vide their letter No.A 12120/Estdt./2013/1005 dt. 22/08/2016 have been forwarding the applications/representations of DEOs/Supervisors who do not possessed degree as prescribed in recruitment rules for the post of Assistant Director(Data Centre) and have completed 24 years regular service before 01.01.2006 for granting 2nd financial upgradation under ACP Scheme in Grade Pay Rs.5400/-.

2. It is to informed that the matter related to grant of relaxation in Recruitment Rules of Assistant Director(Data Centre) in the column of qualification for grant of 2nd financial up-gradation under ACP Scheme in that Grade Pay to the DEO Grade-B/Senior Supervisors who have completed 24 years of regular service in the grade and do not possesses the requisite qualifications, was referred to DoP&T for approval. As per Para -6 of Annexure -I annexed to DoP&T's O.M. dated 09.08.1999 vide which the ACP Scheme was introduced states that financial upgradation under the ACP Scheme may be granted to those employees who fulfil all the promotional norms of the hierarchy posts in which the financial upgradation is to be granted. While referring the file to DoP&T, all the facts concerned to the matter such as appointment of DEO Grade-B with relaxation in Educational Qualification, Hon'ble Supreme Court of India's judgment dated 11.11.2005 in Civil Appeal No.2708-2709 of 2002 in the matter of Shri Jagdish Kumar & Other Versus State of Himachal Pradesh & other Case was also referred along with Hon'ble CAT, New Delhi dated 10.10.2012 in O.A.No.366/2012 filed by Shri A.K. Malhotra against Ministry of Textile and The Development Commissioner(Handicraft) were also referred along with the case for granting the relaxation in educational qualification in particular subjects as mentioned in recruitment rules of Assistant Director(Data Centre).

3. Although all the essential facts explained for getting approval of DoP&T, but DoP&T does not extend any relaxation in the criteria pertaining to Educational Qualification for promotion and stipulated that "As per policy, for grant of ACP, all the promotional norms including the Educational Qualification for promotional post have to be fulfilled. There is no provision in ACP Scheme for relaxation of any aspect of ACP policy. Therefore, this Department does not agree for relaxation of Educational Qualification for ACP benefits". Further DoP&T advised the Department to consider their cases as per MACP Scheme where the requirement of

fulfilment of promotional norms is not necessary except the criteria of 'Benchmark' in the ACRs/APARs.

4. In view of DoP&T guidelines mentioned in Para 5 above, Shri R.P. Arya, General Secretary, AICEDPSA(Recognised) was also informed about vide this office even no.letter dated 06/07/2016 and now all the DCOs are requested to dispose of representations/applications made by DEO Gr.B/Sr. Supervisors who do not conformed Educational Qualifications as prescribed in recruitment rules of Assistant Director (Data Centre) at their level by taking reference of this letter. And it is also requested that the cases related to stepping up the pay of DEO Gr.B/Sr. Supervisors in Grade Pay Rs.5400/- may be forwarded directly to Administration Section-IV of ORGI as this matter is being dealt by Ad-IV section not by Administration Section-III.

(Santosh Kumar)
Under Secretary to Govt. of India"

5. Ld. counsel for the applicant relied upon a decision of Patna Bench in O.A.No.456/2013 which was subsequently upheld by the Hon'ble High Court of Patna in CWJC 6154/2017.

6. We also find that no representation has been preferred annexing a copy of the said decision to seek benefit thereof.

A bare perusal of the order passed in O.A.456/2013 would show that in the order the Bench has summarised the main features of ACP and MACP schemes and noted the significant differences between them. The Bench has held as under:-

"25. In the present case, there is no ambiguity in the ACP scheme that an employee has to fulfil all the norms of promotion for getting ACP. The ACP does away with the need of having regular posts, but it does not do away with the entitlement of fulfilling the promotion norms.

26. The Respondent's letter dated 15.4.2015 (Annexure 21) only clarifies the manner in which cases becoming due for ACP between 01.01.2006 to 31.08.2008 have to be dealt with in terms of DOPT circulars. The need for this clarification arose because the 6th CPC orders were issued on 31.08.2008/01.09.2008 giving it effect from 01.01.2006, thus creating an interregnum between 01.01.2006 and 31.08.2008. This does not change the eligibility conditions for grant of ACP.

27. The OA is, accordingly, dismissed. No order as to costs."

We fail to understand how the decision would come to the aid of the applicant.

7. In view of such, we dispose of the present O.A. with liberty to the applicant to prefer, if she wishes to, a comprehensive representation to the competent authority to seek the benefit of the order passed by Patna Bench within a period of 4 weeks from the date of receipt of a copy of this order and upon receipt of the same the competent authority shall dispose it of with a reasoned and speaking order in accordance with law within a period of 8 weeks thereafter.

8. The O.A. accordingly stands disposed of. No costs.

Nandita Chatterjee)
Administrative Member

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(Bidisha Banerjee)
Judicial Member