



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

Original Application No. 350/001746 of 2016

Shri Sunil Kumar Bhattacharya, son of Late Jogendra Mohan Bhattacharya, aged about 73 years, residing at "Sayari" 2nd Floor, "THE NEER" Apartment, Dada Bhai More, Deshbandhu Para, P.O. Siliguri Town, Dist. Darjeeling (W.B.), Pin-734004, retired as Assistant Engineer B/R with effect from 31.01.2003.

Applicant

- Versus -

1. Union of India, service through The Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. The Engineer-in-Chief, Director General (Personnel) E1(DPC-1) Integrated Head Quarter, Kashmir House, New Delhi-110011.
3. The Chief Engineer, HQ, Eastern Command, Fort William, Kolkata-700021.
4. The Chief Engineer, Siliguri Zone, Sevoke Road, P.O. Salugara, Siliguri, Pin-734008, West Bengal.
5. The Central Record Officer (Officers), Delhi Cantonment-10, C/o 56 APO, Pin-900106.

Respondents.

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

O.A/350/1746/2016

Date of Order: 26.8.19

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. (Ms.) Nandita Chatterjee, Administrative Member

SUNIL KUMAR BHATTACHARYA
VS.

UNION OF INDIA & OTHERS
(M/O DEFENCE)

For the applicant : Mr. B.C. Deb, counsel

For the respondents : Mr. S. Paul, counsel

ORDER

Bidisha Banerjee, Member (J):

This O.A. has been preferred to seek the following reliefs:-

"a) Direction upon the respondents to grant the applicant fixation of pay under 2nd ACP Scheme granted by Engineer-in-Chief(as stated above) with effect from 09.08.1999. Arrears of pay and allowances including HRA, Transport Allowance and incremental benefits with effect from 09.08.1999 to 31.01.2003 and pensionary benefit with effect from 01.02.2003 such as pension, gratuity, commutation of Pension, Leave salary and Medical Allowances admissible in enhanced rate in the pay scale of Rs.10000-15200/- Arrears of pay from 09.08.1999 to 31.01.2003 and arrears of pension with effect from 01.02.2003 till the date of payment;

b) Direction upon the respondents to grant interest @8% p.a. on arrears of pay and allowances with effect from 09.08.1999 till the date of actual payment and arrears of pensionary benefit with effect from 01.02.2003 till the date of actual payment.

c) Any order and/or further order or orders as the Hon'ble Tribunal may deem fit and proper."

2. It transpires from the pleadings of the parties that the applicant is primarily aggrieved in regard to a communication dated 08.01.2016 issued on behalf of the Chief Engineer, Headquarters, Siliguri Zone disposing of his representation against non-receipt of 2nd financial upgradation under ACP Scheme.

The applicant, as could be discerned, retired on superannuation on 31st January, 2003. He preferred an application dated 21st December, 2015 seeking 2nd financial upgradation under ACP Scheme. To ascertain whether his claim for 2nd ACP was legally tenable the respondents examined his case and observed the following :-

"(a) The officer was appointed as sub-overseer on 14-6-67

(b) Promoted as Supdt. B/R Gde II on 21-7-71

(c) Further promoted as Supdt B/R Gde I on 29-6-88 & AE(Civ) on 04-12-2002

(d) On introduction of ACPs wef 09 Aug 1996 he was firstly granted 2nd ACP in the pay scale of Rs.10500. Accordingly pay fixation was initiated which was not accepted by audit as intimated vide your HQ letter No.131950/62/ACP/Fix/3754/Engrs/EIR (C) dated 02 May 2011 on the plea that he has already secured two promotions thereby not eligible for 2nd ACP.

(e) Accordingly E-in-C's Branch cancelled the said 2nd ACP granted to him vide their letter No.B/41028/ACP/AEs/IEs/EI (DPC-I) (i) dated 21 Oct 2011.

(f) On merger of BR Gde II & Gde I, a clarification is required whether 2nd ACP can be granted to the retiree wef 09 Aug 1999 in the pay scale of Rs.6500-10,200/- which he got on promotion to AE(Civ) wef 04 Dec 2002 if the merged posts will be considered as single promotion. If it can be considered a single promotion, then only 2nd ACP can be granted."

3. The respondents have refuted the claim having stated as under:-

(a) This Applicant was initially appointed in this department as MES as Sub-Observer on 14.06.1967.

(b) Subsequently, the applicant was promoted (1st Promotion) as Supdt. B/R Gde II on 20.07.1971 in the Pay Scale of Rs.330-560.

(c) Further he got 2nd Promotion in the post of Supdt. B/R Gde I on 29.06.1988 in the Pay Scale of Rs.1640-60-2600-EB-75-2900.

(d) 2nd promotion of the Applicant as Supdt B/R Gde II in the revised pay scale of Rs.5000-8000/- was given on 29.08.1988.

(e) He was awarded 3rd promotion as AE with effect from 04.12.2002 in the pay scale of Rs.6500-10,500/-.

(f) On 01.01.1986, this applicant was upgraded for the 1st time in the pay scale of Rs.1640-2900 in view of the judgment of CAT Bangalore as he has already served 5 years of service.

(g) On 01.01.1991, 2nd upgradation was given to the applicant in the pre-revised pay scale of Rs.2000-3500(Revised 6500-10500) by virtue of judgment of CAT Bangalore as he has already served 15 years of service.

(h) It is made clear that the applicant, during his total tenure of service of 36 years, got three promotions, on 21.07.1971, 26.06.1988 and on 04.12.2002 besides two upgradations on 01.01.1986 and on 01.01.1991.

(i) The applicant is relying upon the letter dated 28 Jan 2009 vide letter No.B/4 1028/ACP/AES/JES/2006-07/E1(DPC-1) wherein the 2nd financial upgradation under ACP scheme in the scale of Rs.10000-325-15200 was erroneously given and the applicant is insisting for the same as because his name was shown in the list vide Sl. No.147 of the said panel.

(j) Immediately thereafter said Directorate General(Pers)/E1(DPC) Military Engineer Services, Engineer-in-Chief's Branch, New Delhi-110011, issued a letter vide No.B/41028/ACP/AEs/JEs/E1(DPC-1) dated 21.10.2011 stating therein that the amendments be made to the panel issued vide this office letter stating therein that all entries against the Srl. No.147 of panel to be deleted.

(k) It is very much clear that 2nd ACP erroneously given earlier without linking the direction issued earlier and so long it is amended and deleted in the year 2011 by virtue of the letter vide No.B/41028/ACP/AEs/JEs/E1 (DPC-1) dated 21.10.2011, the earlier letter of granting of 2nd ACP vide letter

No.B/41028/ACP/AES/JES/2006-07/E1(DPC-1) dated 28th years 2009 shall not remain in force.

(l) Since his 2nd financial upgradation was granted on 01.01.1991 as per CAT Bangalore order and his pay was fixed at that time, hence, applicant can not seek pay fixation in terms of 2nd ACP which was granted erroneously but rectified immediately thereafter, hence, there is no question of arrears of pay from 09.08.1999 to 31.01.2003.

(m) This applicant is not eligible for any other financial upgradation under ACP's as per Criteria of existing policy. The main object of the ACP is to give promotion/higher pay scale in lieu of promotion within 12/24 years of ones service.

Further in their reply the respondents have summarised the posting details as under:-

- | | | |
|-------|---|--|
| (i) | Appointed on 14.06.1967: As Sub-Overseer | |
| (ii) | 1st promotion | : w.e.f. 21.07.71 as Supdt B/R II |
| (iii) | 2 nd promotion | : w.e.f. 29.06.88 as Supdt B/R I |
| (iv) | Secured upper placement
(equiv to AE's pay scale as
Per CAT B'lore judgement) | : w.e.f. 01.01.91 in pay scale
2000-3500/-(Corresponding
Pay scale under RPR-97 is
6500-10500/-)" |

4. At hearing Id. counsel for the respondents would further indicate that the 2nd ACP was cancelled vide letter dated 21.10.2011 and, therefore, fixation in the pay scale of 10500-15200 did not arise and there was no occasion to revise his pensionary benefits. The respondents have further elaborated by way of a chart the various positions held by the applicant due to grant of promotion and examination of his right as per C.A.T., Bangalore bench judgement which goes thus:-

Ser No.	Categories of Post	Date of Appointment/promotion	Pay Scale of Post	Appointment/promotion letter Date/ PTO No.	Remarks.
1.	Sub Overseer	14.06.1967	110-3-131-4-143-EB-4-155/-	Dated 10 Mar 1971	
2.	Supdt B/R II	12.08.1971	180-10-290-EB-EB-15-380/-	Copy of Pay Fixation on promotion s Supdt B/R II dated 20 Dec 1971	1 st Promotion
3.	Supdt B/I	29.06.1988	Rs. 1640-60-2600-EB-75-2900/-	PTO No. 27/02/88 dated 04.07.1988 and No. 38/02/88 dt 19 Sep 1988	2 nd Promotion
4.	AE (Civ)	04.012.2002	Rs.6500-200-10,500/-	PTO No. 01/02/03 dated 01 Jan 2003	3 rd Promotion (But the Officer had already got AE's Scale of Rs. 6500-200-10500 wef 1.1.1991 after completion of 15 years service as per CAT Bangalore Judgement. Hence further fix.is not regd in this Scale.
FINANCIAL UP GRADATION AS PER CAT BANGALORE JUDGEMENT (Copy of E-in-C's Br letters Enclosed)					
1.	1 st Up Gradation	01 Jan 1986	1640-60-2600-EB-75-2900/-	PTO No. 25/03/1996 dated 14.06.196	Financial Up gradation after 05 years of service
2.	2 nd Up Gradation	01 Jan 1991	2000-60-2300-EB-75-32-100-3500/-	-do-	Financial Up gradation after 15 years of service

5. We heard the Id. counsel for the parties and perused the materials on record.

6. Having noted the entries in the chart provided by the respondents which have not been contradicted or disputed by the

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applicant we infer that the applicant earned his first promotion as Superintendent B/R II on 12.08.1971 and 2nd promotion as Superintendent B/1 on 29.06.1988 while 3rd promotion as AE(Civ) on 04.12.2002. In terms of ACP Scheme of 1998 he was entitled to 2 ACPs in his entire career span upon completion of 12 years and 24 years of his service provided he did not earn any regular promotion during such period.

7. We would notice that his entry as Sub-Overseer being on 14.06.1967, he completed 12 years of service on 13.06.1979 and 24 years of service on 13th June, 1991(14.06.1979-13.06.1991). Within first 12 years of service (14.06.1967-13.06.1979)he earned one promotion as Superintendent B/R II on 12.08.1971 which would offset 1st ACP. He earned his second regular promotion to Superintendent B/I on 29.06.1988 during the second 12 years of his service that would itself offset 2nd ACP. Superintendent B/R II having subsequently merged with Superintendent B/R I his movement from B/R II to B/R I could not be considered as a regular promotion to offset any ACP. Therefore, he earned his 2nd regular promotion from Superintendent B/I to AE(Civil) beyond 24 years of his service. However, by virtue of C.A.T., Bangalore Bench judgment he earned first upgradation w.e.f. 1st January, 1986 and 2nd upgradation w.e.f. 1st January, 1991 both of which fell within the first 24 years of his service and, therefore, having earned one regular promotion in the first 12 years and 2 upgradations before completion of 24 years of service, he would not be legally entitled to

any further ACPs. Therefore, his claim as put forth in the present O.A.
fails and is dismissed. No costs.

(Dr.Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

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