

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.
OA/050/00475/2016
[MA-308/2017]

Date of order reserved : 06.09.2019

Dated of order : 12th Sept., 2019

C O R A M

Hon'ble Shri Jayesh V. Bhairavia, Member [Judicial]
Hon'ble Shri Dinesh Sharma, Member [Administrative]

1. Janardan Prasad Singh, S/o Late Girija Nand Singh, resident of Mohalla –Abhimanyu Nagar, Near Brilliant ITI PO – Danapur, District – Patna.
2. Suresh Prasad, S/o Late Dev Narayan Prasad, Village – Moharampur, PO – Bihta, District – Patna.

Applicant.

By Advocate : Shri J.K.Karn.

Vs.

1. The Union of India through the Secretary, Ministry of Water Resources, RD & GR Shram Sakti Bhawan, Rafi Marg, New Delhi.
2. The Secretary, Central Water Resources, New Delhi.
3. The Under Secretary, [O&M], Government of India, Central Water Commission, Sewa Bhawan, New Delhi.
4. The Under Secretary, [E-V/Vi], Govt. of India, Central Water Commission, Estt.Vi Section, Sewa Bhawan, New Delhi.
5. The Chief Engineer, Lower Ganga Basin Organization, CWC, 177-B.S.K.Puri, Patna.
6. The Superintending Engineer [Co-Ordination], O/o the Chief Engineer LGBO, CWC, S.K.Puri, Patna.

Respondents.

By Advocate : Shri H.P.Singh, Sr. S.C.

ORDER

Per Jayesh V. Bhairavia, Member [Judicial] : - In the instant OA, the applicants are seeking the following reliefs : -

8[A] Letter dated 2nd March, 2016 issued under the signature of Under Secretary [O&M], Govt. of India, Central Water Commission, New Delhi containing letter dated 5th February, 2016 issued by Under Secretary [E.V/VI], Govt. of India, Ministry of Water Resources, Central Water Commission, New Delhi as contained in Annexure-A/2, may be quashed and set aside.

8[B] Letter dated 31.05.2016 issued under the signature of Under Secretary [E-VI], Govt. of India, Central Water Commission, Estt. VI Section, Sewa Bhawan, New Delhi as contained in Annexure-A/3, may be quashed and set aside.

8[C] The respondent authorities may be directed to allow the applicants their 1st and 2nd ACP w.e.f. their date of eligibility in terms of ACP Scheme, with all consequential benefits.

8[D] The respondent authorities may be directed to recalculate and re-fix the last pay drawn by applicants after allowing them 1st and 2nd ACP, as prayed in paragraphs –C above and then to sanction and release the applicants their balance amount of Gratuity, other pensionary benefits by issuing fresh and revised PPO, with all consequential benefits by allowing admissible statutory interest upon the financial benefits.

8[D] Any other relief/reliefs as the applicants are entitled and Your Lordships may deem fit and proper in the ends of justice.”

2. The applicants’ case in short, runs as under : -

[i] The applicants entered into service as Surveyor in Central Water Commission on 26.06.1968 and 27.06.1968 respectively and served in the department for more than 39 years and retired on superannuation on 31.12.2007 and 31.08.2008 respectively.

[ii] When the applicants were declared successful in the Departmental Examination against the post of Jr. Engineer [Civil], they were promoted as such on 31.03.1987 and 28.04.1987 respectively.

[iii] The Government of India introduced ACP Scheme w.e.f. 1999 and it was made effective till 31.08.2008, when the MACP Scheme came into force. The Govt. of India decided to grant two financial upgradation under ACP Scheme on completion of 12 years and 24 years regular service in terms of Column No.4 of DOP&T OM dated 09.08.1999, which stipulates that – “Introduction of the ACP Scheme should, in no case affect the normal [regular] promotional avenues available on the basis of vacancies. Attempts needed to improve promotional prospects in organisationals/cadres on functional grounds by way of organisational study, cadre reviews, etc. as per

prescribed norms should not be given up on the ground that the ACP Scheme has been introduced, vide Annexure-R/1.”

[iv] It is submitted by the applicants that they were regular employee of the department and no disciplinary proceedings or criminal case was pending against them. They were eligible for grant of ACP but the same has been denied by the department. The applicants approached the Grievance Cell of the Ministry of Water Resources, but vide letter dated 2nd March, 2016 [Annexure-A/2], the applicant no.1 has been communicated that his matter was taken up by the Under Secretary [E-IV] and intimated that as per provision contained in para 6 of OM dated 09.08.1999, he did not fulfill the normal promotion norms of the post of AD-II, hence he was not eligible for grant of ACP. Similarly, the applicant no.2 was communicated vide letter dated 31.05.2016 [Annexure-A/3] and denied his claim.

[v] The applicants submitted that Copy of Proceeding/Noting Portion Column No.2 is itself contradictory, wherein it is stated that as per prevailing rule of recruitment of JEs at that time, Surveyor can be promoted with 8 years service and having educational qualification prescribed for the post of JE or Surveyor with 8 years regular service having passed departmental examination or Surveyor with 12 years service in the grade. The applicants were promoted on the basis of 12 years' service in the grade as they were having only matriculation qualification.

[vi] The applicants submitted that the criteria of educational qualification for grant of ACP/MACP came to judicial scrutiny on numerous occasions and have favourably been decided in favour of

employees but the same has again repeated in the case of applicants and they have been erroneously deprived of the benefit of 1st and 2nd ACP putting them to huge financial loss, hence the present OA.

[vii] The applicants filed MA No.308/2017 for early hearing of OA No. 475/2016. Heard the MA and the same is allowed. The OA is being heard accordingly for final adjudication.

3. The respondents have filed their written statement and contested the case. According to them, since both the applicants have retired on superannuation [Applicant No. 1 on 31.12.2007 and applicant no.2 on 31.08.2008] and the ACP Scheme was introduced w.e.f. 09.08.1999, and since the applicants never raised their grievance during their service period till their retirement nor within the period of limitation from the date of cause of action, this OA is barred by limitation as prescribed under Section 21 of the Administrative Tribunals Act, 1985.

4. That apart, the respondents submitted that due to stagnation in the cadre, the Govt. of India has introduced Assured Career Progression Scheme [ACP] as per the DOPT order dated 09.08.1999 [Annexure-R/1], where the Junior Engineers were given the benefit of [ACP] in the Financial Upgradation of next promotional existing hierarchy i.e. in the grade of Assistant Engineer, after completion of 12 years of service in the same grade and the same procedure follows for 2nd ACP after completion of 24 years of service. Accordingly, the ACPs were granted to all eligible Junior Engineers from time to time.

5. The respondents further pleaded that the case of both the applicants, Shri Janardan Prasad Singh, JE and Shri Suresh Prasad have been considered by the departmental screening committee but

in the light of condition no.6 of DOPT's OM dated 09.08.1999, both of them did not fulfill the normal promotion norms for the post of AD-II, which is either degree or diploma in Civil or Mechanical Engineer. Therefore, they were not found eligible for grant of financial upgradation under ACP Scheme, so their names were not considered by the DPC. The respondents submitted that in view of the aforesaid facts and circumstances, this OA deserves to be dismissed.

6. Heard the learned counsel for the parties and gone through the records.

7. It is noticed that admittedly both the applicants have retired on superannuation on 31.12.2007 and 31.08.2008 respectively. It is also admitted that the Govt. of India introduced the ACP Scheme on 09.08.1999. Cause of action of the applicants arose in the year 1999 itself. They ought to have raised their grievance for grant of financial upgradation under ACP Scheme 2001 itself but they failed to do so. That apart, the applicants failed to raise their grievance before their retirement i.e. 2007/2008. Further, the Tribunal noticed that the case of both the applicants, Shri Janardan Prasad Singh, JE and Shri Suresh Prasad have been considered by the departmental screening committee in the light of condition no.6 of DOPT's OM dated 09.08.1999, but since both of them did not fulfill the normal promotion norms for the post of AD-II, which is either degree or diploma in Civil or Mechanical Engineer, therefore, they were not found eligible for grant of financial upgradation under ACP Scheme. The Screening Committee found that the officers, i.e. the applicants herein does not meet the Bench Mark, i.e. the minimum educational

qualification, therefore, they were not found fit for financial upgradation.

We do not find any infirmity in the decision of the respondents. Accordingly, the OA fails on both counts, limitation as well as on merit.

8. In view of the aforesaid discussions, this OA is hopelessly barred by limitation. Accordingly it is dismissed as barred by limitation as well as on merit. No costs.

Sd/-
[Dinesh Sharma]M[A]

Sd/-
[Jayesh V. Bhairavia]M[J]

mps.