

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.2218/2003

this the 28th day of February, 2004

Hon'ble Shri Kuldip Singh, Member(J)
Hon'ble Shri S.A.Singh, Member (A)

Rajender Chauhan,
S/o Late B.S.Chauhan
R/o E 323, Saraswati Vihar,
New Delhi.

...Applicant..

(By advocate: Shri Sumit Kumar)

VERSUS

1. National Council of Educational Research and Training (NCERT), through the Director, Sri Aurobindo Marg, New Delhi-110 016.
2. Union of India, through Ministry of Personnel, Public Grievances and Pensions, (Deptt. of Personnel & Training) North Block, New Delhi-110001.

(By Advocate: Ms. Deepa Rai)

..Respondents.

O R D E R

By Shri Kuldip Singh, Member(J)

The applicant has filed this OA for grant of benefits of Assured Career Progression (ACP) Scheme, which is stated to have been refused by the respondents vide order dated 19.3.2002.

2. The facts in brief are that the applicant had applied for the post of Production Assistant and thereafter he was given offer of appointment vide order dated 28.3.1985. Though the terms of appointment was temporary initially for a period of one year but the applicant alleges that he continued to work on the same post interruptedly and was regularised w.e.f. 6.7.1990.

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3. It is further stated that the respondents issued an ACP Scheme for Central Government Civilian employees which provided the first benefit to the employees after 12 years of regular service or on date of implementation of scheme whichever is later. Respondents also implemented the ACP Scheme in respect of non-academic staff of the council w.e.f.17.11.2000 but the benefits of the same was not given to the applicant even after completion of 16 years of service. He also made a representation to this effect but of no avail.

4. It is further stated that the respondents had erroneously mentioned the service of the applicant to be on adhoc basis while the terms of appointment clearly mentioned it on temporary basis, so he is entitled for the ACP Scheme benefits w.e.f. 6.7.2002 after completion of 12 years service.

5. Respondents are contesting the OA by filing their counter affidavit and pleaded that the services of the applicant was only on adhoc basis. At the time when he was regularised he had never raised any issue that he should be regularised w.e.f. 1985 and as such he is entitled for ACP after completion of 12 years only in case he is regularised w.e.f.1985.

6. It is further pleaded that in 1985 there were only six regular posts of Production Assistant and it has been created by Ministry of Human Resource Development subject to sanction by the Ministry of Finance, Government of India. Thus the council is not competent to create any

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post. As there was no permanent vacancy, he could not be regularised, nor was the applicant posted against any regular permanent post. The applicant was given regular appointment 6.7.1990.

7. The second contention of the respondents is that the applicant was given offer for promotion but he had refused to take promotion as Assistant Production Officer at RPDC, Calcutta. The purpose of the ACP Scheme is to provide relief in cases of acute stagnation where the employees, despite being eligible for promotion in all respects, are deprived of regular promotion for long periods due to non-availability of vacancies in the higher grade. Under the ACP Scheme, where a promotion has already been offered and the employee refuses to accept such promotion, then he cannot be said to be suffering from stagnation as he has opted the same on his own volition, therefore, he could not be considered for grant of benefit under ACP Scheme.

8. We have heard the parties and perused the available record.

9. The main contention of the learned counsel for the applicant is that he was offered appointment vide letter dated 28.3.1985 which shows that the appointment was for a period of one year at that time. He will be on probation for a period of two years from the date of his appointment, which may be extended at the discretion of the appointing authority. It is contended that the applicant was appointed against regular vacancy available with the Department, so applicant should be deemed to be regularised

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from the date he joined the post. As regards this contention of the learned counsel for the applicant is concerned, we find that the same is not maintainable. The fact remains that the respondents had pleaded that the applicant was given ad hoc appointment periodically and to that effect the respondents have referred to Annexure R-A collectively i.e., orders dated 23.3.1983, 29.3.1983 and 04.10.1983 and there is another letter wherein the appointment of applicant has been shown to be ad hoc on the post of Production Assistant. The applicant never agitated that he is being described as ad hoc. He has also not agitated to this effect when he was regularised in the year 1990 that he should be regularised w.e.f. 1985. Now it is too late for the applicant to ask and seek the relief for his regularisation from a back date on the ground that he had worked interruptedly. If at all the applicant was aggrieved about the date of regularisation, he should have come to the court earlier. Now, at this stage, applicant cannot plead that his regularisation should be ante dated.

10. Now, even assuming if we consider his regularisation w.e.f. 6.7.1990, it is also pleaded that as he had completed 12 years so the benefits of ACP Scheme cannot be extended to him or not. Respondents pleaded that the applicant was promoted as Assistant Production Officer vide order dated 20/22.6.2000 and the applicant refused to be promoted vide letter dated 23.6.2000.

11. We have gone through a letter written at annexure A-12 filed along with the rejoinder. On this aspect

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aspects, we may also refer to the OM dated 18.7.2000 issued by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) which is the ACP Scheme wherein it is mentioned that if a person refused promotion, he cannot be extended the benefit of the said Scheme. In this case applicant seems to have refused to go to the Calcutta on promotion because of his personal reasons. As clarified by the DOPT, the applicant is not entitled to the benefits of the ACP Scheme, as the applicant was offered for promotion before completion of 12 years and he had refused to join because of his personal reasons, he cannot be said to be stagnating as he has opted to remain in the existing grade on his own volition.

12. In view of above discussions, we find that the OA is bereft of merit and the same has to be dismissed. Accordingly, OA is dismissed. However, parting with this case, we make it clear that the applicant has to be considered against regular promotion after completing necessary period and if no promotion be made after completion of the said period, he ^{shall} also to be considered for ACP Scheme. No costs.

(S.A. Singh)
Member (A)

(Kuldeep Singh)
Member (J)