

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

Original Application No.1281/2013

Date of Order : 10.03.2019

Between :

P.Jagannadha Rao, S/o Late Chitambaram,
Aged 72 years, Occ : Lower Division Clerk (Retired),
Eastern Naval Command, Visakhapatnam,
R/o D.No.13-6-4, Bhujangarao Peta,
Maharanipeta P.O., Visakhapatnam – 530 002. ... Applicant

And

1. The Union of India,
Rep. by its Secretary, Ministry of Defence,
South Block, New Delhi – 110 011.
2. The Chief of the Naval Staff,
Integrated Headquarters of MOD (Navy),
Sena Bhavan, New Delhi – 110 011.
3. The Flag Officer Commanding-in-Chief,
Headquarters Eastern Naval Command,
Naval Base P.O., Visakhapatnam – 530 014.
4. The Chief Staff Officer (P&A),
Headquarters Eastern Naval Command,
Naval Base P.O., Visakhapatnam – 530 014.
5. The Command Civilian Personnel Officer,
Headquarters, Eastern Naval Command,
Naval Base P.O, Visakhapatnam – 530 014.
6. The Additional Controller of Defence Accounts (Navy),
Area Accounts Office, NAD Post,
Visakhapatnam – 530 009. ... Respondents.

Counsel for the Applicant	...	Mrs.Anita Swain, Advocate
Counsel for the Respondents	...	Mrs.K.Rajitha, Sr.CGSC

CORAM:

Hon'ble Dr.Bhagawan Sahai ... *Member (Admn.)*
Hon'ble Mr.R.N.Singh ... *Member (Judl.)*

ORAL ORDER

Mr.R.N.SINGH, JUDICIAL MEMBER :

Heard Mrs.Anita Swain, learned counsel for the applicant and Mrs.K.Rajitha, Sr.CGSC for the respondents.

2. The applicant who was retired as Lower Division Clerk has filed the present OA being aggrieved by the action of the respondents in not granting 2nd financial upgradation under ACP Scheme vide impugned orders dated 19.01.2012 and 15.03.2013 passed by the 5th respondent.

3. The brief facts of the case are that the applicant was initially appointed as Cinema Projectionist Gr-II in the pay scale of Rs.110-155 on casual basis w.e.f. 20.07.1966. His services were regularized as Cinema Projectionist Gr-II w.e.f. 20.12.1968. The applicant was subsequently promoted to the grade of Cinema Projectionist Gr-I w.e.f. 30.09.1982 in the pay scale of Rs.330-480 which was revised to the pay scale of Rs.1200-1800 w.e.f. 01.01.1986 in view of the recommendations of the IV CPC.

4. On abolition of posts of Cinema Projectionist, the applicant was adjusted as Lower Division Clerk (LDC) under Surplus and Deficiency Scheme

(S&DS) w.e.f. 02.05.1988 in the pay scale of Rs.950-1500 by giving pay protection to the pay drawn by the applicant in the previous post of Cinema Projectionist Gr-I. Accordingly the pay of the applicant was fixed at Rs.1400/- in the pay scale of Rs.950-1500.

5. It is not in dispute that the benefit of 2nd Financial Upgradation under the ACP Scheme was granted to the applicant by the competent authority vide order dated 03.10.2000 (Anx-A-II) w.e.f. 09.08.1999 in the pay scale of Rs.5000-8000. The pay fixation proposal in respect of the applicant was submitted in the pay scale of Rs.5000-8000, however, the same was returned by the Audit Authorities on 24.10.2000 seeking clarification to the following effect :

- (i) Kindly review the case with reference to clarifications No.4 to 6 and 17 of ACP Scheme vide MOD letter Dr.15 Feb 2000 circulating the Ministry of Personnel Public Grievances, Dept. of Personnel and Training OM No.35034/1/97-Estt(D)(Vol-IV) dt. 10 Feb 2000 and your comments be offered for the above case.*
- (ii) To state the orders under which the individual was given IInd financial upgradation under the ACP Scheme from the scale of Rs.3050-75-3950-809-4590 to Rs.5000-150-8000 instead of the scale of Rs.4000-100-6000.*

6. The applicant was at the verge of retirement, however, the benefit of the order dated 03.10.2000 giving pay scale of Rs.5000-8000 in view of the 2nd financial upgradation under the ACP Scheme was in fact not extended to the applicant and the applicant retired without having the benefit of such financial upgradation as ordered by the competent authority vide order dated 03.10.2000 and his pension came to be fixed at Rs.4000-6000.

7. Aggrieved of the same, the applicant has preferred representation dated 30.03.2011 (Anx-A-III). However, in place of giving effect to the order dated 03.10.2000, the respondents cancelled the order dated 03.10.2000 which was passed in favour of the applicant, vide their letter dated 19.01.2012 (Anx-A-IV) and the applicant was informed of this development vide their communication dated 15.03.2013 (Anx-A-VI).

8. Learned counsel for the applicant argued that the cancellation of the benefit of the order dated 03.10.2000 is bad in law in as much as the same has been passed without any prior notice. She further argued that the order dated 03.10.2000 was passed by the competent authority after taking into consideration all relevant facts, rules and including the clarification No.40 issued by the Department of Personnel and Training (Anx-A-VII) on the subject ACP Scheme and the same reads as under :

Sl.No.	Point of Doubt	Clarification
40	An employee drawing pay in the scale of Rs.800-1,150 (pre-revised) was declared surplus and was re-deployed as Peon in a Ministry through the Surplus Cell in the scale of Rs.750-940 (pre-revised). However, he was allowed to draw pay in the scale of Rs.800-1,150 as personal to him even after redeployment in the lower grade. What shall be his entitlements under ACPS ?	As the employee has remained in the scale of Rs.800-1,150 all along and has not availed any promotion, he is entitled to two financial upgradations in a scale higher than Rs.800-1,150 (pre-revised) irrespective of the post actually held after redeployment. Since in the Ministry, a Group 'D' employee is eligible for promotion to the grade of LDC, provided he is a matriculate and as a post in the scale of Rs.825-1,120 (S-4) is not in the normal hierarchy in the Secretariat, such an

		<p>employee can be considered for two financial upgradations in the grades of LDC and UDC, provided he is a matriculate. Otherwise, he will get only one financial upgradation in the revised scale of Rs.825-1,120 (Rs.2,750-4,400 revised). Cases of other persons re-deployed to lower posts through the Surplus Cell may also be regulated accordingly.</p>
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9. Learned counsel for the applicant reiterates that the impugned orders are in violation of the clarification No.40 of ACP Scheme.

10. Mrs.K.Rajitha, learned Senior Central Government Standing Counsel argued that the clarification at Sl.No.40 as extracted above, has already been considered by the respondents while passing the impugned order dated 19.01.2012 in para-3 (iii). However, learned counsel for the respondents does not dispute that the order dated 03.10.2000 has not been given effect to by the respondents without any reason. It is also not disputed that the order dated 03.10.2000, referred to above has been cancelled without putting the applicant any notice. More over, once the applicant has already been placed in the pay scale of Rs.4000-6000 without the grant of 2nd financial upgradation under ACP Scheme how the applicant will remain in the pay scale of RS.4000-6000 even on grant of the 2nd financial upgradation under ACP Scheme, has not been explained by the respondents either in the impugned order or in the reply statement.

11. In view of the aforesaid, the OA is liable to be partly allowed. The impugned orders dated 19.01.2012 and 15.03.2013 are quashed and set aside. The respondents are directed to reconsider the claim of the applicant for grant of 2nd financial upgradation w.e.f. 09.08.1999 keeping in view all relevant facts and circumstances, including the aforesaid clarification No.40 issued by the DOP&T and pass appropriate reasoned and speaking order within three months from the date of receipt of a copy of this order. It is further made clear that, if on such reconsideration, the applicant is found to be eligible for the pay scale of Rs.5000-8000, on grant of 2nd financial upgradation under ACP Scheme, the applicant shall be eligible for arrears of pay on refixation of pension and on such refixation of the pension, the arrears of pension with interest at the rate as admissible under GPF and such arrears and interest shall be paid by the respondents to the applicant within eight weeks thereafter.

12. The OA is disposed of accordingly. There shall be no order as to costs.

(R.N.SINGH)
MEMBER (JUDL.)

(BHAGWAN SAHAI)
MEMBER (ADMN.)

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