



CENTRAL ADMINISTRATIVE TRIBUNAL

KOLKATA BENCH

Original Application No. 1168 of 2015

Date of Decision: 3.12.19

**THE HON'BLE MRS. MANJULA DAS, JUDICIAL MEMBER
HON'BLE MR.N.NEHSIAL, ADMINISTRATIVE MEMBER**

Sri Alokesha Paul
Son of Late Bhutnath Paul,
residing at 11/2,
Abinash Chandra Sarkar Road,
P.O. Dakhineswar,
Kolkata – 700076

(and working as Lower Division Clerk in the Office of the Court Liquidator,
High Court, Calcutta, under the Ministry of Finance, Department of Financial
Services having office at 15, R.N. Mukherjee Road, Kolkata – 700001.

By Advocate Mr.C.Sinha

-VS-

1. Union of India
Represented by the Secretary,
Ministry of Finance,
Department of Financial Services,
Jeevan Deep Building,
New Delhi – 110001.
2. Under Secretary to the Government of India,
Ministry of Finance,
Department of Financial Services,
(Banking Division),
Jeevan Deep Building,
Parliament Street,
New Delhi – 110001.

Manjula Das

3. Assistant Court Liquidator,
 High Court at Calcutta,
 Under Ministry of Finance,
 Department of Financial Services,
 having his office at 15, R.N.
 Mukherjee Road, Kolkata – 700001.

By Advocate: Mr.S.Paul.

ORDER

Hon'ble Mr.N.Neihsial, Administrative Member:

The applicant has filed this O.A. under Section 19 of the Administrative Tribunals Act 1985, with the following reliefs:-

8.a) to remove the pay parity between the Petitioner and Smt. Swapna Das by awarding suitable additional monetary to the Petitioner w.e.f. 27.06.2007 onwards and to fix the pay band of the Petitioner at least @Rs. 4,600/- only.

b) to pay arrears of the additional monetary benefits to pay the equal salary for the Petitioner in comparing the salary of said Smt. Swapna Das with 18% interest thereon.

c) an interim order in terms of the prayer above."

2. Learned counsel for the applicant prays for reliefs with legal provisions as under:-

(i) That the right of the petitioner to have Assured Career Progression and Modified Assured career Progression is a

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fundamental right and same was ensured by the Central Government in it's existing rules and regulation.

(ii) That the Hon'ble Calcutta High Court in W.P.No.756 of 1991 categorically directed interalia that the seniority of the Petitioner should be allowed by the Respondent authorities to regularize the service of the petitioners therein (including your petitioner) with full status of Central Government employee on expiry of 360 days of joining in their respective services, with fitment in the appropriate scale of pay, which are to be counted and benefit of such fitment and promotion, if any, are to be given to them.

(iii) That the Respondent Authority cannot indulge gross discrimination in their office by violating the provisions of Article 14 & 16 of the Constitution of India.

(iv) That inspite of being senior in service, said Swapana Das was awarded 2 ACP on 09.08.1999 and 27.06.2007 while the petitioner inspite of being a senior than said Smt. Swapana Das awarded only 1 ACP on 04.01.2001 and one MACP 01.09.2008.

(v) Pursuant to such gross discriminations, in awarding ACP, said Swapana Das inspite of being a junior employee in the office of the Respondent No.3, found drawing much salary than the Petitioner and same should be immediately checked and such discrimination should be removed immediately, by awarding the similar additional monetary benefit to the petitioner w.e.f. 27.06.2007 itself.

(vi) To pay Arrears of the additional monetary benefits to pay the equal salary for the Petitioner in comparing the salary of said Smt. Swapana Das with an interest of 18% p.a."

3. The respondent authorities filed reply/written statement on 01.04.2016 and contested as under:

(a) The applicant initially joined in the office of the Court Liquidator, High Court at Calcutta with effect from 10th January, 1976 purely on temporary basis and became a permanent employee under Central Government service as Group-D staff with effect from 4th January 1977, i.e. 360 days from the date of such temporary employment, by virtue of the order dated 26th March 2001 passed by Hon'ble High Court at Calcutta in W.P No.211 of 2011 (Court Liquidator's Employees Association & Ors , -Vs- union of India & Ors). The applicant was thereafter promoted from Group-

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D to Lower Division Clerk with effect from 01.01.1982 in the Pay Scale of Rs.3050-75-3950-80-4590 in the office of the Respondent No.3 subject to the condition that his service will be treated as permanent Central Government Employee only after the expiry of 360 days of his joining.

- (b) That on 30.06.2015 this applicant submitted an application addressed to the Respondent No.3 with a request for stepping up of pay, citing therein name of one person named as Smt. Swapana Das, who according to the applicant, is junior to him in the post of Lower Division Clerk on 27.06.1983 and got two ACP, on 09.08.1999 in the pay scale of Rs.5200-20,200 +1099 GP (Grade pay) and on 27.06.2007 in the pay scale of Rs.9,300-34,800+4200 GP who was subsequently relieved from this office and presently in the office of CPWD.
- (c) That the Respondent No.3 already issued a copy of chart showing particulars of necessary grant of ACP and MACP stating the different dates when the ACP and MACP was granted in favour of the applicant as well as said Smt. Swapana Das.
- (d) That the applicant has filed the instant O.A. against the Respondents on the allegation that the Respondents have filed and neglected to take any steps in the matter.
- (e) That it is clarified, in para 8 of the Annexure-1 to O.M. dated 9.8.1999, of the Assured Career Progression (ACP) Scheme that:

"8. The financial upgradation under the ACP Scheme shall be purely personal to the employee and shall have no relevance to his seniority position. As such, there shall be no additional financial upgradation for the senior employee on the ground that the junior employee in the grade has got higher pay-scale under the ACP Scheme."

f) That as per the terms and conditions of Modified Assured Career Progression (MACP) Scheme introduced with effect from 01.09.2008, in supersession of the previous ACP Scheme applicable for all regularly appointed Group 'B' and Group "C" employees of the Central Government, vide DOPT's Office Memorandum dated 19th May 2009, it has been categorically provided in paragraph 10 thereof that

“10. No stepping up of pay in the pay band or grade pay would be admissible with regard to junior getting more pay than the senior on account of pay fixation under MACP Scheme.”

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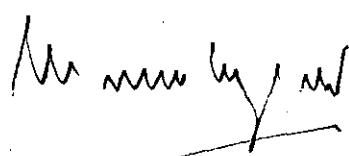
(g) That it is further clarified, in para 11 of the O.M. DATED 19.5.2009, OF MACP Scheme to the following effect:

"11. It is clarified that no past cases would be reopened. Further, while implementing the MACP Scheme, the differences in pay scales on account of grant of financial upgradation under the old ACP Scheme (of August 1999) and under the MACP Scheme within the same cadre shall not be construed as an anomaly."

A copy each of the ACP and MACP Schemes are annexed hereto and marked as Exhibit R 1 and R 2 respectively."

4. The applicant filed his rejoinder to the written statement of the respondent authorities on 22.6.2018.

5. We have given the hearing to both the parties and carefully gone through the records and submissions made by them. It is seen that the applicant got appointment as Central Government employees as per order of the Hon'ble High Court of Calcutta in W.P.No.756 of 1991 dated 18.6.1992 and the same was disposed of by the Hon'ble Supreme Court of India, in Civil Appeal No.5642/1994 dated 27th August, 1999. Since the order of the Supreme Court was not fully complied with by formulating the Scheme for the absorption of the applicants herein the Hon'ble Calcutta High Court in W.P.No. 211 of 2001 passed the following orders:



" Accordingly, a writ of mandamus shall issue directing the respondents within two months from date of communication of this judgment and order to give to the petitioners No.2 to 55 the full status of permanent Central Government employees on the expiry of 360 days of joining service but so far as the actual payment of arrears of salaries etc. which may become due to them because of the difference in pay they actually get and the pay of a regular Government servant, is concerned, no arrears shall be paid to them beyond three years from the date of the judgment in Matter No.756 of 1991 but their fitment in the appropriate scales are to be counted and the benefit of such fitment and promotions if any, are to be given to them. Likewise their entitlement of pension, provident fund, gratuity and all other benefits are to be computed on the basis of their length of service calculated in the light of the observations in the said judgment in Matter No.756 of 1991. The arrears of three years as directed above are to be given to the petitioners within six months from the date of communication of this judgment and order.

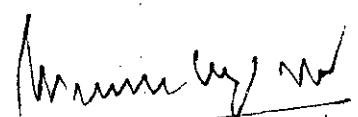
The writ application is accordingly allowed and Rule is made absolute in terms, as above, There shall,, however, be no order as to costs."

6. In compliance with this order of the Hon'ble Calcutta High Court, Government of India, Ministry of Finance, Department of Economic Affairs, created 54 posts of Group 'B', 'C', & 'D' and they also issued an order No. 2/3/2001-BOA dated 13th September, 2001, appointing 54 individual persons as Central Government employees on the expiry of 360 days of joining service as given in Column-4 of the Table of the order. In this order, some persons have been fitted in the post from LDC to UDC, LDC to LDC and some of them Group 'D'

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to LDC. The present applicant is one of the persons at S.No.12 who has been shown initially appointed as Group 'D' on 10.1.1976 and fitted as LDC in the said order. The said order basically repeated the order of the Hon'ble High Court, in this matter of 756 of 1991, indicating that their fitment in the appropriate scale are to be counted and the benefit of such fitment and promotions if any, are to be given to them. In respect of the present applicant, another order No. 2/3/2001-BOA dated 13th September, 2001, was issued by the Government of India, Ministry of Finance, Department of Economic Affairs, wherein they have indicated again as in Column-4 i.e. from the date of initial appointment on 10.1.1976, the applicant deemed to be Central Government employees on the expiry of 360 days from this date. The post to which he was initially appointed as indicated as Group 'D'.

6. This was followed by another letter from the respondents vide their letter No.CL-342/Misc.14-2001 dated 28.09.2001 informing him that he has been initially appointed as Group 'D' w.e.f. 10.1.1976 and promoted to Lower Division

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Clerk on 01.01.1982. This date of becoming LDC as on 01.01.1982 is also confirmed by the applicant in his representation dated 30.6.2015.

7. From careful reading above records and documents, it is indeed clear that consequent to the order of the Hon'ble High Court, Calcutta, the individual who was initially appointed as Group 'D' on 10.1.1976 had become Central Government employee on the expiry of 360 days from that date i.e. on 10.01.1977. Since the order of the Hon'ble High Court, which is subsequently implemented by the Government of India gives some benefits including fitment of the scales and promotions, the applicant became LDC w.e.f.01.01.1982 which has been reflected in the Government order of 13.9.2001. As such, the benefits of ACP which came into effect from August 1999, he will be entitled the 1st ACP on completion of 24 years of service w.e.f. January, 1977 or from the operation of the ACP scheme. With the introduction of MACP w.e.f. 01.09.2008 he will be entitled for MACP from the

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date of completion of 30 years of service or with effect from 01.9.2008.

8. We have examined the data sheets submitted by the applicant wherein he has been given ACP and MACP. From the records as seen herein, we found that as per existing order of the Hon'ble High Court of Calcutta, duly implemented by the Government of India and with reference to the order of ACP and MACP, the applicant is seen to have been given the benefits of ACP and MACP as admissible.

9. As regards to his claim of his junior getting more pay and asking for stepping up of pay, the respondent authorities, has rightly pointed out that under the scheme of ACP and MACP there is no scope / provisions for stepping up of pay of Senior in regards to his junior getting more pay under ACP and MACP, particularly when the other person was directly appointed as LDC. This is more so particularly wherein the private respondent belongs to other organizations.

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10. Accordingly, we are of the considered view that the case of the applicant has no merit and we do not see any reasons to interfere with who has already been decided and acted upon by the respondents authorities.

11. Accordingly, O.A. is liable to be dismissed and is hereby dismissed.

12. No order as to costs.

(N.NEIHSIAL)
ADMINISTRATIVE MEMBER

(MANJULA DAS)
JUDICIAL MEMBER

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