



CENTRAL ADMINISTRATIVE TRIBUNAL

KOLKATA BENCH

Original Application No. 1051 of 2015

Date of Decision: 03-12-2019.

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

Sri Narendra Nath Halder,
 Son of Late Nagendra Nath Halder,
 aged about ... years, residing at T/267,
 Baishnabghata Patuli

Post Office-Panchasayar, Kolkata-7000094 and working as Lower
 Division Clerk on deputation basis in the Debts Recovery Tribunal1,
 Kolkata with effect from 18.6.2014

From the office of Ministry of Finance, Department of Financial
 Service, Section BOII, 3rd Floor, Jeevan Deep Building
 10, Parliament Street, New Delhi-110001. ... Applicant

By Advocate: Mr.P.C.Das
 Ms.T.Maity

-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,

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Department of Economic Affairs,
 (Banking Division),
 Financial Services,
 Government of India
 Jeevan Deep Building,
 3rd Floor,
 10 Parliament Street,
 New Delhi -110001.

3. Assistant Court Liquidator,
 In the office of the
 Court Liquidator, High Court
 High Court at Calcutta 9
 Old Post office Street,
 Kolkata-700001
4. Santanu Paul, working in the
 office of Regional Passport Office,
 4 Brabourne Road, Kolkata-700001.
5. Jayanta Mukherjee,
 working in the office of Regional Passport office,
 4 Brabourne Road, Kolkata-700001
6. Rathindra Nath Bose, working in the office of Directorate
 General of Commercial Intelligence and statistics, 565,
 Anandapur, Ward No.108, Sector-1
 Plot No.22ECAP, Kolkata-700107.
7. Anwar Hossain, working in the office the Debts Recovery
 Tribunal-II, 42C,,
 Jawaharlal Nehru Road,
 Jeevan Sudha Building,
 7th Floor, Kolkata-700071
 7th Floor, Kolkata-700071

Respondents

By Advocate: Mr.S.Paul.

Signature of Mr. S. Paul

ORDER

Hon'ble Mr.N.Neihzial, 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 quash and/or set aside impugned order dated 18.12.2013 issued by the Assistant Court Liquidator, High Court at Calcutta being Annexure A-6 of this original application whereby and whereunder the claim of the applicant has been rejected by not granting the benefit of ACP and by not stepping up the pay vis-à-vis to the applicant and the private respondents.

b) to pass an appropriate order directing upon the respondent authority to give the benefit of one ACP which your applicant is entitled in respect of stagnating in a particular post with effect from 1986 till today i.e more than 29 years which the private respondents have got and therefore, they are getting the higher pay and your applicant is deprived by not getting the said benefit. Although your applicant is a senior than the private respondents, therefore, the junior cannot get any higher pay and in that event the stepping up of pay should be allowed vis-à-vis to the applicant and the private respondents.

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c) To pass an appropriate order directing upon the respondent authority to give the appropriate benefit of ACP in favour of the applicant and step up his pay vis-à-vis juniors along with all consequential benefits."

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

(i) That the applicant was initially appointed to the post of Group -D in the office of Court Liquidator, High Court AT Calcutta with effect from 1st February, 1984 and subsequently he was joined as Lower Division Clerk in the office of the Court Liquidator, High Court, Calcutta with effect from 01.08.1986 and from 01.08.1986 your applicant is holding his post of Lower Division Clerk. The total period which your applicant has spent is 29 years without getting the appropriate benefit of ACP

(ii) That by virtue of the order passed by the Hon'ble High Court at Calcutta in W.P.No.211 of 2001, vide orders dated 26th March, 2001 and 13th September, 2001 your applicant has been appointed as Lower Division Clerk in the pay scale of Rs.3050-3950 in the office of the Court Liquidator, High Court, Calcutta as permanent Central Government employee with effect from 01.08.1986. Vide order dated 13th September, 2001 a posting and permanent order has been issued in favour of the applicant to the post of Lower Division Clerk with pay fixation of Rs.3050-75-3950-80-4590.

iii) That thereafter, your applicant has been relieved from the office of Assistant Court Liquidator, High Court at Calcutta to report duty in the Department of Financial Services, New Delhi in the department of Ministry of Finance vide office order dated 06.03.2013.

iv) That after joining in that department, your applicant seen that the private respondents those who more far junior than your applicant are getting higher pay than

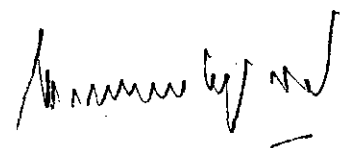
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your present applicant. The private respondents those who are appointed after the present applicant are enjoying the Grade pay of Rs.2800 as because they got the benefit of ACP, whereas your applicant did not get the benefit of ACP and therefore, he is getting Grade Pay of Rs.2000/-. Due to such anomaly of pay scale and for stepping up of the same, your applicant made a representation before the Assistant Court Liquidator, High Court at Calcutta on 18th November, 2013 by enclosing some relevant Rules.

V. That after receipt of such representation which your applicant submitted through proper channel through the Government of India, Ministry of Finance, the Under-Secretary, Ministry of Finance vide his letter dated 26th November, 2013 requested the authority concerned for rectification of Grade Pay of the applicant but the Assistant Court Liquidator, High Court at Calcutta without approval of the Ministry of Finance rejected the claim of the applicant on a frivolous ground. Since your applicant cited that the persons who are much junior than the present applicant are drawing Grade Pay of Rs.2800/- who are appointed much after your applicant. The respondent department has taken a plea that the persons from serial No.1 to 10 have got 2nd MACP after completion of 20 years and at the same time the applicant also got the 2nd MACP. But they have not justified that how your applicant got the Grade Pay of Rs.2000/-. The other persons like the private respondents are getting the Grade pay of Rs. 2800/- and vide impugned order dated 18.12.2013 the case of the present applicant has been rejected.

VI That thereafter, vide order dated June 3, 2014, your applicant has been sent on deputation for discharging the post of Lower Division Clerk on deputation basis in the Debts Recovery Tribunal-1, Kolkata and he has joined the Debts Recovery Tribunal-1, Kolkata without remuneration. But despite redressal of grievances of the applicant and to give the benefit of ACP by anomaly of pay scale vis-à-vis to the private respondents then respondent authority did not pay any heed to that representation and cited a wrong example by impugned order dated 18.12.2013.

VII That an identical issue has been decided by the Hon'ble High Court of Kerala at Ernakulam vide order dated 10th July, 2012 in a writ petition being O.P.(CAT) No.1576 of 2012 whereby the Hon'ble High Court decided that under any circumstances, junior cannot get the higher pay. Here from 1986 to 2015, your applicant is holding the post of Lower Division Clerk as per the Scheme introduced by the Government of India under ACP. Your applicant is entitled at least for one ACP during his service career. Your applicant got one MACP which has already given on 01.09.20108. the other junior persons like the private respondents have got the ACP



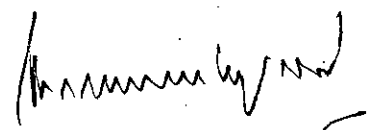
but your applicant did not get the same. After one ACP benefit is granted in favour of the applicant, his pay may not be less than his juniors. Despite making representation before the concerned authority, the respondent department did not pay any heed to that representation.

VIII. That the Hon'ble High Court of Kerala at Ernakulum in an identical issue passed the order on 10th July, 2012 and the learned Central Administrative Tribunal, Principal Bench, New Delhi in an identical issue vide order dated 01.02.2013 in O.A.No.2124 of 2011 and held-"That stepping up of pay should be allowed vis-à-vis to the persons who are Seniors and getting the lesser pay than their juniors". The Hon'ble High Court of Kerala at Ernakulum upheld the said view, therefore, your applicant is entitled to get the extension of benefit of that judgment and is entitled to get the benefit of ACP who is stagnating in a particular post for more than 20 years but the respondent authority are not considering this grievances.

IX. That your applicant made a last representation before the Assistant Court Liquidator, High Court at Calcutta for stepping up of his pay and requested the authority concerned to grant the Grade Pay of Rs.2800 with effect from the date when his juniors have got the same."

3. The respondent authorities filed reply/written statement on 04.04.2016 and contested as under:

- (a) The applicant initially joined in the office of the Court Liquidator, High Court at Calcutta as Peon with effect from 10th February,, 1984 purely on temporary basis and became a permanent employee under Central Government service as Group-D staff with effect from 26th January 1985, 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-D to Lower Division Clerk with effect from 01.08.1986 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.

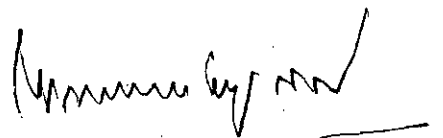
- (b) That thereafter this applicant was relieved from the office of Court Liquidator, High Court at Calcutta to report his duty in the Department of Financial Services, Ministry of Finance, New Delhi with effect from 06th March 2013 vide Office Order No.CL-487/Misc/14/2013 dated 06.03.2013. That the applicant has filed the instant O.A. against the Respondents on the allegation that the Respondents have failed and neglected to take any steps in the matter failed
- (c) On 18.11.2013 the applicant submitted an application through proper channel addressed to the Respondent No.3 with a request for stepping up of pay, citing therein names of ten persons who according to the applicant, are junior to him in the same post and are drawing grade pay of Rs.2800/-whereas his Grade Pay is Rs.2,000/-.
- (d) That on 26th November 2013 the Respondent No.2 issued a letter addressed to the Respondent No.3 enclosing the said letter of the applicant to examine the matter and take suitable action in the matter.
- (e) That on 18.12.13 vide No.CL-235/Misc/14/2013 the Respondent No.3 issued a letter stating there that this applicant was initially appointed as Grade D on 26.01.1985 in this office and thereafter was promoted to the post of LDC on 01.08.1986 which was found after verification from his service book and the officials mentioned in his complaint from 1 to 10 joined as LDC on the dates mentioned against them who got 2nd MACP on completion of 20 years but this applicant has already got one promotion on 01.08.1986, thereafter on 01.09.2008 got 2nd MACP which entitled him to the Grade pay of Rs.2000/- Additionally it was replied that in terms of GID 18 (a) below FR22 (FRSR Part1 2010) the applicant's request cannot be admitted as both Junior and Senior employees do not belong to the same cadre and identical posts in which they have been appointed."

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4. The applicant filed his rejoinder to the written statement of the respondent authorities on 25.8.2016.

5. We have given 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, 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."

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

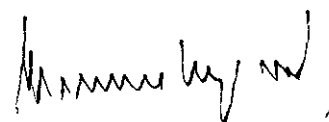
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LDC to LDC and UDC and some of them Group 'D' to LDC. The present applicant is one of the persons at S.No.26 who has been initially appointed as Group 'D' on 01.02.1984 and fitted as LDC in the said order. The said order also repeated the order of 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,(Banking Division) wherein they have indicated again as in Column-4 i.e. from the date of initial appointment as on 01.02.1984, 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 was indicated as Group 'D'. This was followed by another

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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. 01.02.1984 and promoted to Lower Division Clerk on 01.08.1986 This date of becoming LDC as on 01.08.1986 is also confirmed by the applicant in his representation dated 18th Nov,2013.

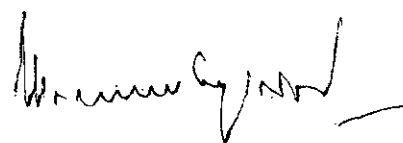
7. Therefore, careful reading of above records and documents, it is indeed clear that consequent to the order of the Hon'ble High Court, Calcutta, the individual who was initially appointed as Group 'D' on 01.02.1984 became Central Government employee on the expiry of 360 days from that date. Since the order of the Hon'ble High Court, which is subsequently implemented by the Government of India gives the benefits including fitment of the scales and promotions, obviously the applicant became LDC w.e.f. 01.08.1986 which is reflected in the Government order of 13.9.2001. This being the case, the benefit of



ACP which came into effect from August 1999, would be entitled the 1st ACP on completion of 24 years of service w.e.f. Feb, 1985 or from the introduction of the ACP scheme, whichever is later. With the introduction of MACP w.e.f. 01.09.2008 he will be entitled for MACP from the date of completion of 30 years of service from the same date of Feb, 1985 or ten years from the date of getting the benefit of ACP.

8. From the records as therein, 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 has been given the benefits of ACP and MACP as admissible.

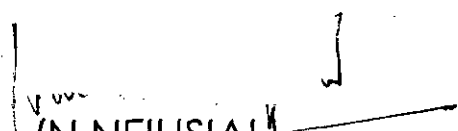
9. As regards to his claim of his junior getting more pay and asking for stepping up of pay, the respondent authorities, has rightly pointed out that under the scheme of ACP and MACP there is no



scope/ provisions for stepping up of pay of Senior in regards to his junior getting more pay under ACP and MACP.

10. Keeping in view of the above, there is no scope for stepping up of pay under the ACP and MACP, particularly, wherein the private respondents belonged to other organizations. 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 what has already been decided and acted upon by the respondents authorities.

11. Accordingly, O.A. is liable to be dismissed and is hereby dismissed. No order as to costs.


(N. NEIHSIAL)
ADMINISTRATIVE MEMBER


(MANJULA DAS)
JUDICIAL MEMBER

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