
(2023) 10 CAT CK 0011

In the Central Administrative Tribunal

Case No : Original Application No. 330, 529 Of 2014

Bhakti Vijay Shukla

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 06-10-2023

Acts Referred:

Central Administrative Tribunal Act, 1985 & Section 19

Citation : (2023) 10 CAT CK 0011

Hon'ble Judges : Om Prakash, VII, Member (J); Dr. Sanjiv Kumar, Member (A)

Bench : Division Bench

Advocate : Kamal Singh, Amitabh Kumar Sinha

Final Decision : Allowed

Judgement

1. This Original Application is filed under section 19 of the Central Administrative Tribunal Act, 1985 claiming relief to issue a suitable order or direction to the respondents to grant financial up-gradation to the applicant as per ACP Rules with grade pay of Rs. 5400/- which is existing hierarchy promotion grade pay since 1.1.2006, forthwith and to grant due arrears arisen thereon. Prayer has also been made to issue any other order which this Tribunal may deem fit and proper and also award costs.

2. The brief facts of the case are that the applicant was appointed as Lab Technician on 02.01.1992 in the respondents' establishment and joined there on 05.11.1992 and he was made permanent in 1994 with effect from 05.11.1994 vide order dated 16.06.1999. The contention of the applicant is that while filing this application in 2014 he had completed 21 years of service and from 10.04.2002 he was promoted to the post of Extension Officer. After the introduction of 6th Pay Commission, Lab Technician/ Scientific Assistant post and that of Extension Officer's posts were merged in single Grade Pay of Rs. 4200/- nullifying the benefit of his promotion. The basic argument of the applicant is that because of the merger of these two grades, his earlier promotion in the year 2002 was nullified and hence he was eligible for the benefit of ACP. To support his

claim, he also argued that several people junior to him were granted ACP in Higher Grade than him of Rs. 4600/- on 07.08.2012 and he gave representation in this regard to his authorities on 23.08.2012; which was followed by several reminders dated 08.10.2012 and 15.01.2013 etc. The applicant also quotes DoPT Circular dated 10.02.2000 in support of his claim and further argued that authorities have not ignored his earlier promotion due to the merger of two different cadres and have not given him the benefit of ACP for which he was entitled. Therefore, he should be considered for up-gradation under the ACP Scheme.

3. The case came up for final hearing on 26.09.2023. Shri S K Kushwaha holding brief of Shri Kamal Singh, counsel for the applicant and Shri Amitabh Kumar Sinha, counsel for the respondents were present and heard.

4. Respondents have filed counter wherein he agrees with the basic facts of the case that the applicant was appointed as Lab Technician/Scientific Assistant on 02.01.1992 and he joined service on 05.11.1992 and he was made permanent on 05.11.1994 vide order dated 16.06.1999 and with effect from 10.07.2002 he was promoted to the grade of Extension Officer. They also agreed that the post of Lab Technician /Scientific Assistant have been merged with that of Extension Officer vide 6th Pay recommendations but they assert that the applicant has already been given one regular promotion to the Scientific Assistant to Extension Officer on 10.07.2002. Hence, he is not entitled for financial up-gradation in Pay Band II and grade pay of Rs. 5400/-. They further say that the applicant was charge sheeted for directly writing to the Head Office and has also not worked satisfactorily and so he was not eligible for any further financial up-gradation. The respondents further argued that the 6th Pay Commission was implemented from 01.01.2006 and ACP Scheme was discontinued and the applicant has opted for new pay-scale with effect from 01.01.2006 and as Modified ACP Scheme became effective from 01.09.2009, the applicant was not eligible for any up-gradation under ACP Scheme. The respondents further say that grant of ACP to Shri V.V.Rama Rao and Sri Gedam Vilas Scientific Assistant have no relevancy to the case of the applicant. Hence, this OA should be dismissed.

5. Rejoinder has been filed for the applicant wherein he reiterates his fact as in the OA and re-emphasize that as per DoPT Memorandum dated 10.02.2000, "since the benefit of up-gradation under ACP Schemes are to be allowed in the existing hierarchy, the mobility under ACPs shall be in the hierarchy existing after the merger of pay scales by ignoring the promotion". For such grades, where different cadres have been merged and in his case, as his promotional post of Extension Officer was merged with Scientific Assistant. So, he is eligible for the up-gradation under ACP Scheme. Hence, he should be granted the prayer by allowing the present OA.

6. Additional rejoinder has further been filed wherein the applicant wants to say that he is fit and eligible for the post of Assistant Director Quality Control since from the year 2005 and accordingly, he should be given promotion but he has

not amended his OA and the relief clauses therein to seek any such relief.

7. Supplementary counter affidavit has been filed by the respondents wherein the respondents emphatically say that the applicant has already been promoted to the post of Assistant Director (Quality Control) in Pay Band-3 Grade Pay Rs. 5400/- w.e.f. 01.07.2015 in accordance with the existing Revised Recruitment Rule FFDC Kannauj 2015.

8. They have further filed supplementary counter affidavit wherein the respondents specifically say that the applicant had already been given one regular promotion from Scientific Assistant to Extension Officer on 10.04.2002 in the pay scale of Rs. 5500-175-9000. Since pre-revised pay scales Rs. 5000-8000 & Rs. 5500-9000 has been merged and placed in Pay Band-2 with Grade Pay of Rs. 4200/- w.e.f. 01.01.2006, hence, in terms of DoPT New Delhi OM No. 35034/3/2008 Estt(D) dt. 09.09.2010 clarification No. 27 (iii) the above promotion would be ignored and 1st ACP would be allowed in the promotional hierarchy from Scientific Assistant to Extension Officer in PB-2 Rs. 9300-34,800/- with Grade Pay Rs. 4600/- w.e.f. 01.01.2006 subject to fulfillment of conditions of ACP.

9. To this extent, the respondents concede the arguments as well as prayer of the applicant. They further, say that the case of grant of MACP to Shri B.V. Shukla Assistant Director (Quality Control) was placed before the Screening Committee in the meeting held in FFDC Kannauj on 24.09.2015 but the committee deferred the case for grant of MACP as the matter was subjudice in Central Administrative Tribunal, Allahabad in OA No. 529/2014 i.e. the present OA. So, by this averment also the respondents concede that the applicant had eligibility for MACP and the respondents were inclined to give the benefit and the Committee also met but only deferred because this Original Application was pending.

10. We have gone through the entire records and carefully considered the rival contentions.

11. In the DoPT om dated 09.09.2010 No. 35034/3/2008- Estt(D) at para 27 (iii) which reads as under:-

Doubts

Clarification

27 (iii)

If a Government servant recruited in the pre-revised pay scale of Rs. 5500-9000 prior to 01.01.2006 (and he has put in 14 years of regular service) then would there be any claim for financial upgradation under ACPs.

(iii) The pre-revised pay scales Rs. 5000-8000 & Rs. 5500-9000 have been merged and placed in PB-2 with grade pays of Rs. 4200 w.e.f. Hence, the promotion would be ignored as he has completed his 12 years of regular service

and the benefit of 1st ACP would accordingly be allowed in the promotional hierarchy i.e. in the grade pay of Rs. 4600 w.e.f. 01.01.2006.

A simple reading of the above clearly shows that the applicant is eligible for the benefit of up-gradation as per the DoPT clarification which the respondents also concede.

12. Considering the above facts we pass the following orders:-

The present Original Application is allowed and the respondents are directed to conduct a special DPC for the purpose of considering the eligibility of the applicant for up-gradation as per the OM of DoPT dated 09.09.2010 and the said process should be completed within a period of three months. The applicant will also be eligible for consequential benefits from the date of his up-gradation @ 6% per annum.

13. Associated M.As stand disposed of accordingly. No order as to costs.