

(2016) 04 OHC CK 0035

In the Orissa High Court

Case No : Writ Petition (Civil) No. 27703 of 2013

Gopal Chandra Sethi

APPELLANT

Vs

The Executive Engineer, Balasore Electrical Division

RESPONDENT

Date of Decision : 27-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 1 ILRCuttack 1146

Hon'ble Judges : C.R. Dash, J.

Bench : Single Bench

Advocate : M/s. Gautam Mukherji, A.C. Panda, A.S. Biswal, S.D. Ray, R. Priyadarsini, Advocates, for the Petitioner; M/s. Ramanath Acharya, Basudev Barik, P.M. Rao, Advocates, for the Opp. Parties

Final Decision : Allowed

Judgement

C.R. Dash, J.—The petitioner in this writ application has claimed 3rd Assured Career Progression ("ACP" for short) on completion of 30 years of his service in the same grade.

2. The petitioner on completion of 35 years of service, retired on superannuation. He had made a representation for consideration of his case for grant of 3rd ACP. The Opp. Party-Company, however, vide Office Order No.6314, dated 24.04.2009 rejected the claim of the petitioner for 3rd ACP.

3. The petitioner joined in the erstwhile Orissa State Electricity Board ("OSEB" for short) as a Meter Reader/Clerk-B on 21.04.1976. Subsequently, he continued in service under the NESCO. It is an admitted fact that, after completion of 15 years of service, the petitioner availed 1st ACP with effect from 21.04.1991. He also availed 2nd ACP on completion of 25 years of service w.e.f. 21.04.2001. In view of tripartite settlement of the Opp. Party-Company with different labour unions as per Annexure-1, the petitioner was entitled to 3rd ACP on completion of 30 years of service. However, on completion of 30 years of service, petitioner

was not granted 3rd ACP and, vide decision of the Opp. Party-Company dated 24.04.2009, such benefit of 3rd ACP of the petitioner has been disallowed.

4. A counter affidavit has been filed on behalf of the Opp. Party-Company. Relying on Annexure-A/1 (Annexure-1 to the writ petition) relating to the paragraph dealing with Assured Career Progression, it is averred in the counter affidavit that the benefit of 3rd ACP has to be given only after screening of each and every case by the Screening Committee to be constituted by the Controlling Departments, and all norms of promotion have to be taken into consideration for allowing ACP in different stages. It is further averred that, for promotion from Clerk-B to Clerk-A, passing of Departmental Accounts Examination is a necessary pre-condition, and the petitioner having not passed Departmental Accounts Examination and he having not been found suitable and fit for promotion to Clerk-A, no 3rd ACP has been allowed in his favour.

5. Mr. Mukherji, learned counsel for the petitioner has relied on the case of Aswin Kumar Das v. The Executive Engineer, Balasore Electrical Division and another disposed of on 30.01.2013 to substantiate his contention that, in a similar case of the same Electrical Division of the NESCO, the Hon'ble Court relying on Clause-11 of the Office Order dated 15.03.1983 of the Orissa State Electricity Board regarding promotion to the higher post, has quashed the decision of the Opp. Party-Company for not granting 3rd ACP to the petitioner therein, and the present case is covered by the decision of this Court in the aforesaid case.

6. Mr. Acharya, learned counsel for the Opp. Parties submits that the petitioner having not passed the Departmental Accounts Examination, is not eligible for promotion to higher grade and, when he is not eligible for promotion to the higher grade, question of granting him 3rd ACP does not arise, as in each and every stage of the ACP, each and every case is to be scrutinised by the Scrutiny Committee to see that whether the conditions for promotion are fulfilled. Learned counsel for the Opp. Party-Company further submits that this Court in the case of Aswin Kumar Das (supra) has wrongly interpreted the law.

7. Decision of this Court in the case of Aswin Kumar Das (supra) has not been assailed before the Division Bench or in the Apex Court. It has become final. At this stage, it is misconceived to submit for the Opp. Party-Company that the law in the aforesaid decision has been wrongly interpreted. In the case of Aswin Kumar Das (supra), the petitioner therein joined as a Meter Reader/Clerk-B under the erstwhile Orissa State Electricity Board on 26.05.1973 as a regular employee. After completion of 15 years of continuous service, he availed 1st ACP with effect from 26.05.1988 and on completion of 25 years of service in the said post, he availed 2nd ACP with effect from 26.05.1998. During the service tenure of the petitioner, there was change in management. At first, Gridco took over OSEB and thereafter NESCO was created. The petitioner Aswin Kumar Das retired from service on superannuation on 31.08.2008 while serving under the NESCO the Opp. Party-Company. In the year 2007, the Opp. Party-Company promoted the petitioner temporarily to the post of Clerk-A under the regular

establishment. The petitioner however refused to take promotion, as he was getting higher scale of pay as Clerk-B. The petitioner Aswin Kumar Das had also not passed the Departmental Accounts Examination and his promotion to Clerk-A was temporary without prejudice to the claim of others subject to condition that the petitioner shall be reverted to his former post as soon as a qualified Accounts training passed Clerk-B is available for promotion, if in the meantime, the petitioner does not pass the Departmental Accounts Examination. The petitioner-Aswin Kumar Das however did not avail the promotion and preferred to continue as Clerk-B. On completion of 30 years of his service, he claimed 3rd ACP, which was refused, and in the writ application this Court, on interpretation of Paragraph- 12 of Annexure- 1 to the present writ application and Clause- 11 of the Office Order dated 15.03.1983 of the OSEB, quashed the decision of the Opp. Party-Company and directed the Opp. Parties to disburse the benefit of 3rd ACP to the petitioner with effect from 01.04.2005 with all subsequent Pensionary benefits.

8. So far as the present case is concerned, the only ground taken by the Opp. Party-Company in the counter affidavit is that the petitioner had not passed the Departmental Accounts Examination, which was a pre-condition for promotion to the next higher grade, i.e., Clerk-A.

9. Paragraph- 12 of Annexure- 1, which deals with Assured Career Progression reads as follows :-

"12. ASSURED CAREER PROGRESSION (ACP) :

This will be applicable to all the Non-Executive Employees/Workers up-to Supervisory-B w.e.f. 01.04.2005 in three stages i.e. 1st ACP on completion of 15 years, 2nd ACP after 25 years and 3rd ACP after 30 years of service, if they continue in one post/grade. The benefit of ACP will be given only after screening of each and every case by the Screening Committee to be constituted by the Controlling Departments and all norms of promotion shall be taken into consideration for allowing ACP in different stages. The financial benefit to the extent of 3% of the Basic Pay plus Grade Pay will be added on availing ACP in different stages and next increment will accrue one year after. If the Employee/Worker has already availed both 1st and 2nd stage of Time Bound Advancement (TBA) scale under the existing provisions, he/she will not be again entitled to the ACP in the revised pay. However, the 3rd ACP after completion of 30 years of service shall be applicable as stated above."

A cursory reading of the aforesaid paragraph makes it clear that, benefit of ACP has to be given only after screening of each and every case by the Screening Committee to be constituted by the Controlling Departments, and all norms of promotion shall have to be taken into consideration for allowing ACP in different stages. Grant of ACP is a different thing and promotion is a different thing. ACP is granted to compensate an employee for stagnation in a particular post for a number of years. Promotion is dependent on availability of posts and fulfilment of

conditions and eligibility for promotion. Passing of Departmental Accounts Examination may be a necessary condition for promotion, which depends on availability of posts. But passing of Departmental Accounts Examination cannot be considered to be a pre-condition for grant of ACP. The Screening Committee has to see only suitability of the person to be promoted otherwise irrespective of the facts whether he has passed Departmental Accounts Examination or not. If a person is otherwise eligible for promotion for a blemishless service career to his credit, he is to be granted 3rd ACP, no matters whether he has passed Departmental Accounts Examination. There is nothing in the counter affidavit to show that the petitioner is disqualified for promotion otherwise. The only ground taken in the counter affidavit to disallow 3rd ACP is that, he has not passed Departmental Accounts Examination. Such a ground in view of my discussions supra is not sustainable in the eye of law.

10. Annexure-1 to the writ petition became operative with effect from 01.04.2005. The 3rd ACP was due to the petitioner on completion of 30 years of service on 21.04.2006. Petitioner's case is covered by Annexure-1, as he retired after 01.04.2005 and his 3rd ACP became also due after 01.04.2005.

11. This Court in the case of Aswin Kumar Das (supra) has taken a correct view of the matter and has allowed the benefit of 3rd ACP to the petitioner therein. The present case is squarely covered by the decision of this Court in the case of Aswin Kumar Das (supra).

12. In view of the above reasons, this Court, while quashing the decision of the Screening Committee vide Office Order No.6314, dated 24.04.2009, directs the Opp. Parties to disburse all the benefits of 3rd ACP and subsequent pensionary benefits to the petitioner with effect from 21.04.2006 within a period of three months from the date of receipt of a certified copy of this Judgment.

13. The writ application is accordingly allowed.