

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

C.W.P No. 26363 of 2015

Date of decision : 18.12.2015

Union of India and others

.....Petitioners

Versus

**Central Administrative Tribunal, Chandigarh Bench, Sector 17,
Chandigarh and another**

.....Respondents

CORAM : HON'BLE MR. JUSTICE M. JEYAPPAUL

HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.P.C.Goyal, Advocate
for the petitioners.

DARSHAN SINGH, J.

The present civil writ petition has been filed under Article 226/227 of the Constitution of India for issuance of the writ in the nature of certiorari for quashing the orders dated 30.09.2013 (Annexure P-3) passed by the learned Central Administrative Tribunal, Chandigarh Bench (hereinafter called 'Tribunal'), whereby the Original Application No. 794/HR/2011 has been allowed and the order dated 18.08.2015 (Annexure P-7) passed by the learned Tribunal vide which the Review Application filed by the petitioners has been dismissed.

2. Respondent no.2 Mr. L.S.Duggal, filed the Original Application before the learned Tribunal alleging therein that he joined the services of the petitioners as Health Inspector on regular basis w.e.f. 04.11.1976. The Government of India promulgated the Assured Career Progression Scheme (for short A.C.P Scheme) dated 09.08.1999 prescribing two financial up-gradations to the Central Government employees who remained stagnated for 12/24 years of their service. Respondent no.2 was granted the 1st A.C.P w.e.f. 09.08.1999

and the 2nd A.C.P w.e.f. 04.11.2000. However, he disputed that his pay was wrongly fixed in the pay scale of Rs.5000-8000/- w.e.f. 04.11.2000, though, he was entitled to the pay scale of Rs.5500-9000/-. Respondent no.1 was promoted to the post of Health Superintendent and assumed the charge of that post w.e.f. 11.03.2000. Due to his family circumstances, he moved representation dated 03.09.2001 for posting him on extreme compassionate ground at Chandimandir in the lower grade of Health Inspector. His request was accepted by petitioners vide order dated 25.10.2001. In consequence of his reversion a fresh pay fixation order dated 05.06.2000 was issued by respondent no. 3 reducing his pay by two stages to the pay scale of Rs. 4000-6000/- which was wholly illegal and arbitrary. Thereafter, respondent no.2 was again promoted to the post of Health Superintendent vide order dated 29.12.2008 in the pay scale of Rs. 4500-7000/-. Respondent no.2 moved the representation claiming the benefit of 1st A.C.P w.e.f. 09.08.1999 and 2nd A.C.P w.e.f. 03.11.2000 in the pay scales of Rs.4500-7000/- and Rs.5500-9000/- respectively. His case was recommended by respondent no.2 and was forwarded to respondent no. 4, who disagreed with respondent no. 2 vide letter dated 25.08.2010. It was also pleaded that the A.C.P Scale granted to him was withdrawn on reversion w.e.f. 01.01.2002. Respondent no. 2 sought the relief (s) to issue a direction to the petitioner to grant the benefit of 1st A.C.P in the pay scale of Rs. 4500-7000/- w.e.f. 09.08.1999, benefit of 2nd A.C.P in the pay scale of Rs. 5500-9000/ w.e.f. 04.11.2000 and benefit of 3rd A.C.P in the Pay Band-2 Rs.9300-34800/- with Grade Pay of Rs. 4600/- with all consequential benefits of arrears of pay and allowances with interest. He further sought the declaration that on his reversion, his pay cannot be reduced and he be held entitled to pay protection on his reversion to the lower post.

3. The claim of respondent no. 2 was contested by the petitioners

that there is no provision of protection of pay drawn against the higher cadre post on reversion to the lower post at one's own request as provided under para no. 2 Government of India Order No.13 reproduced under Fundamental Rule 22 of FRSR Part I. It was further pleaded that the benefit of 1st A.C.P was granted to the respondent no. 2 w.e.f. 09.08.1999 vide order dated 26.02.2010 in the pay scale of Rs. 4500-7000/-. The applicant was promoted to the post of Health Superintendent w.e.f. 11.03.2000 and was granted the 2nd financial up-gradation w.e.f. 04.11.2000 in the pay scale of Rs. 5000-8000/-. The petitioners denied that respondent no.2 was entitled to the pay scale of Rs. 5500-9000/- on account of the grant of 2nd A.C.P. They further pleaded that the 3rd financial up-gradation under MACP was granted to respondent no. 2 in the next grade pay in the hierarchy of Rs. 2800/- and he was not entitled to the pay grade of Rs. 4600/-.

4. Learned Tribunal observed that in the Original Application, respondent no. 2 has claimed two relief (s) i.e. firstly, the fixation of his pay in the pay scale under 2nd A.C.P and secondly on reversion his pay is to be protected. Considering the bar in terms of Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987, as the plural relief (s) cannot be entertained in one Original Application. The learned Tribunal considered only the 2nd claim of the applicant with respect to the protection of his pay on his reversion which he was getting on that date under A.C.P Scheme.

5. Learned Tribunal vide impugned order dated 30.09.2013 held that the action of the petitioners in not fixing the pay of respondent no. 2 in the pay scale of Rs. 4500-7000/-, which he was already getting w.e.f. 09.08.1999 under A.C.P. Scheme on the date of his reversion w.e.f. 25.10.2001 was illegal. Respondent no. 2 was held entitled to the pay scale which he got under the 1st and 2nd A.C.P Scheme. The time bound direction was given to conclude the

exercise. Respondent no.2 was given liberty to file the separate original application with regard to his other claims. The petitioners filed the Review Application bearing No. 060/00088/2014, which was also dismissed by the learned Trihunal vide order dated 18.08.2015.

6. Aggrieved with the aforesaid orders, the present writ petition has been preferred.

7. We have heard Mr. P.C.Goyal, Advocate, learned counsel for the petitioners and have carefully gone through the paper book.

8. Initiating the arguments, learned counsel for the petitioners contended that the impugned orders are illegal. In-fact there was irregularity in grant of the benefit of the A.C.P/ MACP Scheme to respondent no. 2, which transpired from the record. He further contended that respondent no.2 had refused promotions to the promotional post of Health Superintendent in the years 1987, 1990 and 1991 respectively. So, respondent no.2 was not stagnating due to non availability of vacancies for promotion. The A.C.P was introduced to avoid stagnation. Since, respondent no.2 himself had refused promotion, thus he was not entitled for the grant of A.C.P as his case was not covered at all under the A.C.P Scheme of 1999. This aspect has not been considered by the learned Tribunal. Thus, he contended that the impugned orders are liable to be set aside

9. We have duly considered the aforesaid contentions.

10. It is the admitted case of the petitioners that the A.C.P Scheme was made applicable w.e.f. 09.08.1999 stipulating two financial up-gradations to the Central Government Employees on completion of 12/24 years of service who were not promoted. It is also not disputed that respondent no.2 was granted the benefit of 1st A.C.P w.e.f. 09.08.1999 vide order dated 26.02.2010 in the pay scale of Rs. 4500-7000/-. He was also granted the 2nd financial up-

gradation w.e.f. 04.11.2000 in the pay scale of Rs. 5000-8000/-. Respondent no.2 was also promoted to the post of Health Superintendent w.e.f. 11.03.2000. Due to his family circumstances, respondent no.2 moved a representation dated 03.09.2001 for posting him at Chandimandir in the lower grade of Health Inspector. He was ordered to be reversed on the post of Health Inspector on his own request vide order dated 25.08.2001 and was posted at Chandimandir. On his reversion, his pay was reduced by two steps in the pay scale of Rs. 4000-6000/-. Respondent no.2 was already granted the 1st and 2nd A.C.P before he moved the representation for his reversion. The short point for consideration in the present writ petition is as to whether on account of reversion of respondent no.2 on his own request the A.C.P scales granted to him are liable to be withdrawn or not.

11. Learned counsel for the petitioners has vehemently argued that as the respondent no.2 has refused the promotion to the post of Health Superintendent in the years 1987, 1990 and 1991, so he was not entitled to be granted the benefit of financial up-gradation and those are liable to be withdrawn. But, we do not find any substance in these contentions raised by learned counsel for the petitioners. It is the admitted case of the petitioners that the A.C.P Scheme was introduced w.e.f. 09.08.1999 and it is alleged that respondent no.2 has refused promotion to the rank of Health Superintendent in the years 1987, 1990 and 1991. No doubt, the benefit of A.C.P Scheme was available only to those who were stagnating on one post and had not got any promotion. But, even as per the case of the petitioners, respondent no.2 has refused promotion much before A.C.P Scheme was made applicable and it is not expected that respondent no.2 could be aware of that the government was going to introduce any such A.C.P Scheme in future. Thus, his refusal for promotion much before the A.C.P Scheme coming into force cannot be a

ground to deny him the benefit of the A.C.P Scheme. The similar question arose for consideration before the Division Bench of the Hon'ble Rajasthan High Court in case **Union of India and another Vs. Harish Bulchandani and another 2006(1) SLR 686**. The Hon'ble Rajasthan High Court has laid down as under:-

“4. We were inclined to examine the matter in all its details but we are informed that the petitioner had refused promotion on 07.10.1999 and the scheme entitling the petitioner the benefit granted to him came into being on 17.11.2000. This factual position is not in dispute. Once it is proved that the petitioner had refused promotion at the time when the scheme was not even in existence it cannot be said that having refused promotion to a higher post, the petitioner cannot ask for the benefits that do accrue to him under the scheme that came into being on 17.11.2000. Surely, the petitioner would not even know at the time when he refused promotion, that scheme entitling him some benefits would come into being in future.”

12. The case in hand is even on better footing, because in the instant case, the last promotion was refused by respondent no. 2 about eight years prior to the introduction of the A.C.P Scheme. Thus, as respondent no.2 had refused the promotion at the time when the A.C.P Scheme was not even in existence, so he could not have been deprived of the benefits of the scheme which duly accrued to him on the ground that in the past he had refused the promotion to the higher post.

13. It is also evident from clause (xi) of the Assured Career Progression Scheme (Annexure A-25) that where an employee after availing the financial up-gradation under the A.C.P Scheme, subsequently refuses to accept the regular promotion, the financial up-gradation already granted will not be withdrawn. However, the subsequent financial up-gradation will get postponed. Annexure A-26, the letter dated 18.09.2003 issued by the department with respect to the implementation of A.C.P Scheme also provides for the similar position that if an employee does not accept promotion, the 1st

A.C.P if granted earlier, shall not be withdrawn. In view of the aforesaid legal position, the A.C.P scales already granted to respondent no. 2 cannot be withdrawn on account of his reversion or that he had refused promotion before the A.C.P Scheme came into force and he was entitled to the pay scale which he got under the A.C.P Scheme.

14. Thus, keeping in view our aforesaid discussion, we do not find any illegality in the impugned orders passed by the learned Tribunal.

15. Resultantly, the present writ petition has no merits and is hereby dismissed.

(M.JEYAPPAUL)
(JUDGE)

(DARSHAN SINGH)
JUDGE

December 18, 2015

S.khan