

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.590 of 2016

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1. The Union of India through the Secretary, Ministry of Water Resources, Sharam Shakti Bhawan, Rafi Marg, New Delhi.
 2. The Commissioner (Ganga) Govt. of India, Ministry of Water Resources CGO Complex, 11th Block, 8th Floor, Lodhi Road, New Delhi
 3. The Director (Administration) Govt. of India Ministry of Water Resources, Ganga Flood Control Commission, Sinchai Bhawan, Patna - 15.

.... Petitioners

Versus

Amarnath Jha, Son of Late Vishwanath Jha, Resident of Mohalla - Setu Nagar,
P.O. - Anishabad, Police Station - Beur, District - Patna.

.... Respondent

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Appearance :

For the Petitioners : Mr. Sanjay Kumar, A.S.G.

For the Respondent : Mr. Shekhar Singh, Advocate.

Mr. Hemant Kumar Karn, Advocate.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 21-07-2016

Heard learned counsel for the parties.

2. The order dated 27th of November, 2012 passed by the Central Administrative Tribunal, Patna Bench, Patna (for short “the Tribunal”) in O.A. No. 629 of 2007 is subject matter of challenge in the present writ application. Vide the order impugned, the learned Tribunal has granted financial upgradation in the basic pay of the respondent (hereinafter referred to as “the applicant”) at par with his junior who was drawing higher pay because of benefit granted to him under the Assured Career Progression Scheme (hereinafter referred to

as “A.C.P.”).

3. The applicant was appointed as Tracer/Draftsman Grade-III on 3rd of March, 1978 on *ad hoc* basis. He was regularized on 24th of April, 1979 and promoted as Draftsman Grade-II on 29th of October, 1982. Later, he was promoted as Draftsman Grade-I with effect from 4th of April, 1991 in the pay-scale of Rs. 5500-9,000/-. On the other hand, one Anil Kumar, who was appointed as Draftsman Grade-III on 26th of March, 1983, subsequently appointed as Draftsman Grade-II. Said Anil Kumar though junior to him was granted benefit of A.C.P. with effect from 1st of September, 2007 in the pay-scale of Rs. 6500-10,500/- and his pay fixed at Rs. 8300/- with effect from 1st of September, 2007.

4. The grievance of the applicant was that though Anil Kumar is junior to him but his pay was fixed more than that of the applicant, therefore, his pay is entitled to be stepped-up at par with the basic pay of said Anil Kumar.

5. The learned Tribunal allowed the Original Application primarily relying upon a Supreme Court judgment reported as Commissioner and Secretary to Government of Haryana and others Vs. Ram Sarup Ganda and others, (2011) 15 SCC 772. The Supreme Court in the aforesaid case was examining Assured Career Progression Pay-Scales Scheme with effect from 01.01.1996 framed

by the State of Haryana.

6. Mr. Sanjay Kumar, learned Assistant Solicitor General appearing for the petitioners relies upon the circular dated 10th of February, 2000 (Annexure-1), which has explained the grant of A.C.P. to the Central Government Civilian Employees. Clarification 27 of the said circular is relevant, which reads as under:-

S.No.	Point of doubt	Clarification
27.	The condition 8 of the Annexure-I of the DoP&T O.M. dated 9 th August, 1999 operates very harshly against senior employees. It will give rise to serious anomalies in a situation where junior employee in a grade being direct recruit are given ACP upgradation on completing period of residency, claims of senior employees in the same grade and in the same department are ignored merely on the ground that they have already been promoted twice earlier. It would, as such, be very unfair to ignore the claim of seniors as that would lead to heart-burning and demoralisation.	The ACPS is the act as a ‘safety net’ to provide relief in cases of acute stagnation. The concept of “senior-junior” is quite alien to the idea behind the ACPS recommended by the Fifth Central Pay Commission which had also quite specifically recommended against it. Benefits granted under the Scheme are “personal” in nature and in recognition of long hardships faced by stagnating employees. Moreover, it does not grant any status related benefits- nor does it change the seniority position. Senior will continue to be senior even if his junior has earned upgradations under ACPS. Relief granted to Government servants facing stagnation/hardships, as visualized by ACPS, cannot provide a ground for claiming identical relief by others who are not similarly circumstanced.

7. Learned counsel for the petitioners refers to a judgment of the Supreme Court reported as Secretary, Government (NCT of Delhi) and others Vs. Grade-I Dass Officers’ Association and others, (2014) 13 Supreme Court Cases 296 wherein it has been held that A.C.P. is a matter of policy of the Government and is not

amenable to judicial review. It will not be proper to exercise power of judicial review so as to reverse or modify the policy decision of the Government concerned. Considering Clause 12 of the A.C.P. Scheme, the Court held to the following effect:-

“11. On going through the ACPS and the relevant stipulations and conditions it is evident that the Scheme offers higher pay scale/financial benefits only to those eligible government servants who remain deprived of regular promotions. For such deprivation, they are compensated by grant of monetary benefits on personal basis but the same does not amount to functional/regular promotion and does not require creation of new posts. The financial upgradations under the Scheme are to be counted against regular promotions in the service career of the government employee concerned. The two financial upgradations under the Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee. As per Condition 7, financial upgradation is admissible in the next higher grade only in accordance with the existing hierarchy in a cadre/category of posts without creating new posts for the purpose. Practical solution has been indicated in case of isolated posts where there are no defined hierarchical grades. The condition emphasises that financial upgradation on a dynamic basis (i.e. without having to create posts in the relevant scales of pay) has been recommended by the Fifth Central Pay Commission only for the incumbents of isolated posts which have no avenues of promotion at all. Condition 7 fortifies the view taken by the Tribunal through the clear stipulation in the last two sentences:

“7. ... Posts which are part of a well-defined cadre shall not qualify for the ACP Scheme on ‘dynamic’ basis. The ACP benefits in their case shall be granted conforming to

the existing hierarchical structure only.”

8. The applicant claims financial upgradation of his salary only for the reason that his junior is drawing more pay and his pay is only on account of the fact that he has been granted benefit of A.C.P. Scale. The clarification issued is to the effect that the grant of A.C.P. Scale does not affect seniority and it is a benefit which is personal in nature in recognition of long hardships faced by stagnating employees. We find that since the financial upgradation is personal in nature, therefore, such benefit will not confer any cause of action to the seniors to claim stepping up of his pay at par with the juniors. The A.C.P. Scale is given to the employee keeping in view stagnation in the cadre when he does not get any promotion. Since the applicant has earned promotion, he is not entitled to A.C.P. scale but his junior because of stagnation in service became entitled to financial upgradation. Therefore, the applicant cannot claim any parity with that of his junior.

9. Learned counsel for the applicant relies upon a circular dated 4th of October, 2012 (Annexure-F to the counter affidavit). Such circular pertains to the employees who have been granted benefit of A.C.P. Scheme. The circular was issued in respect of question when one employee has been granted A.C.P. prior to 01.01.2006 but some others have got financial upgradation thereafter.

To remove such anomaly, such circular was issued. It is not a case of stepping-up of pay of a person who has not been granted A.C.P. Scale.

10. In view of the said fact, we find that the order of the Tribunal suffers from patent illegality and, thus, the same is set aside and the Original Application is dismissed.

11. The writ application stands allowed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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