

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

Writ Petition No.1612 of 2016

Order: (per V.Ramasubramanian, J.)

Aggrieved by an order of the Central Administrative Tribunal, Hyderabad Bench at Hyderabad, directing the grant of 1st financial upgradation with effect from August, 1999 and 2nd financial upgradation with effect from February, 2007, the Union of India has come up with the present writ petition.

2. Heard Mr. B.Narayana Reddy, learned Assistant Solicitor General of India, for the petitioners and Mr. K.R.K.V. Prasad, learned counsel appearing for the respondents 1 to 5.

3. The respondents 1 to 5 herein were originally appointed as Data Entry Operators Grade-B in the year 1983. In the year 1999, the Union of India introduced a scheme known as Assured Career Progression (ACP) Scheme, entitling an employee to 1st financial upgradation upon completion of 12 years of service and 2nd financial upgradation upon completion of 24 years of service.

4. Contending that they had already completed the requisite number of years entitling them to 1st financial upgradation from 1999, the respondents 1 to 5 submitted representations. The representations were accepted and by an order dated 24-10-2000, the 1st financial upgradation to the next higher grade scale of Rs.5000-8000 was given to the respondents 1 to 5 herein.

5. But the respondents 1 to 5 made another representation seeking the grant of 1st financial upgradation from August 1999, the date of implementation of the ACP Scheme. But the respondents 1 to 5 were informed by a letter of the Registrar General of India dated 07-11-2007 that 13 employees were not found fit for the grant of 1st ACP Scheme and that they were found fit only in 2000 for the grant of 1st ACP Scheme.

6. Thereafter, a Modified Assured Career Progression (MACP) Scheme came into effect from 01-9-2008.

7. Contending that they became eligible for the grant of 2nd financial upgradation under the old scheme in February 2008 itself, even before the MACP Scheme came into force, the respondents 1 to 5 submitted representations on 08-5-2013, 01-6-2013 and 17-10-2013. But by a reply dated 05-9-2013, the request was rejected. Challenging the said order rejecting the request, the respondents 1 to 5 filed an application in O.A.No.1067 of 2014 on the file of the Central Administrative Tribunal. The Tribunal allowed the application, solely on the ground that the denial of 1st financial upgradation to the respondents 1 to 5 in 1999, was due to certain uncommunicated adverse remarks and that as per the law laid down by the Supreme Court in **Prabhu Dayal Khandelwal v. Chairman, UPSC** [2015 (6) *Supreme* 692], uncommunicated adverse remarks could not be taken into consideration to defeat the claim for promotion.

The Tribunal reasoned that since the ACP Scheme is in lieu of promotion, the same logic would apply even to the grant of the benefit of the ACP Scheme. Hence the Union of India is before us.

8. The main grievance of the Union of India as against the order of the Tribunal is that the Tribunal did not even look into the question of delay and laches on the part of the respondents in seeking the relief. It is also contended by the Union of India that the cases of the respondents 1 to 5 would not fall within the purview of the judgment in **Prabhu Dayal Khandelwal** (*supra*). Therefore, the Union of India contends that the order of the Tribunal cannot be sustained.

9. We have carefully considered the above submissions.

10. A copy of the original application filed by the respondents 1 to 5 would show that even according to them, they became eligible for the grant of 1st financial upgradation in 1999 but they were granted the benefit only by order dated 24-10-2000. From 24-10-2000, the respondents 1 to 5 waited for nearly 14 years without taking recourse to legal remedies. As a matter of fact, even the representation said to have been made seeking 1st financial upgradation from 1999 instead of 2000 was made not by the respondents 1 to 5 but by the All India Census Electronic Data Processing Association. This is why the rejection of the request by letter dated 07-11-2007 by the Registrar General of India and Census Commissioner was communicated only to the All India Census Electronic Data

Processing Association. It was only in that reply to the Association that the factum of 13 employees including the respondents 1 to 5 being found unfit for the year 1999 was communicated. Even after this communication addressed to the Association, the respondents 1 to 5 did not approach the Tribunal. Instead, they waited for a full period of 5 years, after the MACP Scheme came into effect on 01-9-2008 and started making representations only from May, 2013. A particular pleading raised by the respondents 1 to 5 in their original application deserves to be taken note of and hence it is extracted as follows:

“4.

4.1.1.

4.1.2. It is pertinent to mention that though the MACP scheme has not come into force by February, 2008, the respondents did not even keep up the promise of considering the case of the applicants for granting 2nd financial upgradation under ACP. The applicants submitted representation on 08.05.2013 followed by 01.06.2013 and 17.10.2013. **Such belated representations by the applicants were on account of the work pressure in respect of the 2011 Census.** The respondents have given individual reply vide memo dated 05.09.2013 issued by the Assistant Director, O/o the 3rd respondent on the same lines inter alia mentioning that the 2nd respondent vide letter dated 05.08.2013 conveyed that the applicants became eligible for grant of 2nd financial upgradation under MACP scheme on completion of 20 years of regular service plus deferment period or 01.09.2008 whichever is later.”

11. The very pleading of the respondents 1 to 5 extracted above would show that they were guilty of delay in

taking up the issue. Section 21 of the Administrative Tribunals Act, 1985 prescribes a period of limitation for taking recourse to the remedies available under the Act. The respondents 1 to 5, by their own pleadings, did not approach the Tribunal within the period of limitation. Therefore, the question of granting any relief to them did not arise.

12. It is needless to point out that after the advent of the Administrative Tribunals Act, the question of delay and laches on the part of the Government Servants is no more a mere technicality. As rightly pleaded by the Union of India in para 7 of the Affidavit in support of the writ petition, the Union of India was handicapped in defending its action in considering the respondents 1 to 5 as unfit for the grant of ACP Scheme in 1999, since a period of 13 years had passed by the time the respondents 1 to 5 approached the Tribunal.

13. Moreover, the very contention of the Union of India before the Tribunal was that the Departmental Screening Committee did not find the respondents fit for the grant of 1st financial upgradation from 09-8-1999. Unless the Tribunal had called for the records of the Departmental Screening Committee and examined the same, the Tribunal could not have reached the conclusion that there were uncommunicated adverse remarks as against the respondents 1 to 5 leading to the non-grant of 1st financial upgradation to them.

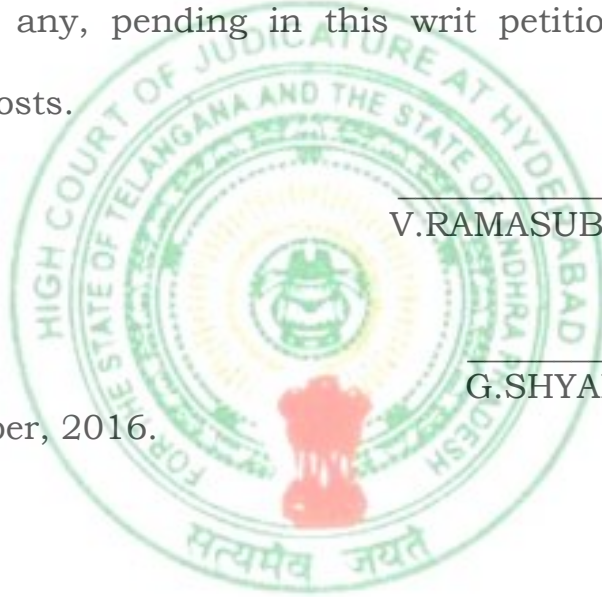
14. In any case the appraisal of a candidate as “average” or “above average” may not really be equated to an adverse remark. Therefore, the order of the Tribunal does not appear to be in accordance with law.

15. The original application ought to have been dismissed even on the ground of long delay of 14 years. Hence, the writ petition is allowed. The order of the Tribunal is set aside and the original application filed by the respondents shall stand dismissed. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

G.SHYAM PRASAD, J.

30th November, 2016.
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

Writ Petition No.1612 of 2016
(per VRS, J.)



30th November, 2016.
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