IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6154 of 2017

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1. Amrendra Kumar Sinha, S/o Sri Late Bhuvneshwar Prasad, resident of Mohalla- Panchshil Nagar, P.O.- Digha, District- Patna.
2. Ashok Kumar Mishra, S/o Sri Purushottam Mishra, resident of Mohalla- South Ram Krishna Nagar, New Bypass Sheikhpura, District- Patna.
3. Sanjay Kumar Sinha, S/o Late Braj Kishore Prasad, resident of Mohalla- Dariyapur Gola, Mohar Tola, Bankipur, District- Patna.
4. Rajendra Prasad, S/o Late Ram Babu Sao, resident of Mohalla- Behind Janta Hotel, Govind Mitra Road, Babu Tola Lane, Muradpur, Patna.
5. Radhey Shyam Pandey, S/o Late Damodar Pandey, resident of Village- Narauli, P.O.- Karauta, District- Patna.
6. Binay Kumar-1, S/o Late Ram Babu, At- House No.155, Awasthi Ghat, Danapur (Main Road), Digha, District- Patna.
7. Dewanand Singh, S/o Late Ram Vinayak Singh, At- Flat No.202, Ishan Aptt. Shivpuri, Boring Road, District- Patna.
8. Kamal Nath, S/o Late Tarkeshwar Nath, At- A- 110, P.C. Colony, Kankarbagh, District- Patna.
9. Sharda Nand Lal Das, S/o Late Rasdhari Lal Das, resident of Village- Sarhad, P.O.- Lohat, District- Madhubani.

.... Petitioner/s

Versus

1. The Union of India through the Registrar General & Census Commissioner, India, Ministry of Home Affairs, 2 - A, Man Singh Road, New Delhi- 110011.
2. The Under Secretary to the Government of India, Ministry of Home Affairs, Office of the Registrar General, India, Ad III Section, 2-A, Man Singh Road, New Delhi- 110011.
3. The Director of Census Operations, Bihar, Ministry of Home Affairs, Bihar State Co-operative Bank Building, Ashok Rajpath, Patna- 800004.
4. The Joint Director of Census Operation, Bihar, Ministry of Home Affairs, Bihar State Co-operative Bank Building, Ashok Rajpath, Patna- 800004.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. P. K. Shahi Sr. Advocate Mr. Mayank Rukhaiyar Advocate Mr. Ardhendhu Mauli Kr. Prasad Advocate
For the Respondent/s	:	Mr. S.D Sanjay Addl. Soc. General Mr. Anjani Kumar Sharan ASG

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)
Date: 01-08-2017

Heard learned senior counsel for the petitioners and learned Additional Solicitor General, Mr. S. D. Sanjay, ably assisted by Assistant Solicitor General, representing Union of India, at length.

The O. A. Application No. 456 of 2013, preferred by a set of 34 applicants, initially, but reduced to 9 applicants, who are petitioners here. These 9 belong to a class or category of people, who have aspirations of a higher pay-band and pay-scale, but do not have the corresponding qualifications to earn the kind of pay-band or pay-scale, to which they claim, they are entitled to.

To summarize the facts, these petitioners are all employees of Census Department, Government of India and they came to be granted benefit of 2^{nd} A.C.P. in the pay-scale of Rs. 5000-8000 /- to Rs. 5500-9000 /-. The decision to grant them 2^{nd} A.C.P. was taken sometime in the year 2007, effective 01.01.2006. The grant of benefit of 2^{nd} A.C.P. was not the issue. A case was sought to be made out that the respondents-Union of India have committed a patent error by not providing the correct replacement scale, which was notified or granted on the recommendation of the 6^{th} Pay Revision Committee.

Learned senior counsel's submission was placed in a very simplistic and attractive manner that there was no complexity at all involved. The only thing they are looking forward to is that because they were granted a particular pay-scale w.e.f. 01.01.2006 they are being made a loser because the actual replacement scale came to be notified in the year 2008 and they are looking for a replacement scale in the grade pay of Rs. 5400 /-, which is corresponding to Rs. 39100 /-.

The Court went through the impugned order in entirety because it became difficult for this Bench to swallow that such a simple prayer and submission would not be understood and appreciated by the Central Administrative Tribunal and they would about writing a detailed order, running into 15 pages, culling the schemes, which include A.C.P. and MACP, as well as analyze the inter-play between the provisions, and dismissed the O.A. Application.

A deeper examination of the records as well as the impugned order, dated 23.02.2017, gives the following result, which the Tribunal has very correctly summarized in paragraph 10 to paragraph 19:

> ***"10. Above the level of Senior Supervisor, temporary posts of Assistant Director, Data Centre were created in 2001 Census in the pre-revised pay-scale of Rs. 8000-13500 which were continued with periodic extension from the Ministry of Finance. These posts become permanent from 01.04.2011. These posts were filled on the basis of recommendation of DPC from the eligible officers fulfilling the necessary requirements of promotions as per the Recruitment Rules of the posts notified on 27.04.2002. It was explained that these new posts were created with***

higher qualification because technical competency was needed at higher supervisory levels. A.C.P. also requires that the person should fulfill all the promotion criteria. Accordingly, those applicants who fulfilled the qualification for the post were given the A.C.P. in the scale of AD which was the next post in hierarchy. Since the other applicants did not fulfill the qualification there were not given the next post in hierarchy. However, they have been given the next Grade Pay as financial upgradation.

11. The applicants have filed rejoinder to the written statement in which they have reiterated their submissions. They have also stated that Office of the Registrar General of India (ORG in short) issued a letter dated 15.04.2015 (Annexure – 21) in which it was stated that second A.C.P. between 01.01.2006 to 31.08.2008 has to be given in the promotion hierarchy. Respondents have filed reply to this rejoinder in which they have enclosed the notification of rules 15.04.2002 / 27.04.2002 (Annexure – R/1) which prescribes the qualification for the post of Assistant Director. They have stated that accordingly the applicants who fulfilled the qualification were given the A.C.P. in the scale of Ass. Director in accordance with these Rules.

12. Heard the parties and perused the documents.

13. There are two issues for adjudication:

i. Whether an employee has a right for promotion to a post which prescribes certain qualification, even though he does not fulfill the qualification.

ii. Whether the applicants in present case had a right to get A.C.P. in the pay-scale of the post of Assistant Director.

14. Learned counsel for the applicant Sri J. K. Karn laid a great emphasis on the first point citing some judgments that promotion is a legitimate expectation in government service, and if a person has been appointed at the initial stage at a lower qualification, he cannot be denied promotion on the ground of not

fulfilling that qualification. We are not inclined to agree with this view. The judgements cited by him have given some general obiter. In the present case, the post of Assistant Director was not earlier in the normal hierarchy of the organization. There is a specific context of creation of the higher level posts of AD with Rules governing for promotion to these posts notified vide MHA G. Notification no. G.S. R. 38, dated 15.04.2002 under the rule making powers of the government under article 309 of the Constitution. The method of recruitment is promotion, failing which by deputation (including Short term), failing both by direct recruitment. In either case, the education qualification has been mentioned in Column 9 of the Schedule of the above Rules as follows:

"No, But must possess a degree in Statistics / Mathematics / Operation Research / Physics / Economics / Commerce / Computer Application of a recognized University or equivalent."

The applicants entered as Data Entry Operator, Group B in the 1982-83 and they had two levels of promotion available to them. The posts of Assistant Directors came into existence in 2002 in a special context with specific purpose with higher qualification notified by statutory rules. These are policy matters within the domain of the executive in which the Tribunal cannot interfere. Therefore, the firs tissue framed by us in Para – 12 (i) is answered in negative.

15. Thus, it is settled that as far as regular promotion as Assistant Director is concerned, a person has to meet the prescribed qualification. Now, we come to the next issue whether in case of financial upgradation under the A.C.P., there is any relaxation or exemption from this requirement of fulfilling the prescribed qualification. This would require a careful examination of the policy of A.C.P. It would also be prudent to examine its successor policy of MACP to appreciate the context and intent of the policy makers.

16. The basic objective of any scheme of financial upgradation is to mitigate stagnation because of limited promotion opportunities. This is kind of a Safety Net. These scheme essentially stipulate that on completion of a certain number of years of service, if an employee has not got regular promotion, he would be given a financial upgradation. Such financial upgradation is purely personal to the employee and is non-functional, i.e., it has no relation to the number of vacancies available.

17. These schemes of financial upgradation have undergone modifications from time to time since the 4th Pay Commission. We are only concerned with the A.C.P. (effective from 09.08.1999 to 31.08.2008) and its successor MACP (effective from 01.09.2008).

18. In between this transition, another development took place that 6th Pay Commission recommendations came into effect from 01.01.2006. Thus, there were three kinds of employees: (i) employees who became eligible for the financial upgradation under the new MACP (i.e. completed 10/20/30 years after 01.09.2008); (ii) employees who became eligible between 01.01.2006 and 31.08.2008 under the old A.C.P. (i.e. completed 12/24 years of service during this period) and (iii) employees who became eligible before 01.01.2006 under the old A.C.P. (i.e. completed 12/24 years of service before 01.01.2006). The applicants belong to the second category, i.e. they became eligible for 2nd A.C.P. between 01.01.2006 and 31.01.2008.

19. The main features of A.C.P. are as follows: -

A.C.P. (from 09.08.1999 to 31.08.2008) vide DoP&T OM No. 35034/1/97-Estt.(D) dated August 9, 1999, read with OM No. 35034/1/97-Estt.(D)(Vol. IV) dated February 10, 2000.

(i) No financial upgradation will be available under the A.C.P. Scheme for Group 'A' Central Services for the reason that promotion in their case must be

earned. (Para 2.1)

(ii) For Group 'B', "C" and 'D' services and isolated posts, two financial upgradation will be granted on completion of 12 years and 24 years of regular service respectively (subject to condition mentioned in Annexure – 1) (Para 3.1)

(iii) A Departmental Screening Committee shall be constituted for the purpose of processing the cases of grant of benefit of A.C.P. Scheme. This Screening Committee shall be the same as that of the DPC as per the prescribed rules. However, in cases where DPC is headed by the Chairman / Member of the UPSC, the Screening Committee under the ACP scheme shall, instead, be headed by the Secretary or an officer of equivalent rank of the concerned Ministry / Department (Para 6.1 & 6.2)

(iv) The highest pay-scale up to which the financial upgradation under the scheme shall be available will be of Rs. 14,300-18300 /-. (Annexure – 1 Para 2)

(v) Financial upgradation under the scheme shall be given to the next higher grade in accordance with the existing hierarchy in the cadre / category / post without creating new post for the purpose (Annexure – 1 Para 7)

(vi) The financial upgradation under the A.C.P. scheme shall be purely personal to the employee and shall have no relevance to his seniority position. As such, there shall be no additional financial upgradation for the senior employee on the ground that the junior employee in the grade has got higher pay-scale under the A.C.P. scheme (Annexure – 1 para – 8)

(vii) All promotional norms have to be fulfilled for upgradation under the A.C.P. scheme."

Further, from culling out the facts and provisions, it is evident that these petitioners are basically looking for replacement scale, which is available to an Assistant Director, which was a temporary post, created due to exigency of service, sometime in the year 2001 with a different pay-scale as well as eligibility having higher qualification and technical competence, which were provided for in the Rules.

From a discussion made by the Tribunal, it is evident that in terms of the financial upgradation due to stagnation, these petitioners have earned the next grade pay available to them. But that does not satisfy them, because they want replacement scale of the next higher post, for which they do not have eligibility in the very first place.

Even for grant of upgradation under the A.C.P. scheme, promotional norms of the next higher post has to be ingrained into such claimants. They cannot claim benefit of the next higher post as a replacement scale as a matter of right. This fact is evident from the reading of the scheme itself. Some of which has been extracted and reproduced by the Tribunal and quoted by us in the earlier part of the order.

It is evident now as to why 25 of the applicants dropped out or withdrew from the O.A. Application and only 9 got left. The Registrar General of India issued a notification, dated 15.04.2015, which is Annexure – 7 to the writ application, where he clarified the position that all those persons, who have the qualification and eligibility for holding the post of Assistant Director, Data Centres, would beget the benefit of the pay-scale which was made available in terms of the recommendation of the 6th Pay Revision Committee. But these are the persons, who do not fulfill the requirements to hold the next higher post, but they surely have wish and aspirations to beget, if not, try to demand the pay-scale, which is available to the next higher post of Assistant Director.

The cases of these petitioners in terms of the A.C.P. scheme were considered. Their stagnation got removed by grant of next higher grade pay as part of the financial upgradation. But to take a second leap and jump to grab a pay-scale, to which they are ineligible in regular course of promotion, is something these petitioners have been trying for and the Tribunal has rightly discouraged such ambition by dismissing the O.A. Application.

In sum, therefore, this Court comes to the considered opinion that the Tribunal has not been in error in rejecting the claims of these petitioners, because these petitioners' litigation was more of a speculation, rather than for enforcement of any right, which have been affected by non-decision, of giving them the pay-scale of Assistant Director, the next higher post.

It is further re-enforced that in normal course of things, even if we keep out the concept of financial upgradation, if those petitioners offer themselves for consideration of next promotion, the question which arises is, can they earn such promotion with the qualification they have? The answer will be a "big no". If it is so, then what they aspire for also have to be answered by another “big no”.

In view of the aforesaid facts and circumstances, this writ application stands dismissed, being devoid of merit.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

SKM/-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	07.08.2017
Transmission Date	