

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2424 OF 2012

The Chief Engineer,
Southern Command, M.E.S.
Pune & Ors.

...Petitioners

Versus

Ramesh Krishna Salgaonkar

...Respondent

**WITH
WRIT PETITION NO. 2423 OF 2012**

The Chief Engineer,
Southern Command, M.E.S.
Pune & Ors.

...Petitioners

Versus

Ravi Pandurang Suryawanshi

...Respondent

Mr. S. S. Kanetkar for Petitioners in both Petitions.
Ms Rohini M. Dandekar for Respondents in both Petitions.

**CORAM: SMT. V. K. TAHILRAMANI, Acting C. J. &
M. S. SONAK, J.**

DATE : 05 JUNE 2018

COMMON ORAL JUDGMENT :

1] Heard learned counsel for the parties.

2] The learned counsel agree that both these petitions

can be disposed of by a common judgment and order. Even otherwise the challenge in both these petitions is to the common judgment and order dated 6th August 2010 in Original Application Nos. 513 of 2007 and 515 of 2007 made by the Central Administrative Tribunal (CAT). This order has to be read along with further order dated 19th October 2010 made by the CAT purporting to correct the common order dated 6th August 2010. Therefore it is only appropriate that both these petitions are disposed of by a common judgment and order.

3] Accordingly, Rule in both the petitions. At the request of and with the consent of the learned counsel for the parties, Rule is made returnable forthwith in both the petitions.

4] Mr. Kanetkar, the learned counsel for the petitioners at the very outset submits that the petitioners do not dispute the applicability of the Assured Career Progression Scheme (ACPS) to the respondents. However, he submits that in terms of the ACPS, the respondents upon completion of 12 years service in grade, were entitled to first financial

upgradation in pay-scale S-2A i.e. Rs.2,610-4,000. Mr. Kanetkar submits that the respondents may also be eligible by way of second financial upgradation on completion of 24 years of regular service to the pay-scale S-5 i.e. Rs.3,050-4,590. However, Mr. Kanetkar submits that the CAT has exceeded jurisdiction in awarding the respondents by way of first financial upgradation on completion of 12 years of regular service the scale S-5 i.e. Rs.3,050-4,590. Mr. Kanetkar submits that if the OM dated 9th August 1999 as clarified by OM dated 1st June 2001 is to be considered then, it is quite clear that the CAT, has committed an error apparent on the face of record in awarding the respondents by way of first financial upgradation pay-scale S-5 instead of pay-scale S-2A. On this short ground, Mr. Kanetkar submits that the impugned judgment and order made by the CAT warrants modification if not wholesale interference.

5] Ms Dandekar, the learned counsel for the respondents submits that there is no dispute in the present case that the respondents who are group 'D' civilian employees of the Central Government possess the qualification of matriculation and were also adjudged as eligible for

promotion to the post of Lower Division Clerk (LDC). She therefore submits that the CAT was entirely justified in awarding the respondents the ACPS pay-scale S-5 i.e. Rs.3,050-4,590. She submits that there is no jurisdictional error in the impugned judgment and order and therefore this petition may be dismissed.

6] In addition, Ms Dandekar points out that the impugned common judgment and order dated 6th August 2010 and 19th October 2010 had also disposed of OA No. 516 of 2007 instituted by D'Mello Socorro. She submits that writ petition no. 2919 of 2012 instituted by the petitioners herein against the said D'Mello Socorro came to be dismissed by this Court vide judgment and order dated 19th September 2014. She therefore submits that the impugned judgment and order stands confirmed by this Court in writ petition no. 2919 of 2012 and therefore, even these petitions are liable to be dismissed.

7] By way of rejoinder, Mr. Kanetkar points out that there was a difference between the cases of the present respondents and the case of D'Mello Socorro. He points out

that D'Mello Socorro was granted a pay-scale of Rs.4,000-6,000 by way of second financial upgradation on completion of 24 years of regular service, whereas, the respondents herein, have been granted the said ACPS scale by way of first financial upgradation on completion of only 12 years of service. Mr. Kanetkar submits that in fact, the modification which the petitioners seek is to bring the case of the respondents on par with the case of D'Mello Socorro.

8] Rival contentions now fall for our determination.

9] The conditions for grant of benefits under the ACPS have been set out in the OM dated 9th August 1999. The scheme envisages merely placement in the higher pay-scale / grant of financial benefits (through financial upgradations) only to the government servant concerned on personal basis and shall therefore, neither amount to functional / regular promotion nor would require creation of new posts for the purpose. The financial benefits under the ACPS shall be granted from the date of completion of eligibility period prescribed under the ACPS or from the date of issue of instructions whichever is later. The first financial

upgradation shall be allowed after 12 years of regular service subject to fulfillment of the prescribed conditions. The second financial upgradation under the scheme shall be given after completion of 24 years from the date of initial appointment subject again to fulfillment of the prescribed conditions.

10] The OM dated 9th August 1999 has been clarified from time to time and the clarification relevant for our purpose is the one contained in the OM dated 1st June 2001.

11] The clarification dated 1st June 2001 reads as follows :

“Clarification on ACP Scheme to Group 'D' civilian employees G.I., Dept. of Per. & Trg., O.M. No. 35034/2/2001-Estt.(D), dated the 1st June, 2001

The undersigned is directed to say that the clarification issued by the Department of Personnel and Training (DoP & T) in reply to the Point of Doubt No. 9 vide Office Memorandum (O.M.) No. 35034/1/97-Estt. (D) (Vol. IV), dated 10.2.2000 regarding financial upgradations admissible under the Assured Career Progression (ACP) Scheme to the Group 'D' civilian employees of the Central Government has been reviewed in the light of the Ministry of Finance (Department of Expenditure) O.M. No. 6/1/98-IC-I, dated 12.2.2001 whereby an elongated pay scale of Rs.2,610-60-2,910-65-3,300-70-4,000 (S-2A) has been introduced with effect from 1.1.1996 in replacement of the pre-revised elongated pay

scale of Rs.775-12-871-14,955-15-1,030-20-1,150, which was applicable to all Group 'D' employees, other than those in the industrial and workshop categories and in the Railways. It has accordingly been decided that financial upgradations under the ACP Scheme introduced vide DoP & T, O.M. No. 35034/1/97-Estt.(D), dated 9.8.1999, shall be allowed to Group 'D' civilian employees of the Central Government in the revised hierarchical grades / pay scales after taking into account the revised hierarchical grades / pay scales after taking into account the revised elongated scale S-2A, wherever applicable, providing that all the conditions specified in the ACP Scheme, including fulfilment of all promotional norms are met. This is, however, subject to the following :-

(i) First financial upgradation on completion of 12 years of regular service shall be at least to the pay scale of Rs.2,610-60-2,910-65-3,300-70-4,000 (S-2A).

(ii) The second financial upgradation on completion of 24 years of regular service shall be allowed at least to the pay scale of Rs.2,750-70-3,800-75-4,400 (S-4). However, where Group 'D' civilian employees of the Central Government are Matriculates and are eligible for promotion to the post of Lower Division Clerk (LDC), the second financial upgradation in their case shall be allowed at least to the pay scale of Rs.3,050-75-3,950-80-4,590 (S-5).

2. The above decisions shall be effective from August 9, 1999 which is the date of introduction of the ACP Scheme.

3. The financial upgradations under the ACP Scheme already granted to Group 'D' employees should, as such, be reviewed and revised in the light of the above decisions.

4. In certain Ministries / Departments /

Organizations, Group 'D' employees initially recruited at S-2/S-3 level have been allowed financial upgradation under the ACP Scheme in the LDC grade (S-5) even without possession of prescribed educational qualification, viz. matriculation. Such upgradation has been allowed erroneously, as in terms of the Condition No. 6 of the ACP Scheme notified in August 9, 1999 fulfilment of all promotional norms (including educational qualification, if any, specified in the relevant Recruitment Rules / Service Rules), prescribed for grant of regular promotion, is an essential requirement for grant of financial upgradations in the hierarchical grades. Such cases should, therefore, be reviewed and excess payments already made be recovered forthwith.

5. All Ministries / Departments may give wide circulation to these decisions for general guidance and appropriate action in the matter."

[Emphasis supplied]

12] In the present case, there is no dispute whatsoever that the respondents, came to be appointed to group 'D' post (peons) on 28th June 1993. This means that the respondents, completed 12 years of service on 28th June 2005. In terms of the ACPS, including in particular the clarification contained in OM dated 1st June 2001 therefore, the respondents, were entitled to the first financial upgradation in the pay-scale S-2A i.e. Rs.2,610-4,000. The respondents completed 12 years from the date of the first financial upgradation on 28th June 2017 and therefore, in

terms of the clarification in OM dated 1st June 2001 were entitled to the second financial upgradation at least in the pay-scale of S-5 i.e. Rs.3,050-4,590. There is no dispute that the respondents are matriculates and eligible for promotion to the post of LDC.

13] The CAT, in the impugned judgment and order has however directed the petitioners to reconsider the case of the respondents for grant of appropriate pay-scale i.e. Rs.3,050-4,090 on completion of 12 years of service from the date of introduction of ACPS. This is obviously an error because in terms of the clarification in OM dated 1st June 2001, the respondents, could be held as entitled to ACPS scale of Rs.2,610-4,000 by way of first financial upgradation on completion of 12 years of regular service on 28th June 2005. Since, there is no dispute that the respondents are matriculates and further, were found to be eligible for promotion to the post of LDC, the respondents, will undoubtedly, be entitled to the second financial upgradation on completion of 24 years of regular service i.e. with effect from 28th June 2017, in the pay-scale of at least S-5 i.e. Rs.3,050-4,590. The impugned judgment and

order to that extent, warrants modification.

14] In case of D'Mello Socorro who had instituted OA No. 516 of 2017, the CAT by its common judgment and order had directed the payment of higher pay-scale on completion of 24 years of service. This means that D'Mello Socorro was awarded the pay-scale of Rs.4,000-6,000 on completion of 24 years of regular service and not on completion of 12 years of regular service. Therefore, the modification which we now propose to order, will in fact, grant to the respondents the same benefits as were granted to D'Mello Socorro.

15] The records indicate that D'Mello Socorro was ordered to be granted the pay-scale of Rs.4,000-6,000 and such award has been upheld by this Court in writ petition no. 2919 of 2012 which was disposed of on 19th September 2014. This is on account of the clarification in OM dated 1st June 2001, which provides that the first and second financial upgradations to be computed on completion of 12 years and 24 years of regular service in the grade *shall be at least in the pay-scale of S-2A or S-5 as the case may be.*

This means that the OM has prescribed the minimum pay-scale which will have to be granted in terms of the ACPS. The CAT, in OA No. 516 of 2007, has granted D'Mello Socorro the pay-scale of Rs.4,000-6,000, which, grant, has been upheld by this Court. In these circumstances, it is only appropriate that even the respondents herein, by way of second financial upgradation are granted the pay-scale of Rs.4,000-6,000. This will then amount to parity with D'Mello Socorro, whose case, according to the petitioners themselves, is no different from the case of the two respondents in these petitions.

16] For all the aforesaid reasons, we partly allow the present petitions and modify the directions issued in the impugned judgment and order by the CAT. We now direct the petitioners to award to the respondents first financial upgradation with effect from 28th June 2005 in the pay-scale S-2A i.e. Rs.2,610-4,000 or the equivalent pay-scale as per the revised pay-scales on 28th June 2005. We also direct the petitioners to grant the respondents by way of second financial upgradation i.e. pay-scale of Rs.4,000-6,000 with effect from 28th June 2017 or equivalent pay-scale as per

the revised pay-scales, since, even Mr. Kanetkar, has not disputed that the respondents are matriculates and are eligible for promotion to the post of LDCs. These directions to be complied within three months and the pay-scales of the respondents to be worked out and the arrears to be paid to the respondents within the said period of three months. In case, the arrears are not paid within three months from today, then, without prejudice to the rights of the respondents to initiate proceedings for contempt, the petitioners, will be liable to pay interest on the arrears at the rate of seven percent per annum.

17] Rule is made partly absolute in both the petitions in the aforesaid terms. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

CHANDKA