

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

CWP-25892-2018 (O&M)

Date of decision : 5.3.2019

Union of India and others

..... Petitioners

Versus

Central Administrative Tribunal and another Respondents

**CORAM : HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE KULDIP SINGH**

Present:- Mr. Arun Gosain, Advocate for the petitioners.

Mr. Rohit Seth, Advocate for respondent No. 2.

KULDIP SINGH, J.

Petitioners-Union of India and others have impugned the orders dated 12.2.2016 and 7.3.2018, (Annexures P-5 and P-8), respectively, passed by respondent No. 1-Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for short 'the Tribunal'), vide which present petitioners have been directed to grant benefit of 2nd and 3rd financial upgradation under the Assured Career Progression Scheme (ACP) and Modified Assured Career Progression (MACP) respectively to respondent No. 2-Prahlad Singh by counting his regular service w.e.f. 19.7.1983 i.e., date of his initial appointment in the Superintendent B/R Grade-II cadre.

The facts of the case are that applicant-respondent No. 2 joined

as Superintendent B/R Grade-II on 19.7.1983 in the pay scale of Rs. 425-700 (corresponding to pay scale of Rs. 1400-2300 of 4th Central Pay Commission of 1986). On completion of five years of regular service, he was granted higher pay scale of Rs. 1640-2900 w.e.f. 19.7.1988 vide letter dated 27.5.1996 (Annexure A-3). There are two channels of promotion from Superintendent Grade-II to Superintendent Grade-I. First channel is by promotion after minimum qualifying service subject to availability of vacancies and second channel is by holding test and interview with minimum prescribed education qualification. On the basis of test and interview, applicant-respondent No.2 was selected and appointed as Superintendent Grade-I vide letter dated 02.02.1993 (Annexure A-2). Applicant-respondent No.2 joined on 24.2.1993 in the pay scale of Rs. 1640-2900.

In the year 1996, the posts of Superintendent Grade I and Superintendent Grade II were merged and designated as Junior Engineer. The Government of India introduced ACP Scheme dated 09.08.1999 (Annexure A-5) providing for financial upgradation on completion of 12 and 24 years of service, if in the meantime, no promotion is earned by an employee. According to applicant-respondent No. 2, he had completed 12 years of service on 19.7.1995 but since the ACP Scheme came into force on 9.8.1999, he was granted 1st financial upgradation under the ACP Scheme w.e.f. 9.8.1999 vide order dated 2.1.2006 (Annexure A-6). However, he was entitled to 2nd financial upgradation under the Scheme w.e.f. 19.7.2007 on completion of 24 years of service and 3rd financial upgradation w.e.f.

19.7.2013 on completion of 30 years of service, under the modified ACP Scheme which came into force on 01.09.2008. The same benefit was denied.

In the earlier application i.e. OA No. 060/00096/2014 filed by the applicant-respondent No.2, the Tribunal vide order dated 11.11.2014, directed the respondents (present petitioners) to pass speaking order. Thereafter, respondents passed the speaking order dated 5.12.2014 (Annexure A-1), rejecting the claim of applicant-respondent No. 2.

The ACP Scheme w.e.f. 9.8.1999 is not denied by respondents (present petitioners). However, it was pleaded that in the present case, period is to be counted from the direct recruitment of the applicant-respondent No. 2 for financial upgradation. The stand was that since applicant-respondent No.2 was selected as Surveyor Assistant Grade I w.e.f. 24.2.2013, therefore his period is to be counted from the said date and he is not entitled to 2nd and 3rd financial upgradation as claimed.

We have heard learned counsel for the parties and have gone through the case file.

Admittedly, the applicant-respondent No.2 was initially appointed as Superintendent Grade II. As a result of test and interview, he was selected as Superintendent Grade I in the year 1993. However, in the year 1996, the posts of Superintendent Grade II and Superintendent Grade I were merged and the said posts were designated as Junior Engineer. That would mean that the effect of the appointment as Superintendent Grade I was undone in the year 1996 as both the posts of Superintendent Grade II and Superintendent Grade I were merged and designated as Junior Engineer.

The ACP Scheme came into force from 9.8.1999. Applicant-respondent No.2 claimed that his service is to be counted from 19.7.1983. Since he did not get any promotion, the same was accepted and he was granted 1st ACP on completion of 12 years of service on 19.7.1995. Since the Scheme came into force from 9.8.1999, same was granted w.e.f. 9.8.1999. Had the present petitioners treated the service of applicant-respondent No. 2 w.e.f. 24.2.1993, he could not be granted 1st ACP on completion of 12 years of service in 1999 which in that case would have become due in the year 2005. Once the 1st ACP has been granted treating the service of applicant-respondent No. 2 from 19.7.1983, 2nd ACP could not be denied on the ground that he was appointed as Surveyor Assistant Grade I on 24.2.1993. In fact that promotion was nullified by merging the posts of Superintendent Grade II and Superintendent Grade I and designating it as Junior Engineer.

The Tribunal has dealt with the effect of *para 5.2* of the ACP Scheme. The Tribunal has further observed that even after joining to the post of Superintendent Grade I, applicant-respondent No.2 remained in the same pay scale because he got the scale of 1640-2900 w.e.f. 19.7.1988. Therefore, there was no financial upgradation. The Tribunal has also observed that similar benefit has been granted to other similarly situated employees including the applicant's junior for which chart is given in the paper book. Respondents-present petitioners have vaguely pleaded in the written statement that cases of some of them have been scrutinized and action for issuing amendment is held up due to non receipt of fresh ACP proformas from the Chief Engineer Commands. However, the Tribunal

noted the grant of such benefit to one Chander Kant Dhiman during the pendency of the application.

The Tribunal has restricted the arrears to the period commencing 18 months preceding to the filing of previous OA No. 060/00096/2014 which was decided on 11.11.2014. Accordingly, there is no illegality or infirmity in the orders dated 12.2.2016 and 7.3.2018, (Annexures P-5 and P-8), respectively, passed by respondent No. 1-Central Administrative Tribunal, Chandigarh Bench, Chandigarh.

We find no force in the present petition and the same is accordingly dismissed.

(RAJIV SHARMA)
JUDGE

(KULDIP SINGH)
JUDGE

5.3.2019
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Whether speaking / reasoned	Yes
Whether Reportable:	Yes