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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1518 OF 2014

Sanjay H. Pandit .. Petitioner

Vs.

Union of India & Ors. .. Respondents

WITH
WRIT PETITION NO. 9945 OF 2019

Shri N. P. Ranjan .. Petitioner

Vs.

Union of India & Ors. .. Respondents

Mr. Ramesh Ramamurthy a/w Mr. Saikumar Ramamurthy and Priya Borgaonkar for petitioners.
Mr. A. D. Shetty a/w Ms. Anamika Malhotra for respondents.

C0RAM: DIPANKAR DATTA, CJ &
M. S. KARNIK, J.

DATE: JUNE 15, 2022

ORAL JUDGMENT (Per Chief Justice):

1. We propose to dispose of Writ Petition No. 1518 of 2014 (hereafter "WP-I", for short) and Writ Petition No. 9945 of 2019 (hereafter "WP-II", for short) by this common judgment and order because of the sameness of issues of fact and law involved therein.

2. WP-I and WP-II are at the instance of Sanjay H. Pandit (hereafter "Pandit", for short) and N. P. Ranjan (hereafter

"Ranjan", for short), respectively. Both Pandit and Ranjan had invoked the jurisdiction of the Central Administrative Tribunal, Mumbai Bench, Mumbai (hereafter "the Tribunal", for short) aggrieved by deferred grant of financial upgradation under the Assured Career Progression Scheme for Central Government civilian employees (hereafter "ACPS", for short) dated 9th August 1999.

3. Original Application No. 237 of 2010, instituted by Pandit, was dismissed by the Tribunal by an order dated 8th March 2013. The said order is the subject matter of challenge in WP-I.

4. Ranjan had instituted Original Application No. 314 of 2010. The Tribunal proceeded to dismiss the same by an order dated 8th January 2019. While so dismissing, the Tribunal followed its earlier decision of dismissal of the original application of Pandit and did not assign any independent reason.

5. Both Pandit and Ranjan joined as Inspectors under the Commissionerate of Central Excise. While Ranjan joined on 24th October 1985, Pandit joined a week later on 31st October 1985.

6. Based on the recommendations made by the 5th Central Pay Commission, the ACPS came into existence on 9th August 1999. The instructions issued in relation thereto were then circulated for information of all concerned. The relevant parts of the instructions relating to the ACPS are quoted hereunder:

> "The Fifth Central Pay Commission in its Report has made certain recommendations relating to the Assured

Career Progression (ACP) Scheme for the Central Government civilian employees in all Ministries/Departments. The ACP Scheme needs to be viewed as a 'Safety Net' to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. Accordingly, after careful consideration, it has been decided by the Government to introduce the ACP Scheme recommended by the Fifth Central Pay Commission with certain *modifications* as indicated hereunder: -

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ANNEXURE-I

Conditions for grant of Benefits under the ACP Scheme.

1. The ACP Scheme envisages merely placement in the higher pay-scale/grant of financial benefits (through financial upgradation) only to the Government servant concerned on personal basis and shall; therefore, neither the amount to functional/regular promotion nor would require creation of new posts for the purpose;

2. The highest pay-scale up to which the financial upgradation under the Scheme shall be available will be Rs. 14,300-18,300. Beyond this level, there shall be no financial upgradation and higher posts shall be filled strictly on vacancy-based promotions;

3. The financial benefits under the ACP Scheme shall be granted from the date of completion of the eligibility period prescribed under the ACP Scheme or from the date of issue of these instructions, whichever is later;

4. The first financial upgradation under the ACP Scheme shall be allowed after 12 years of regular service and the second upgradation after 12 years of regular service from the date of the first financial upgradation subject to fulfilment of prescribed conditions. In other words, if the first upgradation gets postponed on account of the employee not found fit or due to departmental proceedings, etc., this would have

consequential effect on the second upgradation which would also get deferred accordingly;

5.1 Two financial upgradations under the ACP Scheme in the entire Government service career of an employee shall be counted against regular promotions (including *in situ* promotion and fast-track promotion availed through limited departmental competitive examination) availed from the grade in which an employee was appointed as a direct recruit. This shall mean that two financial upgradations under the ACP Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee. If an employee has already got one regular promotion, he shall qualify for the second financial upgradation only on completion of 24 years of regular service under the ACP Scheme. In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him;

5.2 Residency periods (regular service) for grant of benefits under the ACP Scheme shall be counted from the grade in which an employee was appointed as a direct recruit;

6. Fulfilment of normal promotion norms (benchmark, departmental examination, seniority-cum-fitness in the case of Group 'D' employees, etc.) for grant of financial upgradations, performance of such duties as are entrusted to the employees together with *retention of old designations*, financial upgradations as personal to the incumbent for the stated purposes and restriction of the ACP Scheme for financial and certain other benefits (House Building Advance, allotment of Government accommodation, advances, etc.) only without conferring any privileges related to higher status (e.g. invitation to ceremonial functions, deputation to higher posts, etc.) shall be ensured for grant of benefits under the ACP Scheme;

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7. A bare reading of the aforesaid excerpt from the instructions would leave none in doubt that a Central Government civilian employee became entitled to benefit of first financial upgradation after the eligibility period prescribed under the ACPS (i.e., 12 years of regular service) or from the date of issue of the instructions relating to the ACPS (i.e., 9th August 1999), whichever is later. In other words, although Central Government civilian employees like Pandit or Ranjan had completed 12 years of regular service prior to the coming into force of the ACPS, the financial benefits envisaged therein could be extended to them from 9th August 1999, subject to eligibility, but not before.

8. It was one of the requirements of the ACPS that a selection committee be constituted for considering the claims of Central Government civilian employees who have completed 12 years of regular service. The first of such selection committee meetings was held on 6th December 1999. While the name of Ranjan was not forwarded to the selection committee by the Commissionerate for reasons best known to it, the committee deferred consideration of the name of Pandit for want of the Annual Confidential Report (ACR) for the year 1998-99.

9. The selection committee met for the second time on 28th December 1999. On that date, the committee had before it the papers relating to Ranjan; however, since the ACR for 1998-99 was not available, consideration was deferred.

10. By the date of the second meeting, i.e., 28th December 1999, disciplinary proceedings against Ranjan and Pandit, for alleged acts of omission/commission while preparing a seizure list on 1st December 1999, were in the contemplation of the respondents. In view thereof, they were placed under suspension by orders dated 16th December 1999. Departmental charge-sheets, both dated 31st December 2001, were drawn up and served upon them beyond the second meeting. Hence, when the selection committee met on 28th December 1999 and took up Pandit's case for consideration, he was already under suspension. Accordingly, the committee adopted the sealed cover procedure.

11. In the disciplinary proceedings that followed against Ranjan and Pandit, the inquiry officer held them `not guilty' of the charges. However, the disciplinary authority disagreed with the findings of the inquiry officer and concluded the disciplinary proceedings by passing orders-in-original dated 26th July 2006 and 15th February 2007 against Ranjan and Pandit, respectively, whereby both of them were "censured".

12. It was after conclusion of the disciplinary proceedings that Ranjan was granted first financial upgradation under the ACPS on 27th July 2006, whereas Pandit was granted similar such upgradation on 16th February 2007. The very fact that Ranjan and Pandit were granted first financial upgradation immediately after they suffered the orders of censure unmistakably suggest that but for being placed under suspension by the orders dated 16th December 1999, they would have been granted benefits of such upgradation from 9th August 1999 itself. Be that as it may.

13. The common grievance that Ranjan and Pandit voiced in their respective original applications before the Tribunal was that as on 9th August 1999 (being the relevant date for consideration whether they were entitled to the benefits of first financial upgradation, after they had been in regular service for 12 years without promotion), neither any disciplinary proceedings were pending against them nor had they been placed under suspension in contemplation of disciplinary proceedings and, therefore, the respondents were unjustified in depriving them of the benefits of first financial upgradation with effect from 9th August 1999 and deferring it till the dates mentioned above after culmination of the disciplinary proceedings.

14. As noted above, Pandit's original application was dealt with by the Tribunal first and dismissed by the order dated 8th March 2013. We consider it appropriate to quote paragraphs 7 to 10 of the order to comprehend the reasons for dismissal of the original application. The said paragraphs read as follows:-

> "7. It is, thus, seen that the conduct of the applicant had come to the notice of the department on 01.12.1999 and even if the formality of putting him under suspension actually took place on 16.12.1999, the DPC was bound to take into consideration the fact that the applicant, along with other group members, had prima facie entered into a criminal conspiracy of misappropriation of goods worth more than Rs. Two Lac.
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> 8. The learned counsel for respondents submit that on the first date of D. P. C., i.e., 06.12.1999, the complete ACRs of the applicant were not available. However, the fact remains that the Screening Committee could not have considered him in view of the vigilance angle involved in the incidence of 01.12.1999.

> 9. On a query from the Bench, the Learned Counsel for applicant has clarified that none of the other employees mentioned in the charge sheet have been given ACP before the completion of the penalty. We, thus, find that the departmental order does not suffer from discrimination either.
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> 10. In view of the fact that a clear information of the prima facie misconduct of the applicant was available to the DPC on 06.12.1999, the prayer of the applicant in terms of para 8(b) has no merit. Similarly, his prayer at 8(a) to set aside the order dated 04.08.2009, which is actually an order passed by the respondents on his representation dated 16.07.2007 requesting the consideration of his first ACP from 09.08.1999 can also not be granted."

15. The legality and/or validity of such order dismissing the original application of Pandit, on the grounds that he had been placed under suspension and that by itself was a disentitling factor, falls for our scrutiny in WP-I.

16. Having heard Mr. Ramamurthy, learned advocate for Pandit and Mr. Shetty, learned advocate appearing for the respondents, we have no hesitation to hold that the Tribunal misdirected itself in dismissing the original application of Pandit for the reasons assigned by it which we have quoted above. The reason, therefor, follows.

17. In terms of the ACPS, the first condition for Central Government civilian employees to be entitled to claim benefits of financial upgradation (first and second) is 12 and 24 years of regular service without any regular promotion. Financial upgradation under the ACPS would not be available if any regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee. The second condition is that the service during the period of 12 and 24 years must be satisfactory. The third condition is that the employee should neither be suspended in contemplation of disciplinary proceedings nor should disciplinary proceedings be drawn up against him. Once all these conditions are satisfied, the selection committee would have to consider the same and arrive at a decision whether the concerned employee deserves to be granted the benefits of the first/second financial upgradation. If the decision is in the affirmative, the employee acquires a right to claim financial benefits of first financial upgradation with effect from 9th August 1999 and the second after completing another 12 years of regular service reckoned from that date, but without having availed any promotion.

18. In the present case, it is found that Pandit was placed under suspension on 16th December 1999, charge-sheet was issued to him on 31st December 2001 and the order of censure was passed on 15th February 2007. None of these incidents took place within the relevant block period of 12 years, i.e., between 31st October 1985 (date of joining) and 31st October 1997 (date of completion of 12 years regular service, without promotion). In terms of the ACPS, service rendered by Pandit during this period only should have been considered for the purpose of deciding his entitlement to claim benefits of first financial upgradation. The fact that the ACR for 1998-99 was not received on the date of first meeting of the selection committee on 6th December 1999 or that the order of suspension had intervened in the meanwhile prior to the second meeting of the selection committee on 28th December 1999 were hardly relevant. We hold the incident of Pandit being placed under suspension on 16th December 1999 to be a factor extraneous to the subject matter of consideration for grant of first financial upgradation and could not have formed the foundation for depriving Pandit of the benefits of such upgradation with effect from 9th August 1999. We repeat, as on 9th August 1999, the period of regular service rendered by Pandit between 31st October 1985 and 31st October 1997 was only required to be considered; if his service was satisfactory and the other pre-conditions stood satisfied, the benefits could not have been denied. And for that matter, even the ACR of 1998-99, being of a subsequent period, was not at all relevant and could not have been used as a valid ground to deprive Pandit of his rightful claim. The selection committee grossly erred in law and on facts in adopting the sealed cover procedure. We are also of the considered opinion that the Tribunal in dismissing Pandit's original application by the order dated 8th March 2013 failed to take into consideration relevant factors and relied on irrelevant and extraneous factors, thereby rendering its order perverse and, thus, vulnerable.

19. We are, therefore, inclined to set aside the order dated 8th March 2013 and to grant relief to Pandit in the following terms: -

(a) The order dated 8th March 2013 stands set aside.

(b) Pandit shall be entitled to first financial upgradation under the ACPS with effect from 9th August 1999.

(c) The pay of Pandit shall be re-fixed on that basis.

(d) Since we have not been told, based on authentic instructions received by Mr. Ramamurthy as to whether Pandit received any further financial upgradation either under the ACPS or under the Modified Assured Career Progression Scheme (MACPS) which replaced the former, we hold that Pandit shall be entitled to further financial benefit either under the ACPS or under the MACPS after completion of 12 or 10 years of regular satisfactory service, as the case may be, if he had not been promoted and without initiation of any disciplinary proceedings against him resulting in a punishment. For this purpose, the period of 12 years or 10 years, as the case may be, shall be counted from 16th February 2007, meaning thereby that the period during which the disciplinary proceedings were pending against him (i.e., from the date of the charge-sheet dated 31st December 2001 till the order of censure dated 15th February 2007) shall stand excluded for such purpose. The respondents shall decide such entitlement within two months from date.

(e) Since Pandit has retired from service some time in 2021 and if the respondents decide to grant him benefits of the second financial upgradation, they shall also re-fix his pensionary benefits based on the last pay that he would have drawn had the benefits of second financial upgradation been given to him after completion of 12/10 years of regular service calculated from 16th February 2007. This direction is made considering events subsequent to the passing of the order under challenge to render justice to the parties in exercise of the inherent powers of this Court.

(f) Let re-fixation of Pandit's pay, as directed above, as well as release of financial benefits in terms of this order be made as early as possible but positively within four months from date of receipt of a copy of this order.

20. Since the original application of Ranjan was dismissed by the order dated 8th January 2019 without assigning any independent reason but merely relying upon the order dated 8th March 2013 passed on Pandit's original application, which stands set aside, the said order of dismissal of Ranjan's original application cannot also be sustained and, accordingly, is set aside. We declare that Ranjan, having since retired in 2021, shall also be entitled to the same relief as accorded to Pandit by this order, however, with the minor modification that the order-in-original of censure having been passed on 26th July 2006, the date to be reckoned for counting 12 or 10 years, as the case may be, for the purpose of grant of second financial upgradation would be the date following the order-in-original.

21. With the aforesaid directions, WP-I and WP-II stand allowed. No costs.

(M. S. KARNIK, J.) **(CHIEF JUSTICE)**

PRAVIN DASHARATH PANDIT

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