

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Tapabrata Chakraborty

&

The Hon'ble Justice Gaurang Kanth

W.P.C.T. No. 163 of 2016

With

IA No. CAN 2 of 2019 (Old No. CAN 8876 of 2019)

Swapan Kumar Mondal

Vs.

Union of India and Others

For the Petitioner : Mr. Sarajit Sen, Adv.

Mr. Mrinal Kanti Sardar, Adv.

For the Respondents : Mr. Nilanjan Bhattacharyya, Adv.

Ms. Rashmi Bothra, Adv.

Hearing concluded on : 15th December, 2023

Judgment on : 22nd December, 2023.

Gaurang Kanth, J.

1. The Petitioner in the present Writ Petition is challenging the order dated 30.03.2016 passed by the Central Administrative Tribunal, Calcutta Bench ("Ld. Tribunal") in OA No. 336/2011 & OA No. 2010/2010 titled as Swapan Kumar Mondal Vs UOI & Ors. ("Impugned Judgment"). Vide the impugned Judgment, the Ld. Tribunal was pleased to dismiss both the Original Applications filed by the Petitioner herein.
2. The brief facts leading to the present Writ Petition are as follows:
3. The Petitioner was appointed as a Constable in the Railway Protection Force, South Eastern Railway, Nagpur in the pay scale of Rs. 825-1200 (4th Pay Commission) which over the course of time became Rs. 3050-4590 (5th Pay Commission).
4. In the meanwhile, the Assured Career Progression Scheme ("ACP Scheme") was introduced w.e.f 09.08.1999. It is the case of the Petitioner that he was entitled for the first financial upgradation under the ACP Scheme w.e.f 10.03.2002. However, no such upgradation was granted to him at that point of time.
5. The Petitioner was declared as medically decategorized vide order dated 24.02.2005 and was posted as Junior Clerk at Gidni in Electrical Department.
6. The Respondents issued Posting Order No. EEAWA/132 dated 11.07.2005 in which it was indicated that the Petitioner would be entitled for the pay scale of Rs. 3200-4900 in the revised position of Junior Clerk. However, subsequently on 29.08.2005, Respondents issued Divisional Order No. 330/2005 dated 29.08.2005, wherein it

was indicated that since the Petitioner has not got the first ACP benefit in the pay scale of Rs. 3200-4900, the Petitioner's pay scale in the post of Junior Clerk would remain as Rs. 3050-4590. Respondents also issued a revised posting Order dated 29.08.2005, in modification of the earlier posting Order dated 11.07.2005, in which it was indicated that the Petitioner would be entitled to his earlier pay scale of Rs. 3050-4590 in the revised position of Junior Clerk.

7. The Petitioner's pay was upgraded to Rs. 5200-20200 with Grade pay of Rs.1900/- w.e.f 01.01.2006 with the implementation of 6th CPC.
8. The Petitioner was promoted as Senior Clerk w.e.f 12.06.2009 in the pay sale of Rs. 5200-20,200 with grade Pay Rs.2800/-.
9. It is the case of the Petitioner that he was entitled for the 1st ACP upgradation w.e.f 10.03.2002 in the pay scale of Rs. 4500-7000 (5th Pay Commission) and also all the subsequent financial upgradations in accordance with the 6th Pay commission. Another grievance raised by the Petitioner was that after the implementation of the 6th CPC, he has been given 40% of the arrears at the pay scale of Rs. 4500-7000 and the balance 60 % is pending and yet to be released. In order to ventilate his grievances, the Petitioner filed various representations before the Respondents and filed OA No. 2010/2010 with the following Prayer:

“(a) An order do issue directing the Respondents to grant the benefit of two increments in favour of the Applicant and also to refix the pay in the scale of Rs. 4500-7000 and also to pay the arrears.

(b) An order do issue directing the respondents to release 60% towards the arrears of 6th Pay Commission after fixing the pay on the basis of the scale of pay of Rs. 4500-7000”

10. It is pertinent to mention here that in the meanwhile Modified Assured Career Progression Scheme (MACP) was introduced w.e.f

01.09.2008. As per the same, the stagnated employees are entitled for the first financial upgradation in the 10th year of their initial appointment. Since the Petitioner was stagnating from his initial appointment with no promotion/ ACP benefits, vide order dated 18.03.2011, he has been extended with the benefit of 1st MACP financial upgradation w.e.f 01.09.2008 and his pay scale was upgraded to Rs. 5200-20,200 with Grade Pay of Rs. 2000/- w.e.f 01.09.2008.

11. It is the case of the Petitioner that he was entitled for the 1st financial upgradation under the ACP Scheme w.e.f 10.03.2002 and not entitled for the 1st financial upgradation under the MACP Scheme w.e.f 01.09.2008. Hence, during the pendency of the initial OA No. 2010/2010, the Petitioner filed another Original Application being OA No. 336/2011 with the following prayer:

“(a) Declaration that the office order dated 18.03.2011 issued by Chief Electrical Engineer (W), Kharagpur can not be tenable in the eye of law and therefore the same be quashed”

12. During the pendency of these said proceedings, vide order dated 25.04.2012, the Ld. Tribunal directed the Respondents to furnish the status regarding the grant of ACP and payment of arrears. The same was answered in the form of a supplementary Affidavit, highlighting the following points:

“(a) That the pay of the Applicant has already been granted as per the ACP rules w.e.f 10.03.2002 vide Divisional Order No. 153/2012 dated 16.03.2012. (Xerox copy of the order dated 16.03.2012 is annexed herewith and marked as M-2)

(b) The case has been sent to DSC/KGP through letter dated 12.05.2012 for certification of qualifying service for the period from 10.03.1990 to 29.08.2005. Accordingly, Sr. DSC/KGP certified the qualifying service on 22.06.2012.

- (c) *After certification of qualifying service, the pay of the Applicant has been re-casted in scale in Rs. 5200-20,200 with GP Rs. 2400/- w.e.f 01.01.2006 and his pay has also been revised after taking into consideration of his promotion as Sr. Clerk w.e.f 12.06.2009 on regular basis in scale Rs. 5200-20,200 with G.P Rs. 2800/- and the same has been vetted by associated accounts on 23.06.2012. (Xerox copy of the fixation sheet is annexed herewith and marked as M-3)”*
13. Along with the said supplementary Affidavit, the Respondents placed on record the documents showing how the pay of the Petitioner has been refixed after giving him the 1st ACP benefits w.e.f 10.03.2002.
14. Learned Tribunal, after hearing both the parties, vide the common impugned Judgment, dismissed both the Original Applications filed by the Petitioner herein. It is to be noted that eventhough the Ld. Tribunal upheld the pay fixation done by the Respondents, it failed to take notice of the supplementary Affidavit filed by the Respondents. Being aggrieved by the same, the Petitioner preferred the present Writ Petition.

SUBMISSION ON BEHALF OF THE PETITIONER

15. Learned counsel for the Petitioner submitted that the Petitioner joined the service of the Respondents as Constable on 10.03.1990 and he was entitled for the 1st financial upgradation under the ACP Scheme w.e.f 10.03.2002 in the pay scale of Rs. 4500-7000. In order to substantiate this point, learned counsel for the Petitioner relied upon the Judgment of the Ld. Tribunal dated 05.05.2009 in OA No. 820/2005, titled as Dipak Kumar Chatterjee Vs UOI and also the Office order dated 27.11.2006 issued by the Office of Chief Personnel Officer, Kolkata. Learned counsel for the Petitioner further submits that the Petitioner is entitled for the refixation of his pay as per his enhanced 1st ACP.

16. Learned counsel for the Petitioner, during the course of the arguments, further submitted that he was not entitled for the 1st financial upgradation under the MACP Scheme and hence the letter dated 18.03.2011 vide which the benefit of the 1st MACP Scheme was extended to him was challenged before the Ld. Tribunal in OA No. 336/2011.
17. It was also the submission of the Learned counsel for the Petitioner that the Respondents has released only 40% of arrears after the implementation of 6th CPC. Balance 60% is still pending and yet to be released.
18. In view of these submissions, learned counsel prayed for the setting aside of the impugned Judgment and refixation of his pay in the correct pay scale.

SUBMISSION ON BEHALF OF THE RESPONDENT.

19. Learned counsel for the Respondents submitted that the pay scale of the Petitioner was correctly fixed in accordance with the law applicable in this case. Learned counsel further pointed out that there was some mistake on the part of the Respondents initially and the benefit of the 1st ACP has not been extended to him. However, the Respondents rectified the said mistake vide order dated 16.03.2012 and granted him the benefit of the 1st financial upgradation w.e.f 10.03.2002. Learned counsel for the Respondents categorically denied that the Petitioner was entitled for the benefit of the pay scale of Rs. 4500-7000 w.e.f 10.03.2002 as his 1st ACP upgradation. Learned counsel substantiated that the Respondents rightly granted the 1st financial upgradation under the ACP scheme to the Petitioner in the pay scale of Rs. 3200-4900 vide order dated 16.03.2012.
20. Learned counsel for the Respondent further submits that in view of the interim order passed by the Ld. Tribunal, the Respondents

paid higher pay scale to the Petitioner and hence excess payments made to the Petitioner. Learned counsel further clarified that all the arrears qua the 6th Pay commission already stands paid to the Petitioner and nothing is due to him as on date.

21. With these submissions, learned counsel for the Respondents prays for the dismissal of the present writ Petition.

LEGAL ANALYSIS

22. This Court had heard the arguments advanced by the parties and examined the records with the assistance of the learned counsels for the parties.

23. The crucial question to be determined in the present case are (i) whether the Petitioner is entitled for the pay scale of Rs.4500-7000 as his 1st financial upgradation under the ACP Scheme (ii) whether the Petitioner's pay fixation done by the Respondent was correct.

24. On the perusal of the impugned Judgment, it reveals that there were many factual mistakes in the impugned Judgment. Hence before advertng to the legal issues involved in the present matter, this Court deems it appropriate to note down the following admitted facts in the present case.

- (i) The Petitioner was appointed as Constable on 10.03.1990 with a pay scale Rs. 825-1200 (4th Pay commission)
- (ii) 5th Pay Commission was implemented w.e.f 01.01.1996 and the Petitioner's pay was upgraded to the corresponding pay scale of Rs. 3050-4590 (5th Pay Commission).
- (iii) ACP Scheme was introduced w.e.f 09.08.1999. The Petitioner was entitled for the 1st financial upgradation under the ACP Scheme w.e.f 10.03.2002 (After 12 years of regular service).

- (iv) However, the Respondents erroneously didn't grant him this benefit at that point in time.
- (v) Subsequently, on 24.02.2005, the Petitioner was medically decategorized as Junior Clerk with pay protection.
- (vi) Originally vide Office order dated 11.07.2005, Respondents fixed the pay scale of the Petitioner to the post of Junior Clerk in the pay scale of Rs.3200-4900 (on the assumption that 1st ACP has already been granted to him). However, later vide Office order dated 29.08.2005, the earlier Office order dated 11.07.2005 was partially modified and his pay was fixed in the pay scale of Rs. 3050-4590.
- (vii) 6th Pay Commission was implemented w.e.f 01.01.2006 and the Petitioner's pay was upgraded to the corresponding scale of Rs.5200-20,200 with GP Rs.1900.
- (viii) MACP Scheme was introduced w.e.f 01.09.2008. Since no ACP benefits have been granted to the Petitioner, the Respondents vide letter dated 18.03.2011, granted the benefit of 1st financial upgradation under the MACP Scheme to the Petitioner w.e.f 01.09.2008, and his pay has been upgraded to Rs. 5200-20,200 with GP 2000.
- (ix) The petitioner was promoted as Senior Clerk w.e.f 12.06.2009 and his pay has been fixed in the pay scale of Rs. 4500-7000 with GP 2800.
- (x) The Petitioner filed 2 separate Original Applications before the Ld. Tribunal challenging the wrong pay fixation and also the grant of the 1st financial upgradation under the MACP Scheme.
- (xi) During the pendency of the said OAs, the Respondent issued Order dated 16.03.2012 granting the benefit of 1st financial upgradation under the ACP Scheme to the Petitioner w.e.f 10.03.2002 and also refixed his pay accordingly.

25. This being the admitted facts, this Court now proceeds to examine the disputes involved in the present matter. ACP Scheme

was implemented w.e.f 09.08.1999 with an intention to mitigate the acute stagnation meted out to the Central Government Civilian Employees. ACP Scheme envisages 2 financial upgradations in lieu of promotion, i.e, first upgradation after 12 years and the second upgradation after 24 years of regular service. As mentioned herein above, it is an admitted position that the Petitioner is entitled for the benefit of 1st financial upgradation under the ACP Scheme w.e.f 10.03.2002. The dispute is what pay scale the Petitioner is entitled to as his 1st financial upgradation.

26. The answer to the said dispute lies in the ACP Scheme itself. As per Clause 7 of the ACP Scheme (Annexure-I, Conditions for the grant of benefits under the ACP Scheme), financial upgradation under the Scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts.
27. The Petitioner was working as a Constable with the pay scale of Rs. 3050-4590. From the record of the present case, it is evident that the next hierarchy in the cadre for the post of 'Constable' was 'Head Constable' with a pay scale of Rs.3200-4900. Hence as per Clause 7 of the ACP Scheme, the 1st financial upgradation under the ACP Scheme for a 'Constable' would be that in the next existing hierarchical pay scale, i.e, Rs. 3200-4900.
28. It is the submission of the Petitioner that he is entitled for the pay scale of Rs. 4500-7000. In order to substantiate this point, learned counsel for the Petitioner relied upon (i) the Office order dated 27.11.2006 issued by the Office of Chief Personnel Officer, Kolkata and (ii) the Judgment of the Ld. Tribunal dated 05.05.2009 in OA No. 820/2005 titled as Dipak Kumar Chatterjee Vs UOI.
29. The reliance placed on these documents by the learned counsel for the Petitioner is misconceived owing to the following reasons:

Office Order dated 27.11.2006

- (i) The said office order was issued by the office of Chief Personnel Officer, Kolkata for clarifying the re-deployment of the medically decategorized staff in lower grade. Admittedly, the Petitioner was entitled for the 1st financial upgradation as per the ACP Scheme w.e.f 10.03.2002. On the said date, he was not medically de-categorised as a Junior clerk. His de-categorisation happened after 3 years, i.e on 24.02.2005. Hence as on 10.03.2002, there was no de-categorisation and hence the said office order would render no help to the Petitioner.
- (ii) The said office order is applicable to the medically decategorized staff in lower grade. The Petitioner was never decategorized in the lower grade. He was a Constable with pay scale Rs. 3050-4590 and his de-categorisation was to the post of Junior clerk having the same pay scale of Rs. 3050-4590. There was no lowering of the pay scale.
- (iii) The Petitioner is placing high reliance on the examples as quoted in the said office order. As per the said office order, medically de-categorised RPF Head Constable with a pay scale Rs. 3200-4900 is absorbed as junior clerk in the lower pay scale of Rs. 3050-4590, then his first financial upgradation under the ACP Scheme would be in the scale of Rs. 4500-7000, which is the next higher grade in the ministerial cadre. At the time of de-categorisation, the Petitioner was neither Head Constable nor he was absorbed in the lower scale. Hence this example also not applicable to the Petitioner.
- (iv) This Office order itself clarifies that as per the extant instructions, the benefit of financial up-gradations under the ACP Scheme has to be given in the existing hierarchy. Even after medical de-categorisation, the employee will be getting the financial upgradation with reference to his initial appointed grade.

Judgment of the Ld. Tribunal dated 05.05.2009 in OA No. 820/2005 titled as Dipak Kumar Chatterjee Vs UOI

In this case, the Applicants were working as Head Constables in the pay scale of Rs.3200-4900. They were medically decategorized and absorbed in the lower post of Junior clerk with lower Pay scale of Rs. 3050-4590. Subsequently, they were given ACP upgradation to the pay scale of Rs. 4500-7000, however, it was withdrawn later. In this factual background, Ld. Tribunal while applying the Office order dated 27.11.2006, held that the Applicants therein were entitled to the pay scale of Rs. 4500-7000 as while decategorizing their services, the pay scale was reduced. In the present case, the Petitioner was neither Head Constable nor his pay was reduced at the time of decategorisation.

Therefore, neither the Office order dated 27.11.2006 nor the Judgment of the Ld. Tribunal is applicable to the Petitioner.

30. In view of Clause 7 of the ACP Scheme, this Court is of the considered view that the Petitioner, being a Constable, was entitled for the 1st financial upgradation in the existing hierarchical pay scale of Rs. 3200-4900/-.
31. As explained herein above, the initial pay fixation of the Petitioner was erroneous as he was not given the benefit of 1st financial upgradation under the ACP Scheme. However, Respondent rectified this mistake during the pendency of the OAs before the Ld. Tribunal and filed a supplementary affidavit explaining the refixation. Now, the next question to be considered is whether the said refixation done by the Respondent in the year 2012 (as explained in the supplementary Affidavit filed before the Ld. Tribunal) was correct or not. After granting the benefit of 1st financial upgradation to the

Petitioner vide order dated 16.03.2012, the Respondents refixed the pay of the Petitioner as follows: -

- (i) Petitioner was working as Constable in the pay scale of Rs. 3050-4590 from 10.03.1990.
- (ii) Vide order dated 16.03.2012, 1st financial upgradation under the ACP scheme was granted to the Petitioner w.e.f 10.03.2002, and his pay was upgraded to the pay scale of Rs. 3200-4900 w.e.f 10.03.2002.
- (iii) 24.02.2005, Petitioner was medically decategorized and absorbed as Junior Clerk with the pay scale of Rs.3200-4900.
- (iv) On the implementation of the 6th Pay Commission, Petitioner's pay was fixed in the corresponding upgraded pay scale of Rs. 5200-20,200 with Grade pay of Rs. 2400/-.
- (v) Since Petitioner has already received the benefit of 1st financial upgradation under the ACP Scheme, he is not entitled for the 1st financial upgradation under the MACP Scheme. Hence no benefit can be extended to the Petitioner under MACP Scheme.
- (vi) Petitioner was promoted as Senior Clerk vide order dated 12.06.2009 with pay scale of Rs. 4500-7000 with Grade Pay Rs.2800.

32. The Petitioner failed to point out any discrepancy in the aforesaid pay fixation. It is a matter of record that earlier the Respondents had erroneously fixed the pay of the Petitioner without granting him the benefit of 1st upgradation under the ACP Scheme. However, as explained in the supplementary Affidavit filed before the Ld. Tribunal, the Respondents rectified the said mistake vide order dated 16.03.2012 and re-fixed the pay scale of the Petitioner accordingly. This Court finds no infirmity in the said rectified pay fixation.

33. In view of the detailed discussions herein above, this Court is of the considered view that the Petitioner is entitled for the 1st financial upgradation under the ACP Scheme in the pay scale of Rs. 3200-4900 w.e.f 10.03.2002. Further, the refixation of the pay scale done by the Respondents vide order dated 16.03.2012 (as explained in the

supplementary Affidavit filed before the Ld. Tribunal) is correct and in accordance with law.

34. The present Writ Petition is, accordingly, dismissed along with all pending applications.
35. No order as to costs.
36. Urgent Photostat certified copy of this judgment if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Gaurang Kanth, J.)

(Tapabrata Chakraborty, J.)