

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

AND

THE HON'BLE SRI JUSTICE PULLA KARTHIK

Writ Petition No.25329 of 2004

ORDER : *(Per Hon'ble Sri Justice Abhinand Kumar Shavili)*

This Writ Petition is filed by the petitioners under Article-226 of the Constitution of India seeking a 'Writ of Certiorari' by calling for records relating to the order passed by the Central Administrative Tribunal (for short, 'the Tribunal'), Hyderabad in O.A.No.1384 of 2003, dated 13.08.2004 and to quash the same.

2. Heard Mrs. L. Pranathi Reddy representing Deputy Solicitor General of India, learned counsel for petitioners and Mr. Goda Siva, learned Standing counsel for respondent.

3. Learned counsel for the petitioners contended that the respondent was initially working as 'Senior Accountant' in the office of the Deputy Director of Insurance, Government of Andhra Pradesh. While he was working as Senior Accountant, he was deputed to work in the Central Administrative Tribunal, Hyderabad from 08.07.1991 and finally he was

absorbed as Assistant with effect from 11.12.1996 and the respondent has been contending that he is entitled for grant of first financial upgradation under the Assured Career Progression Scheme (for short, 'ACP') he has further contended that his services rendered on deputation from 1991 onwards, should also be counted for the purpose of grant of ACP promotion and the petitioners have rejected the case of the respondent vide proceedings dated 09.10.2003 on the ground that the service rendered on deputation cannot be counted for the purpose of grant of ACP promotion scheme. Aggrieved by the said orders the rejection of ACP, respondent has filed O.A.No.1384 of 2003 and the Tribunal vide orders dated 13.08.2004 was pleased to allow the O.A in favour of the respondent without appreciating any of the contentions raised by the petitioners. Therefore, appropriate orders be passed in the writ petition by setting aside the orders passed by the Tribunal in O.A.No.1384 of 2003, dated 13.08.2004 and allow the writ petition.

4. On the other hand, learned counsel for the respondent contended that the Tribunal was justified in allowing the O.A in favour of the respondent by relying on memo dated 18.07.2001, wherein it was clarified in the form of “Point of doubt and its clarification”. Doubt No.36 deals with a situation where employees are initially sent on deputation, later absorbed in higher post. Admittedly, it has been clarified by the respondent in their memo, dated 18.07.2001 in the form of clarification to doubt No.36. Therefore, the Tribunal was justified in allowing O.A in favour of the respondents. Therefore, there are no merits in the writ petition and the same is liable to be dismissed.

5. This Court, having considered the rival submissions made by the parties, is of the considered view that the respondents have issued memo, dated 18.07.2001, wherein doubt No.36 reads as follows:

S.No.	Point of doubt	Clarification
36.	An employee was initially appointed on deputation in a grade higher than the grade of the post held on regular basis and was subsequently absorbed against the ex-cadre post. Will such initial period of deputation in the higher grade prior to date of absorption be counted towards residency period/regular service for purposes of ACPS ?	In reply to points of doubt No.4 to 6 in DoP&T O.M, dated 10.02.2000, it has been stated that where a person is appointed on direct recruitment/transfer basis from another post in the same grade then past regular service as well as past promotions in the earlier post, will be counted for computing regular service for the purpose of ACPS in the new hierarchy. The reason being that so long as service is in the same scale during the period in question, it is immaterial whether he has been holding different posts in the same scale. However, if the appointment is made to a post in a higher grade, then such appointment, whether by direct recruitment or by transfer or initially on deputation followed by absorption, will be treated as direct recruitment and past service/promotion (which was in a different scale) will not be counter. In the case whether a person is appointed to an ex-cadre post in higher scale initially on deputation followed by absorption, while the service rendered in the earlier post, which was in a lower scale cannot be counted, there is no objection to the period spent initially on deputation in the ex-cadre post prior to absorption being counted towards regular service for the purposes of grant of financial upgradation under ACPS as it is in the same scale of pay and same post.

6. A perusal of the said clarification given to doubt No.36 abundantly makes it very clear that the respondent was entitled to count the service rendered by him on deputation for the purpose of grant of ACP

scheme promotion and the Tribunal was justified in allowing O.A in favour of the respondent. Therefore, this Court is not inclined to interfere with the orders passed by the Tribunal.

7. With these observations, the Writ Petition is dismissed. No costs.

8. As a sequel, miscellaneous applications pending if any in this Writ Petition, shall stand closed.

ABHINAND KUMAR SHAVILI, J

PULLA KARTHIK , J

Date: 18.01.2023
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