



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

WRIT PETITION NO.2036 OF 2025

1. Union of India
Through Secretary, Ministry of Home Affairs,
Government of India, North Block,
New Delhi – 110011
 2. The Registrar General India
Government of India,
Ministry of Home Affairs,
2A, Man Singh Road,
New Delhi - 11011
 3. The Director of Census Operations,
Maharashtra State, Exchange Building,
Sir Shivsagar Ram Gulam Marg,
Ballard Estate, Mumbai – 400032.
 4. The Director
Department of Personnel & Training,
Ministry of Personnel,
Public Grievances & Pension,
North Block, New Delhi 110 001. ..Petitioners
- vs.

Smt. Smita S. Madkar
Age:67 years,
Data Entry Operator Grade 'B' (Retd.),
Directorate of Census Operation,
D.D.E. Unit (Maharashtra),
Devidayal Road, T. Ward,
Mulund (W), Mumbai-400 080.
(R/at-F/55, Palm Acres,
Mahatma Phule Road,
Near Deshmukh Garden,
Mulund East,
Mumbai 400 081. ..Respondent

Adv. Abhijeet A. Joshi, for the Petitioner.

Adv. Annie Nadar a/w Adv. Olivil Nadar, for the Respondent.

**CORAM : M. S. KARNIK &
N. R. BORKAR, JJ.**

DATE : 24th JULY, 2025

ORAL JUDGMENT (PER M. S. KARNIK, J.):

1. Not on board. Taken on board.
2. The challenge in this Petition is to the order of the Central Administrative Tribunal, Mumbai Bench, Mumbai ("the Tribunal", for short) dated 18th April 2024. The Respondent had filed the Original Application No.395 of 2020 for the following reliefs :-

"(a) To allow the Original Application,

(b) To be pleased to call for the records and proceedings/deliberations with the DoPT which led to the passing of the impugned order dated 01/09.08.2016 passed by the Respondents and after going through its propriety, legality and constitutional validity be pleased to quash and set aside the same.

(c) To direct the Respondents to grant the applicant the 2nd financial upgradation under ACP Scheme on completion of 24 years of service with effect from 05.03.2006.

(d) To direct the Respondents to grant the Applicant the enhanced scale of pay in PB - 3 + Grade Pay Rs.5400/- w.e.f. from the date she completed 24 years of service under the ACP Scheme and further grant her

the scale of PB - 3 + Rs.6600/- as 3rd financial upgradation under the MACP Scheme upon completion of 30 years of service.

(e) To direct the respondents to re-fix the pay of the applicant and to grant full benefits and consequential benefits of the same, i.e., Pay Fixation, Pension Fixation, Arrears of pay and allowances, arrears of pension, etc. along with interest thereon at the rate of 18% p.a. from the date till the actual payment.

(f) To allow the O.A. with exemplary costs.

(g) Pass such other directions/orders as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice."

3. The Tribunal by the impugned order allowed the Original Application and issued the following directions :-

i. The impugned Memorandum dated 01/09.08.2016 (Annexure A-1) is set aside;

ii. The respondents are directed to consider the claim of the applicants grant of the 2nd financial upgradation under ACP Scheme on completion of 24 years of service by the applicants and also consider the case of the applicants for enhancement of their scale of pay in PB-3+ Grade Pay Rs. 5400/- w.e.f. the date they have completed 24 years of regular service as per the provisions of the ACP Scheme and also their claim of grant of pay scale of PB-3 + Grade Pay Rs.6600/-, as 3rd Financial Upgradation under the MACP Scheme upon completion of 30 years of service;

iii. The applicants shall be entitled to all consequential benefits i.e. Pay Fixation, Pension Fixation, Arrears of pay and allowance, arrears of pension, arrears of gratuity, Leave Encashment and other retiral dues, etc. in accordance with the relevant rules on the subject;

iv. The applicants shall also be entitled for interest on arrears of pension and other retiral dues accordingly at the rate as applicable to the GPF;

v. The respondents shall comply with the aforesaid directions as expeditiously as possible and preferably within 10 weeks of receipt of a copy of this Order.”

4. Briefly stated, the Respondent was appointed as a Data Entry Operator on 16th May 1983. The Assured Career Progression Scheme (“ACP Scheme” for short) was brought in the force in 1999. As the Respondent had completed 12 years on 16th May 1995 the first benefit upon completion of 12 years of the ACP Scheme was granted to the Respondent on 16th May 1995. The Respondent then was given the second benefit of the ACP Scheme on 16th May 2007 on completion of 24 years of service.

5. The Petitioner – Union of India created certain temporary posts of Assistant Director (Data Centre) in 2000/2001. The posts were later made permanent.

6. The Respondent approached the Tribunal seeking benefits of the Circular dated 15th April 2015. The said Circular reads thus :-

“Sub:- Grant of 2nd ACP to D.E.Os. Gr. ‘B’ & Senior Supervisors – reg.

Sir/Madam,

I am directed to refer to DOPT/DOE clarification No.ID No.1052410/14 CR dated 9.03.2015 & MOF

(Expenditure) No.50129/50(E-III-A)/2015 dated 8.04.2015 on the subject cited above and to say that the matter of grant of 2nd ACP between the period from 01.01.2006 to 31.08.2008 has been considered in consultation with the nodal authorities concerned, it is stated that the officials i.e. D.E.Os. Gr.'B' and Senior Supervisors who were allowed 2nd ACP between the period from 01.01.2006 to 31.08.2008 in PB-2 Rs.9300-34800/- + GP Rs.4600/- are eligible to draw the 2nd ACP in their Promotional hierarchy to the post of AD(DC) in PB-3 Rs.15600-39100+GP Rs.5400/- w.e.f. their respective dates.

2. You are, therefore, requested to send the fresh/revised proposals (format enclosed) of such employees for granting 2nd ACP to them in PB-3 Rs.15600-39100+GP Rs.5400/- w.e.f. their respective dates."

7. Mr. Joshi, learned counsel for the Petitioner-Union of India submitted that by virtue of the said circular the benefits of the 2nd ACP was revised. However, according to him the said revised benefits of the 2nd ACP was to be granted only to those Data Entry Operators Grade 'B' and Senior Supervisors who are allowed the 2nd ACP between the period from 1st January 2006 to 31st August 2008 to the post of Assistant Director (Data Centre). Mr. Joshi submitted that the benefits of this revised ACP was to be granted in view of the G.S.R. 138 dated 15th April 2002 in terms of schedule to only those Assistant Director (Data Centre) who possess the necessary educational qualifications. Inviting

our attention to Clause 9 of the schedule it is submitted that the Data Entry Operators must possess a degree in Statistics/Mathematics/ Operation Research / Physics / Economics/Commerce/ Computer Application of a recognised University or equivalent if they are to avail of the benefit of the revised ACP. Mr. Joshi submits that had the Respondent required the educational qualification in terms of what is provided in Column 9 of the schedule, the Respondent could have been granted the benefit of the revised ACP. However, the Respondent admittedly does not possess the educational qualification of the post of Assistant Director (Data Centre) and therefore the benefit of the 2nd revised ACP cannot be granted to the Respondent. Mr. Joshi submits that the Tribunal fell into error in allowing the Original Application filed by the Respondent on misconstruction of the circular dated 15th April 2015. It is further pointed out by Mr. Joshi that the Patna Bench of the Tribunal has in similar circumstances in Original Application No.456 of 2013 by the judgment and order dated 23rd February 2017 has taken a view that for availing the benefit

of the ACP Scheme an employee has to fulfill all the norms of promotion for getting ACP. He submits that the Patna Bench of the Tribunal observed that the ACP does away with the need for having regular posts, but it does not do away with the requirement of fulfilling the promotion norms. Mr. Joshi submits that this order of the Tribunal was challenged by the employees before the High Court of Judicature at Patna. By the order dated 1st August 2017 the Writ Petition filed by the employees was dismissed thereby confirming the order passed by the Tribunal Bench at Patna. In this view of the matter Mr. Joshi submits that the Respondent is not entitled to the financial upgradation.

8. In effect, it is the contention of Mr. Joshi that for availing of the revised 2nd ACP, the Respondent must possess the necessary educational qualifications required for promotion to the next higher post as prescribed, which admittedly the Respondent does not possess.

9. On the other hand, learned counsel for the Respondent invited our attention to the findings of the Tribunal in support of her submissions.

10. Heard learned counsel for the parties.

11. Having considered the entire materials on record, we are of the opinion that the order passed by the Tribunal does not call for any interference. Admittedly the Respondent does not possess the necessary educational qualifications required for promotion to the next higher post. The Respondent has however completed the requisite number of years required for grant of benefits under the ACP Scheme. By virtue of the circular dated 15th April 2015 the revised benefits were provided for the post of Assistant Director (Data Centre). The question in the present case is whether the qualification prescribed for promotion to the next higher post of Assistant Director (Data Centre) from that of Data Entry Operators Grade 'B' and Senior Supervisors is necessary even for the purpose of extending the revised benefits of ACP. To answer this question we draw support from the decision of the Hon'ble Supreme Court in **Amresh Kumar Singh and Ors. vs. The State of Bihar and Ors.** It is profitable to reproduce the relevant observations from paragraph 8 to 19 which read thus :-

"8. Upon hearing the rival contentions of the parties, the sole question which arises for our reconsideration in these appeals is whether the qualification of graduation prescribed for promotion to the next higher post of Accounts Officer from that of Accounts Clerk is necessary even for the purpose of extending the benefit of ACP.

9. The Bihar Accounts Service Rules, 2000 as notified on 28th March, 2000 vide Rules 17 and 20 read with Schedule I thereof provides for recruitment by way of promotion. The aforesaid Rule 17, inter alia, provides that for promotion on the basis of grade of service, candidates must possess qualifications mentioned in Schedule I which, inter alia, provides that for promotion to Bihar Accounts Service, the minimum educational qualification shall be graduation.

10. At the same time Bihar State Employees Service Condition (Assured Career Progression Scheme) Rules, 2003 vide sub-Rule (5) of Rule 4 lays down that if the Rules prescribe passing of the departmental examination or any qualification for promotion that shall also be an essential condition for sanction of benefit under the scheme. In other words, possession of essential qualification prescribed under the Rules is necessary for grant of benefit under the scheme, i.e., ACP.

11. It is in view of the above rules, the contention of the State is that until and unless the Accountant Clerks possess the minimum educational qualifications of graduation, they are not entitled to promotion in the grade of Bihar Accounts Service that is the Accounts Officer.

12. It may be worth noting that the ACP scheme was enforced on the recommendation of the Fifth Central Pay Commission in context with Group C and D employees and it provided monetary benefit to the employees on completion of 12 years and 24 years of regular service who were not able to get promotion. The scheme as such was anti-stagnation and envisages merely placement of the employees in the higher pay scale for the grant of financial upgradation only without grant of actual promotion.

The benefit of the ACP as such is like granting non-functional in situ promotion.

13. At the cost of repetition, it must be borne in mind that the object of ACP is to avoid stagnation where no promotional avenues are available. The grant of ACP is not technically a grant of promotion but increase in the pay scale to the next higher grade retaining the employee on the post held by him. This is only to accord monetary benefit without disturbing any seniority or actually effectuating promotion to any higher post to avoid stagnation on a particular post or pay scale for a very long period.

14. The object and purpose of ACP/MACP Scheme has been reiterated by this Court in Union of India and Ors. v. C.R. Madhava Murthy and Anr. MANU/SC/0426/2022 : (2022) 6 SCC 183, as one to relieve the frustration on account of stagnation and it does not involve actual grant of promotional post but merely monetary benefits in the form of next higher grade subject to fulfilment of qualifications and eligibility criteria.

15. In sum and substance, both ACP and MACP Schemes are schemes devised with the object of ensuring that the employees who are unable to avail of adequate promotional opportunities, get some relief in the form of financial benefits. Accordingly, the schemes provide for regular financial upgradation on completion of 12-24 years and 10-20-30 years of service without promotion. They are incentive schemes for the employees who complete a particular period of service but without getting promotion for lack of promotional avenues. The effect of the schemes must be judged keeping in view the object and the purport of the scheme.

16. In Union of India and Anr. v. G. Rajanna and Ors. reported in MANU/SC/8202/2008 : (2008) 14 SCC 721, the three-Judges Bench of this Court held that in situ promotions are made to remove stagnation of grade C and grade D employees by giving them certain monetary benefits.

17. It was further observed that fulfilment of educational qualifications prescribed under the recruitment rules for the purposes of promotion are

not necessary for non-functional in situ promotion. In other words, educational qualification required for the purposes of promotion is not necessary for the grant of in situ promotion, i.e., only for extending the monetary benefit where there are no promotional avenues and the employees are likely to be stagnated.

18. In the aforesaid case, the employees were working as malis (Gardeners) and had claimed promotion in the higher pay scale. The Central Administrative Tribunal seized of the original applications observed that the employees cannot claim the scale of the next higher post by way of in situ promotion. On the matter being taken to the High Court by way of a writ petition, the contention of the employees was accepted and it was observed that the object of in situ promotion on non-functional posts, is to ensure that the group C and D employees are not stagnated in the same cadre/pay scale and that they should be provided with certain monetary benefits. Therefore, the rejection of the claim for such non- functional in situ promotion on the ground that the employees do not possess the necessary minimum qualification of matriculation as per the Rules is not justified and renders the order erroneous in law. The view so taken by the Division Bench of the High Court was affirmed by this Court in the above referred Civil Appeals holding that the High Court has correctly analysed the object of the in situ promotion and fixation of pay scales to Group C and D employees to avoid stagnation.

19. In view of the aforesaid legal position coupled with the fact that the qualification of graduation prescribed is for the promotion to the post of Accounts Officer rather than for the grant of in situ promotion on the non-functional post or for extending the benefit of ACP which is purely and simply in the nature of grant of monetary benefit without actually effectuating any promotion to any higher post, we are of the opinion that the judgment and order of the Division Bench of the High Court impugned in the appeals cannot be sustained. It is accordingly hereby set aside and that the judgment of the writ court dated 28.11.2017 is restored. The appellants are extended the benefit of ACP, as directed by the writ court."

12. Mr. Joshi, learned counsel made an attempt to distinguish the decision of the Hon'ble Supreme Court in *Amresh Kumar Singh and Ors.* (supra). It is his submission that the said decision is not applicable in the present facts because the Respondent was already granted the benefit of the 2nd ACP. He submits that the issue as regards the grant of the revised 2nd ACP was not the question before the Hon'ble Supreme Court. This according to Mr. Joshi is the distinguishing feature and hence the decision relied upon by the learned counsel for the Respondent has no application in the present facts.

13. We are not in agreement with the submission of Mr. Joshi. In our opinion the decision of the Hon'ble Supreme Court in *Amresh Kumar Singh and Ors.* (supra) will apply even to a case where the question is of grant of benefit of the 2nd revised ACP. It is just that the benefits have been revised and once the Respondent is held entitled to the benefit of 2nd ACP benefit, there is no justification to deprive her the benefits of revised ACP. The observations in *Amresh Kumar Singh and Ors.* (supra) squarely apply in the present

case.

14. Learned counsel for the Respondent has relied upon the decision of the High Court of Delhi in **Union of India and Ors. vs. Dharampal Singh and Ors.** decided on 28th February 2024 in W.P.(C) 2925 of 2024. The Delhi High Court was also considering the case of an employee who was not fulfilling the qualification for promotional post of Assistant Director (Data Centre) as in the present case. The Delhi High Court after relying on the observations of the Hon'ble Supreme Court in *Amresh Kumar Singh and Ors.* (supra) held thus :-

"7. From a perusal of the aforesaid, what emerges is that the Apex Court has in *Amresh Kumar Singh & Ors.* (supra) categorically held that for the purposes of grant of financial upgradation under the ACP scheme, an employee is not mandatorily required to possess the qualification prescribed for the promotional post. Learned counsel for the petitioner has vehemently contended that since the respondents do not possess the requisite qualifications as per the Recruitment Rules for promotion to the post of Assistant Director (Data Science), the post vis-a-vis the benefit of second ACP was to be extended to them, the petitioners were justified in not extending benefits of the same to them.

8. In our view, once the Apex Court categorically held in *Amresh Kumar Singh & Ors.* (Supra) that financial upgradation under the ACP scheme can be granted even to an employee, who does not possess the qualifications prescribed for the promotional

post, we have no option but to dismiss the present petition.

9. The petition is, accordingly, dismissed with no orders as to costs.”

15. We are in respectful agreement with the view taken by Their Lordships of the Delhi High Court in *Union of India and Ors. vs. Dharampal Singh and Ors.* (supra). Once we are of the view that the decision in *Amresh Kumar Singh and Ors.* (supra) covers the present controversy, we are not persuaded to accept the view of the Patna High Court which decision was rendered prior to *Amresh Kumar Singh and Ors.* (supra).

16. We therefore do not find any merit in this Writ Petition. The Writ Petition is dismissed.

(N. R. BORKAR, J.)

(M. S. KARNIK, J.)