

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

Original Application No.1604/2009

This the 23rd day of December, 2009

HON'BLE SHRI JUSTICE V. K. BALI, CHAIRMAN

HON'BLE DR. RAMESH CHANDRA PANDA, MEMBER (A)

**R. P. Singh S/O B. L. Singh,
R/O 224B, DG-2, Vikaspuri,
New Delhi.**

Applicant

(By Shri Yogesh Sharma, Advocate)

Versus

- 1. Government of NCT of Delhi through
Chief Secretary, New Secretariat,
Near ITO, New Delhi.**
- 2. Secretary,
Social Welfare Department,
Government of NCT of Delhi,
GLNS complex, Delhi Gate,
New Delhi-110002.**
- 3. Joint Director (Admn.),
Social Welfare Department,
Government of NCT of Delhi,
GLNS complex, Delhi Gate,
New Delhi-110002.**

Respondents

(By Ms. Jyoti Singh, Advocate)

ORDER

Justice V. K. Bali, Chairman:

Can the case of an employee for grant of ACP benefit be put in sealed cover because of his involvement in a criminal case years after he became entitled to the same, is the question raised by R. P. Singh, the applicant herein in the present Original Application filed by him under Section 19 of the Administrative Tribunals Act, 1985.

2. Uncontroverted facts as projected in the Application reveal that the applicant was appointed on the post of Foreman Instructor-cum-Superintendent on 22.2.1978.

The post of Foreman Instructor-cum-Superintendent is stated to be an isolated post, there being no feeder or higher post. The pay scale of the said post is Rs.10000-15200 (Rs.3000-4500 old pay scale) and it is a Group A post as per the Government of India notification dated 30.6.1987 and 7.7.1987, vide which a Central civil post carrying a pay or a scale of pay with a maximum of not less than Rs.4000/- has been classified as Group A post. The Government of India vide OM dated 9.8.1999 introduced Assured Career Progression (ACP) Scheme for Central Government civilian employees, whereby an employee is entitled to two financial upgradations on completion of 12 years and 24 years of service respectively if he has not been granted any promotion. ACP Scheme is also applicable to isolated posts for which there is no promotional avenue. Government of India vide OM dated 12.9.2003 clarified that the said Scheme shall be applicable to isolated Group A posts as well. Having been appointed on 27.2.1978 on regular basis, the applicant was thus entitled to first financial upgradation under the ACP Scheme on completion of 12 years of service on 27.2.1990, and the second upgradation w.e.f. 27.2.2002 on completion of 24 years service. Inasmuch as, by the year 1990 when the applicant had completed 12 years of service, the ACP Scheme had not been introduced, the same having been introduced w.e.f. 9.8.1999, the applicant was entitled to get the same with effect from the date of introduction of the Scheme, whereas, the 2nd ACP, as mentioned above, would have been admissible to the applicant on 27.2.2002. The respondents would, however, not look into the matter, thus constraining the applicant to make repeated requests. It is the case of the applicant that the respondents would only assure him that the needful would be done, without, however, taking any tangible steps in that direction. Constrained under the circumstances, the applicant made a written representation dated 11.3.2008 to the Lt. Governor, Delhi, Chief Secretary, Government of NCT of Delhi and Secretary, Social Welfare Department. His representation was forwarded to Joint Director (Admn.) for necessary action on 17.4.2008. When, however, no action was taken, the applicant had to resort to legal proceedings. He filed OA No.1551/2008 in this Tribunal which came to be disposed of on 25.7.2008 with the following directions:

At this stage we only direct the Joint Director, Social Welfare Department, Govt. of NCT of Delhi, third respondent herein to deal with the representation of the applicant and pass order thereon in accordance with law as expeditiously as possible and preferably within a period of two months of date of receipt of copy of this order.

When the order aforesaid was not complied with, the applicant had to file a contempt petition bearing CP No.60/2009, during pendency whereof the respondents passed an order dated 20.3.2009 that the case of the applicant would be placed before the screening committee for grant of benefit under ACP Scheme, for which the chairman of the screening committee had fixed meeting on 20.3.2009 itself at 12.30 p.m. On the basis of the order referred to above, the contempt petition was disposed of. Order has now been passed on 14.5.2009 keeping the case of the applicant for grant of ACP benefit in sealed cover. It is the case of the applicant that on 7.11.2006 vigilance clearance was also given to him and no case of any type, either departmental or criminal, was pending against him. The department, however, delayed the matter and, meanwhile, a criminal case came to be registered against him and others in September, 2008 vide FIR No.18/08. The applicant was arrested on 9.9.2008 and was released on bail on 25.10.2008. He was suspended as well, but by the time the present Application came to be filed, or even as on today, no charge has been framed against him by the criminal court.

3. What thus emerges from the facts as mentioned above is that even though, the applicant was entitled for his first financial upgradation under ACP Scheme on 27.2.1990, whereas the second one on 27.2.2002, the respondents delayed consideration of the same, insofar as the first upgradation is concerned, by almost ten years, and insofar as the second such upgradation is concerned, by about seven years. When ultimately, the matter came up for consideration, the applicant was involved in a criminal case and suspended as well. By the time, however, this matter has come up for final hearing before us, it is conceded position that suspension of the applicant has been revoked.

4. Pursuant to notice issued by this Tribunal, the respondents have entered appearance and filed their counter reply. The facts as set out in the Application, as mentioned at the very outset, are not in dispute. It has, however, been pleaded that the recommendation of the screening committee was kept in sealed cover as the applicant was arrested on 9.9.2008 in case FIR No.18/08 dated 24.6.2008 u/s 13(1)(c)(d), 13(2) Prevention of Corruption Act read with Sections 420/468/471/120-B IPC. The applicant at the time of consideration of his case was under deemed suspension. The respondents then rely upon instructions/guidelines for grant of benefit under ACPS introduced by the Government vide OM dated 9.8.1999 circulated on 27.8.1999, as also OM dated 18.4.2000 and clarification point No.48 of the OM dated 18.7.2001. Pertinent reference is to point No.48 of OM dated 18.7.2001, wherein sealed cover procedure is made applicable for grant of ACP benefits as well. There may not be any dispute that ACP is granted on the same parameters on which promotion is granted, and promotion can be withheld by putting the case of an employee in sealed cover. The position with regard to grant of ACP benefit may not be different. However, when the applicant was entitled for grant of first and second ACP in 1990 and 2002 respectively, in our considered view, registration of an FIR years and years after, would not authorize the respondents on the dint of OM as relied upon by them, to put the case of the applicant under sealed cover. Surely, if the respondents had woken up from their deep slumber, the applicant would have got his first ACP in the year 1990 and the second in 2002. Surely, if the applicant would have been granted the benefit that he was entitled to, registration of the case would not have resulted into withdrawing the same. That apart, the criminal court has not framed any charge against the applicant as yet. We need not refer to the case law on the point as that would unnecessarily burden the judgment. However, it is by now a settled proposition of law that promotion of an employee cannot be stalled by putting his case in sealed cover unless, if the employee is facing a departmental enquiry, charge has been framed against him by the concerned authority, or if he is facing a criminal case, charge has been framed by the concerned criminal court. We find no justification whatsoever for the respondents to have kept the case of the applicant in sealed cover. That being so, the order dated 14.5.2009 keeping the case of the applicant in sealed cover is quashed and set aside. The respondents are directed to make available to the applicant both first and second financial upgradations under ACP Scheme from the dates as mentioned above. Arrears on that count shall be calculated and made over to the applicant within a period of three weeks from today.

5. This Application is allowed in the manner fully indicated above. Costs of the litigation are, however, made easy.

(Dr. Ramesh Chandra Panda)
Member (A)

(V. K. Bali)
Chairman