

**Union of India and ors. Vs. Sri Purna Chandra Nayak.**

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**Court :** Orissa

**Decided On :** Aug-05-2010

**Judge :** Pradip Mohanty; S. K. Mishra, Jj.

**Acts :** Assistive Technology Act (A.T) - Section 19.

**Appeal No. :** W.P.(C) NO.12037 OF 2009.

**Appellant :** Union of India and ors.

**Respondent :** Sri Purna Chandra Nayak.

**Advocate for Def. :** M/s. C.Ananda Rao; Sarat Kumar Behera; A.K.Rath, Advs.

**Advocate for Pet/Ap. :** Mr. Sidharth Sankar Mohapatra, Adv.

**Judgement :**

1. The simple question that arises in this case is whether to avail benefit of Assured Career Progression, in short the 'ACP', it is necessary for the employee to have requisite qualification for getting promotion to the higher cadre.
2. The Department of Meteorology, Ministry of Earth Science, Union of India has preferred this writ petition against the orders passed by the Central Administrative Tribunal in O.A. No.122 of 2005, wherein the Tribunal ordered that the second financial upgradation as per the 'ACP' scheme be granted to the applicant within 60 days from the date of receipt of copy of the order.

3. Bereft of unnecessary details, the fact of the case is that the opposite party at present working as Observatory Attendant in Meteorological Department, Bhubaneswar and having been declared surplus while working in the DNK Project, was redeployed in the present organization. In order to meet the genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues, on the recommendation of the 5th Pay Commission, the Government of India, as a safety net measure accepted and floated a policy commonly known as Assured Career Progression (ACP) Scheme. The scheme provides for grant of two financial upgradations in the entire service career of a Government servant, if no regular promotion during the prescribed periods (12 and 24 years) has been availed of by an employee. It further provides that 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. It also envisages that 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. Condition No.6 of the said scheme envisages that fulfillment of conditions of normal promotion shall be ensured for grant of benefits under the ACP scheme. The applicant having been denied the benefits of the ACP under Annexure-12 dated 20.12.2004 approached the Tribunal by filing an Original Application under section 19 of the A.T. Act, 1985 seeking to quash the impugned order of rejection under Annexure-12 and to direct the respondents, i.e. present petitioners to grant the benefits of two upgradations as provided under the Scheme.

4. The present petitioners, i.e., Meteorological Department, inter alia, pleaded that as the opposite party does not fulfill the eligibility conditions provided in the rules for promotion to the next grade, he was not entitled to the ACP scheme. The petitioners pleaded that for getting financial upgradation under the ACP scheme, one has to fulfill norms for promotion, as provided in the rules. It is further maintained by the petitioners that according to the opposite party he is a non-matriculate, and in spite of opportunity he failed to substantiate that he had appeared in the HSC examination.

5. It is not disputed at this stage that as per the order dated 08.09.2005, the opposite party was granted the first financial up gradation w.e.f. 22.01.2001. Taking such factor into account, the Tribunal has held that the respondent, i.e. present petitioners cannot canvass the plea that the applicant, i.e., opposite party is not eligible for promotion. In other words, the plea raised by the petitioners is hit by the principles of waiver and acquiescence. Once the Department has granted the first financial upgradation on completion of 12 years of service without promotion, then it cannot deny the second financial upgradation on the ground that he does not possess the requisite qualification for a promotion.

6. It is further seen that such order was challenged by the Union of India, Meteorological Department in W.P.(C) No.9721 of 2009, wherein the orders passed by the Tribunal were held to be correct. In pursuance of the orders of this Court on 17.07.2009 in the above Writ Petition, the Government of India, Ministry of Health and Family Welfare, Directorate General of Health, have clarified that Union of India has no objection to grant the second ACP scheme to the opposite party in that case. Once the Union of India has accepted order of the Court and has granted second ACP to one employee, then the Union of India cannot deny the same benefit to the similarly placed employees.

7. Thus, on the basis of the aforesaid discussion, this Court comes to the conclusion that the reasons recorded by the Tribunal are proper and need no interference. Accordingly, the writ petition stands dismissed as devoid of merit. But keeping in view the peculiarity of the case, there shall be no order as to the costs. Writ petition dismissed.

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