HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)

WEDNESDAY ,THE TWENTY SIXTH DAY OF MARCH
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE THE ACTING CHIEF JUSTICE SUJOY PAUL
AND
THE HONOURABLE SMT JUSTICE RENUKA YARA

WRIT PETITION NO: 6602 OF 2009

Between:

1. Union of India, represented by its Secretary to Government, Min. of Defence, North Block, New Delhi.

2. The Controller General of Defence Accounts West Block – V, R.K. Puram, New Delhi – 66.

3. The Controller of Defence Accounts No.1, Staff Road,Secunderabad – 500 009. ..... Petitioners

And

01. Shri C.Balakrishna
S/o Late Venkata Rama Rao
A/c No.8308154
Age: 62 years Occ: Govt.Service(Retd.)
R/o H.No.12-82, Alwal,
Secunderabad -10

02. Shri Samuel Jhonson
S/o Late James Watkins
A/c No.8304762
Age: 59 years Occ: Govt.Service
R/o Plot No.38 Behind Andhra Bank,
D.D. Nagar, Secunderabad

03. Shri M.Jagan Mohan Rao
S/o M.Bhushanam
A/c No.8303852
Age: 61 years Occ: Govt.Service(Retd.)
R/o Plot No.108, Bhoodevi Nagar,
Tirumulgherry post, Sec'bad-15

04. Shri K.Radha Kishan
S/o Late K.Narasaiah
A/c No.8305676
Age: 62 years Occ: Govt.Service(Retd.)
R/o Flat No.403, Hema Plunga Classic Appts,
Narasimha Krishna Cinema Theatre Lane,

05. Shri Aravind Naik
S/o Late Rama Rao Naik
A/c No.8302719
Age: 63 years Occ: Govt.Service(Retd.)
R/o H.No.3-4-1013/7, Rajendra Colony,
Barkatpura, Hyderabad -27

06. Smt.Ch.Sreevalli Devi
W/o Ch.Sriram a murthy
A/c No.8305776
Age: 63 years Occ: Govt.Service(Retd.)
R/o c/o K.Balrama Sharma,
H.No.20-6-153, Opp: Sri Anjaneya Swamy
Temple, Kedareswara Pet, Vijayawada -3

07. Shri K L Narayana Rao
S/o K. Appa Rao
A/c No.8308130
Age: 62 years Occ: Govt.Service(Retd.)
R/o 19-164/20, W.Venkatapuram,
Alwal, Secunderabad -15

08. Shri A. Bhanumurthy
S/o A. Ammi Raju
A/c No.8308138
Age: 61 years Occ: Govt.Service(Retd.)
R/o H.No.1-123/176, Bhoodevi Nagar
Secunderabad-15

09. Shri V Krishnamurthy
S/o Late V. Suryanarayana Murthy
A/c No.8305689
Age: 63 years Occ: Govt.Service(Retd.)
R/o 304, Surya Balaram Enclave
Prashant Nagar, Old Alwal, Secunderabad

10. Shri R. Krishnakant
S/o Late Chakradhar Rao
A/c No.8308127
Age: 62 years Occ: Govt.Service(Retd.)
R/o H.No.18-179, Hanumanpet,
West Malkajgiri, Hyderabad-47

11. Shri O S R Sastry
S/o Late O.V. Sastry
A/c No.8302747
Age: 63 years Occ: Govt.Service(Retd.)
R/o Flat No.501, Prudent Pranava Appts,
Brindavan Colony, A S Rao Nagar,
Kapra, Hyderabad -62

12. Smt.S.Susheela
W/o J D Das
A/c No.8309758
Age: 60 years Occ: Govt.Service(Retd.)
R/o C/o M D Murthy,
146-B, Saipuri, Secunderabad

13. Shri T S Venkata Subramanyam
S/o Late T N Srinivasan
A/c No.8304651
Age: 59 years Occ: Govt.Service
R/o H.No.16-166/1, Eeshwarya Blocks,
Mirzalguda, Malkajgiri, Hyd-47

14. Shri M Firasat Ali
S/o Late Firasat Ali
A/c No.8305700
Age: 59 years Occ: Govt.Service
R/o H.No.23-1-496/1, Bibi Bazaar
Aliza Kotla Charminar East,
Hyderabad -02

15. Shri S.Pattabhiraman,
S/o P Sivaraman
A/c No.8305697
Age: 60 years Occ: Govt.Service(Retd.)
R/o H.No.1-111-A/1(New No.530)
Shyamlal Building,
Begumpet, Hyderabad -16

16. Shri B Babu Rao,
S/o B.Shedrak
A/c No.8308426
Age: 66 years Occ: Govt.Service(Retd.)
R/o Plot No.43, Dinakarnagar
West Venkatapuram, Sec'bad-15

17. Shri A. Ramakrishna,
S/o Surya Prakasa
A/c No.8308123
Age: 62 years Occ: Govt.Service(Retd.)
R/o 5-9-67/6, Devi Kalyan Estates,
St.No.2, Yapral, Sec'bad -84

18. Shri K.S.R.Anjaneyulu,
S/o K. Suryanarayana,A/c No.8303511
Age: 62 years Occ: Govt.Service(Retd.)
R/o H.No.25-40/21, Bank Colony,
East Anandbagh, Malkajgiri, Hyd -47.
(Respondents Nos.1, 12 & 13 are not Performing Party Necessary parties to this Writ Petition) ..... Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an order or direction more particularly in the nature of Writ of Certiorari, call for the records with regard to order dt. 19.09.2008 in O.A.No.738 of 2006 of the Hon'ble Central Administrative Tribunal, Hyderabad Bench, Hyderabad and quash the same as illegal, arbitrary, contrary to law and unconstitutional.

I.A. NO: 1 OF 2009(WPMP. NO: 8638 OF 2009)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the order dt. 19.09.2008 in O.A.No.738 of 2006 on the file of the Hon'ble Central Administrative Tribunal, Hyderabad Bench, Hyderabad herein pending disposal of Writ Petition.

Counsel for the Petitioners: SRI. GADI PRAVEEN KUMAR DY. SOLICITOR GENERAL OF INDIA

Counsel for the Respondents: ---

The Court made the following: ORDER

THE HON'BLE THE ACTING CHIEF JUSTICE SUJOY PAUL

AND

THE HON'BLE SMT. JUSTICE RENUKA YARA

WRIT PETITION No.6602 of 2009

ORDER: *(Per the Hon'ble the Acting Chief Justice Sujoy Paul)*

In this writ petition filed under Article 226 of the Constitution of India, challenge is made to the order of the Central Administrative Tribunal, Hyderabad Bench at Hyderabad (hereinafter referred to as, "the Tribunal"), in O.A.No.738 of 2006, dated 19.09.2008.

BRIEF FACTS OF THE CASE:

2. In short, the respondents herein, who are the applicants before the Tribunal, filed an application under Section 19 of the Administrative Tribunals Act, 1985, before the Tribunal seeking certain financial benefits. The respondents were Senior Auditors in Defence Accounts Department serving under the Controller of Defence Accounts, Secunderabad. The two-fold reliefs claimed by the respondents were – i) direction to the petitioners herein, who are the respondents in the Original Application, to treat the

respondents on par with the Auditors of the Accountant General's Office for the purpose of pay fixation and grant of four advanced increments with effect from 01.01.1972 and accordingly direct refixation of pay and ii) direction to the petitioners to grant the arrears of pay to the respondents arising out of grant of second Assured Career Progression Scheme (ACPS) benefit with effect from 09.08.1999.

3. The Tribunal framed the points for its determination in paragraph 7 of the impugned order, which reads thus:

> "7. The points that arise for consideration in this application are:
>
> (i) Whether the applicants are entitled for four advance increments with effect from 1.1.72 as claimed by them in the application?
>
> (ii) Whether the financial upgradation under ACP scheme is to be given effect from 9.8.99 and not from 29.4.2002, as claimed by the applicants?
>
> (iii) To what relief?"

4. So far as point No.(i) is concerned, the Tribunal declined the relief to the respondents and the said portion of the order has not been called in question by filing any petition. So far point No.(ii) is concerned, the Tribunal allowed the Original Application by holding that respondents Nos.2 to 11 and 14 to 18 were in service

and they appeared for the departmental examination conducted on 29.04.2002 and succeeded in the said examination. The petitioners have not conducted any examination between 09.08.1999 and 29.04.2002 and therefore, the respondents cannot be named for the same. Non-conducting of examination cannot result into deprivation of the respondents from ACPS benefits. The Tribunal gave a specific finding in paragraph No.9 of the impugned order that no prescribed examination was conducted till 29.04.2002. The petitioners ought to have conducted the prescribed departmental examination immediately after 09.08.1999. For the failure of the petitioners to conduct the prescribed departmental examination, the respondents who succeeded in the departmental examination, when conducted, cannot be deprived. For this reason, it was opined that respondents No.2 to 11 and 14 to 18 were entitled to get the ACPS benefits with effect from 09.08.1999.

5. Dissatisfied and aggrieved by the aforesaid decision, the present writ petition is filed by the petitioners contending that the ACPS came into being on 09.08.1999 (Annexure-P8). Thereafter, by communication dated 02.08.2004, it was made clear that the

benefit of ACPS can be granted only from the date of passing of the examination and not from 09.08.1999.

CONTENTION OF THE PETITIONERS:

6. Sri Gadi Praveeen Kumar, learned Deputy Solicitor General of India, appearing for the petitioners, submits that the singular reason assigned by the Tribunal for grant of ACPS benefits from 09.08.1999 is factually incorrect and legally improper.

7. By taking this Court to paragraph Nos.6, 7 and 8 of the writ affidavit, it is argued by the learned counsel for the petitioners that the Tribunal erred in holding that no examinations have been conducted after 09.08.1999 till 2002. The details of the examinations were given and it was clearly pointed out that respondents No.1, 12 and 13 passed the Part I Subordinate Accounts Service Examination, which was held before 2002 and from the due date, ACPS benefits were granted to them.

8. Interestingly, the Tribunal also confined the relief of ACPS benefits to respondents No.2 to 11 and 14 to 18. Thus, consciously, the Tribunal did not grant ACPS benefits to respondents No.1, 12 and 13, because they had already passed

the relevant departmental examination prior in time. Thus, the Tribunal was not justified and correct in holding that no prescribed departmental examination was held before 29.04.2002. Thus, the impugned order may be interfered with.

9. As mentioned in the docket order, nobody entered appearance for the respondents.

10. We have heard the learned counsel for the petitioners at length and perused the record.

FINDINGS:

11. The Tribunal gave its findings as under:

> "Point No. (ii):
>
> It is not disputed that the ACP scheme is applicable to the applicants and the said ACP scheme has been introduced by DOP&T OM dated.9.8.99. It is also not disputed that all the applicants were appointed prior to 1970. Therefore, all the applicants have completed 24 years of service by the date of introduction of Assured Career Progression Scheme dated 9.8.99. It is also not disputed that all the applicants got only one promotion by the date of introduction of the ACP scheme. As per the scheme, those who have completed 24 years of regular service and got only one promotion, such employees are entitled for one financial upgradation by way of second ACP immediately with effect from the date of introduction of the scheme, i.e. 9.8.99. Though the applicants were given benefit of second ACP they were given only with effect from 24.9.2002 instead of from 9.8.99. The respondents' contention is that the financial

upgradation is not automatic and that in order to earn second ACP they should be qualified in the departmental examination of SAS Part-I/Supervisor (Accounts) in conformity with condition No.6 of the ACP scheme read with clarification No. 16 of DOP&T OM No. 35034/1/97-Estt (D) (Vol.IV) dated 10.2.000 and the said position has also been clarified by the DOP&T under clarification No.34 vide their OM No. 35034/97-Estt (D) (Vol.IV) dated 18.7.2001. For better appreciation of this contention, it is useful extract Condition No.6 of the ACP scheme, clarification No. 16 dated 10.2.2000 and also clarification No. 34 dated 18.7.2001:

Condition No. 6:

"6. Fulfillment of normal promotion norms (bench-mark, departmental examination, seniority-cum-fitness in the case of Group 'D' employees, etc., for grant of financial upgradations, performance of such duties as are entrusted to the employees together with retention of old designations, financial upgradations personal to the incumbent for the stated purposes and restriction of the ACP Scheme for financial and certain other benefits (House Building Advance, allotment of Government accommodation, advances, etc.) only without conferring any privileges related to higher status (e.g. invitation to ceremonial functions, deputation to higher posts, etc.) shall be ensured for grant of benefits under the ACP Scheme."

Clarification No. 16:

"16.	The relevant Recruitment/Service Rules prescribe departmental examination/ skill test for vacancy based promotion. However, this need not be insisted for upgradation under ACPS.	As per the scheme (Condition No.6), all promotion norms have to be fulfilled for upgradation under the Scheme. As such, no upgradation shall be allowed if an employee fails to qualify departmental/skill Test prescribed for the purpose of regular promotion."

Clarification No. 34:

"34. An employee has superannuated after 9.8.1999, i.e. the date from which ACPS was introduced. He had completed the required eligibility service as on 9.8.1999 for grant of financial upgradation but he retired on superannuation before the Screening Committee could meet to assess his suitability for grant of benefits under ACPS. Will he be entitled for financial upgradation under ACPS?	In terms of condition No.3 of the ACP Scheme introduced vide OM dated 9.8.99, the financial benefit under the ACPS shall be granted from the date of completion of the eligibility period prescribed under the ACPS or from the date of issue of the instructions whichever is later. Therefore, in respect of employees who had completed eligibility service as on 9.8.1999 but retired prior to meeting of the first Screening Committee meeting, if the assessment to decide grant of financial upgradation is based on ACRs and other service records, the employees who retired after 9.8.1999 may also be considered by the Screening committee and, if recommended for grant of financial upgradation, such employees may be allowed the benefit of ACPS from the due date. If, however, the assessment also includes passing of a trade test/ skill test/

written examination (as prescribed for regular promotion) under ACPS and the employee had not qualified in such tests already, it may not be possible to consider the retired persons, as assessment based on such tests is not possible after the date of superannuation "

As seen from the above extracted Condition No. 6, in order to earn ACP benefit one must fulfill the normal promotion norms. In the instant case, the promotional norm prescribed is to pass in the departmental examination of SAS Part-I/Supervisor (Accounts). As seen from Clarification No. 16, no upgradation shall be allowed if an employee fails to qualify the departmental/skill test prescribed for the purpose of regular promotion. As per Clarification No.34, the financial benefit under the ACP shall be granted from the date of completion of the eligibility period prescribed under the ACPS or from the date of issue of the instructions whichever is later. Here, in the instant case, the date of completion of eligibility prescribed i.e. 24 years is much prior to the date of issue of the instructions, viz.9.8.99. Therefore, the later date from which date the ACP benefit is to be granted is 9.8.99. Therefore, the later date from which date the ACP benefit is granted is 9.8.99. According to the respondents the applicants, except at Serial No. 1, 12 & 13 other applicants did not pass the prescribed departmental examination of SAS Part-1 (Accounts) either by the date of completion of 24 years' service or by the date of ACP scheme dated 9.8.99 and therefore, the ACP benefit was not given to the other applicants with effect from 9.8.99 and that in fact, the applicants at Serial No. 1, 12, & 13 were given ACP benefit from 9.8.99 as they have already passed departmental examination. It is true that the applicants 2 to 11 and 14 to 18 did not pass the departmental examination by 9.8.99. As all of them are on the verge of retirement and as there was no scope for them to get regular promotion before their retirement, they did not choose to appear for departmental examination. Obviously, they did not

anticipate the scheme of financial upgradation on completion of particular years of regular service subject to the condition of fulfilling the norm of regular promotion. Only when the ACP scheme has been introduced they realised the necessity of passing the departmental examination and appeared for the examination conducted on 29.4.2002 and all of them have passed in the examination and became entitled to be given second financial upgradation. Suppose, if they did not appear and pass the examination, before their retirement, Clarification No.34 comes into play and they will not be entitled for second financial upgradation as there was no scope for conducting the examination or skill test after their retirement. Here, in the instant case, it is the applicants 2 to 11 and 14 to 18 were in service and they appeared for the examination conducted on 29.4.2002 and succeeded in the examination. It is not the case of the respondents that in between 9.8.99 and 29.4.2002 any prescribed departmental examination had been conducted and that these applicants failed in that examination. It is obvious that no prescribed examination was conducted till 29.4.2002. The respondents ought to have conducted the prescribed departmental examination immediately after 9.8.99, at least for those who have completed 24 years of regular service and became eligible for consideration for second financial upgradation. For the failure of the respondents to conduct the prescribed departmental examination immediately after 9.8.99, the applicants who have succeeded in the departmental examination when conducted after 9.8.99 cannot be denied the benefit of financial upgradation with effect from the date of the introduction of the ACP Scheme, viz. 9.8.99. As seen from condition No.3 of the ACP Scheme, vide OM dated 9.8.99, financial benefit shall be granted from the date of the completion of eligibility period prescribed under ACPS on from the date of introduction of the scheme whichever is later. So, the due date is either the completion of 24 years period or 9.8.99 whichever is later. Therefore, though applicants satisfied the promotional norms on a later date, this benefit shall be given with effect from the due date viz., either completion of 24 years period or 9.8.99 whichever is later. In the instant case, as the later date is 9.8.99, the benefit shall be given with effect from 9.8.99, though the applicants passed the departmental examination on 29.4.2002. Thus, this point is found accordingly.

10. In the result, the application is partly allowed directing the respondents to give second ACP benefit to the applicants 2 to 11 and 14 to 18 also with effect from 9.8.99, though they passed the prescribed departmental examination conducted on 29.4.2002. The application is partly dismissed rejecting the claim of four advance increments on par with the clerks in the Railway Accounts Department and Indian Audit Accounts Service in South Central Railway. This order is to be implemented within three months from the date of receipt of this order. The parties shall bear costs."

(Emphasis supplied)

12. A careful reading of the determination of point No.(ii), which deals with the benefit of ACPS, shows that the Tribunal granted the ACPS benefits to respondents No.2 to 11 and 14 to 18 solely for the reason that the department did not conduct any examination before 29.04.2002. Learned counsel for the petitioners has drawn our attention to paragraph No.6 to 8 of the writ affidavit and apprised this Court that examinations were indeed conducted in the years 1999, 2000 and 2001 as well. Since respondents No.1, 12 and 13 passed the departmental examination prior to other respondents, they were given the benefit of ACPS from the due date, which is the date of passing the said examination. The other respondents are entitled to get the ACPS benefits only with effect from 29.04.2002, the date when they have passed the requisite examination. As per ACPS, the

benefits cannot be granted before passing the requisite departmental exam.

13. The respondents have not chosen to file any counter before this Court. Thus, we find no reason to disbelieve the averments made in paragraphs No.6 to 8 of the writ affidavit, wherein the petitioners elaborately mentioned the dates of the examination and apprised the Court that respondents No.1, 12 and 13 passed the departmental examination prior in time. Thus, it is clear like cloudless sky that the relevant departmental examinations were, indeed, conducted between 09.08.1999 and 29.04.2002. Thus, the very basis of the finding of the Tribunal that the respondents cannot be deprived from the fruits of ACPS benefits when examinations were not conducted, is factually incorrect and the order founded upon such incorrect finding cannot sustain judicial scrutiny.

14. Curiously, in the entire OA before the Tribunal, the applicants have nowhere pleaded with accuracy and precession that the Department did not conduct any departmental examination between 08.09.1999 and 29.04.2002 (the date when the applicants cleared the examination). In absence of any such

pleadings/foundation, there was no occasion for the learned Tribunal to grant relief on the assumption that since the Department has not conducted any examination, when the applicants have passed the same on 29.04.2002, they must get benefit from 08.09.1999.

15. Resultantly, the impugned order of the Tribunal dated 19.09.2008 in O.A.No.738 of 2006 is set aside and the writ petition is **allowed.** No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

SD/-K.AMMAJI
DEPUTY REGISTRAR

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SECTION OFFICER

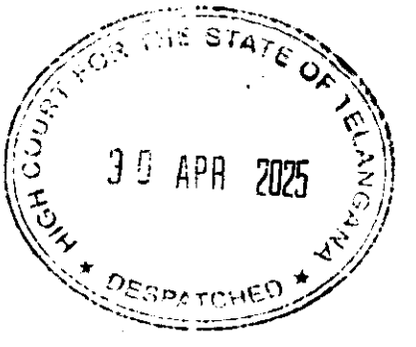
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1. One CC to Sri Gadi Praveen Kumar, Deputy Solicitor General of India [OPUC]
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KKS
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HIGH COURT

DATED:26/03/2025



ORDER

WP.No.6602 of 2009

ALLOWING THE WRIT PETITION WITHOUT COSTS

(4) SD:T 11/4/25