

Government of India
Ministry of Labour & Employment,
Central Government Industrial Tribunal-Cum-Labour Court-II, New Delhi.

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 71/2014

Date of Passing Award- 23rd January, 2023.

Between:

Shri Bansi Dhar,
Through All India Central Govt. Canteen Employees
Association,
F-48, Lado Sarai,
New Delhi-110030.

Workman

Versus

The Secretary,
Non Statutory Canteen, Dept. of Personal,
Govt. of India, North Block,
New Delhi 110001.

Management

Appearances:-

Shri G K Mall,
(Advocate)

For the Workman

Shri Atul Bhardwaj
(Advocate)

For the Management

A W A R D

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Non Statutory Canteen, Dept. of Personal, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 42011/63/2014 (IR(DU)) dated 17/07/2014 to this tribunal for adjudication to the following effect.

“Whether refusal to grant ACP in the scale of 4000-6000 to Shri Bansi Dhar, the workman by the management of Non statutory Canteen, Ministry of Defence under Joint

Secretary Training and CAO in the tune of Memo No. 03/04/2005-Dir. (C) dated 25.07.2012 is just fair and legal? If not what relief the workman concerned are entitled to?"

1. As per the claim statement the claimant workman was appointed as a bearer on 13.06.2008 in the Non Statutory Canteen under the management of the Joint Secretary Training and CAO New Delhi. As per a decision taken by the Government of India all posts in the Non Statutory Canteen and Tiffin Rooms run departmentally were treated as posts in connection with the affairs of the union and incumbent of such posts were declared as holders of Civil Posts under the Central Government. A notification to that effect was issued by the government on 11.12.1979. The said order was given effect from 01.10.1979. In the said order it was laid down that the condition of service of the incumbents of these posts will be framed under the proviso to article 309 of the constitution of India and shall be applicable retrospectively from 01.10.1979. Thereafter in exercise of the power as directed in the memorandum the Government framed the Rule to regulate the method of recruitment and condition of service of persons appointed to such civil posts. According to that rule specific provision were made in respect of the period of probation for the persons appointed between the period commencing from 1st day of October 1979 and ending with the date of publication of the Rule in the official gazette. According to this rule a member of the service who complete the period of probation shall be deemed to have been appointed on regular basis w.e.f the date he completes the probation. If any person has not completed 6 months on the date of publication of the rule his period of probation will be extended upto the date he completes 6 months service and the period of probation can be extended for another period of 6 months in case the period of probation is not found satisfactory. The claimant workman had successfully completed the period of probation as per the Recruitment Rule i.e GSR 54 and accordingly he was treated as a permanent employee and granted the pay scale of Rs. 160-275. The general secretary of the union as the representative of the claimant and persons in the same footing had filed a writ petition bearing No. WPC 6189-7044 of 1983 and 8426-8455 of 1983 before the Hon'ble Supreme

Court asking for a similar benefit as granted to the Non Statutory Canteen employees. It was prayed that the benefit be granted w.e.f 22.10.1980. The Hon'ble Supreme Court passed an interim order in this regard. Pursuant thereto the DOPT issued an office memorandum dated 03.11.1983 deciding that in compliance to the interim direction of the Hon'ble Supreme Court, the pay of the employees in Non Statutory Canteen may be fixed in the revised scale w.e.f 26.09.1983 as indicated in column –III of the annexure to the said office memorandum. The manner in which the pay scale is to be revised was also indicated in the said office memorandum. The Hon'ble Supreme Court in the above said writ petition passed the final order on 11.10.1991 wherein it was directed that the benefits granted in the interim order dated 26.09.1983 shall deemed to be operative from that date. Any further benefit is admissible, those will be admissible from 01.10.1991. Pursuant thereto the Government of India Ministry of Personal and public grievance issued another office memorandum dated 29th January 1992, declaring all employees of Non Statutory Canteen, departmental Cooperative Canteen registered with the Director of the canteen a central government employee w.e.f 01.10.1991. The pay commission, in the year 1996, also recommended that from 01.10.1991 all the benefits available to the other central government employee or comparable status should be extended to the employees of Non Statutory Canteen. It was also recommended by the pay commission that the posts of cook and assistant Halwai be upgraded to the pay scale of Rs. 950 to 1500/- as these are skilled posts and demand for the corresponding pay scale is justified.

2. The Ministry of Finance, department of expenditure, constituted a committee named Staff Inspection Unit to resolve the issue and the committee recommended the pay scale for all the posts in the Non Statutory Canteen in its report submitted in May 2003. This report was reviewed by the Ministry of Finance and final orders were issued on 22.12.2004 in which designation of the posts were restructured. But the recommendation of the staff inspection unit with regard to the pay scale of Bearer Assistant Halwai cum cook was not considered nor any association was communicated about the adverse effects of the benefits which stands contrary to the observation of the Hon'ble

Supreme Court in the case of **MMR Khan vs. Union of India**. Though the post of Assistant Halwai and cook as well as Halwai is skilled work and their duties and responsibility is the same as that of the clerk in the non statutory canteen the same was not considered at all. While the matter stood thus, the clerks appointed in different non statutory canteens had challenged the pay scale of 3200-4900 granted to them before the Principle Bench CAT Delhi through their Association. The Hon'ble CAT, in OA No. 714 of 2005 passed an order directing that the canteen clerks have to be granted the benefit of ACP in the pay scale of Rs. 4000-6000 and this aspect be considered by the government. Pursuant to the said order of the Hon'ble CAT the government of India (DOPT) issued an order dated 19th April 2006 in which the pay scale of Rs 4000-6000 is allowed to the clerks working in the non statutory canteen during grant of ACP. The similar scale was granted to the cooks and Head cooks of the non statutory canteens run by the department of space, DRDO, etc. thus, the association of the claimant served a demand notice for grant of the pay scale of Rs. 4000-6000 to the claimant and the persons of same rank w.e.f 09/08/1999. But the same was not considered by the management nor it was forwarded to DOPT for consideration. It has also been stated that the similar dispute was raised before the industrial Tribunal in ID NO.7/2009 in which the claimant Rajender Sharma was bearer in the non statutory canteen under DRDO. The Industrial Tribunal by the Award allowed the pay scale of Rs. 4000-6000 in grant of ACP to the bearers of that canteen. The claimant through its union raised a dispute before the conciliation officer. During conciliation the management raised dispute that the claimant since has been treated as civilian Central Government Employees, cannot invoke the provisions of ID Act. But the Hon'ble Supreme Court in WPC No. 248 of 1985 have clearly held that Id Act is applicable to all the canteen employees. The conciliation since failed the appropriate government referred the matter to this tribunal for adjudication. The claimant has pleaded that the action of the management in not granting him ACP in the scale of 4000-6000 is illegal and a direction be issued in this regard.

3. The management filed written statement challenging the maintainability of the present proceeding before this tribunal. In

addition to that it has been pleaded that the canteen workers are now holders of Civil Post and as per Rule 7 of the Central Civil Service Classification control and Appeal Rules they are included in the General Central Service of the corresponding Group. As per the decision taken by the Central Government all posts in the non statutory canteen and Tiffin Rooms run departmentally by the Government of India were treated as posts in connection with the affairs of the union and incumbent of such posts declared as holder of Civil posts. Accordingly a set of Rules called the Departmental Canteen Employees Recruitment and Condition of Service Rules 1980 was notified. Some section of the canteen employees filed a writ petition before the Hon'ble Supreme Court (**C K Jha and others vs. Union of India**) praying to treat them equally and at par with the general central government employees. The Hon'ble Supreme Court passed an interim order dated 26.09.1983 directing the Central Government to pay all employees of the non statutory canteen at the same rate and same basis on which statutory canteen employees being paid. In the said writ application final order was passed on 11.10.1991 in which the Hon'ble Supreme Court came to hold that the Principle decided in the case of M MR Khan and others vs. UOI squarely applies. While allowing the writ petition the court observed that certain reliefs granted by the interim order dated 26.09.1983 shall deemed to be operative from that date of order. In case any further benefits are admissible, those will be effective from 01.10.1991. For the purpose of calculation of pension, service from the date of interlocutory order shall be counted. Based on the said order of the Hon'ble Supreme Court the DOPT in consultation with the Ministry of Law and Ministry of Finance issued O M No. 12-5-1991 as per which the employees of the canteens are to be extended all benefits as are available to other Central Government Employees of comparable status except GPF Pension and Group insurance in respect of which separate instruction would be issued. Accordingly separate instructions were issued. The service of departmental canteen employees are governed by separate rules framed under constitutional provision. It is a decentralized Cadre as each Ministry frames its own Recruitment Rules.

4. The claimant Banshi Dhar was appointed as bearer w.e.f 05.04.1974 in the pre revised scale of 2610-3540 as recommended by 5th CPC in the departmental canteen. As per his service record, his educational qualification has been noted as Nil which means he had not passed the required educational qualification. The claimant had made a demand for grant of ACP in the scale of 4000-6000 as has been granted to one Virender Singh by Ministry of Defence in the tune of DOPT Memo No. 03-04-2005. But Banshi Dhari the claimant, stands in a different footing as he was appointed as a bearer on 09.02.1976 in the pay scale of 2610-3540 in the pre revise scale. He was granted first and second ACP con completion of 12 and 24 years in the pay scale of 3050-4590 and 3200-4000 respectively w.e.f 09.08.1990 and 26.09.2007. This was allowed on completion of years of service reckonable from the year 1983 as directed by the Hon'ble Supreme Court. He has been granted 3rd financial upgradation under MACP Scheme Pay Band-I, GP 2400 w.e.f 26.09.2013. Hence, he is not entitled to the financial upgradation of ACP as claimed by him. It has also been stated that on the basis of the recommendation of 5th CPC, ACP Scheme was introduced for Central Government Employees vide OM No. 35034/1/1997 dated 09.08.1999. As per this scheme the employee would be eligible for 2 financial upgradation on completion of 12 years and 24 years of regular service respectively and the said financial upgradation under ACP was available only if no regular promotion during the prescribed period of 12 and 24 years have been availed. In this case for the two upgradations allowed as per his eligibility the claimant was not found entitled to the ACP scale as as claimed by him. But he was granted 3rd financial upgradation under MACP w.e.f 26.09.2013. Though, the ACP scheme which became operational from 09.08.1999 was applicable to the non statutory canteen employees the claimant is not entitled to the same. For the purpose of determining the eligibility for consideration of the financial upgradation under the ACP Scheme the service rendered by the canteen employees is reckonable from 26.09.1983 i.e from the date of interim order passed by the Hon'ble Supreme Court or actual appointment in regular service whichever is later. The claimant is thus, not entitled to the ACP as claimed by him. The government on considering the recommendation of 5th CPC decided to grant revised

scale of pay to the common category of non statutory canteen employees in different offices. As per the said revision a bearer was to get the revised pay scale of 2610-60-3150-65-3540. It is correct that as per the recommendations of 5th CPC. The ACP notified on 09.08.1999 was extended to the employees of non-statutory canteens located in Central Government Offices. As per the scheme, employees would be illegible for minimum of two financial of upgradation in the entire service career on completion of 12 and 24 years of regular services. As per this scheme conditions no. 6, in annexure 1 to OM No. 35034/1/97 dated 09.08.1999 all promotion norms have to be fulfilled for upgradation under the scheme. Following the Supreme Court order the hierarchy and scale of canteens employees was modified taking into consideration the implementation of SIU(Staff Inspection Unit) and DOPT issued OM no. 03/10/2001 dated 22.12.2004.

5. The ACP scheme for employees of non-statutory canteens was further revised vide DOPT letter no. 314/2005 dated 14.01.2008. To obviate certain anomalies, the scale to be given on grants of first ACP was annexed to the said letter. Owing to implementation of the said ACP order dated 14.01.2008, again certain anomalies cropped in while the pay was fixed. Thus, the same was again brought to the notice of DOPT. Thereafter the ACP scheme was partially reviewed and modified in respect of the ACP to be granted to the bearers/and the coffer/Tea makers in the pay scale of Rs. 2610/3540 indicating that the persons who are matriculate and eligible for the promotion post for clerk in the pay scale 3050-4590 and second promotion to the post of Assistant Manager-cum-store keeper shall be granted ACP in the pay scale of 4000-6000 as per the recruitment rules. The non-matriculate bearers were illegible for first promotion to the post of Assistant halwai cum- cook in the scale of 3050-4590 and second promotion to the post of halwai-cum-cook in the pay scale of 3200-4900. Accordingly, OM no. 3/4/2005 dated 25.07.2012 was issued. Since the claimants' education as per his service record was recorded as Nil, he was considered in the non-matriculate category. It was also noticed that the claimant had already been granted two financial upgradation on his 12th year and before 24 years of service. Thus the first and

second ACP were justifiably granted. He was granted third upgradation under MACP. Hence, his claim is not maintainable.

6. The claimant filed replication denying the stand of the management.

On these rival pleadings the following issues were framed.

ISSUES

1. Whether refusal to grant ACP in the scale of 4000-6000 to the workman by the management of non-statutory canteen is just fared and legal? If so its effect.
2. If not, what relief the claimant is entitled to and from which dated.

The claimant examined himself as WW1 and filed a series of documents which are all Governments notification and orders related to grant of ACP issued from time to time. Similarly, on behalf of the management one Kulbhusan Malhotra, Under Secretary DOPT testified as MW1. He also exhibited a series of documents marked as MW1/1 to MW1/36.

7. At the outset of the arguments the Ld. A/R for the management challenged the jurisdiction of this tribunal to the adjudicated upon the issue.

It was argued that the claimant having been declared as holder of Civil posts under the Central Government with effect from first day of October 1979, as per the Governments notification dated 11th Dec 1979 and the recruitment rules has been separately framed, every person appointed or deemed to have been appointed under the said rule, is a central government employees and as such the provisions of ID Act, are not applicable in as much as the office of the respondent is not an industry under the Industrial Dispute Act. Moreover, as per rules 7 of Central Civil Services classification control and appeal rules are deemed to be included in the General Central Services of corresponding group. As such the dispute relating to them are either to be dealt by the Central Administrative Tribunal or under the writ jurisdiction of the Hon'ble High court. He thereby prayed for dismissal of the claim petition for want of jurisdiction. It was also

pointed out that the issue came of before the Hon'ble Supreme Court in Civil appeal no. 6462 and 6464 of 2003 against the order passed by the Hon'ble High Court of Bombay, in the case of Umesh Korga bhandari vs. Mahanagar Telephone Nigam. The Hon'ble Supreme Court after a detail consideration referred the matter to a higher bench which is still pending. Hence, the order passed by the Hon'ble Division Bench of Bombay in the case of Mahanagar Telecom Nigam referred supra holding that the dispute of canteen employees is not maintainable under section 1091) of the Id Act is not maintainable, holds good in the file. The reply arguments of the Ld. A/R for the claimant is that the proceedings is maintainable and similar orders have earlier been passed by this Tribunal. This aspect shall be dealt while dealing with the issue relating to ACP.

FINDINGS

8. The admitted facts are that the workman was appointed as a bearer on 09.02.1976 and retired from service in the year 2015. Pursuant to the order passed by the Hon'ble Supreme Court the DOPT issued an order dated 03.11.1983 granting all the benefits granted to the employees of statutory canteens. The Hon'ble Supreme Court passed the final order on 11.10.1991 and pursuant thereto a decision was taken by the Government of India and all posts in the non-statutory canteens and Tiffin room run departmentally by the Government of India were treated as posts in connection the affairs of the Union and the incumbents of such posts were treated as holders of the civil posts with effect from 1.10.179 pursuant to the notification rules were framed under the proviso to article 309 of the Constitution of India governing the service condition of the canteen employees. The canteen employees since filed writ petition before the Hon'be Supreme Court in the case titled C.K. Jha and others vs. Union of India, an order was passed directing the central government to pay all employees of non statutory canteens at the same rate and at the same basis on which employees of statuary canteen are paid. The claimant as per the claim statement was appointed as a bearer on 20.10.1972. The Government declared all the employees of non statutory canteens as holders of civil posts under the Central Government. By notification dated 23.12.1980, GSR 54 as per which the claimant and others were

declared as holder of civil posts under the central government with effect from first day of October 1979. Under the service rule, framed every person recruited to the services after 1st October 1979 has to complete a six month period of probation. A member of the service who complete his period of probation satisfactorily shall be deemed to have been appointed on regular basis with effect from the date he completes his period of probation. The claimant since completed the period of probation as per the recruitment rules he was granted the pay scale of Rs. 160-275. The general secretary, as the representative of the workman had filed writ petition before the Supreme Court for grant of similar benefits as extended to the employees of statutory canteens. The Supreme Court passed an interim order and on the basis of the said order the interim relief was granted by the Government by the order of DOPT dated. 03.11.1983. It is also admitted that the Hon'ble Supreme Court in the said writ petition passed the final order dated 11.10.1991 and pursuant thereto the interim relief granted was deemed to be extended from 03.11.1983 and any additional benefit to be granted shall be admissible with effect from 01.10.1991. The pay commission in the year 1996 recommended that the employees of statutory and non statutory canteens as per the order of the Hon'ble Supreme Court be treated at par and similar benefits shall be admissible to them since they have already been declared as civil employees. The claimant was appointed as bearer with effect from 20.10.1972 in the pre revised scale of 2610-3540. As per 5th CPC the ACP scheme became operational from 09.08.1999 and as per the said scheme the ACP was made applicable to the non-statutory canteens employees too. Before that in order to draw parity in the cadre of statutory and non statutory and canteens employees the Govt. had constituted a staff inspection unit which had recommended restructuring of the post and the admissible pay scale.

9. The claimant in his oral testimony has stated that the ACP was admissible as a mode of financial upgradation to the employees who could not get promotion within 12 years or 24 years of regular service as the first and second ACP. Though the scheme was extended to the non statutory canteen employees and the claimant was entitled to first ACP in the pay scale of 3050-4500 and later on when promoted as cook which was re-designated as Assistant Halwai cum cook as per the

recommendation of 5th pay commission he should have been allowed second ACP in the pay scale of 4000-6000 and third MACP in the pay scale of 5000-8000. The Management without application of mind refused to grant him second ACP in the scale of 4000-6000 which substantially affected his pay and pension. It has also been stated that the post of cook and clerk in the non statutory Canteen have been treated as skilled post and the clerk obtained an order from the principal Bench CAT New Delhi for grant of second ACP in the scale of 4000-6000. Thereby the claimant has prayed that a direction be issued to the management for grant of second ACP to him from the date it is admissible in the scale of 4000-6000.

10. The witness examined on behalf of the management while relying upon a series of documents submitted that the claimant has given misleading picture of the ACP allowed to the clerk of not statutory canteens. As per the direction of the Supreme Court the employees of the not statutory canteen were declared as central government employees with effect from 01.10.1991 and all the benefits of central government employees of comparable status were allowed. On the basis of recommendation of fifth CPC, ACP was introduced for central government employees by notification dated 09.08.1999. As per this scheme the employees would be eligible for two financial up gradation on completion of 12 years and 24 years of regular service respectively. The financial up gradation under ACP scheme was available only if no regular promotion during the prescribed period 12-24 years have been availed by the employee. In the case the claimant he got the first and second ACP in the scale 3050-4590 and 3200-4900 with grade pay of 2000. As such the question of non grant of ACP doesn't arise and he was rightly granted third financial up gradation under MACP with effect from 26.09.2013. Hence, he got all his dues and the claim is not maintainable.

11. The ACP scheme became operational from 09.08.1999 which is the date of issue of OM no. 35034/1/1997. This scheme was extended to the canteen employees by OM no. 3/4/1999 dated 25.07.2000. As per this notification for the purpose of determining the eligibility for financial up gradation of the canteen employees under the ACP

scheme the service rendered by the canteen employees was reckonable from 26.09.1983 that is the date of interim order passed by the Hon'ble Supreme Court. As seen from the notification issued by the Ministry of Finance Department of Expenditure notification no. F.50(1/IC/97) dated 30th Sept 1997, it was decided to revised the pay scale to the common category department canteen employees and non statutory canteen in various offices of the government. As per the said notification the pay scale of the bearer was revised to 2615-3540. The claimant was granted first and second ACP on completion of 12 and 24 years. This has been admitted by the claimant that he got 2 ACPs on completion of 12 and 24 years. Moreover, the management has stated that the claimant was not entitled to ACP scale as a matriculate making him eligible for first promotion to the post of clerk and second promotion to the post of Assistant management cum store keeper. The MACP has been granted to him as a non matriculate bearer which is justified. Thus, on a careful analysis of the evidence and the documents relied upon by the claimant as well as management, it is held that the claimant is not entitled to ACP in the scale of 4000-6000 as claimed by him. The issue is accordingly answered accordingly. Be it stated that the case of the claimant in ID No. 07/2009, decided earlier by this tribunal granting ACP in the scale of 4000-6000 is distinguishable on facts, as the claimant of that proceeding was a matriculate and eligible for promotion to the post of clerk and then to the post of storekeeper.

12. In view of the decision arrived while deciding issue no. 1 it is held that the claimant is not entitled to the relief sought for. Hence ordered.

ORDER

The claim petition be and the same is dismissed on contest. It is held that the claimant is not entitled to the grant of ACP as claimed by him. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

Presiding Officer.
CGIT-Cum-Labour Court.
23rd January, 2023.

Presiding Officer.
CGIT-cum-Labour Court.
23rd January, 2023.