

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.2673 OF 2002
WITH
O.A. No.2674 OF 2002
O.A. No.3021 OF 2002

(17)

New Delhi, this the 26th day of August, 2003

HON'BLE SHRI KULDIP SINGH, JUDICIAL MEMBER
HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

O.A. NO.2673 OF 2002

Suman Lata Bhatia,
W/o Shri Vinod Kumar Bhatia,
Sr. Translator (Hindi),
P.A. No.30492
HQ Western Air Command, IAF,
New Delhi.

Residential Address:-

Suman Lata Bhatia,
W/o Late Shri Vinod Kumar Bhatia,
B-29, East Uttam Nagar,
Uttam Nagar,
New Delhi.

....Applicant

(By Advocate : Shri G.D. Bhandari)

Versus

Union of India

1. The Secretary,
Ministry of Defence,
Government of India, New Delhi.
2. The Officer Commanding,
HQ Western Air Command, IAF (C.Edu. D),
Suborto Park, New Delhi-110010.
3. The Air Officer I/c Pers.,
Air Headquarters, Vayu Bhawan,
New Delhi.

....Respondents

(By Advocate : Shri R.P. Aggarwal)

O.A. No.2674 OF 2002

Smt. Veena Arora, W/o Shri J.K. Arora,
Sr. Translator (Hindi), Edu. Section,
P.A. No.31949-B,
Air Force Record Office,
New Delhi-110010.

Residential Address:-

Smt. Veena Arora,
8/16, Ground Floor,
Old Rajinder Nagar,
New Delhi-110060.

....Applicant

(By Advocate : Shri G.D. Bhandari)

Versus

Ch. Bhandari

Union of India
 1. The Secretary,
 Ministry of Defence,
 Government of India, New Delhi.

2. The Officer Commanding,
 HQ Western Air Command, IAF (O.Edu. D),
 Suborto Park, New Delhi-110010.

3. The Air Officer I/c Pers.,
 Air Headquarters, Vayu Bhawan,
 New Delhi. Respondents
 (By Advocate : Shri M.K. Bhardwaj for Shri A.K.
 Bhardwaj)

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O.A. No.3021 OF 2002

Smt. Manju Arora,
 W/o Shri Pawan Arora,
 Sr. Hindi Translator, P.A. No.30493,
 7 BRD, AF Station, Tughlakabad,
 New Delhi.

.... Applicant

(By Advocate : Shri G.D. Bhandari)

Versus

Union of India
 1. The Secretary,
 Ministry of Defence,
 Government of India, New Delhi.

2. The Air Officer Commanding,
 7 BRD, AF Stn., Tughlakabad,
 New Delhi-110010.

3. The Air Officer I/c Pers.,
 Air Headquarters, Vayu Bhawan,
 New Delhi. Respondents

(By Advocate : Mrs. Meenu Mainee)

ORDER (ORAL)

SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER :-

These Original Applications under Section 19 of the Administrative Tribunals Act, 1985 are disposed of by a common order, as the issue involved is similar in all the OAs.

OA 2673/2002

The applicant - Smt. Suman Lata Bhatia, who is an employee of Ministry of Defence and working as

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Senior Translator (Hindi), has requested for setting aside the order dated 4.9.2002 (Annexure A-3) by which the first financial upgradation under the Assured Career Progression Scheme ('ACP Scheme' for short) granted to her w.e.f. 9.8.1999 in the pay scale of Rs.6500-10500 has been cancelled and recovery of the payments have been ordered to be made. The reason given for cancellation by the respondents is that she was offered vacancy-based promotion made as Translation Officer (Hindi) in the past but she refused to accept the promotion on personal grounds.

OA 2674/2002

The applicant - Smt. Veena Arora is also an employee of Ministry of Defence working as Senior Translator (Hindi). She has made a prayer for setting aside order dated 8.8.2002 (Annexure A-3) by which the benefit of financial upgradation under the ACP Scheme which granted upgraded pay in the scale of Rs.6500-10500 to her w.e.f. 9.8.1999 has been cancelled and the recovery of payments is proposed to be made. This impugned order has been passed because she had earlier refused to accept her promotion as officiating Translation Officer (Hindi) for personal reasons.

OA 3021/2002

The applicant - Smt. Manju Arora, Senior Hindi Translator working in the Ministry of Defence has also prayed for setting aside the order dated 10.10.2002 (Annexure A/3) by which upgradation of pay



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in the scale of Rs.6500-10500 granted earlier to her w.e.f. 9.8.1999 has been cancelled. She has also requested for restraining the respondents from making any recovery in pursuance to the impugned order. The impugned order in this case has also been passed because she had earlier refused the vacancy-based promotion as Translation Officer (Hindi).

2. The learned counsel of the applicants in all the three cases has stated that the applicants were eligible for upgraded pay scale under the ACP Scheme which came into force w.e.f. 1.6.1999 as per OM dated 9.8.1999. In all the three cases, the applicants had refused to accept the regular promotion prior to coming into force the said Scheme. In this connection, as an illustration, he referred to order dated 23.8.1982 (Annexure A-13 in the case of Smt. Veena Arora) wherein policy to be followed in cases where persons refused promotion to higher grade has been explained. This policy refers to ban on promotion "till expiry of one year from the date of acceptance or refusal of promotion". According to the learned counsel, the applicants were eligible for even regular promotion after expiry of one year. Therefore, denial of upgradation of pay under the ACP Scheme is illegal. In this connection, he also stated that the ACP Scheme has came into force from the date of its notification on 8.9.1999 and cannot be applied retrospectively. He placed reliance on the decision of the Hon'ble Supreme Court in the case of K.



Kuppusamy and Another Vs. State of T.N. and others

1998 (8) SCC 469, in support of his contention.

3. Alternatively, the learned counsel urged that the impugned orders should be quashed and set aside so far as these prescribe lower pay scale to the applicants. These orders entail consequences of recovery of pay and allowances already paid to the applicants w.e.f. 8.9.1999 on upgradation of pay of the applicants. He referred to the decision of the Hon'ble Supreme Court in the case of Shyam Babu Verma and Others Vs. Union of India and Others, 1994 (27) ATC 121, wherein the Hon'ble Supreme Court has held that recovery on account of higher pay given to the petitioners could not be enforced as the petitioners revised higher pay was given due to their own fault. In another case, of Sahib Ram Vs. The State of Haryana and Others, JT 1995 (1) SC 24, the Hon'ble Supreme Court has held that the higher scale given to the applicants was not on account of any misrepresentation, so the excess amount paid could not be recovered. It was, therefore, urged that no recovery should be made from the applicants.

4. The respondents have opposed the prayer of the applicants. According to the respondents, all the three applicants were promoted regularly as Translation Officers but they refused to take up the post on which they were promoted. The case of the respondents is that the OM dated 9.8.1999 under which

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the financial upgradation was given to the applicants has been subsequently explained by the DOP&T vide OM dated 18.7.2001. The relevant point of doubt has been clarified as follows:-

"S1. No.38

A person has refused a vacancy - based promotion offered to him prior to his becoming eligible for financial upgradation under ACPS, on personal grounds. Will he be eligible for financial upgradation under ACPS?

A person had refused a regular promotion for personal reasons. He has since completed 24 years' of service. Will he be entitled for 2nd financial upgradation?

The ACP Scheme has been introduced to provide relief in cases of acute stagnation where the employees, despite being eligible for promotion in all respects, are deprived of regular promotion for long periods due to non-availability of vacancies in the higher grade. Cases of holders of isolated posts have also been covered under ACPS, as they do not have any promotional avenues. However, where a promotion has been offered before the employee could be considered for grant of benefit under ACPS but he refuses to accept such promotion, then he can not be said to be stagnating as he has opted to remain in the existing grade on his own volition. As such, there is no case for grant of ACPS in such cases. The official can be considered for regular promotion again after the necessary debarment period.

In the second case also, since in terms of condition No.10 of the ACPS, on grant of ACPS, the employee shall be deemed to have given his unqualified acceptance for regular promotion on occurrence of vacancy, the officer will have to give in writing his acceptance of the regular promotion when offered again after

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the debarment period before he can be considered for grant of second financial upgradation under ACPS."

5. The learned counsel of the respondents invited attention to para 11 of the ACP Scheme as per OM dated 9.8.1999 which provides that any interpretation /clarification of doubt as to the scope of meaning of the provision of the ACP Scheme should be given by the DOP&T (Establishment 'D'). According to the learned counsel, the above clarification has been given by the Department of Personnel and Training. Therefore, the same is binding.

6. Learned counsel of the respondents also invited attention to the recommendations of Vth Central Pay Commission ('Vth CPC' for short) by para 22,31 which has recommended that a comprehensive and coherent promotion scheme should be evolved which assured adequate career progression in a reasonable time frame to all categories of employees. The Vth CPC had also pointed out certain basic features of Assured Career Progression Scheme recommended for Central Govt. employees which included the followings:-

"(xi) The higher grade under this scheme shall not be given to those who had declined regular promotion earlier. In cases where a person who has been placed in a higher pay scale under the Scheme refuses functional promotion involving higher responsibilities on the actual occurrence of the vacancy, the employee shall be reverted to the

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lower pay scale. As such, while giving the higher pay scale under the Scheme, an undertaking should be taken that the employee shall occupy the regular promotion on occurrence of the vacancy, and in case he refuses to accept the higher post, he shall be kept out of the Assured Career Progression Scheme."

Pursuant to this recommendation of the Vth CPC, the ACP Scheme by QM dated 9.8.1999 has been issued. It was, therefore, stated that the applicants are not entitled for the benefits under the ACP Scheme.

7. The learned counsel of the respondents also invited attention to a copy of Ministry of Defence's letter dated 7.9.2000 (Annexure R-I to OA 3021/2002) which states as under:-

"A case was referred to Department of Personnel and Training (DOP&T) for clarification wherein the employees had completed 12/24 years of service and they had been offered regular promotion before the issue of order of implementation of the ACP Scheme. These Employees had refused the regular promotion offered to them earlier. The point of doubt in this case was whether these employees may be given one or two financial upgradation (as the case may be) under the ACP scheme only from the date they became eligible for regular promotion."

2. DOP&T has given their clarification as under:-

"The basic philosophy of scheme is to provide safety net for hard cases of Stagnation where no vacancy based promotion could be offered to an employee within the Specified period of regular service. In this particular case as the regular promotion offered has been refused, the employee has lost his claim for upgradation under ACP Scheme. In terms of relevant instructions he may again be offered vacancy based promotion after the necessary debarment period is over."

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8. By another letter dated 15.11.1999 (Annexure R/9 in OA 2674/2002), the Air Headquarters, New Delhi had reproduced the conditions as per DOP&T's OM dated 9.8.1999. The list enclosed with this letter included the name of Smt. Veena Arora (Applicant in OA 2674/2002), who was being given first financial upgradation on completion of 12 years of service. But in view of the recommendations of the Vth CPC as well as clarifications issued by the DOP&T from time to time, she was not eligible. Learned counsel pointed out that as per OM dated 10.2.2000 "cases where the ACP Scheme has already been implemented shall be reviewed/rectified if the same are not found to be in accordance with the scheme/clarifications." Therefore, the impugned orders of cancellation of the upgradation orders under the ACP Scheme was justified, since the recovery is in pursuance to an order which is erroneous, the same is also justified. The learned counsel of the respondents, therefore, urged that OAs should be dismissed.

9. We have heard the learned counsel of the parties and perused the materials available on record.

10. There is no dispute that the OM dated 9.8.1999 issued by the Department of Personnel and Training relating to the Assured Career Progression Scheme was to deal with the problems of genuine stagnation and

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hardship faced by the employees due to lack of adequate promotional avenues. The learned counsel of the respondents has pointed out the recommendations of the Vth CPC which has been referred to earlier in this order. According to the Vth CPC's recommendations, the Scheme was not meant for the persons, who had refused promotion in regular course. The clarifications issued by the DOP&T vide Sl. No.38 with OM dated 9.5.2001, extracted earlier, clearly states that where the promotion has been offered before the employee could be considered for grant of benefit under the ACP Scheme, but he refused to accept such promotion, he cannot be said to be stagnating as he has opted to remain in the existing grade on his own volition. Such official can be considered for regular promotion again after the necessary debarment period. Therefore, there is no case for grant of ACP Scheme promotion in such cases. In this view of the matter, we are of the considered view that the applicants of all these OAs are not entitled to the benefits of upgraded pay scales in terms of the ACP Scheme. Therefore, the impugned orders are justified to this extent. So far as recovery arising on account of the cancellation of the upgradation of the applicants' pay etc. is concerned, the same is considered bad in the light of the decisions of the Hon'ble Supreme Court on which reliance has been placed by the learned counsel of the applicants. There is nothing on record to suggest that the

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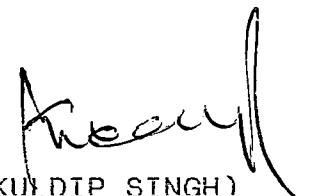
upgraded pay scale was allowed to the applicants on account of their misrepresentation. Therefore, the decision of the Hon'ble Supreme Court in the case of Shyam Babu Verma (supra) squarely applies. Any recovery in pursuance to those impugned orders is held to be unjustified. We, therefore, direct the respondents not to make any recovery from the applicants in respect of the pay and allowances granted to the applicants on account of upgraded pay scale under the ACP Scheme.

11. In view of the facts of these cases and for the reasons mentioned hereinbefore, all the three OAs are partly allowed without any order as to costs.

12. Let a copy of this order be placed in the files of all the three OAs.



(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER



(KULDIP SINGH)
JUDICIAL MEMBER

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