

Central Administrative Tribunal
Principal Bench

OA No. 4401/2014
OA No. 4405/2014
OA No. 4408/2014

New Delhi, this the 12th day of February, 2020

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A. K. Bishnoi, Member (A)**

OA No. 4401/2014

Narendra Kumar Jain,
Aged about 61 years,
S/o Sh. Kishan Das Jain,
Working as Assistant Director (Retd.)
R/o B-497, Kendriya Vihar,
Sector-51, NOIDA-201301 (UP) - Applicant

(By Advocate: Shri M.K. Bhardwaj)

Versus

Union of India through,

1. The Secretary,
Ministry of Textiles,
Udyog Bhawan, New Delhi
2. The Development Commissioner,
(Handicraft), West Block-7,
RK Puram, New Delhi - Respondents

(By Advocate: Sh. R.K. Sharma)

OA No. 4405/2014

Vinod Kumar Saxena,
Aged about 61 years,
S/o Sh. Sh. Har Swaroop Saxena,
Working as Assistant Director (Retd.)

R/o 15/9, Isha Nagar,
Sasni Gate, Aligarh-202001

- Applicant

(By Advocate: Shri M.K. Bhardwaj)

Versus

Union of India through,

1. The Secretary,
Ministry of Textiles,
Udyog Bhawan, New Delhi
2. The Development Commissioner,
(Handicraft), West Block-7,
RK Puram, New Delhi - Respondents

(By Advocate: Sh. Subhash Gosai)

OA No. 4408/2014

Kuldip Singh Guleria,
Aged about 61 years,
S/o late Sh. TR Guleria,
Working as Assistant Director (Retd.)
R/o Village and Post-Dadoli,
Tehsil and Distt. Kangra, HP

- Applicant

(By Advocate: Sh. MK Bhardwaj)

Versus

Union of India through,

1. The Secretary,
Ministry of Textiles,
Udyog Bhawan, New Delhi
2. The Development Commissioner,
(Handicraft), West Block-7,
RK Puram, New Delhi - Respondents

(By Advocate: Sh. Subhash Gosai)



: O R D E R (ORAL) :

Justice L. Narasimha Reddy :

As common questions of facts and law are involved in these three OAs, they are disposed of through this common order.

2. For the sake of convenience, the facts of OA No. 4401/2014 are referred to in detail. The facts in other two OAs are also similar, except for small variations.

3. The applicant was appointed on 21.08.1978 as Technical Assistant (TA) (Metal) in the Ministry of Industry, on temporary basis and was regularised w.e.f. 16.01.1982. The applicant was shifted to the Ministry of Textiles. The promotion from that post is to Assistant Development Officer (ADO). In the course of reorganization, sometime around 1996, the post of Technical Assistant (TA) was merged with that of Investigator, and the resultant post was made the feeder category for the Handicrafts Promotion Officer (HPO) in the Ministry of Textiles.

4. It is stated that the applicant was extended the benefit of 1st ACP w.e.f. 09.08.1999, the date on which



the concerned OM came into force and was placed in the pay scale of Rs.5500-9000/-, attached to the post of HPO. It is also stated that he was extended the benefit of 2nd ACP on 21.08.2002 in the pay scale of Rs.6500-10500/-.

5. The applicant addressed a letter dated 12.03.2014, seeking some information pertaining to the extension of benefit of ACP/MANP in favour of two employees by name, YP Verma and A.K. Mahrotra, who too worked as TAs. Through a reply dated 02.05.2014, the applicant was informed that the benefits were extended to those employees strictly in accordance with the relevant rules. This OA is filed, challenging the communication dated 02.05.2014.

6. The applicant contends that Mr. YP Verma, who was a Technical Assistant, approached this Tribunal by filing OA No. 1063/2008, and he was granted the relief of 1st ACP in the form of upgradation to the pay scale of Rs.6500-10500 and similar benefit was not extended to him.

7. On that basis, the applicant has claimed the benefit of financial upgradations under 1st and 2nd ACP in the pay scale of Rs.6500 to Rs.10500 and Rs.10500



to Rs.15200 respectively w.e.f. 09.08.1999 and 21.08.2002. He has also claimed the benefit of 3rd ACP w.e.f. 01.09.2008.

8. The respondents filed a detailed counter affidavit, opposing the OA. According to them, the subject matter of the OA No. 1063/2008 was only the eligibility of Mr. YP Verma to be promoted since he did not possess the prescribed qualifications. It is also stated that the applicant did not raise any objection when the benefit of 1st and 2nd ACP were granted to him, and it is not open to him to raise this issue at this stage. The respondents further state that the applicant was promoted to the post of HPO on 15.02.2002, and he cannot claim any benefit of the higher scale in the form of ACP.

9. Earlier the OA No. 1063/2008 was disposed on 16.12.2008, observing that the applicant is entitled to the financial benefits claimed by him. The respondents filed WP No. 10275/2017 against that order of the Tribunal. The Hon'ble High Court expressed its serious reservation about the content of the order passed by the Tribunal and remanded the matter. Accordingly, the O.A. is listed for hearing.



10. We heard Shri M.K. Bhardwaj, learned counsel for the applicant and Shri R.K. Sharma, learned counsel for the respondents.



11. The entry of the applicant was into the post of TA (Metal) in the Ministry of Industry, on temporary basis, on 21.08.1978 and his services were regularized on 16.01.1992. Initially, he was in the Ministry of Industry and thereafter, he was shifted to Ministry of Textiles. There was a reorganization of the posts in the Ministry of Textiles in the year 1996. The post of TA and the post of Investigator were merged and such a post was made as a feeder category for HPO.

12. The Government introduced the Assured Career Progression Scheme (ACP) vide OM dated 09.08.1999. An employee, who did not earn promotion for a period of 12 years, even while being eligible, was extended the benefit of 1st ACP in the form of pay scale attached to the next higher post. Second such benefit was on completion of 24 years of service. Since the applicant completed 12 years of service, by the time the said OM was issued, and he did not earn promotion, he was extended the benefit of 1st ACP w.e.f. 01.09.1999 and was placed in the pay scale of Rs.5500-9000, which is

attached to the post of HPO. He has also been granted the 2nd ACP. He got regular promotion to the post of HPO on 15.02.2002. The applicant did not raise an objection, either as regards the pay scale or timing when he was granted the benefit of 1st ACP.

13. It was only in the year 2014; the applicant made a representation, stating that the benefit of 1st ACP ought to have been in the form of pay scale of Rs.6500-10500 attached to the post of ADO. The basis for such a claim is the order passed by the Tribunal in OA No. 1063/2008 filed by one YP Verma. A copy of the order is filed as Annexure 12. The order is very brief in its context. The applicant therein was working as Technical Assistant (Metal). He was not extended the benefit of ACP on the ground that he did not possess the qualifications stipulated for promotion to the post of HPO. The Tribunal took the view that though the qualifications prescribed for the post of TA on the one hand and HPO on the other hand are the one and the same. Since the Appointing Authority relaxed the qualifications of the applicant therein at the time of his appointment, he cannot be treated as unqualified for promotion. In other words, he was declared eligible to



be extended the benefit of ACP. Whether or not, the ACP shall be in the form of pay scale attached to the post of ADO or HPO, the issue at all was not discussed. On the one hand, it was left untouched. The same is evident from Para 5 of the order. It reads as under:-

“5. Without going into the controversy as to whether the post of ADO or HPO as a feeder category is a promotional post of TAM, yet when relaxation has been accorded to the applicant at the initial level on being appointed as TAM, the relaxation will hold good forever, as ruled by the Apex Court in **Jagdish Kumar Vs. State of H.P. & Ors.**, 2006(1) SLJ 54. Accordingly, at one level, the educational qualification is once relaxed, one cannot be denied progression in service jurisprudence, which is by way of promotion is a constitutional guaranteed right, to approbate and reprobate simultaneously is not in good administration. Insisting upon the qualification, i.e. graduation, which has once been relaxed is unfair and unreasonable in the circumstances.”

14. Having declared that the applicant therein was eligible to be promoted or extended the benefit of ACP, the Tribunal in last paragraph of the order, directed that the upgradation shall be to the scales of Rs.6500-10500 and Rs.10500 to 15200. That Para reads as under:-

“6. In the result, for the foregoing reasons, OA is dismissed. Impugned order is set aside. Respondents are directed to accord 1st and 2nd financial upgradations to the applicant under ACP



in the respective scales of Rs.6500-10500 and Rs.10500-15200 w.e.f. 9.8.1999 and 2.3.2003 with all arrears within a period of three months from the date of receipt of a copy of this order. No costs.”

15. With great respect to the learned Members, who decided the OA, we are of the view that the identification of the pay scale did not fall for consideration in that OA at all. The only question was about the eligibility of the applicant and once that was decided, the matter ought to have been left to the respondents to decide. An order or judgment can be treated as a binding precedent only as regards the issue which is specifically raised in the case and decided by the forum, and not a passing observation made therein.

16. It is relevant to mention that in WP No. 9330/2009 filed in the Delhi High Court against the order in OA No. 1063/2008, the Hon’ble High Court clarified that they have not gone into the question whether the next promotion is to the post of HPO or ADO. The relevant extract of the para reads as under:-

“....We also clarify that we have not gone into the question as to whether the next promotion of the petitioner is to the post of ADO or HPO.”



17. It has already been mentioned that the applicant has not raised any objection when the benefits of 1st and 2nd ACP were granted to him. Another important factor is that he was regularly promoted to the post of HPO in the year 2002. When the regular promotion is only to the post of HPO, he cannot expect the ACP, referable to the post of ADO. The record discloses that the post of ADO was abolished in the year 1996 itself. Other OAs are on the same lines.

18. We do not find any merit in these OAs. They are accordingly dismissed. There shall be no order as to costs.

(A.K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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