

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 3185/2001
MA NO. 2610/2001

This the 2nd day of ~~March~~ ^{Abul} 2002

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HON'BLE SH. KULDIP SINGH, MEMBER (J)
HON'BLE SH. S.A.T.RIZVI, MEMBER (A)

1. Vasudev
R/o A-98, Fateh Nagar,
Jail Road,
New Delhi.
2. Bijoy Kant
son of Late Shri B.P.Mandal,
R/o B-1/1147, Vasant Kunj,
New Delhi.
(By Advocate: Sh. Vikas Kumar)

Versus

1. Union of India
through Secretary,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi.
2. Govt. of India,
Through D.G (W),
Central Public Works Department,
Nirman Bhawan,
New Delhi.
3. Secretary of Govt. of India,
Dept. of Personnel & Training,
North Block,
New Delhi.
(By Advocate: Sh. K.R.Sachdeva)

ORDER

By Sh. Kuldip Singh, Member (J)

Applicant have challenged the order dated 12.11.2001 whereby the department has withdrawn the earlier order No.39/2000 and 77/2000 regarding grant of second ACP to the applicants in the pay scale of Rs.14300-400-18300 and by the impugned order though the second upgradation under ACP has been allowed but it has been allowed in the scale of Rs.12000-375-16500 w.e.f. 9.8.99.

2. Applicants have prayed for quashing of the orders and

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restoration of the earlier order vide which after the grant of second ACP they were placed in the scale of Rs.14300-400-18300.

3. The facts which as alleged are that the applicants have been recruited directly to the post of Assistant Engineers. They had completed 24 years of service and are entitled to the second upgradation under the ACP scheme. The applicants' claim that before the grant of the benefit of second ACP they were working in the scale of Rs.10000-13500 and the next higher scale was in the scale of Rs.14300-18300 so the applicants are entitled to the said scale.

4. Withdrawal of the same is stated to be arbitrary, discriminatory and against the spirit of the fifth pay commission report. According to the applicants, as per ACP scheme the post where there is a well-settled hierarchy in a cadre the employees were entitled to financial upgradation under the ACP scheme to the next higher grade in accordance with existing hierarchy in the cadre. If there is any new post or new scale is introduced that has to be ignored and the applicants have to be given the next higher grade in the existing hierarchy.

5. Applicants further submitted that on the date of issue of order dated 9.8.99 there did not exist any non-functional post in the pay scale of Rs.12000-16500 and all the promotions of the Executive Engineers were to be made for the post of Superintendent Engineer in the pay scale of Rs.14300-18300.

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6. Applicants further assert that even if any new scale is created or any new post is created subsequent to the date of grant of benefit under the ACP scheme then in that event the pay scale once granted cannot be withdrawn as it has been clarified vide S.I. No.33 and 41 of Annexure A-5. Thus, it is stated that the impugned order which withdraws the earlier officer order vide which the upgradation was granted to the earlier order is bad and is liable to be quashed.

7. The respondents in the reply submitted that the OA has been filed to challenge the instructions issue by the DOPT vide their OM dated 9.8.99 regarding introduction and implementation of Assured Career Progression (ACP) Scheme. Thus, the application is bad in law and is not maintainable. The respondents further submitted that as per the pay scales notified by the Government vide Ministry of Finance notification dated 30.9.97 the hierarchy which exist from the post of Assistant Engineer onwards in the engineering cadre of CPWD is as follows:

| | |
|-------------------------|------------------------------------|
| Assistant Engineer | Rs.6500-200-10,500/- |
| Executive Engineer | Rs.10,000-325-15,200/-(Functional) |
| | Rs.12,000-375-16,500 (Non- |
| | functional) |
| Superintending Engineer | Rs.14,300-400-18,300/- |

This notification issued by the Government of India has made these scales operational w.e.f. 1.1.96 vide their notification.

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8. The matter regarding grant of ACP scheme to the Assistant Engineers (Direct Recruit)(Group 'B') was considered in the office of Resp. No.2 in consultation with the administrative Ministry, i.e. Resp. No.1. It was observed that there were only 67 AEs who were appointed on the basis of direct recruitment before 1972 and who have since been promoted as Executive Engineer in the scale of Rs.10,000-15,200/- so they were entitled to the second upgradation after completion of 24 years of service. Although the pay scale of Rs.12,000-375-16,500/- was introduced in the hierarchy of pay scales in the Engineering cadres of CPWD but the same had not been implemented in the department at the time when the scheme of ACP was considered. So on the basis of the recommendation of the Screening Committee the applicants were given straightway the pay scale of Rs.14,300-18,300 which was the next functional scale in the department after the pay scale of Rs.10,000-15,200/-. Now, since in view of the DOPT OM dated 9.8.99 the grant of ACP Scheme had been reviewed and it has been found that the non-functional pay scale of Rs.12,000-16,500/- was also a part of hierarchy in the CPWD and was very much relevant for the purpose of ACP Scheme. So, it is found that the applicants had been given two step jump whereas they were only entitled to the next higher financial grade and since the scale of Rs.12,000-16500/- had been ignored therefore, keeping in view the directions of the DOPT and after the approval of the competent authority the stepping up under ACP Scheme granted to the applicants were withdrawn and the applicants were given the second financial upgradation in the pay scale of Rs.12000-16500 in compliance of the ACP scheme. Thus, there is no infirmity in the orders passed by the department and the same cannot be quashed.

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9. We have heard the learned counsel for the parties and gone through[A the record.

10. Learned counsel appearing for the applicant submitted that as per clarifications given on Sl. No.33 and 41 in the office memorandum dated 18.7.2001, it has been categorically clarified that subsequent creation of the post in Grade 'B' will not, therefore, make any material difference in the situation in relation to the case of this employee for the purpose of grant of second financial upgradation under ACPS. The point of doubt was raised to the fact that if an employee was promoted from Grade 'A' to Grade 'C', Grade 'B' was introduced in the hierarchy in between Grade 'A' and Grade 'C' subsequent to such promotion. Will he be entitled to any more financial upgradation under the ACP Scheme (ACPS) considering that he is already placed in the third level of the hierarchy. The employee was entitled to financial upgradation. So it was clarified that subsequent clarification of the post in Grade 'B' was introduced in the hierarchy in between Grade 'A' and Grade 'C' subsequent to such promotion. An another point raised at Sl. No.41 it was clarified that the benefit of ACP Scheme is to be allowed as per hierarchy existing, as on the date the employees become eligible for financial upgradation under ACPS. Relying upon this, learned counsel for the applicant submitted that on the date when the earlier order granting benefit under the ACP Scheme and placing the applicant in the scale of Rs.14300-18300 was granted then at that stage, the scale of Rs.12000-16500 did not exist and if this scale has been introduced subsequently that does not effect the applicant's right. So on this score, the counsel for the applicant submitted that the impugned orders are liable to be quashed. However, in reply to this Sh. Sachdeva



appearing for the respondents place on record notification dated 30.9.97. It is with regard to the rules called as Central Civil Service (Revised Pay) Rules, 1997. These rules came into force on 1.1.96 and the schedule attached to these rules, the scales of the Engineering services have been provided as under:-

Gr. 'A' Engineering Services

(a) Suptdg. Engineer 3700-125-4700- 14300-400-18300 50.45
150-5000

(b) Exe. Engineer 3000-100-3500- 10000-325-15200 50.45
125-4500 12000-375-16500
(Non-functional
JAG)

11. On the basis of this, the learned counsel for the respondents submitted that the scale of Rs.12000-16500 had been introduced under the Central Civil Services (Revised Pay) Rules 1997 w.e.f. 1.1.96 on the basis of the Pay Commission's report so the hierarchy of pay scales, as mentioned above, in para 6 came into force w.e.f. 1.1.96. Counsel for respondents submitted that the purpose of ACP Scheme is to give next financial upgradation to the stagnating employees and in this case the next financial upgradation was in the scale of Rs.12000-16500 and this has been also given in accordance with the DOPT OM dated 9.8.99 which provides the scheme for Assured Career Progression Scheme and the counsel for the respondents further pointed out that as per the clarifications which had been given vide office memorandum dated 10.2.2000 on a point raised for clarification with regard to the fact that if employees have been allowed to

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selection grade/in situ promotion where those grades are not a part of the defined hierarchy whether the same are to be considered for promotion for the purpose of ACP or not and while clarifying the same DOPT had clearly stated that existing hierarchy in relation to a cadre would mean the restructured grades recommended by the 5th Central Pay Commission. So, the learned counsel for the respondents submits that this clarification read with restructured grades as introduced by the Central Civil Services (Revised Pay) Rules, 1997 which came into force w.e.f. 1.1.96, the restructured grades are to be considered as provided in these rules. As per these rules the next financial hierarchy was in the pay scale of Rs.12000-16500 and the same has been properly granted.

12. We have considered the rival contentions raised by the respective parties. The main contention raised by the counsel for the applicant is that the scale of Rs.12000-16500 have been introduced subsequent to the order issued in favour of the applicant for granting benefit under ACP Scheme and fixing their pay in the scale of Rs.14300-18300 and since the pay scale of Rs.12000-16500 has been introduced subsequently so the earlier order should not have been withdrawn. But to our view, this contention of the learned counsel for the applicant has no merits. Since the notification dated 30.9.97 vide which the Central Civil Service (Revised Pay) Rules, 1997 have been notified would go to show that the pay scales of the Engineering Department have been restructured in accordance with the schedule attached to the rules which came into force w.e.f. 1.1.96 whereas applicants became entitled to grant of second upgradation subsequent to that. Applicants were entitled only to a pay scale which is in next financial

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hierarchy in their cadre, i.e., of the scale of Rs.12000-16500 they cannot be allowed to have two jumps from Rs.10000-15200 to Rs.14300-18300 ignoring the scale of Rs.12000-16500. The reliance of the applicants on the point of clarifications at Sl.No. 33 and 41 given in the Annexure A-5 are misplaced and the case of the applicant is distinguishable from that.

13. In view of these circumstances, we find that the OA is devoid of merits and the same does not call for any interference and the same is hereby dismissed. No costs.



(S.A.T.Rizvi)
Member (A)



(KULDIP SINGH)
Member (J)

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