

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.818 of 2000

New Delhi, this 27th day of September, 2000

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Hon'ble Mr. Justice Ashok Agarwal, Chairman  
Hon'ble Mr. M.P. Singh, Member(A)

F.C. Jain  
R/o A-93 Suryanagar  
Dist. Ghaziabad  
(U.P.)

... Applicant

(By Advocate: Shri G.K. Aggarwal)

versus

1. Union of India, through  
Secretary  
Ministry of Urban Affairs & Employment  
Nirman Bhawan  
New Delhi-110011

2. The Director General (Works)  
Central Public Works Department  
Nirman Bhawan  
New Delhi-110011

3. Union of India, through  
Secretary  
Deptt Pers & Trg, North Block  
New Delhi-110001

... Respondents

(By Advocate: Shri A.K. Bhardwaj)

ORDER(Oral)

By Mr. Justice Ashok Agarwal

Applicant joined the Central Public Works Department as a Junior Engineer on 10.10.1962. He was promoted as Assistant Engineer on 18.9.1987. He has now superannuated as Assistant Engineer with effect from 31.7.2000. By the present OA, he claims benefit of a decision of the Director of Works (S&D) of 13.5.1998 whereby Assistant Engineers to the extent of 50% of their strength have been granted a higher pay scale of Rs.7500-12000 as compared to other 50% drawing pay scale of Rs.6500-10500. According to the applicant, applicant stood at Sl.No.884 and stood in the 50% of the Senior

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Assistant Engineers (Civil) and was thus entitled to be placed in the pay scale of Rs.7500-12000. He claims the aforesaid pay scale with effect from 1.1.1996.

2. Aforesaid benefit has been denied on the ground that applicant has already received benefit of the Assured Career Progression Scheme of August 9, 1999 (ACP Scheme, for short) at Annexure-2. Aforesaid benefit has been given to the applicant on 9.8.1999.

3. It is, inter alia, contended on behalf of the respondents that the applicant will be entitled either to the benefit of the office order of 13.5.1998 at Annexure-1 or the benefit of the ACP Scheme at Annexure A-2 and not both. It is further submitted that if at all the applicant is held entitled to the benefit of the aforesaid order at Annexure-1, he will be entitled to the same not with effect from 1.1.1996 as claimed, but with effect from 13.5.1998 when the aforesaid benefit in terms of the recommendations of the 5th Pay Commission was adopted by the Government.

4. We have considered the rival contentions advanced before us. We have also perused the aforesaid office order of 13.5.1998 at Annexure-1 as also the provisions of the ACP Scheme of August 9, 1999 and we find that the contention raised on behalf of the respondents that employees would be entitled to only one and not both the benefits, is not justified. As far as the employees who have been excluded from the benefit are concerned, they

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□ have been specifically mentioned in para 3.1 of the ACP Scheme. Whereby employees such as casual employees (including those with temporary status), ad hoc and contract employees have been excluded. Applicant does not fall in any of the aforesaid categories of employees. Vide paras 10 and 13 of the Conditions of the ACP Scheme it has been provided as under:

"10. Grant of higher pay-scale under the ACP Scheme shall be conditional to the fact that an employee, while accepting the said benefit, shall be deemed to have given his unqualified acceptance for regular promotion on occurrence of vacancy subsequently. In case he refuses to accept the higher post on regular promotion subsequently, he shall be subject to normal debarment for regular promotion as prescribed in the general instructions in this regard. However, as and when he accepts regular promotion thereafter, he shall become eligible for the second upgradation under the ACP Scheme only after he completes the required eligibility service/period under the ACP Scheme in that higher grade subject to the condition that the period for which he was debarred for regular promotion shall not count for the purpose. For example, if a person has got one financial upgradation after rendering 12 years of regular service and after 2 years therefrom if he refuses regular promotion and is consequently debarred for one year and subsequently he is promoted to the higher grade on regular basis after completion of 15 years (12+2+1) of regular service, he shall be eligible for consideration for the second upgradation under the ACP Scheme only after rendering ten more years in addition to two years of service already rendered by him after the first financial upgradation (2+10) in that higher grade i.e. after 25 years (12+2+1+10) of regular service the debarment period of one year cannot be taken into account towards the required 12 years of regular service in that higher grade;

13. Existing time-bound promotion schemes, including in-situ promotion scheme, in various Ministries/Departments may, as per choice, continue to be operational for the concerned categories of employees. However, these schemes, shall not run concurrently with the ACP Scheme. The Administrative Ministry/Department - not the employees - shall have the option in the matter to choose

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between the two schemes, i.e. existing time-bound promotion scheme of the ACP Scheme, for various categories of employees. However, in case of switch-over from the existing time-bound promotion scheme to the ACP Scheme, all stipulations (viz. for promotion, redistribution of posts, upgradation involving higher functional duties, etc) made under the former (existing) scheme would cease to be operative. The ACP Scheme shall have to be adopted in its totality;"


5. In our judgement, aforesaid conditions also do not provide that the employees who have received benefit under one scheme will not be entitled to the benefit of the other. Similarly, no such condition is attached to the office order of 13.5.1998 at Annexure-1. In the circumstances, aforesaid contention raised on behalf of the respondents is rejected.

6. Similarly, we find that the office order of 13.5.1998 at Annexure-1 has been issued in terms of the recommendations of the 5th Pay Commission. The same has, therefore, to be uniformly adopted along with other recommendations with effect from 1.1.1996. The same cannot be made applicable from the date of the office order later issued on 13.5.1998. Applicant, in the circumstances, is held entitled to the pay scale of Rs.7500-12000 with effect from 1.1.1996.


7. As enumerated above, applicant was engaged as a Junior Engineer with effect from 10.10.1962 and he was promoted as Assistant Engineer on 18.9.1987 which promotion he has accepted. Applicant under the terms of the ACP Scheme would, therefore, be entitled to the benefits thereof after a period of 12 years from the date of his assuming charge as an Assistant Engineer as

he has not been promoted for a period of 12 years. He will thus be entitled to receive upgradation of his pay scale with effect from 18.9.1999. 8

8. Present OA, in the circumstances, is allowed. Respondents are now directed to fix the pay of the applicant in the pay scale of Rs.7500-12000 with effect from 1.1.1996 and thereafter grant him upgradation of pay scale with effect from 18.9.1999, calculating the benefits accruing on the aforesaid basis and to pay him his dues including arrears expeditiously and within a period of three months from the date of service of the order. No order as to costs.

  
(M. P. Singh)  
Member(A)

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(Ashok Agarwal)  
Chairman