

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/20/957/2014

HYDERABAD, this the 5th day of August, 2020



**Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member**

1. Ch. Satyanarayan T.No.8926
S/o. Bappanna,
Aged about 53 years, Occ: Type Writer Mechanic,
R/o. D.No.39-4-15, Sector-4,
Murali Nagar, Visakhapatnam – 500 007.
2. B. Eswara Rao, T.No.8572,
S/o. Late B.V. Satyanarayana,
Aged about 57 years, Occ: Trade Mechanic,
R/o.D.No.22-144/1, Venkatadri Nagar,
Srinivas Nagar, Simanchalam -500028,
O/o. Naval Dockyard, Visakhapatnam.

... Applicants

(By Advocate: Mrs. Anita Swain)

Vs.

1. The Union of India rep. by its
Secretary, Ministry of Defence,
South Block, New Delhi.
2. The Chief of Naval Staff,
Integrated Headquarters,
Ministry of Defence, Sena Bhavan, PO. DHQ,
New Delhi- 110 011.
3. Flag Officer-Commanding- in- Chief,
Head quarter Eastern Naval Command,
Naval Base, Visakhapatnam – 500 014.
4. The Admiral Superintendent,
Naval Dockyard, Visakhapatnam – 500 014.

... Respondents

(By Advocate: Mr. M. Venkata Swamy, Addl. CGSC)

O R D E R (ORAL)

Hon'ble Mr. B.V. Sudhakar, Admn. Member

2. The OA is filed for not granting 1st financial up gradation in the pay scale of Rs.4000-6000 and the 2nd financial up gradation in Pay Band-2 with Grade Pay of Rs.4600 on par with the LDCs of the same organisation.



3. Brief facts are that the applicants have joined the respondents organisation as Typewriter Mechanics (Skilled) in the years 1987 and 1984 respectively in the pay scale of Rs.950-1400 as per IV CPC. Later, the post of Typewriter was declared as isolated post with no further promotional avenues. On implementing ACP scheme in 1999, the applicants were granted the 1st financial up gradation in the next higher scale of pay of Rs.3200-4590 instead of Rs.4000-6000, the next hierarchical promotional scale. However, others who joined the respondents' organisation along with applicants in different trades were given the promotional scale of Rs.4000-6000. Further, when the MACP Scheme was implemented, the applicants were again granted the financial up gradations by considering the lower scale of Pay of Rs.3200-4590 though other employees of the respondents organisation in the scale of LDC, whose entry scale of pay was similar to that of the applicants, were placed in promotional pay scale of Rs.4000-6000, which relates to the Pay Band of Rs.9300-34,800 with Grade Pay of Rs.4600. Applicants represented on 29.5.2013 and 13.1.2014 with no fruitful result and hence the OA.

4. The contentions of the applicants are that since the entry scale of the applicants was similar to that of LDC who have been granted the promotional scale, they ought to have been granted similar scale as well. The disadvantage

suffered while implementing ACP of granting financial up gradation in the lower scale has continued even while granting financial up gradations under MACP. Applicants cited that the judgment of the Hon'ble Chandigarh Bench of this Tribunal in OA 1038/CH/2010, which was in their favour, was upheld by the Hon'ble Punjab and Haryana High Court in CWP No.19387/2011 (O&M) and that the SLP filed before the Hon'ble Supreme Court was also dismissed.



5. Respondents in their reply statement contended that the Typewriter post is an isolated post with no scope for promotions. As per DOPT OM dtd. 9.8.1999 for isolated posts under ACP, the financial up gradation was for the immediate next higher pay scale. The applicants cannot compare their entry pay scales on par with the pay scales of LDC and Hindi Typist. The colleagues of the applicants got the promotional scale of Rs.4000-6000 since they worked in trades where promotional avenues were available. The SLP filed against the judgment of Hon'ble Punjab & Haryana High Court upholding the verdict of Chandigarh Bench in OA 1038/CH/2010 was dismissed for reasons of delay and not on merit.

6. Heard both the counsel and perused the pleadings on record.

7(I) On going through the details of the case in detail, it is evident that the applicants were working in the isolated posts of Typist. Under ACP, for an isolated post the financial up gradation is to the next immediate higher pay scale as per DOPT OM dated 9.8.1999, which is extracted hereunder:

*“7. Financial upgradation under the Scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/ category of posts without creating new posts for the purpose. **However, in the case of isolated posts**, in the absence of defined hierarchical grades, financial upgradation shall be given by the Ministries/ Departments concerned in the immediately next higher (standard/ common) pay scales as indicated in Annexure – II....”*



The same issue fell for consideration before the Hon'ble Chandigarh Bench of this Tribunal in OA No.278-CH-2004, which was allowed and held as under:

“13. The issue which now figures for consideration before us is – whether the applicant has rightfully been granted pay scale of Rs.3200-4900 under the ACP Scheme or he is entitled to higher scale of Rs.4000-6000 and above available to the category of Lower Division Clerk. Since there were number of disputes, the Respondent No.1 had issued a Office Memorandum dated 10.2.2000 on the point as to whether in respect of isolated posts, the scale of pay for ACPs as recommended by the Pay Commission should be implemented or the standard/ common pay scales as indicated in Annexure – II of the OM dated 9.8.99 should be given. Since the clarification given by the Respondent No.1 is bone of contention between the parties, the same is reproduced below:

“For isolated posts, the scales of pay for ACPs shall be the same as those applicable for similar posts in the same Ministry/ Department/ Cadre except where the Pay Commission has recommended specific pay scales for mobility under ACPs. Such specific cases may be examined by respective Ministries Departments in consultation with the Department of Personnel and Training. In the case of remaining isolated posts, the pay scales contained in Annexure II of the Office Memorandum dated August 9, 1999 (ACPS) shall apply”.

The above clarification came to be interpreted by a Bench of this Tribunal in the case of Sahib Singh (supra). Shri Sahib Singh was Upholsterer in the Defence Research & Development Organization (Ministry of Defence). The Bench observed that since no specific pay scales have been recommended by the Fifth Pay Commission in respect of Upholsterer, the pay scales applicable for similar posts in the same Ministry should be allowed under the ACP Scheme to the Upholsterer also. Relying upon a letter dated 20.1.99 issued by the Ministry of Defence, in which the pay scale in respect of Technician, was given as Rs.4000-6000 and Rs.4500-7000, the Bench considered the similarity on the ground that entry grade of both the posts is Rs.3050-4590. It was held that since the posts of Technician and Upholsterer are in the same Ministry, the Upholsterer who is in the same pay scale of Rs.3050-4590, like Technician, is entitled to the benefit of two financial upgradation under ACP Scheme in the next grades of Rs.4000-6000 and Rs.4500-7000. The stand of the respondents that since Shri Sahib Singh is in S-5 pay scale of Rs.3050-4590, under the ACP Scheme, he is entitled to S-6 pay scale of Rs.3200-4590 and S-7 Grade of Rs.4000-6000, on completion of 12 and 24 years of service, respectively, was negative. Similar position is obtaining in this case. Indubitably, by Notification dated 4th March, 1998 (Annexure A-3), the Respondent No.1, has revised the scale of pay of Group A, B, C & D employee. In the Annexure to the letter, the LDC, Hindi Typist, Staff Car Driver and



Photocopier, all have been placed in the entry pay scale of Rs.3050-4590. There is no pay scale of Rs.3200-4590. If the applicant was to be placed in the higher pay scale under the ACP Scheme, in terms of the clarification issued by the Respondent No.1 itself, he was to be given a pay scale recommended by the same Ministry. The Hindi Typist and LDCs in the Central Administrative Tribunal have been placed in the entry scale of Rs.3050-4590 i.e. available to the applicant and they are further entitled to higher pay scale of Rs.4000-6000 and then Rs.5500-9000 which are promotional scales. If the pay scale of Rs.3050-4590 has not been recommended for the Staff of Central Administrative Tribunal, there was no question of granting such alien scale to them. They could have been given the pay scales recommended for the similar posts in the same department/ministry which happens to be Hindi Typist/ LDC. Even though Shri Deepak Agnihotri, learned counsel for the respondents tried to distinguish the decision in the case of Sahib Singh (Supra), by mentioning certain factual aspects, but that will not change the ratio laid down in that decision. Thus, it is held that the case of the applicant is covered under the ratio laid down in the case of Sahib Singh (supra). ”

When the above verdict of the Tribunal was challenged in Hon'ble Punjab and Haryana High Court at Chandigarh vide CWP No. 7356 CAT of 2005, it was held as under:

“It is not a matter of dispute that the post of Photocopier in the Tribunal is an isolated post. It is also not a matter of dispute that pay scale of Photocopier is Rs.3050-4590 as is also the pay scale of the posts of LDC/ Hindi Typist. It is further not a matter of dispute that higher scale for LDC under the ACP Scheme is of Rs.4000-6000.

Government of India issued office memorandum dated 10.2.2000 making clarifications regarding applicability of the ACP Scheme. Para 10 of the said clarifications being relevant for adjudicating upon the controversy in hand is being extracted hereunder:-

<p><i>For isolated posts, the scale of pay for ACPS as recommended by the Pay Commission may be implemented and not the standard/ common pay scales indicated vide Annexure II of the Office Memorandum dated August 9, 1999</i></p>	<p><i>For isolated posts, the scales of pay for ACPS shall be the same as those applicable for similar posts in the same Ministry/ Department/ Cadre except where the Pay Commission has recommended specific pay scales for mobility under ACPS. Such specific cases may be examined by respective Ministries/ Departments in consultation with the Department of Personnel and Training. In the case of remaining isolated posts, the pay scales contained in Annexure II of the Office Memorandum dated August 9, 1999 (ACPS) shall apply.</i></p>
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The aforesaid clarification makes it abundantly clear that for isolated posts, the scale of pay under ACP Scheme shall be the same those applicable

for similar posts in the same Ministry/ Department/ Cadre except where the Pay Commission has recommended specific pay scales for mobility under the ACP Scheme. As already noticed, the post of Photocopier in the Tribunal is an isolated post. The post of LDC/ Hindi Typist in the Tribunal itself is similar to the post of Photocopier as both these posts carry the same pay scale of Rs.3050-4590.

In view of the aforesaid clarification issued by the Government of India, there remains no doubt that the respondent holding isolated post of Photocopier is entitled to the higher pay scale under the ACP Scheme as applicable for similar posts in the Tribunal. Since post of LDC/ Hindi Typist is similar to the post of Photocopier in the Tribunal, the respondent is entitled to higher scales of Rs.4000-6000 and Rs.5500-9000 as have been granted to LDC/ Hindi Typist in the Tribunal. Here it would be pertinent to notice that as per Annexure attached to letter dated 4.3.1998 whereby revised pay scales for the staff of the Tribunal have been provided, a common revised pay scale of Rs.3050-4590 has been provided for the posts of LDC, Hindi Typist and Photocopier, besides several other posts enumerated at Sr. No. 24 to 31 of the said annexure. In this view of the matter also, the respondent is entitled to the same pay scales under the ACP Scheme as have been provided for LDC and Hindi Typist in the same Ministry/ Department/ Cadre i.e. the Tribunal in the instant case.

Learned counsel for the petitioners vehemently contended that the respondent is entitled to scale of Rs.3200-4900 and the same has been rightly provided to him by the petitioners because the said scale S-6 is immediately next higher to the entry scale S-5 of Rs.3050-4590 of the post of Photocopier held by the petitioner. Although the contention in the first blush appears to be attractive and forceful, yet in view of clarification vide Office Memorandum dated 10.02.2000, the contention cannot be accepted. Para 10 of the said clarification as has been extracted hereinabove, clearly and categorically stipulates that for isolated post, the scale of pay for ACP Scheme shall be the same as those applicable for similar posts in the same Ministry/ Department/ Cadre. The exception of this clarification is that where the Pay Commission has recommended specific pay scales for mobility under the ACP Scheme, in that event, the pay scales of similar post would not be applicable. However, it is not a matter of dispute that this exception is not applicable to the instant case as the Pay Commission has not recommended specific pay scales for the post of Photocopier for mobility under the ACP Scheme. Consequently, the respondent is entitled to pay scales under the ACP Scheme as applicable for similar posts i.e. for the posts of LDC and Hindi Typist, in view of the clarification issued by the Government of India.

Learned counsel for the petitioners also contended that qualifications for the posts of Photocopier and LDC are different. The contention does not come to the aid of the petitioners because the post of Photocopier is categorised as isolated post only on account of the fact that qualifications for the same are different from the qualifications for the other posts.

However, the post of LDC can be said to be similar to the post of Photocopier for the purposes of Pay Scales under the ACP Scheme because these posts carry the same entry scale of Rs.3050 – 4950. The entry pay scales can be the only criterion for determining if the posts are similar or not. Learned counsel for the petitioners contended that for the posts to be similar, the posts have to be almost identical in various aspects. We find ourselves unable to accept this contention because if the posts have to be almost identical so as to come within the expression of 'similar posts', then the post would not be an isolated post. However, it is not a matter of dispute that the post of Photocopier is an isolated post. Consequently, to find a similar post in the Tribunal, pay

scale has to be looked into and compared. Looking into the pay scales, the post of Photocopier can be said to be similar to the posts of LDC and Hindi Typist.

For the reasons recorded hereinabove, we find no merit in the writ petition and the same is accordingly dismissed.”



II. Respondents relied heavily on para 7 of DOPT OM dtd. 9.8.1999 . The same para was discussed along with para 10 of the clarification given by G.O.I vide memo dtd. 10.2.2000 in the above judgments and gave relief as is sought in the instant case. The Hon'ble High Court judgment applies lock, stock and barrel to the case on hand for the reasons that the applicants are holding the post of Typewriter (Mechanical), which is an isolated post as agreed to by the respondents. The entry pay scale of the Typewriter (Mechanical) and that of the LDC is the same (Rs.3050- 4590). The LDCs in the same Department have been granted promotional hierarchical Pay Scale of Rs.4000-6000, which was not denied by the respondents. Therefore, as per the judgments cited supra which dealt every aspect of relevance concerning the dispute on hand at length, the applicants are also eligible for the promotional pay scale of Rs.4000-6000.

III. In respect of the other averment made by the respondents that the OA has been filed after 14 years of the cause of action, it is to be pointed that the issue pertains to irregular fixation of pay under ACP scheme. Pay is disbursed every month and reduced pay is a continuous cause of injury. It will continue to adversely effect even pension when the applicants retire. Therefore, the cause of action being continuous, limitation clause of Administrative Tribunals Act 1985 does not come into play.

IV. One more submission the respondents have affirmed is that the Hon'ble Supreme Court has dismissed the SLP filed against the judgment of the Hon'ble Punjab & Haryana High Court on grounds of delay. While agreeing with the respondents stand, it must be stated that the respondents have not submitted any material contradicting the verdict of Hon'ble Punjab and Haryana High Court. Therefore, the said judgment is binding for all to follow.



V. In view of the circumstances stated supra, the OA fully succeeds. The respondents are therefore directed to consider as under:

- i. To grant the first financial upgradation to the applicants in the scale of Pay scale of Rs.4000-6000 (Pre-revised) as on the dates eligible under ACP Scheme and thereafter, regulate the further financial up gradations under ACP and MACP Schemes as per provisions contained therein and as per rules and law, in the respective Pay Scale/Pay Band/ Level as is applicable to the applicants.
- ii. Consequential benefits in respect of arrears to be paid shall be restricted to a period of 3 years prior to the date of filing of the OA as held by Hon'ble Supreme Court in Union of India & Ors Vs. Tarsem Singh, (2008) 8 SCC 648.

With the above directions, the OA is allowed with no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

(ASHISH KALIA)
MEMBER (JUDL.)

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