

Central Administrative Tribunal, Principal Bench

O.A. No.2680/2004

New Delhi this the 16th day of February, 2006

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)
Hon'ble Mr. N.D. Dayal, Member (A)

Vishal Mani
S/o Late Lokanand
Presently working as
Ferro Printer
National Sample Survey Organisation,
Field Operation Division,
R/o Quarter No.H-359,
Kalibari Marg,
New Delhi-110 001.

..Applicant

By Advocate: Shri S.K. Das.

Versus

1. Union of India Through Secretary,
Ministry of Statistics & Programme
Implementation,
Sardar Patel Bhawan,
Sansad Marg,
New Delhi-110001.
2. Director General,
National Sample Survey Organisation,
Field Operation Division,
Ministry of Statistics and Programme
Implementation,
Sardar Patel Bhawan,
New Delhi-110001.
3. Additional Director General
National Sample Survey Organisation,
Field Operation Division,
Ministry of Statistics & Programme
Implementation,
Level 4 to 7,
East Block No.VI,
New Delhi-110 066.

...Respondents

By Advocate: Shri Rakesh Chahar.

ORDER (ORAL)

By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

The applicant has filed the present OA firstly for a direction to the respondent to grant him financial upgradation under the Assured Career Progression Scheme (ACP Scheme) and in the pay scale of Rs.5000-8000 instead of Rs.4500-7000 and secondly

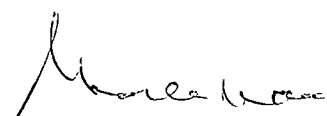
M. A. Khan

they should be restrained from refixing the financial upgradation from the pay scale of Rs.4500-7000 to the pay scale of Rs.4000-6000.

2. The factual background relevant for the decision in the matter is as follows. The applicant is a Ferro Printer Operator. The next higher promotional post to the cadre of Ferro Printer is the Draughtsman. While implementing the recommendation of the 5th Pay Commission, the Draughtsman were placed in the pay scale of Rs.4500-7000. The two Draughtsman filed OA No. 628/2003 for granting them pay scale of Rs.5000-8000 in accordance with the OM dated 1.6.2001 under which, inter alia, a Draughtsman with minimum 8 years of service was to be given replacement scale of Rs.5000-8000. This Tribunal by order dated 15.1.2004 held that the applicants Draughtsman having completed 8 years of minimum qualifying service in the post were to be placed in the revised pay scale recommended by 5th Central Pay Commission and since they had been placed in the pay scale of Rs.1400-2300 with effect from 17.3.1993, on their completing 8 years of service they would be entitled to the pay scale of Rs.5000-8000. The order was implemented and both the Draughtsman in position had been granted replacement scale from Rs.4500-7000 to Rs.5000-8000 with effect from 1.1.1996.

3. The applicant, Ferro Printer Operator was stagnating for over 12 years for non-availability of vacancies in the two posts of Draughtsman even though he had minimum qualifying service for promotion, which was 8 years as per the existing Recruitment Rules so he was granted financial upgradation in the pay scale of Rs.4500-7000 with effect from 9.8.1999.

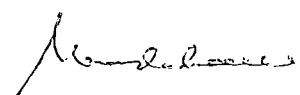
4. After the pay scale of two Draughtsman were revised as a result of the order of the Tribunal dated 15.1.2004 in OA No.628/2003 the applicant made a representation to the respondents to grant them first financial upgradation in the scale of Rs.5000-8000. It seems that while their representation was scrutinized, the respondent found that the entry grade of the Draughtsman in terms of OM dated 1.6.2001 (benefit of which was given to the two existing Draughtsman) was Rs.4000-6000. As a result, a show cause notice was served on the applicant as to why the first financial upgradation should not be revised to the grade of Rs.4000-6000. Before a decision could be taken, the applicant has filed the present OA.



5. In the counter-reply the respondents have resisted the claim of the applicant that they were entitled to be granted first financial upgradation in the pay scale of Rs.5000-8000 pleaded that the respondent Headquarters Office had two sanctioned post of Draughtsman in the pay scale of Rs.4000-6000 (pre-revised Rs.1200-2040) and one post of Ferro Print Operator in the pay scale of Rs.3200-4900 (pre-revised to Rs.975-1540). The Ferro Print Operator with at least 5 years service in the grade was eligible to be promoted to the grade of Draughtsman. The applicant was appointed as Ferro Printer Operator on 13.8.1984 in the pre-revised scale of pay of Rs.260-430. He was granted first financial upgradation in the pay scale of Rs.4500-7000 with effect from 9.8.99 vide order dated 18.2.2000. The said order subsequently was not found in conformity with the conditions of ACP Scheme since upgradation could have been granted in the hierarchy of the cadre or the category of the posts. The next higher pay scale in the hierarchy of the cadre was Rs.4000-6000 and not Rs.4500-7000.

6. It is further submitted after 3rd Central Pay Commission that in pursuance to the award of Board of Arbitration, the Draughtsman in Grades-I, II and III in CPWD in the pay scale of Rs.425-700, Rs.330-560 and Rs.260-430 respectively were placed in the higher pay scale of Rs.550-750, Rs.425-700 and Rs.330-560 respectively. The orders were issued vide Department of Expenditure of the Implementation Cell OM No.13 (1)-IC/91 dated 19.10.1994 (Annexure R-1). These higher scales were granted even to those who did not possess the required qualification but had rendered the length of service prescribed in the OM. In accordance with this OM, the Draughtsman working in the office of the respondent No.2 in the scale of Rs.1200-2040 having put in 5 years service were granted higher pay scale. The said upgradation of the scale was personal to them. 5th Central Pay Commission recommended a replacement scale of Rs.1320-2040 for the post of Draughtsman Grade-III. While considering the representation of the applicant it came to the notice of the respondents that the first financial upgradation granted to the applicant vide order dated 18.2.2000 was erroneous and the applicant was entitled to the first financial upgradation in the pay scale of Rs.4000-6000.

7. The respondents have further alleged that the pay scale of the Draughtsman working in the office of the respondent No.2 was revised to Rs.5000-8000 in OA 628/2003 read with the recommendation made by the 5th Central Pay Commission in para



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50.37 of the Report. The respondents on noticing the error in the grant of first financial upgradation to the applicant, informed the applicant of the mistake and the applicant without waiting for any decision on his representation dated 30.6.2004, has filed the present OA. According to the respondents, the higher pay scale of Rs.1400-2300 was granted to the Draughtsman working in the office of the respondent No.2 on completion of prerequisite conditions of 5 years regular service in the pay scale of Rs.1200-2040 and the revision also took place in view of the recommendation made in para 50.37 but the pay scale of the Draughtsman at the entry level was not revised. The applicant has moved this application in view of the apprehension that the erroneous financial upgradation would be revised.

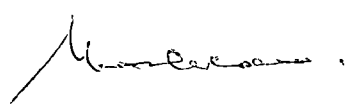
8. In the rejoinder, the applicant has controverted the allegation of the respondents and has reiterated his own case.

9. We have heard the learned counsel for the parties and perused the record.

10. The question that arise for consideration in this OA is as to whether the applicant was entitled to be granted first financial upgradation in the pay scale of Rs.5000-8000. To put it in other words whether the pay scale of Rs.5000-8000 is attached to the next higher post of Draughtsman in the hierarchy of the cadre of Ferro Printer Operator in which the applicant was working.

11. The applicant is stagnating in the post of Ferro Printer Operator for non-availability of vacancies in the post of Draughtsman although he had otherwise minimum qualifying service for promotion to the post of Draughtsman.

12. It is well settled that the financial upgradation under the ACP Scheme is to be regulated strictly in accordance with the terms and conditions of the Scheme issued vide OM dated 9.8.99. The first financial upgradation is to be granted to a government servant stagnating on a post for 12 years if he has not been promoted to the next higher grade in the hierarchy of cadre/category of post, because no vacancy was available for promotion. The controversy in the present case is about the pay scale, which is attached to the post of Draughtsman in the office of the respondent No.2 since the first financial upgradation on completion of 12 years service is to be received by the applicant in that pay scale as per the ACP Scheme.



13. The copy of the Recruitment Rules of the post of Draughtsman has been filed by the applicant as Annexure A-4. The notification was issued in 1978. The post of Draughtsman was in the pay scale of Rs.330-10-380-EB-12-500-EB-15-560. The question is as to what was the pay scale of the Draughtsman in the office of the respondent No.2 at the time when the applicant was granted first financial upgradation on 9.8.99. .

14. For deciding this question the Office Memorandums issued by the respondents will be relevant. First is dated 19.10.1994, copy of which is filed as Annexure R-1 to the counter reply and the second is dated 1.6.2001, which has been reproduced by the Tribunal in its order dated 15.1.2004. These two OMs being relevant are reproduced below:-

New Delhi this the 19th October, 1994

Office Memorandum

Sub: Revision of pay scales of Draughtsmen Grade I, II and III in all Government of India Offices on the basis of the Award of Board of Arbitration in the case of Central Public Works Department.

The undersigned is directed to refer to this Department's OM No.5 (59)-E.III/82 dated 13.3.1984 on the subject mentioned above and to say that a Committee of the National Council (JCM) was set up to consider the request of the Staff Side that the following scales of pay, allowed to the Draughtsman Grade-I, II and III working in CPWD on the basis of the Award of Board of Arbitration, may be extended to Draughtsmen Grade-I, II and III irrespective of their recruitment qualification, in all Government of India offices:

	Original Scale (Rs.)	Revised scale on the basis of the Award (Rs.)
Draughtsmen Grade-I	425-700	550-750
Draughtsmen Grade-II	330-560	425-700
Draughtsmen Grade-III	260-430	330-560

2. The President is now pleased to decide that the Draughtsmen Grade I, II and II in offices/departments of the Government of India other than in CPWD may also be placed in the scale of pay mentioned above subject to the following:

(a) Minimum period of Service for placement from the post carrying scale of Rs.975-1540 to Rs.1200-2040 (pre-revised Rs.260-430 to Rs.330-560) 7 years

(b) Minimum period of service for placement from the Post carrying scale of Rs.1200-2040 to Rs.1400-2300 5 years

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(pre-revised Rs.330-560 to Rs.425-700)

- (c) Minimum period of service for placement from the post carrying scale of Rs.1400-2300 to Rs.1600-2660 4 years
(pre-revised Rs.425-700 to Rs.550-750)

3. Once the Draughtsmen are placed in the regular scales further promotions would be made against available vacancies in higher grade and in accordance with the normal eligibility criteria laid down in the recruitment rules.

4. The benefit of this revision of scales of pay would be given with effect from 13.5.1982 notionally and actually from 1.11.1983".

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1.6.2001

Office Memorandum

The staff side had invited attention to the anomalous situation that had arisen as a consequence in the National Anomalies Committee. They had raised the demand that the revised pay scales recommended by the Fifth Central Pay Commission should be extended to the Draughtsmen in all Central Government Offices due weightage being given for the service rendered by personnel not possessing the prescribed qualifications in different departments as envisaged in this Department OM dated October 19, 1994. Following consideration of this demand in consultation with the Staff Side, the President is now pleased to decide that Draughtsman in different departments other than the Central Public Works Department who do not possess the prescribed qualifications and excluding those who have already deprived the benefits envisaged in the OM dated October 19, 1994 may be placed in the scales of pay recommended the 5th CPC on completion of the minimum service (including service rendered in the corresponding pre-revised scales) as indicated below:

Minimum period of service to be rendered for placement from the scale of Rs.3200-4900 (pre-revised Rs.915-1540) to the scale of Rs.4000-6000 (pre-revised Rs.1200-2040).

Minimum period of service to be rendered for placement from the scale of Rs.4000-6000 (pre-revised Rs.1200-2040) to the scale of Rs.5000-8000 (pre-revised Rs.1400-2300) revised to Rs.1600-2600 by the 5th CPC8 years

Minimum period of service to be rendered for placement from the scale of Rs.4500-7000 (pre-revised Rs.1400-2300) to be scale of Rs.5500-9000 (pre-revised Rs.1640-2900) ... 6 years

4. In determining the eligibility to be placed in the revised scales of pay, the service already rendered to the pre-revised scales will also be duly taken into account. Once the Draughtsmen in various Central Government Departments are placed in the applicable revised scales of pay, further promotions to the higher grades will be made only against available vacancies in such higher grades in accordance with the normal eligibility criteria prescribed in the Recruitment Rules.

5. These orders, shall be applicable to such of those Draughtsmen in various Central Government Departments who had deprived the benefits envisaged in this department's OM dated October 19, 1994 as on January 1,

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1996. The revised pay scales shall also be extended to them only on their fulfilling the revised eligibility criteria now prescribed in paragraph 3 above.

6. Draughtsmen who have already been covered by the orders contained in the OM dated March 13, 1984 and October 19, 1994 shall be eligible to be placed only in the applicable revised scales of pay already approved for the common category of Draughtsmen in pursuance of the recommendations of the Fifth Central Pay Commission".

15. This Tribunal has taken into consideration the above mentioned OMs while deciding OA 628/2003 on 15.1.2004 that the two applicants were entitled to be granted the revised pay scale of Rs.5000-8000 as they had completed 8 years minimum qualifying service.

16. The main relief which the applicant has claimed in the present OA is that he should also be granted the pay scale of Rs.5000-8000 which the two Draughtsman in the office of the respondent No.2 have been granted pursuant to the order of this Tribunal. The respondent also seemed to be contemplating review of the financial upgradation granted to the applicant under the ACP Scheme from the pay scale of Rs.4500-7000 to the lower scale of Rs.4000-6000 on the premises that the scale of Rs.4000-6000 is the entry grade of Draughtsman in the respondents office. In the counter reply it has been repeatedly stated by the respondents that the present OA is premature since the applicant instead of waiting for the decision of the respondents on their representation have rushed to the court in apprehension of the review. It is the case of the respondents that no decision has been taken by the respondents as yet on the question of review of the first financial upgradation which had been granted to the applicant in the pay scale of Rs.4500-7000. In view of this submission, we refrain from dwelling into the question as to what is the entry grade of the post of Draughtsman in the office of the respondent No.2 on 9.8.99 in which the applicant had to be granted the first financial upgradation under the ACP Scheme lest it causes prejudice to any of the parties.

17. In the above circumstances, we confine our decision in the present OA to the main question which has been raised by the applicant that he was entitled to be granted first financial upgradation in the pay scale of Rs.5000-8000.

18. We have perused the order of this Tribunal dated 15.1.2004 in OA 628/2003 in accordance with which the applicants Draughtsman were granted the pay scale of

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Rs.5000-8000 with effect from 1.1.1996. The relevant portion of the order of the Tribunal in the said OA is reproduced as under:-

"11. Clause 5 of the OM ibid make applicability of order to draughtsmen who have not derived the benefits under OM October 19, 1994 and would be entitled to extension of revised pay scales, subject to fulfilling eligibility criteria fixed i.e. 8 years service in the scale. Clause 6 of the OM provides that Draughtsmen who are covered under OM dated 19.10.1994 are to be placed in the revised scale of Rs.5000-8000 in pursuance of recommendations of 5th CPC. The Draughtsmen who had worked in the revised scale as given in OM of October 19, 1994, on completion of 8 years service is to be placed in revised scale recommended by 5th CPC. As the applicants, vide order dated 6.5.1998, were placed in the scale of Rs.1400-2300 w.e.f. 17.3.1993 on completion of 8 years service, would be entitled for the benefit of OM dated 1.6.2001.

12. In the result, for the foregoing reasons OA is allowed in terms of the para 8 of the OA. Respondents are directed to comply with the directions within a period of 3 months from the date of receipt the copy of this order. No costs".

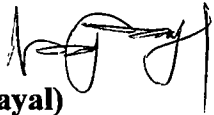
19. It is clear that the Tribunal had given the benefit of the OM dated 1.6.2001 to the applicants Draughtsman holding that they were entitled to be placed in the revised pay scale of Rs.5000-8000 since they had already rendered minimum 8 years eligibility service. The Tribunal has allowed the pay scale of Rs.5000-8000 to the Draughtsman applicants on the ground that the replacement pay scale of the Draughtsman in the office of the respondent with 8 years of service as per OM dated 1.6.2001 the recommendation of the Pay Commission was Rs.5000-8000. Vide OM dated 1/6/2001, the pay of the Draughtsman with minimum qualifying service as prescribed in the OM, was to be revised as laid down. Therefore, possessing the minimum qualifying service was a condition precedent to the grant of the pay scale prescribed in the OM dated 1.6.2001.

20. The applicant, therefore, is not entitled to be granted the higher pay scale of Rs.5000-8000 as he would be eligible for being granted this pay scale only after he had completed the prescribed minimum service of 8 years as Draughtsman in terms of OM dated 1.6.2001.

21. It is admitted by the applicant that he would be entitled to be granted first financial upgradation strictly in accordance with the terms and conditions of the ACP Scheme and in accordance with the terms and conditions of the Scheme, the financial upgradation is to be granted in the pay scale attached to the next higher post in the hierarchy of cadre/category of post. The pay scale of Rs.5000-8000, can by no stretch of reasoning, could be said to be the entry grade of the post of Draughtsman to which the applicant would be entitled as the first financial upgradation under the ACP Scheme.

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22. Accordingly, we do not find merit in the OA that the applicant was entitled to be granted the first financial upgradation in the pay scale of Rs.5000-8000 with effect from 9.8.99. We dismiss the OA partly. We leave it open to the applicant to challenge the order of the respondent which may be passed by them on his representation against review/revision of the pay scale granted as first financial upgradation, i.e., Rs.4500-7000, if necessary, in accordance with law. Parties shall bear their own costs.


(N.D. Dayal)
Member (A)


(M.A. Khan)
Vice Chairman (J)

Rakesh