

Central Administrative Tribunal  
Principal Bench, New Delhi.

OA-2902/2004

New Delhi this the 1<sup>st</sup> day of July, 2005.

Hon'ble Shri Shanker Raju, Member(J)  
Hon'ble Shri S.K. Malhotra, Member(A)

Shri M.S. Jhabe(Retd.)  
SDI of Post Office  
R/o H.No. 550/6-B,  
Rohtak Road, Saraswati Vihar,  
Meerut-2.

..... Applicant

(through Sh. V.P.S. Tyagi, Advocate)

Versus

1. Union of India through  
Secretary,  
Ministry of Communication,  
New Delhi.
2. The Director General of Post Office,  
Dak Bhawan,  
Parliament Street,  
New Delhi.
3. The Chief Post Master General,  
(UP Circle)  
Lucknow(UP).
4. The Chief Post Master General,  
Uttanchal Circle,  
Dehradun.
5. The Superintendent of Post Offices,  
Tehri Division,  
New Tehri(Uttanchal Pradesh).

..... Respondents

(through Sh. D.S. Jagotra, Advocate)

Order (Oral)

Hon'ble Shri Shanker Raju, Member(J)

Applicant assails respondents' order dated 22.9.2003 depriving him  
benefits of second upgradation on the ground that he had already been promoted  
twice.

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2. Applicant was appointed as a Postal Assistant and was deputed on 25.6.1973 to Army Postal Service in the rank of Warrant Officer. While on deputation, he was granted the grade of Inspector of Post Offices w.e.f. 17.5.1983 and on 30.9.1996, he was repatriated.

3. On promulgation of Assured Career Progression Scheme, as the applicant was not considered, he referred a representation, rejection of which resulted in filing of the present OA.

4. Learned counsel of the applicant contended that Vth Central Pay Commission merged the scale of Rs. 975-1600 pertaining to Postal Assistant with the scale of Rs.1200-2040 of UDC in the integrated scale of Rs. 4000-6000, which was accepted. As such, relying upon Clarification No.1 by the Deptt. of Personnel & Training in the O.M. dated 10.2.2000 by the Ministry of Personnel, Public Grievances & Pensions, it is contended that since the benefits of upgradation are to be made out in existing hierarchy, <sup>by</sup> ~~maturity~~ under ACP shall be in the hierarchy existing after merger of pay scale by ignoring the promotion and an employee, who has been promoted from lower pay scale to higher pay scale before merger, shall be entitled to upgradation ignoring the earlier promotion.

5. Sh. D.S. Jagotra, learned counsel for respondents vehemently opposed the contentions and stated that as the applicant was accorded promotion as UDC and Inspector, he is not entitled to be considered for ACP.

6. On careful consideration of the rival contentions of the parties, we are of the considered view that before merger applicant was promoted but the scale of UDC was merged on the recommendations of Vth Central Pay Commission in the integrated scale of Rs. 4000-6000. As such, the promotion earlier to merger cannot be treated as a promotion for the purpose of ACP. Accordingly, the applicant has got promotion as Inspector and is entitled for the second


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upgradation. Moreover, we find that in Circle Gradation list of Inspectors corrected upto 1.7.2002, though applicant's name stands at Serial No. 3 but he has been denied the said benefit of second upgradation whereas Sh. G.B.S. Bisht and Sh. Bhanu Prakash Pandey, who are junior to him, by an order dated 1.6.2001, second upgradation has been accorded to these junior persons ignoring their promotion before merger of grades.

7. It is trite law that one equally placed cannot be treated differentially. The action of the respondents is certainly violative of Articles 14 and 16 of the Constitution of India and is infraction to the principle of equality without any reasonable nexus.

8. In the result, for the foregoing reasons, respondents are directed to consider granting of second such upgradation to the applicant under Assured Career Progression Scheme w.e.f. 9.8.1999 and in that event he shall be entitled to all consequential benefits. The above directions shall be complied with within a period of two months from the date of receipt of a copy of this order.

No costs.

  
(S.K. Malhotra)  
Member(A)

  
(Shanker Raju)  
Member(J)

/vv/