

Central Administrative Tribunal, Principal Bench

O.A. No. 1796/2004

New Delhi this the 25<sup>th</sup> day of July, 2005

**Hon'ble Mr. Justice M.A. Khan, Vice Chariman (J)**  
**Hon'ble Mr. S.K. Malhotra, Member (A)**

1. Shri Kishan Lal MES No.461858  
S/o Shri Hari Prasad  
R/o 249, Rajban Bazar Jubli Ganj  
Meerut Cantt.  
Serving as up-holster in the Office of GE (North)  
Meerut Cantt.
2. Shri Padam Singh MES No.462466  
S/o Shri Shiv Charan Das  
R/o 146 Purva Ahiran, Budhana Gate,  
Meerut City,  
Serving as upholster in the office of GE (South)  
Meerut Cantt.

..... Applicants

By Advocate: Shri V.P.S. Tyagi.

Versus

1. The Union of India (Through Secretary)  
Ministry of Defence,  
South Block, New Delhi.
2. The Engineer-in-Chief, E-in-C's  
(MES) Branch Army Headquarters,  
DHQ P.O. Kashmir House, Rajaji Marg,  
New Delhi-110 011.
3. The Chief Engineer (MES)  
Bareilly Zone, Sarvatra Bhawan,  
Station Road, Bareilly (UP).
4. The Commander Works-Engineer (MES)  
20-J, The Mall,  
Meerut Cantt.
5. The Garrison Engineer, MES (North)  
Meerut Cantt.
6. The Garrison Engineer, MES (South)  
Meerut Cantt.

... Respondents

By Advocate: Shri R.N. Singh.

**ORDER**

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

The applicants seek quashing of identical orders dated 18.5.2004 and of March, 2004 Annexure A-1 and Annexure A-2 whereby applicant No.1 has been refused grant of

*M.A. Khan*

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Hnd financial upgradation and the applicant No.2 is denied Ist financial upgradation under the Assured Career Progression Scheme (ACP Scheme) respectively.

2. Both the applicants are working on the post of Upholsterer, which is an isolated post. They are in the pay scale of Rs.3050-4590 with effect from 1.1.1996. Their allegation is that they were appointed to the post of Upholsterer which they continue to hold although the applicant No.1 has served for 32 years on this post and the applicant No.2 is working on it for the past 17 years but that that they have been unjustifiably denied the financial upgradation in terms of the ACP Scheme. They had filed OA No. 203/2004 titled as Kishan Lal and Another Vs. U.O.I. & Others, which was disposed off by the Tribunal on 6.2.2004. Pursuant to this order, applicants made a representation for grant of financial upgradation under the ACP Scheme, which has been turned down by the respondents by the orders impugned in this OA.

3. The respondents have resisted their claim on the plea that by letter dated 6.7.1994 (Annexure R-I), the applicants were given option for their induction in the Carpenter trade subject to their qualifying the prescribed trade test and had they been inducted into the Carpenter's grade, they would be eligible for their promotion to the higher post as per recruitment rules.

4. In the rejoinder, the applicants have submitted that they are working in the isolated skilled post of Upholsters in the pay scale of Rs.3050-4590, analogous to other skilled trade of Carpenters, which is in the same scale, and they would be entitled to the first financial upgradation under ACP Scheme in the pay scale of Rs.4000-6000 after 12 years of regular service and to second financial upgradation in the pay scale of Rs.5000-8000 after 24 years of regular service. They have denied that they were required to pass any trade test of HS-II because after 1.1.1996 there was no grade of HS-II and HS-I and the two scales, which were earlier in the pay scale of Rs.1200-1800 and in the pay scale of Rs.1320-2040, have been merged into one integrated scale of Rs.4000-60000 on revision of pay by 5<sup>th</sup> Central Pay Commission.

5. We have heard the learned counsel for the parties and have gone through the record.

6. The respondent in their counter has agreed that the applicants were working on an isolated trade/post, i.e., Upholsterer, which has no further promotional avenues. As such

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there is no hierarchy of promotional post to the post of Upholsterer. The applicant No.1 has rendered 32 years of regular service and the applicant No.2 has been working on this post for 17 years on regular basis. There is no promotional post and they have also not been granted any promotion during their service career of 32 years in respect of the applicant No.1 and during the tenure of 17 years in the service span of applicant No.2. They are eligible for consideration for financial upgradation under the ACP Scheme. However, the respondents have denied the benefit of the ACP Scheme to these applicants on the ground that by letter dated 6.7.1994, Annexure R-I, they were given an option for induction in the trade of Carpenter subject to their qualifying the prescribed trade test and that these applicants have failed to exercise this option as a result, they cannot claim that they were stagnating for want of promotional posts. They, as such, are stagnating of their own volition, since after induction into the Carpenters trade, they would have got normal hierarchy of promotional post as per the recruitment rules.

7. The short question is whether the applicants can be denied the financial upgradation under the ACP Scheme since they have failed to exercise the option given to them by letter dated 6.7.1994, i.e., to opt for their induction in the post of Carpenter, subject to their qualifying the prescribed trade test. The relevant extract of letter dated 6.7.1994 Annexure R-I is as under:-

“ Option to allow Upholsterer for induction in Carpenter’s Trade

The existing Upholsterer may be allowed option for induction in Carpenter’s Trade subject to passing of Trade Test of Carpenter (SK) so that the Upholsterer (SK) after induction to Carpenter (SK) shall continue to be considered for promotion upto Carpenter HS-I Level subject to passing of Trade Tests at various level. The Upholsterer (SK) when inducted to Carpenter (SK) will also be considered as redesignation and not promotion, without change in pay structure”.

8. From the above, it is clear that the Upholsterer were given an option for their induction on the post of Carpenter subject to their qualifying the trade test and thereafter their progression in the career would be in accordance with the hierarchy provided for promotion to the post of Carpenter. Though in the counter it is alleged that it was mandatory for them to opt for it but from the above extract of the letter it cannot be stated that it was mandatory upon the Upholsterer, who were working on the isolated posts, and they had no choice but to opt for their induction in the carpenters trade, which was also in

the same pay scale. Once an option has been given, the Upholsterer were free to accept the offer and opt for their induction on the post of Carpenter or opt to continue to work on the post of Upholsterer. The post of Upholsterer was not abolished. Those who did not opt for their induction as Carpenter subject to passing of the trade test, had to continue to work on the isolated post of Upholsterer and suffer the consequences therefor. The ACP Scheme, which came on 9.8.1999 copy of which has also been filed on record by the applicant as Annexure A-3, did not lay down that in case the holder of the isolated post failed to opt for their induction into other post with promotional avenues, they would be not eligible to the grant of financial upgradation under the ACP Scheme.

9. The ACP Scheme was devised to deal with genuine stagnation and hardship faced by the government servants due to lack of adequate promotional avenues though they were otherwise eligible for promotion, the financial upgradation is to be granted strictly in accordance with the terms and conditions of the Scheme. Learned counsel for the applicants has submitted that the financial benefit under the scheme has to be granted where there is genuine stagnation and after fulfilling the conditions prescribed for promotion". It is submitted that since the applicants have failed to opt for their induction into the Carpenter trade, they themselves should be blamed for continuous stagnation on the post. We do not find any merit in this contention. As noticed above, the Upholsterer were given an option and it was discretionary for them to accept the offer or to continue to hold the isolated post of Upholsterer. They had opted to continue on the post of Upholsterer, which does not have any promotional post in the hierarchy. It will not debar them from reap<sup>er</sup>ceiving the benefit of ACP scheme.

10. Para 7 of the ACP Scheme has provided that "in 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 scale as indicated in Annexure-II which is in keeping with Part A of the First Schedule annexed to the Notification dated September 30, 1997 of the Ministry of Finance (Department of Expenditure)." As an example it has also been stated that the incumbents holding the isolated post in the pay scale of S-4 as indicated in Annexure-II would be eligible for the proposed two financial upgradations only to the pay scales S-5 and S-6.

11. In terms of the condition No.7 of the ACP Scheme, the applicants are presently working in the pay scale in S-5, i.e., in the scale of Rs.3050-4590 and they would be entitled to Ist financial upgradation in the grade of S-6 on completion of 12 years, i.e., Rs.3200-4900 and on completion of 24 years regular service grade in S-7, i.e., Rs.4000-6000.

12. As per clarification No.10 issued by the Department of Personnel, Public Grievance and Pensions, Department of Personnel and Training dated 10.2.2000, a copy of which has also been produced in the case of isolated post, "the scale 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 Annexure-II of the Office Memorandum dated 9.8.1999 (ACPS) shall apply." Based on this clarification the learned counsel for the applicants has referred to the order issued by the Ministry of Defence on 20.5.2003. It is regarding restructuring of the cadre of Artisan Staff in the Defence Establishment in modification of recommendations of 5<sup>th</sup> Central Pay Commission. A copy of the said order has been produced. In accordance with this grade restructure in the industrial as well as in the non-industrial trades, wherever already available and the pay scale of the Defence Artisan Staff shall stand modified w.e.f. 1.1.1996 as under:-

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|-------|------------------|--------------|
| (i)   | Skilled          | Rs.3050-4590 |
| (ii)  | Highly Skilled   | Rs.4000-6000 |
| (iii) | Master Craftsman | Rs.4500-7000 |


13. Certain other instructions have also been given in this order. The learned counsel for the applicants, therefore, has argued that in view of this restructuring order the applicants were entitled to the Ist financial upgradation in the scale of Rs.4000-6000 and the IInd financial upgradation in the scale of Rs.4500-7000. The learned counsel has also referred to an order passed by the Hon'ble Delhi High Court in Ms. Bindu Sehgal Vs. Union of India & Others, 2003 (3) All India Service Law Journal 400. The Hon'ble High Court had observed that the scale for ACP would be in the same hierarchy in the

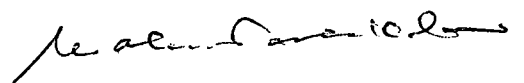
department and not of the other departments. In cited case, the petitioner was working on an isolated post of Hindi Officer in the scale of Rs.6500-10500 and the first financial upgradation was granted by the Defence Ministry in the scale of Rs.8000-13500, which was the next higher scale attached to an analogous post in the same department. The petitioner represented that she should have been granted the pay scale of Rs.10,000-15200 as financial upgradation under the ACP Scheme since the said Scale of pay was granted to a Hindi Officer under the Scheme in the office of the Controller General of Defence Accounts. The Hon'ble Court dismissed the petition and it was observed that she was entitled to financial upgradation in terms of the Scheme on the basis of pay scale of analogous posts in the department and not on the basis of the pay scales existing in some other departments.

14. In the counter reply it is admitted that the applicant was working in the skilled grade which in this case was Rs.3050-4590. As per the restructuring order dated 20.5.2000 the next two higher grades to skilled grade were Rs.4000-6000 and Rs.4500-7000. There are the pay scale attached to analogous posts in the same department. According to clarification No.10 issued vide OM dated 10.2.2000 read with condition No.7 the first and second financial upgradation under scheme admissible to the isolated post of Rs.4500-7000 respectively and not S-6 and S-7 grade given in Schedule II attached to the Scheme.

15. We hold accordingly.

16. As a result of the above discussion, the OA succeeds. We direct the respondents to consider the grant of first and second financial upgradation to these applicants in accordance with the directions and conditions of ACP Scheme dated 9.8.1999 read with clarification No.11 of OM dated 10.2.2000 in the restructured modified grade of analogous posts in the same department vide letter dated 20.5.2003, i.e., 4000-6000 and Rs.4500-7000 respectively as the case may be. The order shall be implemented within 2 months from the date of receipt of a copy of this order. Parties to bear their own costs.

  
(S.K. Malhotra)  
Member (A)

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