

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. NO. 370/2004

New Delhi, this the 21st day of February, 2006

**HON'BLE MR. V.K. MAJOTRA, VICE CHAIRMAN (A)
HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)**

1. Junior Engineer's Association,
CCW, AIR 5th Floor, Soochna Bhawan,
New Delhi through its General
Secretary Shri Hemant Kumar Joshi
2. Joginder Singh,
Arch. Asstt. Grade I, CCW, AIR,
SA-II Unit, 2nd Floor,
Soochna Bhawan, New Delhi
3. Kewal Singh,
Arch. Asstt. Gr.II, CCW, AIR,
SA-II Unit 2nd Floor,
Soochna Bhawan,
New Delhi

APPLICANTS

(By Advocate : Shri S.M. Garg)

VERSUS

1. Union of India through
its Secretary,
Ministry of Information & Broadcasting,
Shastri Bhawan,
New Delhi – 110001
2. Chief Executive Officer,
Prasar Bharati,
Broadcasting Corporation of India,
Doordarshan Bhawan, Mandi House,
New Delhi
3. Chief Engineer-I,
CCW, AIR, 2nd Floor,
Soochna Bhawan,
New Delhi

RESPONDENTS

(By Advocate : Shri S.M. Arif)

ORDER

BY MUKESH KUMAR GUPTA, MEMBER (J):

By the present OA, challenge has been made to an order dated 7.1.2004 (Annexure A/4) rejecting applicants' request for grant of pay



scale of Rs.6500-10500/- under the Assured Career Progression Scheme (ACP Scheme) besides seeking a direction to implement the ACP Scheme and fix the pay of the applicants and other similarly situated Architectural Assistants Grade-I and Grade-II with consequential benefits.

2. To appreciate the controversy in question, certain facts need to be noticed. This is the second round of litigation between the parties. Applicant No.1, an Association of Engineers belonging to Civil Construction Wing (CCW) of All India Radio (AIR), represents the Architectural Assistants Grade-I and Grade-II working in CCW of AIR. Applicants No.2 and 3 are the Architectural Assistants Grades-I and II respectively. Their basic grievance is about fixation of pay scale consequent upon the 5th Central Pay Commission's (5th CPC) recommendations. According to them, on merger of two scales of pay, namely, 1400-2300 and 1600-2660, they are entitled to be placed in the revised pay scale of Rs.5000-8000, based upon the recommendations made vide para 50.128 by the 5th CPC, and thereafter fixing their pay upon implementation of ACP Scheme.

3. On an earlier occasion, they had instituted OA No.272/2001, which came to be disposed of vide order dated 23.7.2002, with the following directions:-

"6. Although we are not inclined to issue directions ourselves to the respondents to place the applicants under the ACP Scheme in the pay scale of rs.6500-10500, at the same time on consideration of rival contentions of parties, we are of the considered view that respondents should consider the claims of the applicants in accordance with law, as such, we direct the respondents to consider this OA as a representation from these applicants and dispose of the same by a detailed, speaking and reasoned



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order within a period of four months from the date of receipt of a copy of this order."

(emphasis supplied)

4. It had been the contention of the applicants that all along they were equated with the Architectural Assistants of CPWD under the 3rd and 4th CPCs, and had been drawing the same pay scales as drawn by their counter-parts in the CPWD. Vide para 50.128, the 5th CPC made the following recommendations:

"The controversy and the problem of the pay scale of Engineering Assistants have been considered by us in detail in the Chapter on the Ministry of Information and Broadcasting. We have recommended the pay scale of Rs.1600-2660 to Engineering Assistants of AIR/DD at par with Diploma Engineers in other departments of the Government.

The pay scales of subordinate engineering cadres are thus recommended as given below keeping in view the general pay structure for Diploma Engineers.

Broadcasting Wing	Existing	Pay Scale (Rs) Recommended (in present terms)
Engineering Assistant	1400-2660/- 2000-3200	1600-2660
Sr Assistant Assistant Engineer	Engineering 1640-2900 2000-3500	1640-2900 2000-3500 2500-4000
		Assistant Engineer Gr-II Assistant Engineer Gr-I

The pay scales and promotion pattern in the Civil and Electrical Wing will be identical as in the CPWD.

(emphasis supplied)

5. Vide order dated 27.10.1997, the Directorate General of Works, CPWD, New Delhi, merged two existing pay scales of Rs.1400-2300 and Rs.1600-2660/- and granted the revised pay scale of Rs.5000-8000/- to the Architectural Assistants and accordingly fixed their pay. Subsequently the said officials were granted the benefits under ACP Scheme by grant of next higher pay scale of Rs.6500-10500/-. The precise grievance is that the said pay scales have not been granted in



the CCW, AIR and they have been placed in the pay scale of Rs.5000-8000/-.

6. Pursuant to aforesaid direction of this Tribunal, the Respondents vide impugned communication dated 7.1.2004 rejected their claim.

The relevant excerpts of which read as under:

"2. In pursuance of the direction given in the judgment dated 23.07.2002 delivered in above O.A. No.272/2001, the matter has again been considered and is stated as follows:-

(i) The pay scale of Architectural Assistant Grade-II was upgraded from the pay scale of Rs.4500-125-7000 to Rs.5000-150-8000 in accordance with the recommendations of Vth Pay Commission and the pay of these Architectural Assistants Grade-II was fixed accordingly.

(ii) The applicants in the above OA as well as other eligible Architectural Assistant Gr. II have been granted financial upgradation, under the ACP Scheme w.e.f. the dates they have become eligible. Their pay has, accordingly, been fixed in the next higher scale of Rs.5500-175-9000/-.

(iii) The pay scale of Rs.5500-175-9000/- has been granted to the applicants strictly as per the provisions of DP&T's OM No.35034/1/97-Estt.(D) dated 9.8.1999 according to which, while granting Financial Upgradation under the ACP Scheme, their pay shall be fixed in the next higher Grade in the hierarchy without creating new post or Grade.

(iv) It is further stated that there is no recommendations of the 5th Pay Commission vide para 3.5.5 relating to Upgradation of pay scales of Architectural Cadre in CCW, AIR and it is nowhere mentioned that the Recruitment Rules or service conditions of Architectural Cadre of CCW will be on the pattern of CPWD.

3. In view of the facts stated above, the financial upgradation has been granted under the ACP Scheme, in the immediate next higher Grade in existing hierarchy, strictly as per the instructions of D.O.P&T."

7. They are aggrieved by the partial implementation of the ACP Scheme, and contend that they were entitled to the pay scale of Rs.6500-10500/- in accordance with the recommendations made by the 5th CPC. Para 3.5.5 of All India Radio Manual prescribes that rules

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applicable to CPWD will apply to the CCW also and the same reads as follows:

3.5.5 Applicability of CPWD Rules:

The Civil Construction Wing is working generally on the pattern of C.P.W.D. The rules contained in C.P.W.D. Account Code, C.P.W.D. Department Code and C.P.W.D. Manuals and subsidiary instructions issued by competent authorities, under these rules, from time to time, apply to the Civil Construction Wing."

8. It is stated that the equivalent post of Architectural Assistants in CCW is known as Assistant (Architectural Department) in CPWD. In CPWD, the said officials were allowed revised pay scale of Rs.5000-8000/- and thereafter, they were allowed the benefit of ACP Scheme by grant pay scale of Rs.6500-10500/- which benefit has not been accorded to them, without any justification. There is no separate Architectural Wing in the AIR. On the contrary, there is only one Engineering Wing in the AIR, namely, CCW and the Architectural Unit is part and parcel of the CCW headed by the Chief Engineer-I. The CCW has been wrongly referred by the 5th CPC as Civil and Electrical Wing and the applicants cannot be denied parity in pay scales and promotion pattern at par with CPWD due to inadvertent mistake of 5th CPC. In any event, the Architectural Unit being part and parcel of CCW of AIR, the same is fully covered by the recommendation of the 5th CPC. Prior to the 5th CPC Report, there had been two scales in the CCW, namely, Rs.1400-2300 and Rs.1640-2900/- for Grade-II and Grade-I respectively, which have been revised to Rs.5000-8000 and 5500-9000, which is a wrong fixation done by the Respondents. The entitlement of pay parity of Architectural Assistants of CCW at par with their counterparts in CPWD has already been recognized and admitted by

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respondents in the reply affidavit filed in OA No.272/2001. The ACP Scheme is to be applied to all Architectural Assistants, in both the Government departments equally, as per the Notification dated 9.8.1999 uniformly. The issue of denial of merger of aforesaid two pay scales had been referred to the Joint Staff Association Meeting and it was recommended that since the pay scales as per 5th CPC recommendations had been granted, the modification in R.R. of the Arch. Assistant was necessary and accordingly Chief Engineer-I and E.O.I were required to send the proposal immediately and implement the ACP according to the CPWD norms, yet the Respondents have failed to take any action. Since the Respondents failed to take any action, despite the recommendations made, followed by reminders, they had earlier instituted OA No. 272/2001.

9. The Respondents contested the claim laid in the present OA and reiterated their stand as conveyed vide impugned communication dated 7.1.2004, noticed hereinabove. It was stated that the pay scale of Architectural Assistants Grade-II was upgraded from the pay scale of Rs.4500-7000/- to Rs.5000-8000/- in accordance with the recommendations of the 5th CPC, and their pay was fixed accordingly. The applicants in the OA as well as other eligible Architectural Assistant Grade-II were granted the benefit of ACP Scheme with effect from the date they became eligible and their pay was accordingly fixed in the next higher grade of Rs.5500-9000/-, in accordance with the provisions of DOP&T OM dated 9.8.1999. It is wrong to suggest that the applicants were entitled to the pay scale of Rs.6500-10500/- under the ACP Scheme. It was further submitted that there was no recommendations of 5th CPC vide para 3.5.5 relating to the upgradation of Pay Scales of



Architectural Cadre in CCW, AIR and it was also nowhere mentioned that the Recruitment Rules or service conditions of Architectural cadre of CCW will be on the pattern of CPWD. The Respondents further denied that there was any inadvertent mistake committed by the 5th CPC. The applicants were granted the pay scale, i.e. Rs.5500-9000/-, as admissible in the hierarchy in the CCW under the ACP Scheme as they were in the pay scale of Rs.5,000-8,000/-. It is contended that the ACP Scheme is applicable only to those persons, who are stagnating at a particular pay scale and there is no promotional avenues available to them, and in that view of the matter, they are entitled for two financial upgradations i.e. first after completion of 12 years and the second after completion of 24 years of service. However, if a person had already got a promotion, then he is not entitled for the first financial upgradation. It is relevant to note that the Grade-I Architectural Assistants have already got their promotions from Grade-II, and as per the ACP Scheme, the 12 years slot was not available to them. The allegations of violation of Articles 14 and 16 of the Constitution of India were also denied.

10. The applicants controverted the aforesaid submissions of the Respondents by filing a detailed rejoinder as well as additional affidavit. Vide additional affidavit, the Applicants placed on record the reply filed by the Respondents in the earlier OA, being OA No.272/2001, to suggest that the respondents have taken absolutely a contrary stand in the present OA as on an earlier occasion they had clearly admitted and accepted the parity of the Architectural cadre of CCW, AIR with their counterpart in CPWD particularly with reference to Para 4.5 of their reply to the earlier OA. Reliance was placed on (1973) 1 SCC 651

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Purshottam Lal vs. Union of India to contend that when the Government made a reference in respect of all Govt. employees and it accepted the recommendation, it was bound to implement the recommendations in respect of all Govt. employees. If it did not implement the report regarding some employees only, it committed a breach of Articles 14 and 16 of the Constitution.

11. The Respondents filed their objection to applicants' Additional Affidavit and denied the suggestion that they had earlier admitted & accepted pay parity of Architectural cadre of CCW of AIR with their counterparts of CPWD.

12. We heard the learned counsel for the parties and perused the pleadings carefully.

13. During the course of oral hearing, both sides reiterated their stand as projected in the pleadings, noticed hereinabove.

14. On perusal of the material on record as well as the Recruitment Rules produced by the parties, we may summarise some admitted facts, namely -

i) There had been two categories of Architectural Assistants in the CCW, AIR, i.e. Grade-II and Grade-I in the pay scales of Rs.1400-2300 and Rs.1640-2900/- respectively which were revised to Rs.4500-7000 and 5500-9000/-, respectively in terms of recommendations made by the 5th CPC. However, Architectural Assistants Grade-II were allowed upgraded pay scale of Rs.5000-8000/-.

ii) There existed posts of Architectural Assistants in the pay scale of Rs.1400-2300 and 1600-2660 which were revised



to Rs.5,000-8,000/- vide D.G., CPWD Order dated 27.10.1997.

- iii) As per the recommendations made by the 5th CPC under Para 50.128, the pay scales and promotion pattern in Civil and Electrical Wing had to be "identical as in the CPWD".
- iv) In terms of para 3.5.5 of A.I.R. Manual, rules applicable to CPWD were to apply to CCW also as the CCW working was generally on the pattern of CPWD.
- v) This Tribunal vide order dated 23.7.2000 in OA No.272/2001 directed the Respondents to consider the Applicants' claim in accordance with law and consider the said OA as a representation and dispose of the same by a detailed, speaking and reasoned order.
- vi) Joint Staff Association meeting held on 4.8.2000 recommended for amendment of the Recruitment Rules to the post of Assistant Architecture and implement the ACP Scheme according to the CPWD norms, which remained unimplemented. The applicants made representation dated 18.09.2003 and pointed out in specific that there exist no civil wing and electrical wing in AIR and there remains only one Civil Construction Wing, which has three disciplines, namely, Architecture, Civil and Electrical Engineering.
- vii) The impugned communication dated 7.1.2004 did neither notice the recommendations made by the 5th CPC vide paragraph 50.125 nor consider and examine the said aspect. On the other hand, it only stated that there was no recommendation made by the 5th CPC vide para 3.5.5

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relating to upgradation of pay scale of Architecture Cadre in CCW, AIR.

viii) CPWD vide OM dated 6.4.2000 allowed the Assistant Architecture, who were placed in the pay scale of Rs.5,000-8,000/- first and second financial upgradation under DOP&T OM dated 9.8.1999 in the pay scale of Rs.6,500-10,500/- and Rs.10,000-15,200/- respectively.

15. In terms of DOP&T's OM dated 9.8.1999 dealing with Assured Career Progression Scheme for the Central Government Civilian Employees, an official is entitled to financial upgradation "to the next higher grade in accordance with the existing hierarchy in a cadre/category or posts." Shri Garg, learned counsel appearing for the applicants vehemently contended that the said mandate had been flouted by the respondents. Relevant para relating of Assured Career Progression Scheme for the Central Government civilian employees reads as under:-

"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 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 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)."

16. Shri S.M. Arif, learned counsel appearing for the respondents contended that the applicants were entitled to financial upgradation to the next category, i.e, S-10, which carries the pay scale of Rs.5500-9000/- as they were already in S-9 category carrying the pay scale of

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Rs.5000-8000/- The said contention was stoutly refuted by the applicants contending that financial upgradation is available "to the next higher grade in accordance with the existing hierarchy in a cadre". On bestowing our careful consideration to this aspect vis-à-vis Para-7 of the DOP&T OM dated 09.08.1999 as well as respondents' own stand, we find merits in the applicants' contention that one is entitled to financial upgradation "to the next higher grade" in accordance with the existing hierarchy in a cadre", and not to the next higher pay scale as indicated in Annexure-II, Para-A of First Schedule annexed to the Ministry of Finance's Notification dated 30.09.1999. The said Annexure-II is applicable only in cases of "isolated posts". In the present case, it is not an isolated post as there are two grades of Archeological Assistants, namely, Grade-II and Grade-I. Therefore, we hold that there is no merit and justification in the contention raised by the Respondents.

17. On bestowing our careful consideration to Para 50.128 as well as Para 3.5.5 of the AIR Manual, we find that as per the said Manual, the Civil Construction Wing of the AIR is working "generally on the pattern of CPWD" and as per the aforesaid para of the Manual, the various rules being followed in the CPWD "apply to the Construction Wing" of the AIR. In other words, the CPWD Code/Manual and subsequent instructions issued thereafter have been incorporated by reference and made applicable to Civil Construction Wing. Vide para 50.128, 5th Central Pay Commission in specific recommended that: "pay scales and promotion pattern in the Civil and Electrical Wings will be identical as in the case of CPWD". A perusal of the impugned communication dated 07.01.2004 leads to inescapable conclusion that the said aspects

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has not been considered at all, by the respondents either objectively or fairly. On the other hand, they merely stated that there were no recommendations of the 5th Central Pay Commission vide para 3.5.5. As such there had been no consideration or examination of the real issue raised by the applicants.

18. In view of the aforesaid discussion, we are unable to sustain the impugned communication dated 07.01.2004 and direct the Respondents to consider all aspects as indicated hereinabove once again and pass a reasoned and speaking order. This exercise shall be completed at the earliest and not later than three months from the date of receipt of a copy of this order.

19. The OA is accordingly disposed of. No costs.



(Mukesh Kumar Gupta)
Member (J)



(V.K. Majotra) 21.2.06
Vice-Chairman(A)

/PKR/