

Central Administrative Tribunal, Principal Bench

O.A. No. 493/2004

New Delhi this the day of 22<sup>nd</sup> December, 2004

**Hon'ble Mr. Justice M.A. Khan, Vice-Chairman (J)**  
**Hon'ble Mr. Sarweshwar Jha, Member (A)**

1. Shri Nooruddin Ashrf  
S/o Late Shri Sayed Ayub Ashraf  
R/o 29/268, DMS Quarters,  
Hari Nagar, New Delhi-110 064.
2. Shri Vijay Kumar  
S/o Late Shri Gopi Nath  
R/o 18/258, DMS Staff Quarters,  
Hari Nagar, New Delhi-110 064.
3. Shri R.K. Sahni  
S/o Late Shri M.R. Sahni  
R/o H.No.156, Gali No.2,  
Govindpuri, New Delhi-110 019.
4. Shri S.K. Patel  
S/o Late Shri K.B. Patel  
R/o 40, Gitanjali Society,  
Mahasave, North Gujarat.
5. Shri A.K. Puri  
S/o Late Shri Madan Mohan Puri,  
R/o 6-B, Friends Colony,  
Jharsa Road, Gurgaon, 122001, Haryana.
6. Shri P.K.R. Mali  
S/o Late Shri Rangil Dass Mali  
R/o Flat No.132, Sector-13,  
Phase-II, Pocket-I, Dwarka,  
New Delhi-110 045.
7. Shri N.N. Sharma  
R/o A/D 121, Shalimar Bagh,  
Delhi-110 088.

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8. Shri D. Kumar  
R/o E-3, DMS Colony, West Patel Nagar,  
New Delhi-110 008.
9. Shri P. Bharti  
R/o 20/276, DMS Staff Quarters,  
Hari Nagar, New Delhi-110 064.
10. Shri A.P. Singh  
11B, Pocket-A, LIG, Hari Nagar,  
New Delhi-110 064.

...Applicants

By Advocate: Shri Mahesh Srivastava.

Versus

1. Union of India  
Through its Secretary,  
Ministry of Agriculture,  
Department of Animal Husbandry & Diaring,  
Krishi Bhawan, Rajender Prasad Road,  
New Delhi-110 001.
2. General Manager,  
Delhi Milk Scheme,  
West Patel Nagar,  
New Delhi-110 008.

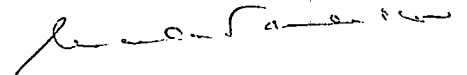
....Respondents

By Advocate: Shri B.S. Jain.

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

The applicants are seeking a direction to the respondents for grant of second financial upgradation under Assured Career Progression Scheme (ACP Scheme).

2. Shortly stated the facts are that the applicants joined the respondents Delhi Milk Scheme (DMS) as Dairy Supervisors on different dates between 1966 to 1970. In accordance with the recommendations of the 5<sup>th</sup> Central Pay Commission, they were

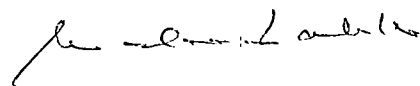


(10)

placed in the grade of Rs.5000-8000. Under the ACP Scheme, they became entitled to two financial upgradations, first on completion of 12 years and second on completion of 24 years of regular service. They were granted first financial upgradation in the pay scale of Rs.6500-10500 which was attached to the promotional post of Section Manager w.e.f. 9.8.1999 by order dated 26.7.2001 (Annexure R-3 to the counter). This financial upgradation was granted under the existing hierarchy of promotional post which was as under:-

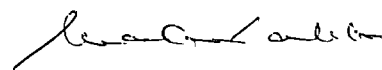
- |     |                  |                |
|-----|------------------|----------------|
| (a) | Dairy Supervisor | Rs.5000-8000   |
| (b) | Section Manager  | Rs.6500-10500  |
| (c) | Shift Manager    | Rs.10000-15200 |

The matter of grant of second financial upgradation in the scale which was attached to the post of Shift Manager, which was the next promotional post, was taken up by the DMS with the Ministry of Agriculture. In the meantime, the Government in accordance with the recommendations of the 5<sup>th</sup> Pay Commission reorganised the cadre of Dairy Supervisor splitting it up into two posts – (i) Assistant Manager Grade-II in the scale of Rs.5000-8000 and (ii) the Assistant Manager Grade-I which was placed in the pay scale of Rs.5500-9000, retrospectively w.e.f. 1.1.1996 vide order dated 23.9.2003. Accordingly, the respondents reviewed the grant of first financial upgradation and granted second financial upgradation to the applicants and some other Dairy Supervisors w.e.f. 9.8.1999 by revised order dated 12.5.2003 (Annexure R-4 to the counter). The first financial upgradation was granted in the scale of Rs.5500-9000 and the second financial upgradation in the scale of Rs.6500-10500 to the applicants and other Dairy Supervisors.



3. In para 12 of the OA, the only prayer made by the applicants was that the respondents should be directed to grant them second financial upgradation with interest within the time allowed by the Tribunal. They did not specifically ask for their second financial upgradation in the scale of Rs.10000-15200. They had neither challenged the re-organisation/restructuring of the Dairy Supervisors post nor have assailed the revised order by which the first and second financial upgradations were granted in the lower grades. But a careful reading of the averment made in the OA manifests that the applicants' grievance was that they were denied financial upgradation in the pay scale of Rs.10000-15200. The respondents also purported to contest this claim by filing the reply. The arguments have also been addressed by the applicants and the respondents on the question whether the applicants were entitled to the grant of financial upgradation in the scale of Rs.10000-15200. We are, therefore, concerned with this question in this OA.

4. The contention of the applicants in the OA, inter alia, is that the Recruitment Rules have not been amended to give effect to the restructured/reorganization in the cadre of Dairy Supervisors and that by administrative order the respondents could not have changed the structure of the cadre of Dairy Supervisors and denied the second financial upgradation to these applicants in the scale of Rs.10000-15200. The reorganization/structural changes were made in the cadre of Dairy Supervisors pursuant to the order of the Ministry of Agriculture. Vide order dated 27.3.2002 (Annexure R-I), the Dairy Supervisors were redesignated as Assistant Manager and they were split up into two groups - (i) Assistant Manager Grade-II carrying the pay scale of Rs.5000-8000 and (ii) Assistant Manager Grade-I carrying the pay scale of Rs.5500-9000. There was no



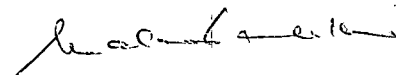
change in the designation and the scale of pay of the Section Manager and Shift Manager.

The Recruitment Rules have not been amended as yet.

5. There is no controversy to the grant of the first financial upgradation under the ACP Scheme in the scale of Rs.6500-10500. The applicants, as observed above, are not seeking quashment of the revised order dated 12.5.2003 (Annexure R-4) presumably for the reason that both first and second financial upgradations under the ACP Scheme were granted to these applicants from the same date, i.e., 9.8.1999.

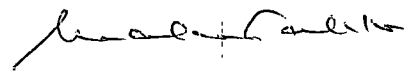
6. ACP Scheme was introduced to ensure at least two promotions by the Government to deal with the problem of "genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues". Under it, the employees were entitled to two financial upgradations, first after completing 12 years of service and the second on completion of 24 years of service. The employees who got one promotion were entitled to the second financial upgradation after completion of 12 years of service. Broadly the financial upgradation was to be given in the existing promotional hierarchy of the cadre.

7. In the counter, the respondents agreed that the applicants were entitled to two financial upgradations in accordance with the ACP Scheme. It was also not denied that the first financial upgradation was granted to these applicants and some other Dairy Supervisors in the scale of Rs.6500-10500 which was attached to the post of Section Manager and it was the next promotional post for Dairy Supervisor. However, their contention is that the structure of the cadre of Dairy Supervisor was reorganized by the Government and that the post of Dairy Supervisor was substituted by two posts of Assistant Manager Grade-II and Assistant Manager Grade-I in the scale of Rs.5000-8000



and Rs.5500-9000 respectively w.e.f. 1.1.1996. It was submitted that steps are being taken for amendment of Recruitment Rules but the orders have been given effect to immediately. As a consequence, the first financial upgradation of the applicants was granted in the grade which was attached to the grade of Assistant Manager Grade-I and the second financial upgradation in the pay scale attached with the post of Section Manager Grade-II.

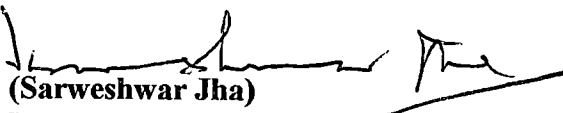
8. The applicants became eligible for two financial upgradations under the ACP Scheme, as admitted by the respondents, with effect from 9.8.1999. They have, in fact, also been granted the financial upgradations first and second from that date. Firstly the first financial upgradation was granted w.e.f. 9.8.1999 in the scale of Rs.6500-10500 vide order dated 26.7.2001 (Annexure R-3). Thereafter, the first and second financial upgradations by revised order were granted w.e.f. 9.8.1999. The first financial upgradation was given under the pay scale of Rs.5500-9000 and the second in the pay scale of Rs.6500-10500. On 9.8.1999, the promotional posts to the post of Dairy Supervisor were Section Manager and Shift Manager to which the scale of Rs.6500-10500 and Rs.10000-15200 were attached. The Dairy Supervisors were in the pay scale of Rs.5000-8000. There is no order of the respondents by which the Dairy Supervisors have been redesignated as Assistant Manager and placed in the scale of Rs.5000-8000 as yet. There is also no amendment of the Recruitment Rules to introduce the re-organised structure in the cadre of Dairy Supervisors as yet. On 9.8.1999, there was no scale of the pay of Rs.5500-9000 in the existing hierarchical structure for promotional post. The Dairy Supervisors were eligible to the grant of first financial upgradation in the scale of Rs.6500-10500 which, in fact, had been granted to them. The second promotional post of



Shift Manager was in the pay scale of Rs.10000-15200 and the second financial upgradation for the Dairy Supervisor under ACP Scheme could be only in the scale of Rs.10000-15200. In fact, the respondents had itself recommended for giving this pay scale as the second financial upgradation to the applicants. Therefore, in 1999 when the applicants became entitled to the second financial upgradation, they were eligible to be granted only the scale of Rs.10000-15200 and not Rs.6500-10500 as is sought to be granted to them by the respondents.

9. Though in the counter the respondents did state that in situ promotion was granted to the applicants in 1992 but it has not been pleaded that in view of this in situ promotion, the applicants were not entitled to the second financial upgradation. It seems that in situ promotion was not in the existing hierarchy. The respondents have not denied the grant of second financial upgradation to the applicants for any such reason. We need not go into this question any further.

10. The result of the above discussion is that the OA is allowed. Respondents are directed to grant the applicants the second financial upgradation in the scale of Rs.10000-15200 which is attached to the post of Shift Manager with effect from 9.8.1999 instead of granting it in the scale of Rs.6500-10500. The applicants are also entitled to all consequential benefits. The order shall be implemented within 3 months from the date it is received by the respondents but the parties will bear their own costs.

  
(Sarweshwar Jha)  
Member (A)

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

Rakesh