

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

1) OA NO.544/2004

2) OA NO.541/2004

This the 15th day of Oct., 2004.

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

1) OA NO.544/2004 ✓

1. Kesho Ram S/O Ram Chand
R/O 59/4332, Regar Pura,
Karol Bagh, New Delhi-110005.
2. Smt. Kamlesh Tuteja W/O Desh Raj Tuteja
R/O 67/8, R.K.Puram,
New Delhi-110022.
3. Bhim Singh S/O Lal Chand
R/O V & P Dundahera,
Gurgaon (Haryana)
4. Jagat Singh S/O Hari Chand
%/352, Nanak Pura, Moti Bagh-II,
New Delhi-110021.

... Applicants

(By Shri Deepak Verma, Advocate)

-versus-

1. Union of India through
Secretary, Ministry of Water Resources,
Shram Shakti Bhawan, Rafi Marg,
New Delhi.
2. Secretary,
Deptt. Of Expenditure,
Ministry of Finance,
North Block, New Delhi.
3. Chairman,
Central Water Commission (CWC),
Sewa Bhawan, R.K.Puram,
New Delhi-110066.

... Respondents

(By Shri B.S.Jain, Advocate)

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2) OA NO.541/2004

1. Bhushan Dutt S/O Sham Singh,
R/O C-363, Gamma-I,
Greater Noida,
Distt. Gautam Budh Nagar (UP).
2. Rajbir Singh S/O Ridku Ram,
R/O H. No.112, Village Tigipur,
Delhi.
3. N.S.Adhikari S/O Diwan Singh,
R/O 5614/B-115, Sant Nagar Burari,
New Delhi.
4. Smt. Harinder Kaur Dhingra
W/O Manjeet Singh Dhingra,
A-125, Dayanand Colony,
Lajpat Nagar-IV, New Delhi.
5. S. R. Jyotishi S/O A. L. Jyotishi,
R/O RY/B-37, Bina Pur Extn.,
Uttam Nagar, Delhi-110059.

... Respondents

(By Shri Deepak Verma, Advocate)

-versus-

1. Union of India through
Secretary, Ministry of Water Resources,
Shram Shakti Bhawan, Rafi Marg,
New Delhi.
2. Secretary,
Deptt. Of Expenditure,
Ministry of Finance,
North Block, New Delhi.
3. Chairman,
Central Water Commission (CWC),
Sewa Bhawan, R.K.Puram,
New Delhi-110066.

... Respondents

(By Shri B.S.Jain, Advocate)

ORDER**Hon'ble Shri V. K. Majotra, Vice-Chairman (A) :**

These OAs are being disposed of by a common order as their facts are similar and issues involved in them are identical.

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2. The applicants in these OAs have been working as Data Entry Operators-B grade Rs.4500-7000 in the Central Water Commission (CWC). It is undisputed that the existing hierarchy in Data Entry cadre in CWC is – (1) Data Entry Operator Grade-B (DEO-B – Rs.4500-7000); and (2) Data Entry Operator Grade-D (DEO-D – Rs.5500-9000). Applicants' case is that on completion of 12 years of regular service, the first financial upgradation under the Assured Career Progression (ACP) Scheme introduced w.e.f. 9.8.1999 should be in the next higher grade, i.e., Rs.5500-9000. Similarly, on completion of 24 years of regular service, they are entitled to second financial upgradation in the scale of Rs.6500-10500. Respondents have accorded the first financial upgradation in the scale of Rs.5000-8000 vis-à-vis Rs.5500-9000. Again, the second financial upgradation has been accorded in scale Rs.5500-9000 vis-à-vis Rs.6500-10500.

3. The only difference between the two OAs is that in OA-541/2004 first financial upgradation has been claimed to the scale of Rs.5500-9000, while in OA-544/2004, the claim relates to both financial upgradations, namely, Rs.5500-9000 and Rs.6500-10500.

4. The learned counsel of applicants has raised the following contentions in support of claims preferred by the applicants:

- (1) The post held by the applicants is not an isolated post under the ACP Scheme. Applicants are presently holding the post of DEO-B (Rs.4500-7000) in the Data Entry Cadre in CWC with the next promotional grade in the post of DEO-D

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(Rs.5500-9000). These averments have been made on behalf of the applicants in paragraphs 4.9 and 4.10 of the OA and have not been denied by the respondents in their counter reply.

- (2) Applicants' case is covered by condition No.7 of the conditions for grant of benefits under the ACP Scheme attached with the OM dated 9.8.1999 (Annexure R-I). Clarifications 32 regarding the ACP Scheme issued vide Annexure AA-2 dated 10.2.2000 specifically relates to the applicants' cadre, which comprises two grades. The learned counsel supplemented that as the applicants' cadre is not an isolated post in terms of condition No.7 *ibid*, financial upgradation under the Scheme has to be given to the next higher grade in accordance with the existing hierarchy in the cadre/category of posts without creating new posts for the purpose. As such, applicants are entitled for placement in the next higher grade in the existing hierarchy, i.e., Rs.5500-9000/Rs.6500-10500 by way of first/second financial upgradation. In terms of clarification 32 *ibid*, in a cadre constituting two grades, standard/common pay scales mentioned in Annexure-II to the OM dated 9.8.1999 are not applicable, but the second upgradation has to be allowed in the pay scale of an analogous grade of a cadre/post in the same ministry/department. However, if no such grade exists in the ministry/department concerned, comparison may be

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made with an analogous grade available in other ministries/departments.

- (3) Some other departments, namely, Ministry of Finance (Department of Economic Affairs) have given the first financial upgradation in the grade of Rs.5500-9000 and the second financial upgradation in the grade of Rs.6500-10500 to the DEOs-B. Thus, applicants have been discriminated against and have been meted out a treatment violative of Articles 14 and 16 of the Constitution.

5. The learned counsel of the applicant has relied upon order dated 10.10.2002 in OA No.1286/JK/2001: **Roopa Singh & Ors. v. Union of India**, in which it was held that when a promotional post is available in the cadre, first financial upgradation has to be given to that grade under ACP Scheme.

6. On the other hand, the learned counsel of respondents submitted as follows:

- (1) True, respondents have not denied that the hierarchy in the Data Entry cadre in CWC comprises two grades, i.e., DEO-B (Rs.4500-7000) and DEO-D (Rs.5500-9000) and that the post of DEO-B is not an isolated post under the ACP Scheme.
- (2) Clarification 32 is not applicable to the instant case. Applicants' case is covered under clarification 56 of DOP&T OM dated 18.7.2000, which envisages that in respect of common category posts, if the government has accepted a



uniform standard hierarchical structure, then existing structure in relation to such categories shall be the standard hierarchy as approved by the Government and not the hierarchy in a particular office, which, for functional considerations, may not have all the grades. The existing scale of applicants being Rs.4500-7000, i.e., S-8 category under the standard/common pay scales of the ACP Scheme, the next standard hierarchical scales would be S-9 and S-10, i.e., Rs.5000-8000 and Rs.5500-9000 respectively. Even though the cadre of DEOs in the CWC has the next promotional grade of Rs.5500-9000 as DEO-D, the first financial upgradation will be standard/common S-9 pay scale of Rs.5000-8000 only. As such in terms of clarification 56 *ibid* applicant shall be entitled to the second financial upgradation on completion of 24 years of regular service in the grade of Rs.5500-9000 only.

- (3) Incorrect implementation of ACP Scheme in some departments/organisations cannot be made the basis for following suit and violating the provisions of ACP Scheme. In this connection, the learned counsel relied upon 1997 SCC (L&S) 801: **State of Haryana & Ors. v. Ram Kumar Mann** to the effect that a relief wrongly given to others cannot be claimed. Unless there was an enforceable right, plea of discrimination cannot be validly raised.

7: We have considered the rival contentions and taken into consideration the material on record.

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8. Admittedly, the Data Entry cadre in CWC has two grades, i.e., DEO-B (Rs.4500-7000) and DEO-D (Rs.5500-9000). Clarification 31 as respects ACP Scheme issued vide Annexure AA-2 dated 10.2.2000 reads as follows:

“31. What is an isolated post for the purpose of the ACP Scheme. Isolated post is a *stand alone* post, having neither feeder grade nor promotional grade. As such, a post having no promotional grade and vice-versa shall not be treated as isolated post for the purpose of ACPS.”

In the instant case as the post of DEO-B has a promotional grade of DEO-D (Rs.5500-9000), the post of DEO-B is not an isolated or stand alone post. While the respondents have applied clarification 56 to the case of the applicants, applicants have sought application of the provisions of condition 7 of the ACP Scheme read with clarification 32. In (1997) 1 SCC 641: **Director General of Posts & Ors. v. B. Ravindran & Anr.**, it was held that clarificatory instructions cannot supersede or take away the right itself under the regulations sought to be clarified. Clarifications 32 and 56 have been issued to clarify the provisions/conditions contained in the ACP Scheme. These clarifications cannot supersede the basic provisions and conditions specified in the Scheme for grant of benefits. As such, condition 7 shall have an overriding effect. It reads as follows:

“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-

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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). For instance, incumbents of isolated posts in the pay-scales S-4, as indicated in Annexure-II, will be eligible for the proposed two financial upgradations only to the pay-scales S-5 and S-6. Financial upgradation on a dynamic basis (i.e. without having to create posts in the relevant scales of pay) has been recommended by the Fifth Central Pay Commission only for the incumbents of isolated posts which have no avenues of promotion at all. Since financial upgradations under the Scheme shall be personal to the incumbent of the isolated post, the same shall be filled at its original level (pay-scale) when vacated. Posts which are part of a well-defined cadre shall not qualify for the ACP Scheme on 'dynamic' basis. The ACP benefits in their case shall be granted conforming to the existing hierarchical structure only;"

9. Clarification 56 has not been issued superseding clarification 32. Clarification 32 specifically deals with the cadres/hierarchy limited to two grades. Clarification 56 does not specifically deal with cadres having two grades only. Thus, condition 7 of the ACP Scheme supplemented by clarification 32 shall hold the field in the instant case comprising a cadre of two grades for purposes of according financial upgradations. The ratio in the case of **Roopa Singh** (supra) is squarely applicable to the present case, wherein applying the provisions of condition 7 of the ACP Scheme, the applicants were held entitled to financial upgradation to the scale of next higher rank in their hierarchy even without a post being available. Annexure A-3 dated 17.6.2002 indicates that in the Department of Economic Affairs, second financial upgradation in the cadre of DEOs has been allowed in the pay scale of Rs.6500-10500. Without rendering any proof regarding cancellation of orders according pay scale of Rs.6500-10500 by way of second financial

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upgradation under ACP Scheme in the Ministry of Finance (Department of Economic Affairs), respondents have attempted to state that Department of Economic Affairs had erroneously granted the second financial upgradation in the scale of Rs.6500-10500 to DEO-B. This explanation and contention on behalf of the respondents is unacceptable. Thus, the case of **Ram Kumar Mann** (supra) would not be applicable to the facts of the present case. Under the provisions of ACP Scheme, applicants do have an enforceable right and discriminatory treatment cannot be meted out to them in implementation of the provisions of the Scheme. Clarification 32 is squarely applicable to the facts of the present case where two grades of hierarchy exist in the cadre of DEOs.

10. Taking into consideration the totality of facts and circumstances, we are of the view that in terms of condition 7 under ACP Scheme read with clarification 32 dated 10.2.2000, applicants are entitled to first financial upgradation in the scale of Rs.5500-9000 which is available in the hierarchical structure of the cadre of DEOs, and the second financial upgradation to the scale of Rs.6500-10500 which is the next higher standard/common pay scale, i.e., grade S-12.

11. In result, respondents are directed to consider granting first financial upgradation in the scale of Rs.5500-9000 w.e.f. 9.8.1999 and second financial upgradation in the scale of Rs.6500-10500 from the respective dates, on fulfilment of conditions under the ACP Scheme relating to stipulated service. Applicants shall be paid consequential benefits on refixation of their pay. Respondents

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are further directed to complete the above exercise within a period of two months from the date of communication of these orders.

12. These OAs are allowed in the above terms.

S. Raju
(Shanker Raju)
Member (J)

V. K. Majotra
(V. K. Majotra)
Vice-Chairman (A)
15.10.07

/as/