

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**



1) OA NO.772/2004
MA NO.666/2004

2) OA NO.995/2004 ✓
MA NO.835/2004

This the 8th day of October, 2004.

**HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE SHRI SHANKER RAJU, MEMBER (J)**

1) OA NO.772/2004

1. Delhi Flood Control Mazdoor Union,
4823, Balbir Nagar Extension,
Gali No.13, Shahdara, Delhi-32
through its General Secretary
Satish Kumar.
2. Udaivir Singh S/O Soran Singh Yadav
3. Shiv Murat Yadav S/O Hardev Singh Yadav
4. Vinod S/O Tirkha
5. Kalicharan S/O Chhotelal
6. Jiyalal S/O Net Ram Yadav
7. Ram Prasad S/O Matadin
8. Ishwar Singh S/O Dhani Ram
9. Ram Asre S/O Kallu Ram
10. Prem Prakash S/O Jagannath
11. Satbir Singh S/O Harnarayan
12. Mahabir Singh S/O Balkishan
13. Hari Om S/O Janki Prasad
14. Hari Charan S/O Ram Autar
15. Shankar Mandal S/O Rajeshwar Mandal
16. Shambhu Nath S/O Heera Lal

All C/O Delhi Flood Control Mazdoor Union,
4823, Balbir Nagar Extension,
Gali No.13, shahdara, Delhi-32,
through its General Secretary,
Satish Kumar.

... Applicants

(By Shri Naresh Kaushik through Shri A. Maratha, Advocate)



1. Govt. of NCT of Delhi
through its Principal Secretary,
Department of Irrigation and Flood Control.
5/9 Under Hill Road, Delhi.
2. The Lt. Governor,
Raj Niwas Marg, Delhi.
3. The Chief Engineer (I&F),
Govt. of NCT of Delhi,
I.S.B.T., Kashmiri Gate,
Delhi.

... Respondents

(By Shri Vijay Pandita, Advocate)

2) OA NO.995/2004

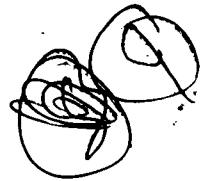
1. Jagan Nath S/O Parma Nand,
Retired Tubewell Operator,
R/O 1/6, Phase-II Ashok Vihar,
New Delhi.
2. Ram Kishan S/O Rai Singh
3. Kartar Singh S/O Daya Nand
4. Chand Ram S/O Shri Chand
5. Jagdish Singh S/O Kanhia
6. Om Prakash S/O Mir Singh
7. Ram Charan Saini S/O Pirbhu Ram Saini
8. Ashok Kumar S/O Bani Singh
9. Ranbir Singh S/O Sardha Singh

Applicants 2-9 are working as Tubewell
Operator under Chief Engineer,
Irrigation & Flood Control Department,
4th Floor, ISBT Building,
Kashmiri Gate, Delhi.

10. R.K.Dixit
11. Rama Nand Misra
12. Karambir Singh

Applicants 10-11 are working as NT Staff under
Chief Engineer, Irrigation & Flood Control
Department, 4th Floor, ISBT Building,
Kashmiri Gate, Delhi-6.

13. Devinder Kumar S/O Banwari



14. Prakash Chand S/O Karan Singh

Applicants 12 is working as Storekeeper and
Applicant No.13, as Mason under Chief
Engineer, Irrigation & Flood Control
Department, 4th Floor, ISBT Building,
Kashmiri Gate, Delhi-6.

15. Ramesh S/O Kali Ram

16. Kitalu S/O Pyare Lal

17. Shyam Singh S/O Goman Singh

18. Kailash S/O Kan Singh

19. Satyanarain S/O Sheo Karan

20. Nar singh S/O Sheo Karan

21. Smt. Gurwanti W/O Mahabir Singh

22. Narain Singh S/O Roop Chand

23. Om Prakash S/O Banwari Lal

24. Hari Singh S/O Khyali Ram

25. Smt. Yashwanti W/O Jaggar Singh

26. Azad Singh S/O Moti Lal

27. Dev Chand S/O

28. Suresh Kumar S/O Ram Narain

29. Man Singh S/O Kan Singh

30. Sher Singh S/O Moti Lal

31. Ramesh S/O Sharda Nand

32. Lal Chand S/O Hira Lal

33. Ajeet Singh S/O Bhagwana

34. Chhotu Ram S/O Mir Singh

35. Hari Kishan S/O Mir Singh

36. Rajinder Singh S/O Tika Ram

37. Narain Singh S/O Kehar Singh

38. Om Prakash S/O Devak Ram

39. Surinder Singh S/O

40. Ramesh Kumar S/O Daya Ram

41. Jai Singh S/O Rich Pal

42. Suraj Mal S/O Ram Narain

43. Mange Ram S/O Mewa Ram

44. Sukhbir Singh S/O Driyave Singh

45. Ram Singh S/O Mange Ram

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46. Jai Pal S/O Lakhi Chand
47. Jai Kishan S/O Munshi Ram
48. Ramphal Singh S/O Kehar Singh
49. Bhagat Singh S/O Ram Singh
50. Savt Raj S/O Surte
51. Chiranji Lal S/O Rich Pal Singh

Applicants 14-50 are working as Baildar under
Chief Engineer, Irrigation & Flood Control
Department, 4th Floor, ISBT Building,
Kashmiri Gate, Delhi-6.

... Respondents

(By Shri Yogesh Sharma, Advocate)

-versus-

1. NCT of Delhi through
Chief Secretary, New Delhi.
2. Principal Secretary,
Irrigation & Flood Control Department,
Govt. of NCT of Delhi,
New Sectt., New Delhi.
3. Chief Engineer,
Govt. of Delhi,
4th Floor, ISBT Building,
Delhi.

... Respondents

(By Shri Vijay Pandita, Advocate)

ORDER (ORAL)

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

The facts of these two cases being similar and the issues involved in them being identical, they are being disposed of by this common order.

2. MA No.664/2004 in OA No.772/2004 and MA No.835/2004 in OA No.995/2004 for joining together of the applicants are allowed.

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3. Applicants in these OAs claim to have been working with the respondents for the last several years as work charged employees and claim benefit of the Assured Career Progression (ACP) Scheme which was introduced by the respondents vide OM dated 9.8.1999. Applicants in OA No.772/2004 had earlier on filed OA No.1393/2002 and 2030/2002 which were disposed of vide order dated 31.12.2002 with direction to respondents to take a conscious decision on the controversy by passing a speaking order within a period of six months. Applicants in OA No.995/2004 had filed OA No.2351/2003 which was disposed of on 23.9.2003 with a direction to respondents to dispose of the applicants' claims by passing a speaking order within a period of three months taking into consideration the directions contained in order dated 31.12.2002 in OA No.1393/2002. In the case of applicants in OA No.772/2004 respondents have decided applicants' claim (Annexure A-1 dated 26.9.2003) stating that the benefits of ACP Scheme in terms of DOP&T OM dated 9.8.1999 etc., shall be admissible to them as work charged employees subject to the approval and notification of recruitment rules of various categories of posts in the work charged establishment. Claims of applicants in OA No.995/2004 have also been disposed of by an order dated 19.12.2003 (annexure A-1) similarly. Both these orders of the respondents have been challenged in the respective OAs.

4. Learned counsel of the applicants in these OAs have stated that respondents have caused a great deal of delay in notifying recruitment rules for the posts in the work charged establishment. As a result, the benefit of ACP Scheme has not been made available to

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the applicants till now. The learned counsel have also drawn our attention to DOP&T OM dated 18.7.2001 by which various clarifications have been issued on the ACP Scheme. Clarification 51 reads, "If, in the matter of service conditions, work charged staff is comparable with the staff of regular establishment, there is no objection in extending the ACP Scheme to the work charged staff." The learned counsel claimed that the functions and duties of the work charged staff are the same as those of the regular staff. Thus, there should be no difference in the service conditions of both categories and the work charged staff should also be provided with benefits of ACP Scheme. The learned counsel stated that after notification of the recruitment rules for the posts in work charged establishment, respondents might apply the provisions of ACP Scheme prospectively, however, in view of the fact that recommendations had been made by the Fifth Central Pay Commission (5th CPC) in regard to the ACP Scheme related to such employees as well, on finalisation of the recruitment rules for the work charged employees, benefit of ACP Scheme should be accorded to such employees retrospectively when the ACP Scheme came into effect.

5. On the other hand, the learned counsel of the respondents drew our attention to clause 3.2 of the ACP Scheme dated 9.8.1999 stating that unless the recruitment/service rules are put into effect, the provisions of ACP Scheme cannot be made applicable to the case of work charged employees. This clause reads, "Regular service for the purpose of ACP Scheme shall be interpreted to mean the eligibility service counted for regular promotion in terms of relevant

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Recruitment/Service Rules.” He contended that as and when the recruitment rules for the work charged employees are finalised and come into effect, the respondents would consider cases of the applicants for according the benefit of ACP Scheme.

6. We have considered the rival contentions and also the material on record.

7. Admittedly, the ACP Scheme based on the recommendations of the 5th CPC was made effective w.e.f. 9.8.1999. The condition precedent for application of the provisions of the Scheme is completion of 12 years and 24 years of regular service. Regular service for the purpose of ACP Scheme as per clause 3.2 *ibid* means the eligibility service counted for regular promotion in terms of relevant recruitment/service rules. Recruitment Rules for various categories of posts in the work charged establishment are stated to be under consideration. In the previous OAs cited above, it was directed that respondents should take a conscious decision as to the claims of the applicants within a period of 3-6 months. Now the respondents have stated that unless and until the recruitment rules for the employees of work charged establishment come into existence, benefit of ACP Scheme for such employees cannot be considered. Obviously, while the 5th CPC recommendations became available in 1997 and ACP Scheme was put into effect in August, 1999, respondents have taken an inordinately long time in finalizing the recruitment rules for various categories of work charged employees, and in the process, such employees have been denied the financial benefits of the ACP Scheme unnecessarily.

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8. From the clarification 51 included in DOP&T OM dated 18.7.2001 and the reply of the respondents, it appears that respondents are positively inclined to apply the ACP Scheme to various categories of work charged establishment as well. However, as usual, respondents seem to be taking an unduly long time in finalizing and putting into effect the recruitment rules of such categories of staff.

9. In the case of **State of Mizoram & Anr. v. Mizoram Engineering Service Association & Anr.**, (2004) 6 SCC 218, it was held that in the matter of grant of pay scales in implementation of the recommendations of the 4th CPC, Chief Engineers cannot be denied the pay scales allowed for senior level posts in corresponding cadres on the ground that Engineering Service in the State was not an organized service, merely because of absence of recruitment rules for the service, as members of the service are not responsible for not framing the rules and as such, they should not be made to suffer for failure of the State to frame the rules. Following the ratio of this case, it has to be observed that respondents as and when they decide about the recruitment rules for various categories of work charged establishment should consider applying the provisions of ACP Scheme to such employees retrospectively w.e.f. 9.8.1989 when they were made applicable to the regular establishment. The applicants in the present case who are work charged employees are not in any manner responsible for delay in finalisation of their recruitment rules and application of the provisions of ACP Scheme. It goes without saying that if decision had been taken at the appropriate time benefit of ACP Scheme to such categories of staff, as the applicants, would

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have been available in August, 1999 as in the case of regular establishment.

10. Taking into consideration the totality of facts and circumstances of these cases, these OAs are partly allowed directing the respondents to take into consideration the observations made above and to finalize the recruitment rules of various categories of work charged establishment, and also to consider according benefit of ACP Scheme to the applicants if the service condition of these work charged employees in terms of their recruitment rules, are found comparable with the staff of regular establishment. It is further directed that the above directions should be fully implemented by the respondents within a period of six months from the date of communication of these orders. No costs.

S. Raju
(Shanker Raju)
Member (J)

V. K. Majotra
8.10.04
(V. K. Majotra)
Vice-Chairman (A)

/as/