

(RESERVED)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ALLAHABAD this the 19 day of 2, **2010**.

HON'BLE MR. A.K. GAUR, MEMBER- J.
HON'BLE MRS. MANJULIKA GAUTAM, MEMBER- A.

Original Application No. 1604 OF 2001.

1. Supriya Roy, aged about 45 years, son of late Har Prasad Roy, presently employed as Fitter, H.S-II, Ticket No. 8459/L, Float Section, Ordnance Parachute Factory, Kanpur.
2. Sheo Prasad Sinha, aged about 45 years, son of late Markanday Prasad Sinha, presently employed as Fitter, HS-II, T. No. 358/MS, Ordnance Equipment Factory, Kanpur.
3. P.S. Srivastava, aged about 45 years, son of Shri B.R. Srivastava, presently employed as Fitter HS-II, Ticket No. 303/MS, Ordnance Equipment Factory, Kanpur.
4. Sharif Ahmad Ansari, aged about 45 years, son of Shri Abdul Rasheed Ansari, presently employed as Fitter, HS-II, Ticket NO. 251/MS (Tail), Ordnance Equipment Factory, Kanpur.
5. Vinod Kumar Misra, aged about 43 years, son of Shri Shyam Narain Misra, presently employed as Marker/SK, Ticket NO. 97/MS (Tail), Ordnance Equipment Factory, Kanpur.
6. Shiv Dayal Srivastava, aged about 46 years, son of Shri Shiv Charan Srivastava, presently employed Fitter, HS-II, Ticket No. 182/MS, Ordnance Equipment Factory, Kanpur.
7. Shivji Pandey, aged about 45 years, son of Rajendra Pandey, presently employed as Fitter, HS-II, Ticket No. 155/MS, Ordnance Equipment Factory, Kanpur.
8. Sudheer Kumar Srivastava, aged about 45 years, son of Shri Sunder Lal Azad, presently employed as Fitter, HS-II, Ticket No. 103/MS, Ordnance Equipment Factory, Kanpur.

9. Nirmal Chandra Sinha, aged about 46 years, son of late Nihal Chandra Sinha, presently employed as Fitter, HS-II, Ticket No. 171/MS, Ordnance Equipment Factory, Kanpur.
10. Udai Shanker Bhatta, aged about 45 years, son of late G.P Bhatta, presently employed as Fitter, HS-II, Ticket No. 108/FS, Ordnance Equipment Factory, Kanpur.
11. Uma Shanker, aged about 45 years, son of late Jageshwar Prasad, presently employed as Fitter, HS-II, Ticket No.113/FS, Ordnance Equipment Factory, Kanpur.
12. Hari Prasad, aged about 48 years, son of late Ram Prasad, presently employed as Fitter, HS-II, Ticket No. 126/FS, Ordnance Equipment Factory, Kanpur.
13. Sarju Narain, aged about 50 years, son of late Tej Ram, presently employed as Fitter, HS-II, Ticket NO. 124/FS, Ordnance Equipment Factory, Kanpur.
14. Shyam Sunder Chaudhary, aged about 47 years, son of Shri S.D. Chaudhary, presently employed as Fitter (Skilled), Ticket No. 61/MB, Ordnance Equipment Factory, Kanpur.
15. Salauddin Khan, aged about 45 years, son of late A.U Khan, presently employed as Mill Wright Fitter, HS-II, Ticket No. 236/MM, Ordnance Equipment Factory, Kanpur.
16. Mohd. Khaslat Hussain, aged about 45 years, son of late Himayat Hussain, presently employed as Wireman, HS-II, Ticket NO. 69/EM, Ordnance Equipment Factory, Kanpur.
17. Nurul Huda Ansari, aged about 45 years, son of late Mohammad Shafiqur Ansari, presently employed as U.D.C, General Administration, Card No. , Ordnance Equipment Factory, Kanpur.
18. Jamuna Prasad Sharma, aged about 45 years, son of Shri B.R. Sharma, presently employed as Fitter (Skilled), Ticket No. 851/LC, Field Gun Factory, Kanpur.
19. Ram Sundar Lal Srivastava, aged about 45 years, son of Shri R.A.L. Srivastava, presently employed as Marker (skilled), Ticket No. 1118/SC, Field Gun Factory, Kanpur.
20. Mrinal Kanti Bhowmik, aged about 45 years, son of late Mantosh Kr. Bhowmik, presently employed as Fitter (Skilled) ticket NO. 1058/TR, Field Gun Factory, Kanpur.

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21. Har Charan Singh Bomara, aged about 45 years, son of late Kripal Singh, presently employed as Borer (Skilled) Ticket No. 1129 Gun Shop III, Field Gun Factory, Kanpur.
22. Dhani Ram, aged about 48 years, son of late Bramha Prasad, presently employed as Fitter (skilled), Ticket No. 849/TR, Field Gun Factory, Kanpur.

.....Applicants

VE R S U S

1. Union of India through the Secretary, Ministry of Defence, Department of Defence Production, Government of India, New Delhi.
2. Chairman, Ordnance Factory Board/ Director General of Ordnance Factories, 10-A, Shaheed Khudi Ram Bose Road, Kolkata-1.
3. Additional Director General of Ordnance Factories, O.E.F., Group Head Quarters, G.T. Road, Kanpur.
4. General Manager, Ordnance Equipment Factory, Kanpur.
5. General Manager, Field Gun Factory, Kanpur.
6. General Manager, Ordnance Parachute Factory, Kanpur.

.....Respondents

Present for applicant : Sri M.K. Upadhyaya

Shri N.K. Naik

Present for respondents : Sri Anil Dwivedi

O R D E R

BY HON'BLE MR. A.K. GAUR, J.M.

By means of the present Original Application, the applicants have claimed following relief(s):-

"(i) the respondents be directed to give the second financial upgradation under the A.C.P Scheme to those of the applicants who got only one regular promotion throughout their service career after their absorption as semi-skilled workers/C-Grade Workers/Fitters-C in the Ordnance Equipment Factory, Kanpur in the year 1977

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and have completed 24 years of service since then.

(ii). Those of the applicants who have not got any regular promotion during the 24 years of service as Semi-Skilled workers and have been given only the benefit of one financial upgradation under the A.C.P Scheme be ordered to be granted the benefit of the second upgradation with effect from the date of completion of 24 years of service from their initial appointment in the semi-skilled grades.

(iii) The respondents be directed not to treat the conversion/absorption of the applicants as Fitter-C/semi-skilled workers shortly after they had completed the Trade Apprenticeship Training under the Apprentices Act, 1961 in the Ordnance Equipment Factory, Kanpur, after their initial appointment as unskilled workers for a short period of less than four months as cases of regular promotion for purposes of consideration for grant of financial upgradation required under the A.C.P Scheme and such appointments of the applicants in the semi-skilled Grade by conversion from Labourer to Fitter-C be treated as appointments in semi-skilled grades and not as promotions.

2. The factual matrix of the case are that the applicants are presently employed as Fitter HS-II, Fitter (skilled), Wireman HS-II, Borer (skilled), Marker (Skilled), Mill Wright Fitter HS-II or U.D.C as shown against their names in the title of the application, in the respective Factories where they are presently employed as mentioned therein. Initially applicants were absorbed in the Ordnance Equipment Factory, Kanpur in the beginning of the year 1977 as Labourers and then after a short period, the then General Manager, Ordnance Equipment Factory, Kanpur succeeded in obtaining sanction of the D.G.O.F for absorption of the applicants as Semi Skilled workers i.e. 'C' Grade workers and they were fully absorbed as such and appointed Fitters-'C' in view of the fact that a large number of vacancies of Fitters -'C' existed in the Ordnance Equipment Factory, Kanpur at that time. The applicant NO.1

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completed Trade Apprenticeship Training on 17.2.1977. Immediately, he was given appointment as Labourer on 18.2.1977. The applicant No.1 was accordingly absorbed as Fitter -'C' in the then pay scale of Rs.210-290 on 2.5.1977. Similarly the other applicants were also absorbed on completion of Trade Apprenticeship Training of three years. In order to maintain continuity of service, the Management of the Ordnance Equipment Factory, Kanpur, showed the absorption of the applicants in the semi-skilled Grade 'C'- Grade as promotion. After the recommendations of the Expert Classification Committee and Anomalies Committee appointed after the 3rd Pay Commission recommendations for Central Government Employees, the semi-skilled Grades of all the applicants were merged with skilled grades and with effect from 16.10.1981, the applicants were absorbed in the Grade of Rs.260-400. Two of the applicants, namely, Vinod Kumar Misra and Ram Sunder Lal Srivastava had got their Trade Changed from semi Skilled workers/Fitter C to isolated Trades, such as Marker and given the designation of Marker-C. Since the Trade of Marker was not covered under the E.C.C/Anomalies Committee Recommendations, they could not get the benefit of such upgradation with effect from 16.10.1981 and they continued to remain in the grade of Rs.210-290 only. In so far as applicant No.17 is concerned, he got his Trade/Cadre changed from Fitter-C to Examiner-C and thereafter to the equivalent Grade of L.D.C. in the Non-Industrial Cadre. In due course, he also got one promotion from L.D.C. to U.D.C. Since the applicants who are presently

working in the Grade of HS-II or U.D.C. and have completed more than 24 years of continuous service, but got only one regular promotion during their entire service career are entitled to the benefit of second financial upgradation under the A.C.P scheme to the next grade of Rs.5000-8000 from their existing Grade of Rs.4000-6000. All the applicants are entitled to the benefit of 2nd upgradation under the A.C.P scheme on account of the fact that they have completed 24 years of service without getting the benefit of two regular promotions in their service career. Guidelines in the matter of grant of the benefit of A.C.P. Scheme clearly stipulated that in cases where an employee gets two regular promotions, he will not get the benefit of financial upgradation under the A.C.P Scheme. The applicants submitted representations in the matter to the Managements of the Factories concerned and also to the Ordnance Factory Board or the A.D.G.O.F, Kanpur, but their cases for grant of the benefit of second financial upgradation under the A.C.P Scheme have not been considered. The representation filed by the applicant No.1 to the General Manager, Ordnance Parachute Factory, Kanpur and subsequent representation to the A.D.G.O.F., O.E.F. Factory Group Hd. Qrs., Kanpur, was rejected by order dated 19.8.2001 issued on behalf of the General Manager, Ordnance Parachute Factory, Kanpur. Some other applicants were also in receipt of similar rejection letters. It is submitted by the applicants that the Union of India started an Assured Career Progression (ACP) Scheme on 09.08.1999 for the benefit of the employees of the Central Government.

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According to the said Scheme the employees are entitled to get the First Promotional Pay Scale after completion of 12 years of service, and after completion of 24 years of service, the employees are entitled to get IIInd Promotional Pay Scale. The difference between In-Situ Promotion Scheme and A.C.P. Scheme is that in In-situ Promotion there is one promotion only, whereas, in ACP Scheme there are two promotional pay scales (one after completion of 12 years of service and second after completion of 24 years of service).

2. On notice of the O.A, respondents have filed counter affidavit in which they have submitted that Government of India vide office memo dated 9.8.1999, allowed the financial upgradation for stagnation relief in Group 'B', 'C' and 'D' posts of the Central Government employees which is called as "A.C.P Scheme". According to this scheme, two promotions to each Central Govt. employee in group B, C and D have been assured on completion of 12 years and 24 years of regular service, if they do not get regular promotion in the aforesaid periods. In the present case the applicants, who are ex-trade apprentices, were initially appointed as Labourer 'B' (now unskilled) and within a short period they had been promoted to semi skilled grade through process of promotion. It is further stated that the applicants on one hand are seeking second upgradation in the next higher pay scale under the A.C.P Scheme on completion of 24 years service which is the issue of 1999 and on the other hand they are seeking

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direction that their appointments in the semi skilled grade by promotion from Labourer to Fitter 'C' made in 1977 be treated as appointments in the semi-skilled and not as promotion which is the issue of 1977. Thus the issue of their appointment in semi skilled grade by promotion from labourer to fitter 'C' treating as appointment in the semi-skilled grade and not as promotion challenged now is hopelessly time barred and as such the instant petition is liable to be dismissed on the ground of limitation. The respondents have further submitted that the applicants had applied for apprenticeship training and after passing the written test and interview, Medical examination and clearance of P.V.Rs they were selected for apprenticeship training in different trades i.e. wireman, Carpenter, Turner, Fitter and Black Smith etc. and after completion of training they were appointed as Labourer 'B' (unskilled) in the pay scale of Rs.196-232 on the basis of requirement at that time. No assurance was given to the applicants that they may be absorbed in the semi skilled grade of Rs.210-290 after obtaining sanction from D.G.O.F. They were promoted to the post of Fitter 'C' in the grade of Rs.210-290 from Labourer 'B' (unskilled) after passing the prescribed test. Respondents further submitted that it shall not be obligatory on the part of the employer to offer employment to the apprentices after completion of training nor for the apprentices to accept any employment if offered. Learned counsel for the respondents has placed reliance on the decision of Apex Court in the case of **M.L. Cecil D Souza**

Versus U.O.I reported in AIR 1975 SC 1269. The relevant portion of the order is reproduced below:-

"It is essential that any one who feels aggrieved with an administrative decision affected one's seniority should not with due diligence and promptitude and not sleep over the matter. Raking up old matters like seniority after a long time is likely to result in administrative complication and difficulties. It would therefore appear to be in the interest of smoothness and efficiency of service that such matter should be given a quiet - us after lapse of some time".

3. Applicant has filed Rejoinder Affidavit and submitted that due upgradation in the next higher pay scale under the A.C.P scheme fell due in 1999 after completion of 24 years of service. In fact all the applicants were recruited as three years' Trade Apprentices of the 15th batch, in the Ordnance Equipment Factor, Kanpur and after completion of Apprenticeship Training, all of them were required to be given appointment in the semi-skilled grade of their respective trades. In all other factories, the trainees of the 15th batch after completion of Apprenticeship training were appointed in the semi skilled grade only. But in the Ordnance Equipment Factory, Kanpur, the then General Manager assured the applicants that he had to obtain sanction from D.G.O.F, H.Q Office for appointment in semi skilled grades till then the applicants were induced to work with the designation of Labourers. The appointment with the designation as Labourers was made on probation for six months, but during the probation period itself, sanction was reported to have been obtained for absorption and the applicants were designated as Semi-Skilled in Fitter Trade. It is further submitted that there was no question of promotion of the applicants in 1977 to the



semi-skilled grade as alleged, because the initial appointment offered with the designation of 'Labourers' was on probation for six months and during probation period itself all the applicants were converted as Semi-skilled fitters and that too without any Trade Test or interview as required in case of promotion. Promotion from Labourers to Semi Skilled Grades could not have been done as per the relevant S.R.O, without taking Trade Test and Interview and that too, after calling for applications and also on the basis of seniority-list in the cadre of Labourers. No seniority list of labourers was published.

4. In reply to the rejoinder affidavit, respondents filed supplementary counter affidavit reiterating the same facts as stated in the counter affidavit and applicant filed supplementary rejoinder affidavit in which nothing new has been alleged.

5. We have heard learned counsel for either sides and perused the pleadings on record.

6. Shri M.K. Upadhyaya, learned counsel for the applicants argued that question of granting promotion to the applicants to the semi skilled grade in 1997 as alleged by the respondents does not arise at all. In fact all the applicants were recruited after completion of three years apprenticeship training of 15th batch in the Ordnance Equipment Factory, Kanpur and after completion of training all of them were required to be given appointment in the semi skilled grade of

their respective Trades. He also argued that in all other Factories, Trainees of 15 Batch after completion of Apprenticeship training were appointed in the semi skilled grade only. By no stretch of imagination, appointment given to the applicants in May 2007, could be said to be a promotion. As the General Manager, Ordnance Equipment Factory, Kanpur could not obtain sanction of D.G.O.F. for timely absorption of the applicants as 'C' grade semi skilled workers, the applicants were assured that the necessary sanction would be obtained. The applicants were given employment as Labourers in the unskilled grade of Rs.196-232. After a short period of the appointment of the applicants as Labourers, the Competent Authority succeeded in obtaining sanction of D.G.O.F for absorption of the applicants as semi skilled grade workers and they were duly absorbed as Fitter 'C'. The management of the Ordnance Equipment Factory, Kanpur showed the absorption of the applicants in the semi skilled grade 'C' as promotion.

7. Shri M.K. Upadhyaya, learned counsel for the applicants would contend that absorption of the applicants could not legally and validly be termed as promotion from unskilled grade to semi skilled grade from the grade of Rs.196-232 to the grade of Rs.210-290 inasmuch as that **under the relevant Promotion Rules/S.R.O, promotion of a person from an unskilled grade to a semi-skilled grade could be done only in case the person concerned has completed three years' continuous and satisfactory**

service in the unskilled grade and passed the prescribed trade test for such promotion. It is also urged on behalf of the applicants that the applicants were absorbed in the grade of Rs.260-400 w.e.f. 16.10.1981 after the recommendations of the Expert Classification Committee and Anomalies Committee appointed after the 3rd Pay Commissions recommendations for Central Government Employees, the semi-skilled Grades of all the applicants were merged with skilled grades. It is also pointed out that two of the applicants, namely, Vinod Kumar Misra and Ram Sunder Lal Srivastava had got their Trade changed from semi Skilled workers/Fitter C to isolated Trades, such as Marker and given the designation of Marker-C. Since the Trade of Marker was not covered under the Expert Classification Committee/ Anomalies Committee Recommendations, these persons could not be got the benefit of such upgradations with effect from 16.10.1981 and they continued to remain in the grade of Rs.210-290 only.

8. Learned counsel for the applicant also argued that after serving long period in the grade of Rs.260-400 most of the applicants were considered for promotion to the next higher skilled grade II and after passing trade test in their respective factories, such applicants were got the promotion as Fitter HS-II, Mill Wright HS-II, Wireman HS-II etc. Since all the applicants who are presently working either in the grade of H.S Grade II or U.D.C and have completed more than 24 years of continuous service but got only one regular promotion

during the entire service career are entitled to the benefit of second financial upgradation under the A.C.P Scheme (in the grade of Rs.5000-8000 from their existing grade of Rs. 4000-6000).

9. Shri Anil Dwivedi, learned counsel for the respondents argued that the applicants have already got two promotions from the date of their initial appointment firstly from Labourer 'B' (unskilled) to Fitter 'C' and secondly from Skilled to Highly Skilled Grade II and hence they were rightly not granted any upgradation under the A.C.P Scheme. The applicants were promoted from Labourer 'B' to Fitter 'C' after passing the prescribed trade test in the grade of Rs.210-290.

10. Learned counsel for the respondents by filing Misc. Application NO. 5090 of 2009 placed certain documents on record. A perusal of the record filed alongwith Misc. Application clearly indicates that copy of Trade Test report and copy of promotion to the Fitter Grade 'C' is not available in the office of respondents. Respondents have utterly failed to file any documents indicating the fact that the Trade Test was held after the appointment of the applicants as Labourer on 18.2.1997. It is also seen from the record that validity of the Trade Test is for 3 years from the date of passing the Trade Test. There is nothing on record to show that the applicants have passed the Trade Test.

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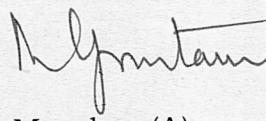
11. We have also carefully perused the documents on record filed as Annexure 1 to the Misc. Application dated 16.12.2009 of the respondents and found that the applicants' pay in Fitter 'C' grade 210-290 was fixed w.e.f. 2.5.1977. In our considered view, the absorption of the applicants could not be validly termed as promotion, because under relevant promotion Rules/S.R.O. promotion of a person from an unskilled grade to a semi-skilled grade could be done only in case the person concerned has completed three years' continuous and satisfactory service in the unskilled grade and passed the prescribed trade test for such promotion. In the instant case, the applicants were appointed as Labourer on 18.2.1977 and allegedly promoted as Fitter Grade 'C' on 2.5.1977. This clearly indicates that the applicants were converted to the Semi Skilled Grade/C-Grade from the Grade of Worker/unskilled Grade within a period of one and four months of their joining as Labourers in their Factories. Moreover during such conversion, the applicants were still under probation.

12. In our considered opinion for all intent and purposes, the absorption of the applicants as Fitter Grade 'C' must be treated as appointment in the semi skilled grade on completion of Trade Apprenticeship training. It is seen from the record that most of the applicants were considered for promotion to the next higher grade to highly skilled grade II after passing Trade Test in their respective factories, such applicants were given promotion as Fitter HS-II, Mill Wright HS-II, Wireman HS-II etc. Since all the applicants, who are presently working either in the grade of H.S Grade II or U.D.C and have completed more than 24 years of continuous service

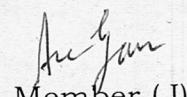
but got only one regular promotion during the entire service career, they are entitled to the benefit of second financial upgradation under the A.C.P Scheme and all such applicants are entitled to be given the second financial upgradation under the A.C.P Scheme. The other applicants who are still in skilled grade for more than 24 years are also entitled to second financial upgradation.

13. We have given our anxious thought to the pleas advanced by the parties counsel, we are fully convinced that the applicants are entitled to the benefit of second financial upgradation under the A.C.P Scheme on account of the fact that they have completed 24 years of service without having got two regular promotion in their service career. We are satisfied that the alleged promotion dated 2.5.1977 of the applicants, by no stretch of imagination, could be deemed to be a promotion, but absorption as Fitter Grade 'C'.

14. In view of our aforesaid observations, we allow this O.A. and direct the Competent Authority to give the benefit of second financial upgradation under the A.C.P Scheme to those of the applicants, who got only one regular promotion throughout their service career, after their absorption as Fitter Grade 'C' in the year 1977 and have completed 24 years service as the case may be within the period of 3 months from the date of receipt of a certified copy of this order. No costs.



Member (A)



Member (J)

Manish/-