

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

**HON'BLE MR. A.K. GAUR , MEMBER (J)
HON'BLE MRS. MANJULIKA GAUTAM (A)**

Original Application Number. 836 OF 2001.

ALLAHABAD this the 28 day of Jan, 2009.

1. L.M. Tripathi, S/o Late Amarendra Mani Tripathi, R/o H- 68/3, Sahney Colony, Cantt, Kanpur.
 2. Pradeep Kumar Sen, S/o Late R.N. Sen, R/o 86, Gandhi Gram, Kanpur.
 3. Hari Shanker Tewari, S/o Late N. Tewari, R/o 109/46, Nehru Nagar, Kanpur.
 4. O.P. Humbati, S/o Late Deela Mal, 5/9, G.C. Colony, Cantt. Kanpur.
 5. S.K. Mishra, S/o Shri Ram Swaroop Mishra, L.I.G, 2002, Barra- 5, Kanpur.
 6. S.A. Khan, S/o Shri J.A Khan, R/o 101/181-C, Hata Gammu Khan, Beconganj, Kanpur.
 7. Satish Chandra Srivastava, S/o Late Basant Lal Srivastava, R/o 256/3, L.I.C., Kanpur.
 8. V.K. Srivastava S/o V.P. Srivastava, 120-C, Shyam Nagar, Kanpur.
 9. V.S. Tewari S/o Sri R.S. Tewari, R/o H-39/B, Subhash Colony Kanpur.
 10. Bhupendra Singh S/o Shri Jaggan Nath Singh, R/o 127/159, Vivek Vihar, W-2, Juhi, Kanpur.
 11. Ranjit Singh, S/o Bhaggoo Singh, 118/371, Kaushalpur, Kanpur.
 12. Arun Kumar S/o Late Ashwani Prakash, 40/4, Labor Colony, Govind Nagar, Kanpur.
 13. S.K. Yadav S/o Late S.R. Singh Yadav R/o 9/1, G.C. Colony, Cantt Kanpur.
 14. J.K. Sharma S/o Late L.R. Sharma, R/o B-91, C.O.D., Kanpur.
 15. M.L. Kushwaha S/o Late Ayodhya Prasad, H-68/4, Sahney Colony Cantt Kanpur.
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16. B.N. Srivastava S/o H.L. Srivastava, R/o 28-A, Anand Nagar, Rawatpur, Kanpur.
17. R.P. Gupta S/o Late P.P. Gupta, R/o 293/2, Babupurwa Colony, Kanpur.
18. B.S. Sethi S/o Shri Hansraj Sethi, R/o 118/103(18), Kaushalpuri, Kanpur.

.....Applicants.

VERSUS

1. Union of India through the Secretary, Ministry of Defence Production, Govt. of India, New Delhi.
2. Additional Director General of Ordnance Factories OEF Group Headquarters, GT Road, Kanpur.
3. General Manager, Ordnance Equipment Factory, Kanpur.

.....Respondents

Advocate for the applicant:	Sri B.B. Sirohi
Advocate for the Respondents:	Sri S.Singh
	Sri S.C. Mishra

ORDER

Delivered by Hon'ble Mr. A.K. Gaur, J.M.

The applicants Through this O.A filed under section 19 of Administrative Tribunals Act, 1985 has prayed for quashing the order dated 06.01.2001 and 14.03.2001 (Annexure A-1 and A-2 of O.A) coupled with prayer for a direction to the respondents to fix the pay of the applicant in the grade of Rs. 5000-8000/- by stepping up their pay scale from the date their juniors were so placed and further for second upgradation in their next higher pay scale under ACP Scheme and other consequential relief(s).

2. According to the applicants, prior to 1953, there were two categories of Checkers in Ordnance Factories in the scale of Rs. 40-60 and Rs. 55-85 and these Checkers were performing duties of clerical nature substantially hence they demanded for their designation as Lower Division Clerk. The

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Govt. of India appointed "Kalyanwala Committee" to look in to this matter and report as to whether the Checkers are substantially performing the duties of clerical nature or not and whether they are entitled to be designated as Lower Division Clerk and classified as such. The said Committee submitted its report on 02.09.1952 based upon which the Ministry of Defence issued Office Memorandum No. 17(10)/12321/D(CIV) dated 17.11.1953 providing that the erstwhile Checkers, who are matriculate or who have completed three years of continuous service as Checkers should be classified as Lower Division Clerk and the Checkers, who have not completed three years continuous service will continue to be classified as Checkers and will be re-designated as Lower Division Clerk on completion of three years of service provided they are found fit.

3. Learned counsel for the applicant further contended that as the essential qualification for LDC was matriculation all the Checkers, who were matriculate or had put in three years service in terms of Kalyanwala Committee, were designated as Lower Division Clerk and the cadre of Checkers became a dying cadre and ultimately Ordinance Factory Board Calcutta vide their Office memorandum dated 05.03.1980 had merged the post of Checkers with the post of LDC. Learned counsel would further contend that inspite of acceptance of Kalyanwala Committee, the Checkers were neither treated nor designated as LDC hence some Checkers working in Ordinance Equipment Factory, Kanpur filed a Suit No.73 of 1958 in the Court of Civil Judge Kanpur, which was decreed with cost by the Ist Additional Civil Judge Kanpur vide judgment dated 28.7.1960 in the following terms :-

" The plaintiffs suit is decreed with cost against the defendant and it is hereby cleared that plaintiffs are entitled to be classified and the re-designated as Lower Division Clerk on the basis of recommendation of

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Kalyanwala Committee as per sanction of President of India with effect from 1.9.1953 and are entitled to all consequential benefits and privileges arising there on. The defendant is allowed to month's time from this date for compliance with this decree under Section 82 CPC"

4. According to the applicants, against the aforesaid decree the Govt. of India preferred an appeal before Hon'ble High Court which was allowed vide judgment and order dated 29.9.1965. Aggrieved the Checkers filed SLP (Civil Appeal No.1987/68) before Hon'ble Supreme Court (Lalji Dubey and Ors. Vs. Union of India & ors., which was allowed vide judgment dated 13.11.1973. Operative paragraph of the said judgment reads :-

" For the reasons the appellants are entitled to succeed. The appeal is accepted. Judgment of the High Court is set aside. As result of this judgment declaration granted by Civil Judge Kanpur revived and became re-effective."

5. The grievance of the applicants is that the respondent No.3 notified the vacancy of LDC but after selection they were designated as 'Checkers' in their appointment letters despite the judgment in Suit No.73 of 1958 and judgment of Hon'ble Supreme Court (supra). Learned counsel for the applicants vehemently argued that when the Civil Judge Kanpur granted declaration which was affirmed by Hon'ble Supreme Court and all Checkers were designated as LDC, the respondents in utter violation and disregard of the aforesaid two judgments illegally designated the applicants as 'Checkers'. According to the learned counsel for the applicants, inspite of designating the applicants as 'Checkers' there has been no change in the duties of Checkers or LDC as they have been performing same duties which were being performed by them in 1953, 1973 and 1980. Learned counsel for the applicants would further contend that after 5th pay Commission's report all the erstwhile Checkers/LDCs have been classified as LDC and allowed pay scale of

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Rs.4000-6000/-. The Govt. of India based on one of the recommendations of 5th Pay Commission introduced Scheme of ACP vide OM dated 13.9.1999 according to which the employees who have put in regular service of 12 years in a grade, are entitled to be given 1st upgradation in pay and on completion of 24 years service second upgradation in higher pay scale is to be allowed subject to the condition they are found fit by the DPC provided that benefit under ACP will be allowed only to those Govt. servant who in their entire service career have not availed two promotions. Several Govt. servant raised doubt about the above conditions particularly about 'Merger' as fitment in higher pay scale being taken as promotions. The Govt. of India vide OM dated 10.2.2000 issued clarification to the effect that on merger of two pay scales and giving higher pay scale as a result of merger is not to be treated as promotion. Learned counsel for the applicants categorically submitted that inspite of the settled legal position and clarification of the Govt. of India on the subject, the respondents did not allow upgradation to the applicants treating them as directly recruited 'Checkers' and on their re-designation as LDC cadre. For redressal of their grievance, the applicants preferred a detailed representation dated 6.6.2000 before General Manager OEF Kanpur, who vide order dated 6.1.2001 (Annexure-1 of the OA) had rejected the same in a very casual manner. The applicants again preferred an application dated 18.2.2001 addressed to the Additional Director General Ordinance Factory (OEF Group Headquarters) Kanpur, who also in a very casual manner rejected the application of the applicants vide order dated 14.3.2001 (Annexure-2 of the OA) and sought for quashment of these two orders particularly in view of the recommendation of Kalyanwala Committee which was accepted by the Govt. of India on 17.11.1953 and the judgment of Hon'ble Supreme Court in the case of Lalji Dubey (supra).

6. On notice the respondents have filed detailed Counter Affidavit denying the claim of the applicant mainly on the ground of delay. In their Counter Affidavit, the respondents have stated that the applicant were initially appointed as 'Checkers' during the year 1973 and 1974 and subsequently were promoted to the post of L.D.C and thereafter to the post of U.D.C. According to the respondents, on the recommendations of 1st Pay Commission, the daily rated workers were accommodated in the regular grade of Checkers Grade-I and Grade-II and these two grades were merged on the recommendation of Kalyanwala Committee in the year 1953. In para 19 of the counter affidavit it has been stated that the post of LDC and Checker were not at all equal and having different pay scale. The post of Checkers were abolished in the Ordinance Factory in the phased manner by order dated 5.3.1980 and detailed instructions were issued by the Ordinance Factory Board's order dated 6.3.1980 that all the Checkers having requisite qualification as LDC were to be promoted to the post of LDC through DPC. In para 20 it has further been contended that as per the recommendation of 5th CPC all Checkers who have been promoted to the post of LDC and thereafter promoted to the post of UDC have been fitted in the pay scale of Rs.4000-6000 which is for the post of UDC. It is further contended that neither the pay scale of post of Checkers nor the post itself has been merged to another pay scale or post. In para 23, the respondents has vehemently submitted that the applicants are not entitled to get the benefit of OM dated 10.2.2002 as the case of the applicant does not found under the purview of clarification as given under point of doubt in OM dated 10.2.2000 because the post of Checker and LDC have never been merged together or with any other post carrying same or higher pay scale. The applicants were directly recruited to the

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post of Checker against the then vacancy thereafter they have got two promotions as LDC and UDC respectively therefore they are not at all entitled for financial upgradation under ACP Scheme. In support of their arguments respondents have placed reliance on the judgment of Hon'ble Supreme Court in the case of *M.L. Ceoil D'Souza Vs. UOI & ors.* - AIR 1975 SC 1269 and *Ratan Samanta Vs. UOI & ors.* - 1993 (Supple) (4) SCC page 67 and un reported judgment passed by Madrash High Court in Writ Petition No. 41301 of 2002 Union of India & ors. and CAT Chennai & ors.

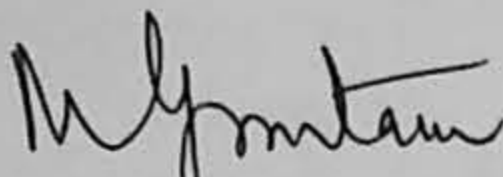
7. We have heard arguments advanced by the learned counsel for the parties and perused the pleadings on record as well as the written submissions filed by either side.

8. A bare perusal of order dated 6.1.2001 (Annexure-1 of the OA) order dated 14.3.2001 (Annexure-2 of the OA) clearly reveal that both orders have been passed in a most casual and perfunctory manner. Prima facie , we are satisfied that the respondents while passing the orders dated 06.01.2001 and 14.03.2001 had totally failed to consider the recommendation of Kalyanwala Committee which was accepted by the Govt. of India on 17.11.1953 and the orders passed in SLP (Civil Appeal No.1987/68) by Hon'ble Supreme Court in the case of *Lalji Dubey* (Supra) . Accordingly in view of the decisions rendered by Apex Court in **2006 SCC(L&S) 840 (N.M. Arya Vs. United Insurance Company)**, **2008 Vol I Supreme Today 617 (D.F.O Vs. Madhusudan Ram)**, **AIR 1986 SC 1173 (Ram Chandra Vs. U.O.I & Ors.)** and **2006 Vol. II SCC page 147 (Director I.O.C Vs. Santosh Kumar)**, in which it has been held that while considering and deciding an appeal or application, competent authority should pass reasoned and speaking order, both the orders dated 6.1.2001

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(Annexure-1 of the OA) order dated 14.3.2001 (Annexure-2 of the OA) are hereby quashed and set aside and the matter is remitted back to the competent authority to reconsider the matter in the light of observation made above and pass a reasoned and speaking order within a period of three months from the date of communication of this order.

9. There will be no order as to costs.


(MEMBER-A)


(MEMBER- J)

/Anand/