

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 19th day of December 2002

Original Application no. 1243 of 2001.

Hon'ble Maj Gen K K Srivastava, Member A
Hon'ble Mr. A.K. Bhatnagar, Member J

1. Dina Nath, s/o Sri Chandreshwar Sah,
R/o Vill & Post- Gangpur Siswan,
Distt. Siwan (Bihar).
2. Sholey Ram, S/o Juthan Ram,
R/o House no. A-11/23-17, Post Kashi,
Distt. Varanasi.
3. Jokhu Prasad, s/o Sri Y Prasad,
R/o Vill Belhatta, Post Prabhupur,
Distt. Chandauli (UP).
4. Kalloo Ram, S/o Shri Khiti Ram,
R/o A-11/28-26, New Mahadev, Rajghat,
Varanasi. (UP).
5. Sundar Lal, S/o Sri Ganga Ram,
R/o 11/74, Rajghat, New Mahadev,
Varanasi (UP).
6. Phool Singh, s/o Sri Bane,
R/o Vill Sarai Mohammadpur,
Post Puraina, Distt. Ghazipur.
7. Ram Sagar Mallah, S/i Sri Soma Mallah,
R/o Vill Masora, Post Kerakat,
Distt. Jaunpur.
8. Ram Bahadur Tiwari, S/o Sri HS Tiwari,
R/o Vill Tiwari Bazar, Post Lakhganj,
Distt. Gonda.
9. Baijnath Mistri, s/o Sri Barha Mistri,
R/o Vill Sihar, Post Satgaona,
Distt. Hazaribagh (Jharkhand).
10. Sattan Prasad, s/o Sri V. Prasad,
R/o House no. A-13/210-A, Rajghat, Ghasiari Tola,
Varanasi.

11. Shri Amar Nath Singh, S/o Shri Ram Singh,
R/o Bhika Garg Ka Pura Post Dukshaha,
Kaushambi.

... Applicants

By Adv : Shri Rakesh Verma

Versus

1. Union of India through the Secretary,
Ministry of Water Resources,
New Delhi.
2. The Central Water Commission through the Secretary,
R.K. Puram, Sewa Bhavan, New Delhi.
3. The Superintending Engineer, Hydrological Observation
Circle, Akashdeep, 1st Floor, Pannalal Park,
Varanasi.
4. The Executive Engineer, Central Water Commission,
Middle Ganga Division -III, Akash Deep, Panna Lal Park,
2nd Floor, Varanasi.

... Respondents

By Adv : Shri N.C. Nishad

O R D E R

Hon'ble Maj Gen K K Srivastava, Member A.

In this O.A., filed under section 19 of the A.T. Act, 1985, the applicants 11 in number have challenged the orders dated 24.7.2001 (Ann AI) and 7.9.2001 (Ann AII) passed by respondents no. 3 and 4 respectively withdrawing the benefit of second financial upgradation under the A.C.P. Scheme and thereby taking away the benefit of the pay scale of Rs. 3050-4590 and have prayed that both the orders be quashed and the respondents be directed to continue in the pay scale of Rs. 3050-4590 which they were drawing or else grant the applicants second financial upgradation in the pay scale of Rs. 2750-4400. They have also prayed that no recovery should be made from them.

2. The facts of the case, in short, are that the applicants no. 1, 2, 4, 5, 6, 7 & 8 are working as Boatsmen, applicants

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no. 3, 9 and 11 as Khalasi and applicant no. 10 as Work Sarkar Grade III in the respondent's establishment under respondent no. 4. They were working in the pay scale of Rs. 2550-3200 w.e.f. 1.1.1996. In pursuance to the recommendations of ~~the~~ Central Pay Commission O.M. dated 9.8.1999 i.e. Assured Career Progression Scheme (in short ACP) for Central Government Civilian employees was issued and the same was circulated by respondent no. 1 giving the effect of its provision vide letter dated 10.5.2000. A clarification was issued by Government of India on 1.6.2001 in respect of Group 'D' employees that first financial upgradation would be on completion of 12 years of regular service atleast to the pay scale of Rs. 2610-4000 and the second financial upgradation on completion of 24 years of regular service at least to the pay scale of Rs. 2750-4400. It is also provided that where Group 'D' employee is matriculate and is eligible for promotion to the post of Lower Division Clerk (in short LDC) the 2nd financial upgradation shall be allowed at least to the pay scale of Rs. 3050-4590. Accordingly all the applicants were placed in pay scale of Rs. 2610-4000 w.e.f. 9.8.1999 as first financial upgradation and thereafter applicants no. 1,2,4,5,6,7 & 8 were granted 2nd financial upgradation in scale of Rs. 3050-4590 by order dated 30.9.2000, applicants no. 3, 9 and 11 by order dated 10.10.2000 and applicant no. 1 by order dated 18.1.2001 after having been selected by duly constituted screening Committee. This 2nd financial upgradation was withdrawn by impugned orders dated 24.7.2001 and 7.9.2001 in pursuance of letter dated 5.2.2001. Hence this O.A. which has been contested by the respondents. Counter Affidavit and Rejoinder Affidavit have been exchanged between the parties.

3. Sri Rakesh Verma, learned counsel for the applicant submitted that respondent no. 2 issued letter dated 5.2.2001

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under misconceived interpretation of para 60 of ACP Scheme leading to issuance of impugned orders. The action of Respondents is totally illegal, arbitrary and cannot sustain in the eyes of law. Shri Rakesh Verma argued that ACP scheme dated 9.8.1999 is for granting financial upgradation after completion of 12 years and 24 years. In the said scheme it is laid down that the second financial upgradation shall be allowed at-least to the Pay scale of Rs. 2750-4400 to Group 'D' employees. However, by clarification dated 1.6.2001 the Group 'D' employees who are matriculate and are eligible for promotion to the Post of LDC have to be allowed atleast the scale of Rs. 3050-4590. The applicants were correctly given the first financial upgradation w.e.f. 9.8.1999 in the pay scale of Rs. 2610-4000 as they had completed more than 12 years. On completion of 24 years of service they were given the scale of Rs. 3050-4590 from different dates. The learned counsel for the applicants contended that the applicants were granted the second financial upgradation to the scale of Rs. 3050-4590 earlier to the receipt of clarification dated 1.6.2001. Therefore, respondents could not withdraw it taking shelter of subsequent amendment.

4. Shri R. Verma further submitted that no show cause notice has been given to the applicants before affecting recovery from the applicants. He also argued that if due to lack of educational qualification (Matriculation) the applicants were not entitled for the pay scale of Rs. 3050-4590 they are certainly entitled for the pay scale of Rs. 2750-4400 as second financial upgradation on completion of 24 years of service.

5. Resisting the claim of the applicants Shri N.C. Nishad, learned counsel for the respondents submitted that the Departmental Screening Committee erroneously granted the second financial

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upgradation to the scale of Rs. 3050-4590 even though the applicants were not fulfilling the criteria of educational qualification. The mistake was noticed afterwards and all such cases were received and the second financial upgradation erroneously granted was withdrawn by the impugned orders. The action of the respondents is justified as it was to rectify the a dministrative error. The applicants did not fulfil the provisions/conditions-6 envisaged in the ACP scheme dated 9.8.1999. The learned counsel for the respondents submitted that the O.A. is devoid of any merit and is liable to be dismissed.

6. Heard learned counsel for the parties, carefully considered their submissions and perused records as well as the pleadings.

7. The main question before us to adjudicate is as to what scale the applicants are entitled to as second financial upgradation, because admittedly the applicants have completed 24 years of service. We have perused the ACP scheme dated 9.8.1999 and also the clarification dated 1.6.2001. The clarification given by the Government of India by its OM dated 1.6.2001 lays down as under :-

"(i) First financial upgradation on completion of 12 years of regular service shall be at least to the pay-scale of Rs. 2610-60-2910-65-3300-70-4000 (S.2A).

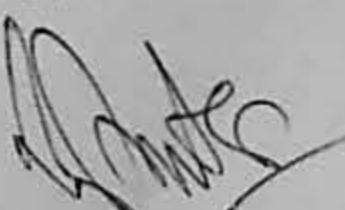
(ii) The second financial upgradation on completion of 24 years of regular service shall be allowed at least to the pay scale of Rs. 2750-70-3800-75-4400 (S-4). However, where Group 'D' civilian employees of the Central Government are Matriculates and are eligible for promotion to the post of Lower Division Clerk (LDC), the second financial upgradation in their case shall be allowed at least to the Pay-scale of Rs. 3050-75- 3990-80-4590."

8. From the above it is clear that those group 'D' employees, who are not Matriculate, are to be given atleast the pay-scale of Rs. 2750-4400 on completion of 24 years of regular service. We have no doubt in our mind that the Departmental Screening Committee erroneously granted the scale of Rs. 3050-4590 on completion of 24 years which the applicants^h are not entitled to being non-matriculates, but they are certainly entitled to the scale of Rs. 2750-4400. The respondents have withdrawn the second financial upgradation granted to the applicants by impugned orders dated 24.7.2001 and 7.9.2001 but have taken on pains^h to reconsider their cases and settle the controversy. It would have been proper on the part of respondents to have issued a fresh order granting the second financial upgradation to the applicants in the scale of Rs. 2750-4400. In the interest of justice this action has to be taken by the respondents without delay. Besides grant of scale of Rs. 3050-4590 was ordered by respondents themselves and that too after selection by duly constituted Screening Committee in which the applicants had no role to play and therefore it will not be appropriate for respondents to effect any recovery.

9. In the facts and circumstances the O.A. is partly allowed. The respondents are directed to issue ^{an appropriate} order granting the second financial upgradation to the applicants in the pay-scale of Rs. 2750-4400 from the dates they are entitled to on completion of 24 years of service, within a period of three months from the date of communication of this order. We also direct that no recovery shall be made from the applicants. In case any recovery has been made, the same shall be refunded within three months from the date of communication of this order.

10. There shall be no order as to costs.


Member J


Member A