

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH
ALLAHABAD.

DATED: THIS THE 19TH DAY OF AUGUST 2005.

ORIGINAL APPLICATION NO. 376 OF 2005. 4.2

HON'BLE MR. K.B.S. RAJAN, MEMBER-J

1. C.S. Sen, S/o Late Suraj Pal Sen,
R/o 6/9/F Anand Nagar, Naini,
ALLAHABAD.
2. Ram Nath, S/o late Keshari Lal,
R/o 425, Awash Vikash Colony, Naini,
Allahabad.

Applicant

By Advocate : Sri O.P. Gupta

Versus.

1. Union of India through the Secretary, Ministry of Small Scale Industries, Govt. of India, New Delhi.
2. Development Commissioner, Small Scale Industries, Nirman Bhawan, New Delhi.
3. Director, Small Industries Service Institute, 107, Industrial Estate, Kalpi Road, Kanpur.
4. Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, Govt. of India, New Delhi.

.....Respondents

By Advocate : Sri Tej Prakash

ORDER

BY K.B.S. RAJAN, MEMBER-J

The issue involved in this case is what scale should be available under the ACP Scheme in respect of UDC, (a) whether the next higher scale in the

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common category (Assistants) or in the next hierarchical grade (OS Grade II). This issue is no longer res-integra as vide order dated 16.2.2005 in OA No. 557 of 2004, a Full Bench of the Tribunal had already decided the issue.

2. Before going into the facts of the instant case, it is worth referring to the Full Bench Judgment. The question before the Full Bench was as under: -

- "1. Whether Clarification No. 56 issued by the DOP&T on 18.7.2001 would have an effect of rendering condition no. 7 of the ACP Scheme redundant and to take away the right accrued to a Government servant in his hierarchy to be granted financial upgradation under the ACP Scheme?
2. The relevant facts, giving rise to the above reference, can conveniently be delineated.
3. The applicants were appointed as Lower Division Clerk with the respondents. They were promoted as Upper Division Clerks in the pay scale of Rs. 4000-6000 in the Ministry of Small Scale Industries. As per the existing hierarchy, under the recruitment rules, the applicants are entitled to be promoted to the post of Superintendent in the pay scale of Rs. 5500-9000. When the V Central Pay Commission's recommendations were returned, the Assured Career Progression [for short, ACP] Scheme had been introduced. In accordance with the same, by an order dated 27.09.2002, the applicants were granted the benefit of ACP Scheme. They were placed in the pay scale of Rs.5500-9000. There were certain doubts in the mind of the State and clarifications were sought. Clarification No. 56 had been received in which it was pointed that as the hierarchy in the Small Scale Industries Department is small, it is

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not at par with All India hierarchy of the cadre. This would amount to discrimination. In pursuance of the said Clarification, a show cause notice was issued to modify the ACP Scheme benefit. The scales were to be reduced. The consequential recovery was to be effected. The reply to the same had been filed.

4. Vide the impugned order of 19.01.2004 the upgradation under ACP Scheme granted to the applicants in the scale of Rs.5500-9000 has been modified to the scale of Rs. 5000-8000."

3. The final decision of the Full Bench is as under:-

"23. Resultantly, the position is clear and beyond any pale of controversy that the clarification, that has been issued, must be held to be one which is modifying the Scheme and by virtue of a clarification, it could not have been so done.

24. Resultantly, for these reasons, we answer the reference as under:-

"Clarification No. 56 issued by the Department of Personnel & Training on 18.07.2001 will have the effect of rendering condition no. 7 of the ACP Scheme as redundant. It cannot take away the right that has accrued to the Government servant in his existing hierarchy with respect to the grant of the scale to be granted by way of financial upgradation."

4. In so far as the present case is concerned, the two applicants (functioning as UDCs) were granted ACP in the scale of Rs. 5500-9000 (which is the grade for OS II), respectively from 31.8.2002 and 19.12.1999. However, referring to a clarification issued by the department vide order dated 18.7.2001, under item 56 thereof, the respondents had issued a show cause notice for withdrawal of the aforesaid



ACP benefit, to be substituted by the pay scale of Rs. 5000-8000 which is the scale for the post of Assistant. The justification for such downward revision was that the common category had the post of Assistant above UDC and as such, notwithstanding the fact that in the case of the applicants, above UDC, the next higher post is O.S. II, the ACP should be, in accordance with the clarification, only that of Assistant. The applicants had no doubt made representation but the respondents had reduced the pay scale. Hence, this OA challenging the orders dated 10.12.2003, 26,12,2003 and 21.1.2004 by which the pay scale had been revised.

5. The learned counsel for the respondents referred to paragraphs 4 and 5 of his counter and also stated that some benches of the Tribunal had decided date case upholding the decision of the Department of Personnel. The decision referred to were that of Gawahati Bench in OA No. 26 of 2004 and that of Chandigarh Bench in OA No. 327/PP/2004 and those of other Benches, which had followed the above decision.

6. The Full Bench has already considered the above two orders in its judgment, vide paragraphs no. 13 and 17. Ultimately the Full Bench has stated that the Govt. cannot modify the scheme and take away the right that has accord to the Govt. servants in his existing hierarchy with respect to the grant of scale to be granted by way of financial up

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gradation. This decision of the Full Bench applies in all the four squares to the facts of the case.

7. In the result the OA is allowed. The impugned orders dated 10.12.2003, 26.12.2003 and 21.1.2004 are hereby quashed and set-aside. The respondents are directed to restore the pay scale of Rs. 5500-9000 to the applicants and refund any amount recovered alongwith the payment of arrears of pay and allowances arising out of the restoration. The above direction shall be complied with, within a period of three months from the date of communication of this Order.

8. No order as to costs.


Member (J)

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