

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 2 DAY OF 7 2009)

Hon'ble Mr. A.K. Gaur, Member (J)
Hon'ble Mrs. Manjulika Gautam Member (A)

Original Application No.673 of 2004

(U/S 19, Administrative Tribunal Act, 1985)

J.P. Srivastava aged about 51 years, S/o Shri Sheoji Prasad Srivastava, R/o H.No. 150/12, Babupurwa New Labour Coloney Kidwai Nagar, Kanpur.

..... *Applicant*

Versus

1. The Union of India, through the Secretary Ministry of Defence, Deptt. Of Defence Production & Supplies/ DGQA, New Delhi-11.
2. The Director General of Quality Assurance, Deptt. of Defence Production & Supplies/DGQA, New Delhi.
3. The Quality Assurance Officer, Quality Assurance Estt. (FG), Ministry of Defence/DGQA Armapore Post, Kanpur-208009.
4. The Principal Controller of Accounts (Fys), 10-A, S.K. Bose Road.

..... *Respondents*

Present for Applicant : *Shri R.K. Shukla*

Present for Respondents : *Shri D.N. Mishra*

OR D E R

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

By means of the present Original Application the applicant has claimed following relief(s):-

"(i) issue a writ, order or direction in the nature of Certiorari quashing the orders dated 10.05.2004 (Annexure A-I). Daily order part II No.46 dated 8.5.2004 (Annexure A-II, the DGQA letter No. A/86320/ACP/DGQA/Adm-10 dated 9.5.2003 (Annexure A-II(a) and order dated 10.11.2003 (Annexure A-III) issued by the respondents No.3 & 2 respectively so far as it relates to cancellation of financial benefits granted to the petitioner under ACP Scheme of 1999.

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- (ii). Issue a writ, order or direction in the nature of Mandamus commanding the respondents to restore the applicant on the same pay and pay scales on which he was fixed after granting A.C.P. benefits.
- (iii) restrain the respondents from making any recovery from the salaries of the applicant, while implementing the impugned order dated 10.05.2004 or 8.5.2004 (Annexure A-I & A-II).
- (iv) Command the respondents not to effect the applicant in any manner whatsoever, in pursuance to the impugned order dated 10.5.2004 or 8.5.2004 or dated 10.11.2003."

2. The applicant was initially appointed on the post of Tracer in the pay scale Rs.260-430 on 13.06.1977. The applicant was subsequently promoted to the post of Draughtsman Grade III and posted to CQA (HV) Avadi, Madras w.e.f. 22.10.1994. On the basis of award of Board of Arbitration in respect of C.P.W.D. Draughtsmen, the revision of pay scales of Draughtsman Grade I, II, and III in all Central Government offices of India, was enforced vide order dated 15.09.1995 issued by Ministry of Defence. The pay scale of the applicant in Draughtsman Grade III was also revised and the post was re-designated as Draughtsman Grade-II w.e.f. 22.10.1994. On 15.09.1995 the Government of India extended the benefit of CPWD award to the applicant. According to the applicant the placement of the applicant in the high pay scale on the basis of Arbitration Award of C.P.W.D. is not a promotion as it is, categorically mentioned in para 3(2) of Ministry of Defence letter dated 15.09.1995 (Annexure A-V). It is clearly observed that "once the Draughtsmen are placed in the regular pay scales, further promotions would be made against available vacancies in the higher grade and in accordance with normal eligibility criterion laid down in the recruitment rules." While clarifying the matter of A.C.P. in their Para-I of letter dated 08.05.2000 declared that

"Upgradation of pay scale on account of job classification studies/Government's Executive Instructions issued based on Central Pay Commission recommendations and Court Directives etc. are not to be treated as promotion and such cases shall be examined keeping in view the clarifications" (Annexure A-VI).

3. In accordance with the Arbitration Award, the pay scales got revised in the year 1980. The Draughtsman employed in other departments also claimed similar revision and accordingly on 13.3.1984, the Government of India, Ministry of Defence (Department of Expenditure) issued an office memorandum directed that scale of pay of Draughtsmen Grade III, II & I in the department of Government of India, other than C.P.W.D., may be revised as per the revised scales in C.P.W.D. provided their recruitment qualifications are similar to those prescribed in the case of Draughtsmen in C.P.W.D. The Ministry of Defence did not implement ~~and~~ the same resulting into multifarious litigation beginning from writ petition filed before the Calcutta High Court, various O.As before Jabalpur Bench as well as Calcutta Bench of the Tribunal. Vide circular dated 15th September, 1995 of Ministry of Defence, also implemented the revision in the case of Draughtsmen in Government of India, on the basis of award of Board of Arbitration rendered in the case of C.P.W.D. (Annexure A-VII). It is alleged, by the applicant that placement in higher pay scale on the basis of award of arbitration in the case of C.P.W.D., is not a promotion. The pay revision is not equated and has not been confused or misunderstood as against regular promotion, as is understood in service jurisprudence. Consequent upon the

acceptance of 5th Central Pay Commission Report and to remove the stagnation, the Ministry of Defence, Public Grievance and Pensions (Department of Personnel and Training) vide their Office Memorandum dated 09.08.1999 issued the Assured Career Progression Scheme (in short for 'ACP') for Central Government Civilian Employees (Annexure A-VIII). The ACP Scheme Provides for two financial Upgradation in the entire service career of an employee. In the Scheme it is emphasized that it is in lieu of regular promotions to be availed from the grade in which an employee is appointed as direct recruit meaning thereby that two financial Upgradation under A.C.P. Scheme shall be availed only, if no regular promotions during the prescribed period, 12-24 years have been availed by an employee. In the event of an employee availing of one regular promotion, he is still entitled and qualified for second financial Upgradation on completion of 24 years of regular service. According to the applicant, the Upgradation, revisions of pay etc. could not qualify to be counted against regular promotions for the purposes of ACP Scheme. It is also clarified that the revision of pay in Draughtsman Cadre under C.P.W.D. arbitration award is not to be treated as promotion (Annexure A-IX).

4. The grievance of the applicant is that after giving the benefit of A.C.P. Scheme, the respondents' organization has cancelled the same behind the back of the applicant and without giving any notice or opportunity has taken a decision, wherein, the placement of revision of pay granted by virtue of the C.P.W.D. Award, is sought to be treated as a regular promotion for the purpose of

A.C.P. Scheme and the benefits granted under the A.C.P. Scheme were sought to be unilaterally withdrawn. The benefits already granted under A.C.P. Scheme have been cancelled (Annexure A-I & A-II). Aggrieved by the said order, the applicant filed O.A. No. 943 of 2003 before this Tribunal and this Tribunal accordingly directed the respondents to consider and decide the representations of the applicants and pass a detailed reasoned and speaking order within a period of 4 months from the date of the receipt of the copy of the order, till the disposal of the representations the respondents were restrained from giving effect to the order dated 9.5.2003 and 28.5.2003 (Annexure A-X). In compliance of the order and direction of the Tribunal the respondent no.2 has passed the order dated 10.11.2003. From the perusal of the order dated 10.11.2003, it is seen that the same is non speaking and cryptic and has been passed without application of mind.

5. It is submitted by the applicant that before reducing the pay and pay scale of the applicant, respondents have not given any show cause notice or opportunity to the applicant. They have also issued orders for recovery of alleged overpayment made between 2001 to 2004 for no fault of the applicant. The applicant also submitted that in Jabalpur Bench, Ernakulam Bench and Madras Bench of the Tribunal similar Original Applications have been filed and the Hon'ble Tribunal has been pleased to pass interim order for not making any recoveries from their pay and also restrained them as not to reduce the pay and pay scales by cancellation of ACP benefits (Annexure A-XI).

6. In the counter reply filed by the official respondents, it is submitted that the revision of pay scale of the Draughtsman categories vide Government Order dated 15.09.1995 was extension of the Award of Arbitration, which was applicable to the Draughtsmen of CPWD, is wholly misplaced. According to the respondents, the order contained in Ministry of Defence letter dated 15.09.1995 is not extension of CPWD Award. **The Arbitration Award is based on qualifications and the Ministry of Defence order dated 15.09.1995 is based on length of service.** Under ACP Scheme two Upgradations/Promotion in the career of an employee is to be granted. The issue to be examined is whether the applicant has been granted two Upgradations or not. The applicant was recruited as Tracer and has already been granted two Upgradations/Promotions to the grade of Draughtsman III and Draughtsman II. He is thus not eligible for any further Upgradations under ACP. The grant of upgraded pay scales to the CPWD Draughtsmen in accordance with the Arbitration Award or its extension to the similarly placed Draughtsmen in other department vide Government Order dated 13.03.1984 was not slightly different as contended by the applicant but entirely different from the scheme of Upgradation of scales under Ministry of Defence order dated 15.09.1995. The former was in the matter of prescribing appropriate pay scale commensurate with recruitment qualifications and was applicable from the date of appointment in the grade and did not change the existing grade and the letter was not linked to the recruitment qualifications and was subject to completion of certain prescribed number of years of service in the grade and on grant of higher

scale, the individual was also given higher designations as applicable to promotion.

7. According to the respondents, any Upgradation of pay scale granted subject to completion of certain qualifying service, as clarified by DOP & T is to be treated as promotion for the purpose of assessing entitlement for ACP irrespective of the fact whether benefit of one increment in the lower scale while fixing pay in the higher scale was not given. Upgradation given under these orders have been given subject to completion of prescribed years of service and of the availability of vacancies in the higher grade, in the case of ACP. In the case of CPWD, the pay scale of Draughtsman III has been revised from Rs. 260-430 to Rs.330-560 and every individual who is recruited as Draughtsman III automatically gets this same grade of Draughtsman III. So also Draughtsman II and Draughtsman I. In the case of Ministry of Defence order dated 15.9.1995, the pay scale has been revised for future recruitment as may be seen from Paras 2 and 8 of letter. However, the existing employees are not granted higher scale from the date of recruitment but only on completion of prescribed service. And on grant of higher pay scales, he is also elevated to the next rank with designation unlike the case of CPWD. No such Upgradation of the promotion which falls after the date of placement, to the next higher scale has been involved in the case of CPWD Award, as done in Ministry of Defence. It has been contended on behalf of the respondents that Upgradation granted under Ministry of Defence order dated 15.09.1995 is to be treated as promotion for the purpose of ACP. It is also submitted on behalf of the

respondents that two financial Upgradations in entire service of an employee ^{are} is to be given. Financial Upgradation need not necessarily be only through promotion. The clarification issued by the DOP & T under point of Doubt No.35, that placement in higher scale subject to completion of specified length of service in the existing grade shall be taken as promotion/Upgradation for the purposes of ACP. The DOP & T have also clarified that higher scales granted on the basis of qualifying service are to be treated as promotion for the purpose of ACP. In the instant case on implementation of order dated 15.9.1995 not only the individual was granted higher pay scale on completion of prescribed number of years of service, but also granted higher designation. The contention of the applicant that Upgradation, revision of pay etc. should not be counted against regular promotion is misleading and ill-founded (Annexure CA-1 & CA-2). The decision to cancel the ACP orders has been arrived at after thorough examinations of the issue by the competent authority. Further DOP & T vide clarification No.35, as contained in letter dated 18.7.2001, have clarified that Upgradation granted based on length of service as in the case of Ministry of Defence letter dated 15.09.1995 have to be counted as one Upgradation for grant of ACP benefits. As such, the applicant is not entitled for the IIIrd ACP benefits, which was granted to him inadvertently. Any mistake, as and when it comes to notice, has to be rectified immediately. The cancellation order dated 9.5.2003 was issued according to the Rules. The cancellation has been ordered on the basis of the clarification issued by the same authority, who have issued the orders of A.C.P.

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8. Applicant has filed Rejoinder Affidavit and denied the averments contained in the counter reply and nothing new has been added therein.

9. Respondents have also filed Supplementary Counter Affidavit and submitted that the grant of higher scale of pay in the Ministry of Defence order dated 15.9.1995 is based on prescribed length of service and also result in grant of higher designation and hence the same is required to be treated as promotion for the purpose of ACP.

10. We have heard parties counsel and perused the Written Argument filed by the learned counsel for the applicant. Learned counsel for the applicant has vehemently argued that no show cause notice or opportunity has been granted to the applicant before cancellation of benefit of ACP dated 10.05.2004, 08.05.2004, 09.05.2003, 10.11.2003. Learned counsel of the applicant contended that the applicant has not misrepresented any fact or conceal any thing from the notice of the respondents. The applicant has not misappropriated any amount nor played any fraud in receiving ACP benefits. Learned counsel for the applicant would contend that the order of recovery passed by the respondents is illegal, arbitrary and without jurisdiction. In respect of his contention, he has placed reliance on following decisions:-

1. *Shyam Babu Verma & Ors. Vs. UOI & Ors. ATC 1984, 27 Supreme Court P. 121 (SC)*

2. *Sahib Ram Vs. State of Haryana & Ors. 1995 SCC (L&S) P. 248.*

3. *Duryodhan Lal Jatav Vs. State of U.P. & Ors.*
Allahabad High Court, ATJ 2005(3).
4. *Ashutosh Bannerjee Vs. UOI & Ors. SLJ (CAT) 2004 (1)*
5. *Shiv Kumar Vs. State of Punjab & Ors. ATJ 2004 (2).*

11. It is also argued by the applicant that the instant O.A. is fully covered by the decisions rendered by Mumbai Bench of the Tribunal in case of *K.K. Khopkar & Ors. Vs. U.O.I. Ors. in O.A. 124 of 2004 decided on 28.02.2005.* It is also argued that the matter of recovery entail civil consequences and as such before recovery of amount notice or opportunity must be granted to the aggrieved person and no recovery made, in violation of Principle of Natural Justice is liable to be refunded by the employee.

12. Learned counsel for the respondents, on the other hand submitted that the Draughtsmen working in DGQA are different from those, working in CPWD for the simple reason that they had separate recruitment Rules and by separate service condition further the entry level qualification for Draughtsman in C.P.W.D. are different and higher than that of Draughtsman in DGQA. In addition respondents had stated that the applicant was given a higher pay scale on completion of prescribed number of years of service and should amount to promotion. While dealing with the case of the applicant respondents have clearly argued that the contention of applicant that revision of pay scale of the Draughtsman categories vide Government Order dated 15.09.1995, was extension of the Award of Arbitration which was applicable to the Draughtsmen of CPWD, is wholly misplaced. According to the respondents, the order contained in Ministry of Defence letter

dated 15.09.1995 is not extension of CPWD Award. The Arbitration Award is based on qualifications and the Ministry of Defence order dated 15.09.1995, is based on length of service. Under ACP Scheme two Upgradations/Promotion in the career of an employee is to be granted. The issue to be examined is whether the applicant has granted two Upgradations or not. The applicant was recruited as Tracer and has already been granted two Upgradations/Promotions to the grade of Draughtsman III and Draughtsman II. He is thus not eligible for any further Upgradations under ACP. The grant of upgraded pay scales to the CPWD Draughtsmen in accordance with the Arbitration Award or its extension to the similar placed Draughtsmen in other department vide Government Order dated 13.03.1984 was not slightly different, as contended by the applicant, but entirely different from the scheme of Upgradation of scales under Ministry of Defence order dated 15.09.1995. The former was in the matter of prescribing appropriate pay scale commensurate with recruitment qualifications, was applicable from the date of appointment in the grade and did not change the existing grade and the letter was not linked to the recruitment qualifications, was subject to completion of certain prescribed number of years of service in the grade and on grant of higher scale, the individual was also given higher designations as applicable to promotion. It is also submitted by the respondents that any Upgradation of pay scale granted subject to completion of certain qualifying service, as clarified by DOP & T is to be treated as promotion for the purpose of assessing entitlement for ACP irrespective of the fact whether benefit of one increment in the lower scale while fixing pay in the

higher scale was not given. Upgradation given under these orders have been given subject to completion of prescribed years of service and of the availability of vacancies in the higher grade in the case with ACP. In the case of CPWD, the pay scale of Draughtsman III has been revised from Rs. 260-430 to Rs.330-560 and every individual who is recruited as Draughtsman III automatically gets this same grade of Draughtsman III. So also Draughtsman II and Draughtsman I. In the case of Ministry of Defence order dated 15.9.1995, the pay scale has been revised for future recruitment as may be seen from Paras 2 and 8 of letter ibid order. However, the existing employees are not granted higher scale from the date of recruitment but only on completion of prescribed service. And on grant of higher pay scales, he is also elevated to the next rank with designation unlike the case of CPWD. No such Upgradation of the promotion which falls after the date of placement, to the next higher scale has been involved in the case of CPWD Award, as done in Ministry of Defence. It has been contended on behalf of the respondents that Upgradation granted under Ministry of Defence order dated 15.09.1995 is to be treated as promotion for the purpose of ACP. It is also submitted on behalf of the respondents that two financial Upgradations in entire service of an employee is to be given. The clarification issued by the DOP & T under point of Doubt No.35, that placement in higher scale subject to completion of specified length of service in the existing grade shall be taken as promotion/Upgradation for the purpose of ACP. The DOP & T have also clarified that higher scales granted on the basis of qualifying service are to be treated as promotion for the purpose of ACP. In the instant case on implementation of order

dated 15.9.1995 not only the individual was granted higher pay scale on completion of prescribed number of years of service but also granted higher designation. The contention of the applicant that Upgradation, revision of pay etc. should not be counted against regular promotion is misleading and ill-founded (Annexure CA-1 & CA-2). The decision to cancel the ACP orders has been arrived at after thorough examinations of the issue by the competent authority. Further DOP & T vide clarification No.35 as contained in letter dated 18.7.2001 have clarified that Upgradation granted based on length of service as in the case of Ministry of Defence letter dated 15.09.1995 have to be counted as one Upgradation for grant of ACP benefits. As such, the applicant is not entitled for the IIId ACP benefits, which was granted to him inadvertently. Any mistake, as and when it comes to notice, has to be rectified immediately. The cancellation order dated 9.5.2003 was issued according to the Rules. The cancellation has been ordered on the basis of the clarification issued by the same authority, who have issued the orders of A.C.P.

13. Having given out thoughtful consideration to the pleas advanced by the parties counsel, we are firmly of the view, that CPWD Award is based on qualification, Ministry of Defence order dated 15.09.1995 is based on qualifying service. In Para-3 of the letter dated 15.09.1995, it is clearly mentioned as follows:-

"3. Incumbents in position before 13.5.1982 may be placed in the revised scale of pay as and when they complete/completed the length of service in the respective grades and subject to condition indicated below:-

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(1) The individuals will be granted the revised scale from the date on which they complete the required length of service as follows:-

(a) Minimum period of service for placement from the post carrying scale of Rs.975-1540 to Rs.1200-2040 (Pre-revised Rs.260-430 to Rs.330-560) 7 Years

(b) Minimum period of service for placement from the post carrying scale of Rs.1200-2040 to 1400-2300 (pre-revised Rs.330-560 to Rs.425-700) 5 Years

(c) Minimum period of service for placement from the post carrying scale of Rs.1400-2300 to Rs.1600-2660 (Pre-revised Rs.425-700 to Rs.550-750). 4 Years

(2) Once the Draughtsmen are placed in the regular scales, further promotions would be made against available vacancies in higher grade and in accordance with the normal eligibility criteria laid down in the recruitment rules.

(3) The benefit of this revision of scale of pay would be given with effect from 17.5.1982 notionally and actually from 1.11.1985, in respect of D'Men who fulfilled the requirement relating to the period of service mentioned in clause (1) above before 13.5.1982. In respect of the D'men who were in position as on 13.5.1982 but did not fulfill the required length of service on that date, they will be entitled to the revised scales as and when they complete requisite length of service.

(4) The individuals pay scale had not been revised earlier on the basis of Ministry of Finance O.M. No. 5(59)/E.III/82 dated 15.3.1984, referred to in para 1 of this letter or through any court/orders."

14. We may also observe that the benefit of higher pay scale based on qualification is granted from the date of recruitment, whereas the benefit of higher pay scale based on the qualifying service, is granted only on completion of the requisite service. The applicant was granted higher pay scale under the provisions of Ministry of Defence order dated 15.9.1995, based on qualifying service. It is, crystal clear that the applicant has been placed in the higher scale on completion of minimum period of qualifying

service prescribed and not based on qualification. Since the applicant has already been granted two promotion/Upgradation, he is not entitled for any further ACP. The applicant has been granted Upgradation from Tracer to Draughtsman III under the provisions of Ministry of Defence order dated 15.9.1995, and another ACP from Draughtsman III to Draughtsman II and therefore he is also not entitled for further ACP. Accordingly, the III ACP granted to the applicant has rightly been withdrawn.

15. The respondents have been consistent in considering the case of the applicant. In view of the fact that the applicant is not similarly placed person like Draughtsman in CPWD, It is not possible for us to blindly compare their case with that of those employees working in CPWD. A clear distinction has been made in accordance with the Rules and we don not see any reason to interfere.

16. We have also considered the case cited on behalf of the applicant reported in 1984(27) ATC 121 Shyam Babu & Ors. vs. Union of India & Ors and 1995 SCC (L&S) 248 Sahib Ram Vs. State of Haryana & Ors. and noticed that the higher pay scale has been given to the applicant from 13.6.2001 to 30.04.2004 and pay scale has been reduced from Rs.5500-9000 to Rs.5000-8000 without affording any opportunity or notice. The Supreme Court has clearly held that since the applicant received the higher scale due to none of their fault, it shall only be just and proper not to recover any excess amount paid to him.

17. We have given our anxious thought to the pleas advanced by the parties counsel and we are satisfied that the Scheme of ACP was introduced by the Government of India on 9.8.1999 by which two financial Upgradation were to be given, first after completion of 12 Yrs. And second after completion of 24 Yrs. of service subjecting to meeting the normal promotion norms, if no regular promotion has been given to the employees within these periods. However, subsequently the issue was examined in detail and it was clarified that the upgradations of the pay scale based on certain qualifying service was to be referred as promotion for the purpose of ACP. Hence the 3rd ACP upgradation given by ignoring the grant of higher scale under Government Order dated 15.9.1995 has been cancelled. We do not find any illegality in the said order of competent authority.

18. We have also considered the aspect of recovery made from the applicant, vide order dated 10.5.2004 (Annexure A-I). It is an admitted fact by the respondents in their reply that the applicant has misrepresented the fact and the excess payment made to him was not on account of his own fault. It is nobody's case that the applicant had ever misrepresented his case and on account of misrepresentation the excess of payment have been paid to him. As the applicant has already received the payment not account of his misrepresentation or concealment, it shall be just and proper not to recover any excess amount already paid to him.

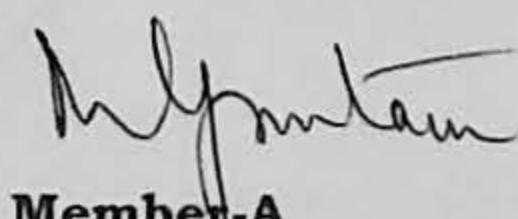
19. In view of the decisions rendered by Hon'ble Supreme Court in 1984(27) ATC 121 Shyam Babu & Ors. vs. Union of India & Ors



and 1995 SCC (L&S) 248 Sahib Ram Vs. State of Haryana & Ors.

We direct that no steps shall be taken to recover any excess amount from the applicant due to fault of the respondents. The applicant being in no way responsible for the same, if any over payment, has been recovered from the applicant, the same be refunded to him.

20. In view of the aforesaid observations, we hereby partly allow the Original Application, quash and set aside the order dated 10.5.2004 (Annexure No. A-I) with regard to the subsequent recovery of the over payment made to him. In case any amount has been recovered, the respondents are directed to refund the same to the applicant within a period of three months from the date of receipt of the copy of the order. Accordingly, the O.A. is disposed of with the directions as contained in the preceding paragraphs.



Member-A



Member-J

//Sushil//