

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 16 DAY OF 9 2009)

**Hon'ble Mr. A.K. Gaur, Member (J)
Hon'ble Mr. D.C. Lakha Member (A)**

Original Application No.774 of 2004

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

Amitava Dey aged about 54 years, Son of Late N.G. dey, R/o H. No.128/256, K-Block, 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 11.
3. The Quality Assurance Officer, Quality Assurance Estt. (GS) Ministry of Defence/DGQA, P.B.No.127, Kanpur-208004.
4. The Principal Controller of Accounts, Central Command, Lucknow.

..... ***Respondents***

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

Present for Respondents : ***Shri S.C. Mishra***
Shri S. Singh

O R D E R

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

By means of this Original Application, applicant has claimed for following main relief/s:-

"(i) Issue a writ order or direction in the nature of Certiorari quashing the orders dated 12.01.2004 (Annexure A-II). Daily order part II No.27 dated 04.03.2004 (Annexure A-III) issued by the respondent No.3, so far as it relates to cancellation of financial benefits granted to the petitioner under ACP Scheme of 1999.

(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 scale on which he was fixed after granting ACP benefits.

✓

(iii) *Restrain the respondents from making any further recovery from the salary of the applicant while implementing the impugned order dated 12.01.2004."*

2. The applicant was initially appointed on the post of Tracer w.e.f. 06.01.1975 under the control of the respondents, in the pay scale of Rs.260-430. Subsequently, he was promoted to the post of Draughtsman Grade-III in the pre-revised pay scale of Rs.330-560. Consequent upon, revision of pay scales of Draughtsman Grade-I, Grade-II, Grade-III, in all Central Government Offices of India, on the basis of the award of Board of Arbitration in respect of C.P.W.D. Draughtsman as ordered vide Ministry of Defence dated 15.09.1995, the applicant's pay scale in Draughtsman Grade-III was also revised in the pre-revised scale of pay of Rs.425-700 vide order dated 29.01.2002 (Annexure A-7). According to the applicant this was one time placement in the higher pay scale under CPWD award and not promotion. As it is categorically mentioned in Para 3(2) of Ministry of Defence letter dated 15.09.1995 that " once the Draughtsman are placed in the regular pay scales, further promotion would be made against available vacancies in the higher grade and in accordance with normal eligibility criterion laid down in the recruitment rules." (Annexure A-8). On the basis of report of 3rd pay commission, the pay scales of Draughtsman employed in the CPWD were revised. The employees of CPWD were not satisfied with the said decision and claimed that they ought to be placed in higher pay scale. This dispute got referred to a Board of Arbitration which gave an award on 20.06.1980 recommending upward revision in the pay scales. The three category of Draughtsman Grade-I, II, & III stood respectively revised from 425-700 to 550-750, from 330-560 to Rs.425-700 and Rs.

✓

260-430 to Rs.330-560. On 13.03.1984, Government of India, Ministry of Finance issued an office Memorandum, wherein it was directed that scale of pay of Draughtsman Grade-III, Grade-II & Grade-I in the departments of Government of India other than CPWD may be revised as per the revised scales in CPWD provided their recruitment qualifications are similar to those Prescribed in the case of Draughtsman in C.P.W.D., however, vide circular dated 15.09.1995 of Ministry of Defence, in the matter of revision of pay scale of Draughtsman on the basis of the Award of Board of Arbitration in the case of CPWD, the same was extended to all. It is categorically mentioned that Draughtsman are placed in the regular pay scales, further promotion would be made against available vacancies in the higher grade and in accordance with normal eligibility criteria laid down in the recruitment rules. The pay revision is not equated and has not to be confused or misunderstood as against regular promotion. Consequent upon the 5th Central Pay Commission Report and to remove the stagnation, the Ministry of Personnel, Public Grievances and Pension vide their office memorandum dated 09.08.1999 issued the Assured Career Progression Scheme for Central Government, Civilian Employees. It is clearly indicated that two financial upgradation under ACP Scheme shall be available only. If, no regular promotion 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. In short to avail the benefit of ACP Scheme, the absence of regular promotion is the calling card. Upgradation, revision of pay etc, do not qualify to be counted against regular

✓

promotion for the purpose of ACP Scheme. According to the applicant after grant of benefit of ACP Scheme, some communication have been exchanged in the hierarchy of the respondent organization and behind the back of the applicant, without any knowledge/notice some decisions came wherein the placement/revision of pay granted by virtue of the CPWD Award is sought to be treated as a regular promotion for the purpose of the ACP Scheme and the benefits granted under the ACP Scheme are sought to be unilaterally withdrawn. A copy of impugned order canceling the applicant's pay fixation under ACP Scheme has already been annexed as Annexure A-3. Aggrieved by the aforesaid cancellation the applicant filed OA No. 943 of 2003, which was finally disposed of by the Tribunal with a direction to the respondent nos. 2 & 3 to consider the representation of the applicant and pass a detailed reasoned and speaking order within a period of four months from the date of receipt of copy of this order and in the impugned orders dated 09.05.2003(Annexure A-1) and 28.05.2003 (Annexure A-2) were directed not to be given effect to. The applicant preferred a representation dated 17.11.2003, the representation of the applicant has been rejected by the respondent no.3 by a non speaking order. It is also alleged that before issuing order no show cause or opportunity of hearing has been granted to the applicant. According to the applicant the Jabalpur Bench, Ernakulam Bench and Madras Bench of the Tribunal issued interim orders for not making any recoveries from their pay and also restrained the respondents not to reduce the pay and pay scale by cancellation of ACP benefits.

✓

3. By filing counter reply respondents have submitted that Scheme of ACP was introduced by the Government of India on 09.08.1999 wherein grant of two financial up-gradations as per the letter were to be given, subject to meeting the normal promotion norms, if, no regular promotion had been given to the employees within these periods. Assuming that the grant of higher scale under the Government orders dated 15.09.1995 to the Draughtsman was an extension of the CPWD Award, the department of personnel and Training initially clarified that up-gradation of pay scale under these orders was not to be treated as promotion for assessing eligibility for up-gradation under ACP Scheme. Hence, ACP up-gradation to Draughtsman of DGQA were accordingly issued ignoring the benefit of **higher pay scales granted under Ministry of Defence letter dated 15.09.1995.** DOPT issued certain **clarification vide point of doubt No.35 dated 18.07.2001** to the effect that if up-gradation of the post were given subject to completion of certain prescribed period of service, it would be treated as promotion for the purpose of ACP and adjusted against one of the two ACP entitlements. According to the respondents, grant of ACP up gradation to the applicant ignoring the grant of higher scale under **Ministry of Defence order dated 15.09.1995**, as promotion for the purpose of ACP, amounted to grant of III ACP which is not provided for under the existing scheme. Hence, the up-gradation given by ignoring the grant of higher scale under the **Governments Order dated 15.09.1995** have been cancelled accordingly. The order of Ministry of Defence dated 15.09.1995 does not deal with revision of pay scale of Draughtsman-III, II and I in all Central Government Offices, but only in certain organization under

Ministry of Defence. The allegation of the applicant that his pay scale was revised is not correct. The applicant has to complete prescribed years of service in order to get the higher scale. He was recruited as Tracer on 06.10.1975 in stores Discipline and was promoted to the grade of Draughtsman on 13.02.1980. On having been declared surplus, he was posted to another discipline (Vehicles Discipline) on 31.03.1987 as Draughtsman-III. However, at his own request, the applicant was posted back to Stores Discipline on reversion, in the grade of Tracer. The applicant has been wrongly placed in the higher pay scale of Draughtsman-III w.e.f. 15.09.1995 in terms of Ministry of Defence order dated 15.09.1995, for which action has been taken to rectify the mistake. Subsequently, the applicant has also been promoted to the grade of Draughtsman-II w.e.f. 11.12.2001. This also now requires review. In terms of Ministry of Defence order dated 15.09.1995 the applicant being Tracer on 01.03.1997 only, his statement that he was placed in revised pay scale of Rs.1400-2300/- w.e.f. 13.02.1985 has no relevance to his service prior to his having been declared surplus as Draughtsman-III and subsequently having been reverted to the grade of Tracer on his personal request. According to the respondents the orders issued on ACP guarantees two up-gradations/promotions in the career of an employee. The issue to be examined is whether the applicant has obtained two up-gradations or not. The applicant was recruited as Tracer and has already been granted two up-gradation/promotion to the post of Draughtsman-III and Draughtsman-II. He is thus, not eligible for any further up-gradation under ACP. The contention of the applicant that the grant of higher scale under Ministry of Defence letter dated 15.09.1995 is

extension of the Arbitration Award made in favour of CPWD Draughtsmen, granting them higher pay-scales is wholly misplaced. Any up-gradation 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. Up-gradation given under these orders have been given subject to completion of prescribed years of service and irrespective of the availability of vacancies in the higher grade as 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 revised scale from the date of his recruitment but remains in the same grade of Draughtsman-III. So also Draughtsman-II and Draughtsman-I. In the case of Ministry of Defence order dated 15.09.1995, the pay scales have been revised for future recruitment w.e.f. 15.09.1995 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. His further promotion is granted to next grade and not to the grade in which higher scales has been granted. These are also the essential features of promotion in any cadre. Further, no such up gradation 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. In fact Ministry of Defence order dated 15.09.1995 is applicable only if the CPWD Award is not applicable to an Organization. As such, what has been implemented in Ministry of Defence is not the

CPWD Award. Hence up-gradation granted under Ministry of Defence orders dated 15.09.1995 is to be treated as promotion for the purpose of ACP.

4. Applicant has filed rejoinder affidavit denying the facts enumerated in the counter affidavit and submitted that the applicant's pay cannot be reduced retrospectively without issuing any show cause notice and affording any opportunity of hearing to represent. According to the applicant CPWD award was not given to the applicant due to his any misrepresentation or fraud. At this stage respondents are estopped from making recovery of the same under the provisions of Rule.

5. We have heard Shri R.K. Shukla, learned counsel for the applicant and Shri S.C. Mishra, learned counsel for the respondents and perused the written arguments filed on behalf of the parties counsel.

6. Learned counsel for the applicant argued that the respondents have arbitrarily cancelled the benefits of 2nd ACP and the action of the respondents in making recovery of amount without issuing any show cause notice or given opportunity of hearing to the applicant is not according to law. Learned counsel for the applicant would contend that there are ^{two} ~~two~~ main issues which are to be adjudicated by the Tribunal; -

i. *Whether the revision of pay scale of Draughtsman made on the basis of CPWD Award is promotion or not?*

ii. *Whether ACP benefits granted to the applicant and enjoyed by him for several years can now be cancelled without initiating disciplinary proceedings and*

arbitration over payment made, if any, can be recovered from the applicant's pay and allowances?

7. It has been argued on behalf of the applicant that consequent upon **the revision of pay scale as per 3rd Central pay Commission report, the Draughtsmen of CPWD department were highly agitated and after discussion in joint Consultation Machinery at National level, the matter was referred to Arbitration, which gave award dated 20.06.1980 and after the award was given in CPWD, the matter of draughtsmen and other Central Government Department employees agitated their grievance, after considering their case the Government of India issued circular dated 13.03.1984 that the pay scale of Draughtsmen of other Central Government Departments be also revised provided their recruitment qualification are similar to those prescribed in CPWD's recruitment rules.** The Draughtsmen of Ministry of Defence also agitated their matter and demanded revision of pay scale irrespective of fulfillment of recruitment qualification subject to completion of certain length of service. Accordingly, the Government of India issued a letter dated 15.09.1995 for sake of convenience Sub Para (2) of Para 3 of the said letter is being reproduced herein under:-

"Once the Draughtsmen are placed in the regular scale further promotion would be made against available vacancies in higher grade and in accordance with the normal eligibility criterion laid down in Recruitment Rules."

8. Learned counsel for the applicant has strongly argued that the aforesaid revision of pay scale is not promotion and in support of this contention he has placed reliance on the decision rendered by Bombay Bench of Tribunal in O.A. No.124 of 2004 decided on 28.02.2005 K.M.

Khopkar Vs. Union of India & Ors. It is urged that against the order of the Tribunal the Union of India filed Writ Petition No.5269 of 2005 and the same has been dismissed by judgment and order dated 11.12.2006. Learned counsel for the applicant would further contend that the applicant has not at all misappropriated any amount nor played any fraud in receiving ACP benefits, the applicant has received benefits whatever was paid to him according to the respondents. They have neither misrepresented nor concealed any material fact from the notice of the respondents. In order to buttress the contention that whatever excess payment has been made to the applicant is be due to negligence, inaction and carelessness on the part of the respondents, and not on account of concealment & misrepresentation of the applicant. It is alleged that in any view of the matter the recovery is uncalled for. It is argued by learned counsel for the applicant that if an employee, who had been in receipt of higher amount on account erroneous fixation by them should not be asked to repay excess payment drawn by him. Following decision of Hon'ble Supreme Court have been relied upon by the counsel for the applicant in their written argument which was as under:-

1. **1995 SCC (L&S)-248- Sahib Ram Vs. State of Haryana & Ors.**
2. **2002(2) SLR-694-B.H. Riddy Vs. N.T.R.D.**
3. **1994(2) SCC-521-Shyam Babu Vs. Union of India & Ors.**
4. **2000 SCC (L&S)-394- Bihar State Electricity Board Vs. Vijay Bahadur**
5. **2002 (3) SCC-302- State of Karnataka Vs. Mangalore University**
6. **2009 (5) Supreme Today – 164 Sayed Abdul Kalid Vs. State of Bihar**

✓

7. **2006 (11) SCC-492 Purshottam Lal Das Vs. State of Bihar**

9. Learned counsel for the respondents argued that the dispute arose with regard to the pay scale of Draughtsmen working in CPWD. The matter went upto the Board of Arbitration and the award was implemented. However, Draughtsmen working in other departments were agitating that they should also be given the same benefits that were being given to the draughtsmen working in CPWD. The matter was referred to committee of the National Council and on the basis of recommendations of the committee, the benefits of revision of pay scales to Draughtsmen in CPWD were granted to draughtsmen in other departments provided there recruitment qualifications were similar. In the committee of the National council. It was also resolved that those, who do not fulfill the recruitment rules would continue to draw the salary in the revised scales. The benefits of this revision of scale of pay was given notionally from 13.05.19896 and actually from 01.01.1983.

It is argued by the learned counsel for the respondents that in so far as the respondents organization/DGQA is concerned the recruitment qualification prescribed for recruitment of draughtsmen were different from that of CPWD. As indicated above, in accordance with the decision taken by the committee, revised pay scales were implemented. The matter was agitated before Jabalpur Bench of Tribunal in O.A. No.203 of 1987 vide order dated 04.09.1990, the O.A. was dismissed. Learned counsel for the respondents however, argued that subsequently vide order dated 19.10.1994 the Government extended revision pay of scales of Draughtsmen of CPWD to other departments of the Government

✓

irrespective of their recruitment qualifications prescribed in the CPWD, **but subject to certain number of years of qualifying service depending upon the grades. Based on this letter the Ministry of Defence issued orders dated 15.09.1995 extending the benefits, which is applicable to the applicant.**

10. We have carefully seen the record of the case and found that after extending the benefit of Ministry of Defence letter dated 15.09.1995 granting revised pay scale to the Draughtsmen, ACP Scheme was introduced enabling grant of two financial up-gradation to overcome the problem relating to stagnation. Accordingly, ACP up gradation to Draughtsmen of DGQA were awarded ignoring the benefit of higher pay scale granted to them in pursuance to the Ministry of Defence letter dated 15.09.1995. **Subsequently, it was also clarified that the up gradation of pay scale subject to completion of certain qualifying service was to be treated as promotion for the purpose of ACP and was liable to be adjusted against one of the two entitlements.** In these circumstances, according to the respondents the up-gradation given to the applicant ignoring the grant of higher scale were cancelled later on. According to the respondents this action of cancellation is wholly just, proper and according to law. It is vehemently argued on behalf of the respondents that the applicant cannot compare himself with the draughtsmen working in CPWD, as the applicant has got a different and higher qualification at the entry level.

11. Having given our thoughtful consideration to the pleas advanced by the parties counsel, **we may observe that the respondents have**

been maintaining all along that the draughtsmen working in DGQA are different from those working in CPWD for the simple reason that they had separate recruitment rules and are guided by a different service condition. Further, the entry level qualification for Draughtsmen in CPWD are different and higher than that of Draughtsmen in DGQA. Leaned counsel for the respondents has placed reliance on the decision of Madras Bench of the Tribunal rendered in O.A. No.736 of 2003 (*N. Radhakrishnan & another Vs. Union of India and Ors.*), in order to show that in a similar and identical situation the Madras Bench of the Tribunal had dismissed the case of the applicant.

12. The contention of the applicant that the grant of higher scale under Ministry of Defence orders dated 15.09.1995 is extension of the Arbitration Award made in favour of CPWD Draughtsmen granting them in higher pay scales is wholly misplaced. Any up-gradation 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 accessing entitlement of ACP. Up-gradation given under these orders have been given subject to completion of prescribed years of service and irrespective of the availability of vacancies in the higher grade as in the case with ACP. In the case of CPWD, the pay scale of Draughtsmen Grade-III has been revised from Rs.260-430 to Rs.330-560 and every individual who is recruited as Draughtsmen Grade-III automatically gets this revised scale from the date of his recruitment. In the case of Ministry of Defence order dated 15.09.1995, the pay scales have been revised for future recruitment with effect from 15.09.1995 as may be

seen from Paras-2 and 8 of letter. The existing employees are not granted higher scale from the date of recruitment but only on the 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. His further promotion is granted to next grade and not to the Grade in which higher scale has been granted. No such up-gradation 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. In fact Ministry of Defence order dated 15.09.1995 is applicable only, if CPWD award is not applicable to an organization.

13. In our considered view the up-gradation granted under Ministry of Defence orders dated 15.09.1995 is to be treated as promotion for the purposes of ACP. We may also observe that the clarification issued by the DOP&T under point doubt no.35 that placement in higher scales subject to completion of specified length of service in the existing grade then such a placement will be taken as promotion/up-gradation for the purpose of ACP. As per clarification given by the Nodal Authority, it is crystal clear that higher scales granted on the basis of qualifying service are to be treated as promotion for the purposes of ACP. In the instant case on implementation of Ministry of Defence orders dated 15.09.1995 not only the individual was granted higher pay scale after completion of prescribed numbers of years of service but also granted higher designation. After placement in higher designation they are eligible to be considered for promotion to the next higher grade. For example the applicant by virtue of having been placed in the grade of draughtsmen-II in implementation of Ministry of Defence order dated 15.09.1995 will

✓

be eligible to be considered for promotion to the next higher grade of Draughtsmen Grade-I. Therefore, the argument advanced by the counsel for the applicant that up-gradation and revision of pay etc. should not be counted against promotion is misconceived and not acceptable.

14. In our considered opinion, the decision to cancel the ACP orders dated 12.01.2004 and 04.03.2004 have been arrived at by the Competent Authority after thorough examination of the issue involved in the Case. Further DOP&T vide clarification no.35 as contained in Office Memorandum dated 18.07.2001 have clarified that up-gradation granted based on length of service as indicated in the Ministry of Defence letter dated 15.09.1995 have to be counted as one up-gradation for grant of ACP benefits. In any case, the applicant is not entitled for the 3rd ACP benefits which was granted to him inadvertently.

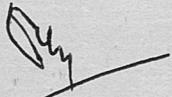
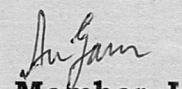
15. Learned counsel for the applicant raised another legal argument that the excess/overpayment made to the applicant should not be recovered from them and amount if any already recovered from the applicant is liable to be refunded.

16. We have carefully gone through the various decisions of Hon'ble Supreme Court rendered in Sahib Ram's and Shyam Babu Verma's case (Supra) and we are firmly of the view that so far the recovery of excess amount which has already been paid to the applicant is concerned, the applicant deserves sympathy as for no fault of his,

✓

recoveries have been directed. We have given our anxious though to the pleas advanced by the parties counsel and in our considered view no recovery shall be made from the amount already paid to the applicant. If any, amount has already been recovered from the applicant the same shall be refunded to him.

17. In view of our aforesaid observation the Original Application is partly allowed without interfering with the order of cancellation dated 12.01.2004 and 04.03.2004 (Annexure A-II & A-III), we hereby direct the respondents not to make any recovery from the salary of the applicant while implementing the order dated 12.01.2004, amount if any, already recovered from the applicant shall be refunded to him within a period of three months from the date of receipt of copy of this order. No costs.


Member-A
Member-J

//Sushil//