

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD

— (THIS THE 18th DAY OF November 2009)

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

Original Application No.991 of 2004
(U/S 19, Administrative Tribunal Act, 1985)

1. Kamta Prasad, Aged about 52 years, Son of Ram Nath.
 2. Ladle Khan, aged about 48 years, Son of Late M. Khan.
 3. Lal Ji aged about 52 years, Son of Jai Kumar
 4. Mukh lal aged about 50 years, Son of Ram Sakal
 5. S.K. Gosh aged about 59 years Son of Late S.N. Gosh.
 6. Ibnul Atique aged about 51 years, Son of Mohd. Sabeer.
 7. Sharda Prasad Singh, aged about 54 years. Son of Ram Raj Singh.
 8. Mahabali aged about 49 years, Son of Late Baij Nath
 9. Raj Bali Prasad, aged about 51 years, Son of Late Ram Sagar.
 10. Aditya Narain Tiwari, Aged about 52 years Son of Late J.D. Tiwari
 11. Hari Mohan Patel, aged about 54 years Son of H.G. Patel.
 12. Bhuwal Prasad aged about 45 years, Son of Late Baij Nath Prasad.
 13. Mishri Lal, Aged about 50 years Son Late Chikhuri Ram
 14. Nanhe Lal Srivastava, aged about 50 years Son of G.S. Lal.
 15. Jagdish Prasad Aged about 50 years, Son of Raja Ram.
 16. Ashok Kumar Srivastava, Aged about 49 Years, Son of Shitala Prasad.
 17. Lakshi Ram, aged about 51 years, Son of Late Ram Nihor.
 18. Dhruvat nat, Aged about 51 years Son of Shri Sheo Lochan.
 19. Lal Ji Chauhan aged about 45 years, Son of Chandrika Chauhan.
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20. Mahesh Rai, Aged about 49 years, Son of Late Parmanand Rai.
21. Sheo Narain Singh, Aged about 50 years Son of Parashu Ram
22. Lal Chand Ram, Aged about 52 years Son of M. Ram
23. Bharat Lal Pandey aged about 50 years Son of Late H.P. Pandey.
24. Kashi Nath Singh, Aged about 47 years, Son of Shri Kanhaiya Singh.
25. Ram Roop, Aged about 47 years, Son of Late Mahesh Ram
26. Lal Mani Mishra aged about 48 years Son of K.P. Mishra
27. Virendra Kumar Pandey, aged about 48 years Son of Late Algu Pandey alias Chhbila Pandey.
28. Harpat Praasad, aged about 50 years Son Bachan Ram
29. Khadak Bahadur Singh aged about 50 years, Son of Shri R.C. Singh
30. Gorak Prasad, aged about 44 years Son of Naresh.
31. Bhagwan Das, Aged about 49 years, Son of Ritrim.
32. Ramdhari Singh Yadav, aged about 49 years, Son of Vishwanath.
33. Raj Deo Ram, Aged about 53 years, Son of Bhagelu Ram.
34. Sumer Ram, Aged about 49 Years Son of M. Ram.
35. Hare Ram-II, Aged about 49 years, Son of Kedar Ram
36. Paras Nath Ram aged about 57 years, Son of Sarvajeet.
37. Sheo Lakhan, Aged about 47 years Son of Shri R.N. Gond.
38. Lal Bahadur Yadav, Aged About 52 years, Son of Shree Ram Yadav.
39. Ram Lakshan, Aged about 55 Years, Son of Hanuman.
40. Jai Prakash aged about 50 years, Son of R.N. Singh.
41. Buniyadul Hasan, Aged about 49 years, Son of J. Hussain
42. Anwar Ali, Aged About 47 years, Son of Late Saqur.

All are resident of Ashapur, District Varanasi and all are working as Chawkidar at Regional Carpet Store Ashapur, Varanasi, District Varanasi.

..... Applicants

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Versus

1. Union of India, Ministry of Textile, Udyog Bhawan New Delhi through its Secretary
2. Development Commissioner (Handicrafts) West Block No.7 R.K. Puram, New Delhi.
3. Regional Director (Central Region), Office of the Development Commissioner (Handicrafts) Kendriya Bhawan 7th Floor Sector-H, Aliganj Lucknow.
4. Assistant Director, Service Centre, Office of the Development Commissioner (Handicrafts D-64/151, A-M-1 Nagar Nigam Colony, Sagra Varanasi).

..... Respondents

Present for Applicant : Shri N.L. Srivastava

Present for Respondents : Shri R.K. Srivastava

ORDER

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

We have heard Sri N.L. Srivastava, learned counsel for the applicants and Sri Dharmendra Tiwari brief holder of Sri R.K. Srivastava, learned counsel for the respondents.

2. By means of this Original Application, applicants have prayed following main relief/s:-

- (i) *To quash the impugned orders dated 29.12.2003, 14.10.2003 and 02.04.2004 to the extent of withdrawing the in-situ promotion with retrospective effect.*
- (ii) *To quash the impugned order dated 21.07.2004 and direct the respondents to give the benefit of pay protection to the applicants as on 9.8.1999 which they have already received under the Scheme of In-Situ Promotion.*
- (iii) *To issue a direction to the respondents to not recover any amount from the applicants which they have received as excess salary due to late granting the benefit of the A.C.P. Scheme to the applicants.*

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3. The brief facts of the case are that all the applicants are working as Chawkidar Group 'D' employees in the office of the respondents. The Union of India introduced a Promotion Scheme on 01.04.1991 with regard to Class-C and Group 'D' employees. The above said Promotion Scheme called as In-Situ Promotion Scheme. According to said Scheme the employees directly recruited to Group 'C' and Group 'D' post at the minimum of the pay scale and not promoted even after one year of their reaching the maximum of the pay scale will be considered for in-Situ Promotion on the basis of Seniority-cum-fitness to the next higher Scale available in the normal Line (Annexure A-2). All the applicants in pursuance of the aforesaid scheme were promoted vide order dated 14.08.1995 in the pay scale of Rs.775-1050 from the date mentioned against their names. The pay scale of Rs.775-1050 has, however, been amended and modified by the departments as Rs. 2610-4000 w.e.f. 01.01.1996 on the recommendation of the 5th Pay Commission Report (Annexure A-3).

4. According to the applicants, at present the applicants are getting the salary in the pay scale of Rs.3875/-. It is submitted by the applicants that the Union of India started an Assured Career Progression (ACP) Scheme on 09.08.1999 for the benefit of the employees of the Central Government. According to the said Scheme the employees are entitled to get the First Promotional Pay Scale after completion of 12 years of service, and after completion of 24 years of

service the employees are entitled to get IInd Promotional Pay Scale. The difference between In-Situ Promotion Scheme and A.C.P. Scheme is that in In-site Promotion there is one promotion only, whereas, in ACP Scheme there are two promotional pay scales (one after completion of 12 years of service and second after completion of 24 years of service). Vide orders dated 02.04.2004 and 29.12.2003 the Competent Authority i.e. Respondent No.3 granted the benefit of Scheme dated 09.08.1999 to the applicants.

5. The grievance of the applicants is that by means of aforesaid orders the respondent no.3 has also withdrawn, In-situ Promotion of the Applicants w.e.f. from the date it was sanctioned and in lieu thereof, the respondent no.3 granted the First A.C.P. Scheme benefits to the applicants w.e.f. 09.08.1999 in the pay scale of Rs.2610-4000/-. It has been contended on behalf of the applicants that both the orders (02.04.2004 and 29.12.2003) have been passed by the respondent no.3 in pursuance of the Head Quarter's order dated 14.10.2003 (Annexures A-6, A-7 and A-8). It is alleged by the applicants that vide impugned orders dated 14.10.2003, 29.12.2003 and 02.04.2004 the respondents have reduced the pay scale of the applicants. The pay scale of Rs.2610-4000 was already given to the applicants w.e.f. 1992-93 in the pay scale of Rs.775-1150 prior to revision of pay scale. All the applicants are getting the salary in the pay scale of Rs.3440 on 09.08.1999. Aggrieved by the aforesaid deduction of pay, the applicants filed detailed representation before the respondent no.2 on 01.07.2004 and requested

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therein that their pay scale has been reduced by the respondents after granting the benefit of Ist ACP Scheme and requested to protect the pay scale of the applicants which they were receiving before getting the A.C.P. benefits. It was also prayed that no recovery be made due to re-fixation of the salary of the applicants under ACP Scheme. Vide order dated 21.07.2004 the representation of the applicants have been rejected by the Competent Authority (Annexure A-11). The Competent Authority in its order dated 21.07.2004 clearly mentioned that benefit of both the Schemes i.e. In-situ Promotion and ACP Scheme cannot be granted side by side. As the department has decided to enforce the ACP Scheme, it would not be proper and appropriate to give the benefit of In-situ promotion.

6. By filing Counter Reply, it is submitted that by the Government of India, DOP&T O.M. dated 09.08.1999, it has been decided by the respondents department that Assured Career Progression Scheme shall be adopted in stead of In-Situ promotion. As per direction/guidelines provided in the above OMs of DOP&T, the respondents department, issued another O.M. dated 14.10.2003, wherein, it is directed to the concerned Head of Office/ Controlling Officer under the respondents department to review all the cases wherein the benefit of In-Situ Promotion as well as ACP have been granted. As both the schemes are not to be run concurrently and orders were also issued for withdrawal of benefit of In-Situ promotions, wherever granted and the pay of concerned officials may be re-fixed accordingly. It is relevant to

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mention here that under the provisions of In-Situ promotion scheme, the applicants were getting only one higher scale during entire service period, however, the ACP Scheme provided two higher grade of pay scale w.e.f. 09.08.1999 to all the Group 'B' , 'C' and 'D' Central Government Civilian employees. The respondents department has taken the steps to withdraw the In-situ promotion Scheme in favour of employees including applicants that they shall get more benefit in future under ACP Scheme. In pursuance of the above O.Ms. dated 09.08.1999 and 14.10.2003, the respondent no.3 issued an office order dated 29.12.2003 to withdraw the benefits of In-Situ Promotion as and when the same was granted and instead the applicants were granted benefit of ACP Scheme w.e.f. 09.08.1999.

7. In the Rejoinder Reply filed by the applicants, it is submitted that in the Assured Career Progression Scheme it has not been mentioned at any place that, In-Situ promotion can be withdrawn with retrospective effect. The orders passed by the respondents are illegal and without jurisdiction. The benefits of ACP Scheme can only be enforced with prospective effect and not retrospectively.

8. Learned counsel for the applicant vehemently argued that by granting the benefit of ACP Scheme, the respondents have arbitrarily passed the order of recovery of amount earlier paid to the applicants by virtue of In-Situ promotion. The applicants have never misrepresented or committed any concealment of facts and the payment was made to

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them *bonafidely* by the respondents. The alleged excess payment made to the applicants are not because of their misrepresentation or concealment of fact and is solely due to grant of In-Situ promotion and for which the applicants are not to be blamed and any action for recovery would be violative of Principle of Natural Justice and fair play. No notice or opportunity has been granted to the applicants before recovering the amount from them.

9. Learned counsel for the applicant in support of his contention has placed reliance on the following decisions of Hon'ble Supreme Court:-

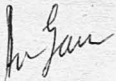
- (i) 1994 SCC (L&S) 683 Shyam Babu Vs. Union of India & Ors
- (ii) 1995 SCC (L&S) 248 Sahib Ram Vs. State of Haryana
- (iii) 2009 (5) Supreme Today 164 Sayad Abdul Kadir Vs. State of Bihar.
- (iv) 1997 SCC (L&S) 1652 B. Ganga Ram Vs. Regional Joint Director
- (v) 2006 (4) SCC 492 Purshottam Lal Vs State of Bihar

In all the aforesaid cases, it has been held that the excess payment made to the applicants on account of in-action of the respondents and due to no fault of applicants, it shall only be just and proper not to recover any excess amount which has already been paid to them. Admittedly, benefits of both the schemes name In-situ promotion and A.C.P. Promotions cannot be granted to the applicants simultaneously. However, excess payment has been made to the applicants not on account of any misrepresentation made by the applicants, but due to enforcement of A.C.P. Scheme, 1999 and for

which they cannot be held to be at fault. Under the circumstances the amount paid till the date of enforcement of ACP Scheme, 1999 may not be recovered from the applicants.

10. Accordingly, we partly allow the O.A. and direct that no steps be taken to recover or to adjust any excess amount, which they have received in terms of In-situ promotion, due to the fault of respondents, the applicants being in no way responsible for the same. There will be no order as to costs.


Member-A


Member-J

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