

(11)

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD**

**Original Application No. 348 of 2005**

*Thursday* this the 31<sup>st</sup> day of July 2008

**Hon'ble Mr. Justice Khem Karan, Vice Chairman  
Hon'ble Mr. K.S. Menon, Member (A)**

Krishna Nand Barnwal, son of Late Jamuna Lal, resident of Village and Post Karmauta district Ballia, presently residing at C/o Assistant Garrison Engineer, Military Engineering Services, Varanasi.

**Applicant**

**By Advocate Sri M.M. Sahai**

**Vs.**

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. Garrison Engineer (N), Binnaguri, district Jalpaiguri.
3. Garrison Engineer (E), Allahabad.

**Respondents**

**By Advocate Sri Saumitra Singh**

**ORDER**

**By K.S. Menon, Member (A)**

This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985, against the Order dated 17.12.2004 passed by respondent No. 2, by which the respondents have rejected the applicant's claim for grant of second financial upgradation on completion of more than 24 years of service under the Assured Career Progression (in short ACP) Scheme. The applicant has prayed for the following reliefs: -

- (i) *The Hon'ble Tribunal may be pleased to set aside the order dated 17.12.2004 Annexure-I to Compilation Ist*
- (ii) *That the Hon'ble Tribunal may be pleased to issue suitable order directing the respondents to grant second Financial Up-gradation to the petitioner will al consequential benefits.*
- (iii) *That the Hon'ble Tribunal may be pleased to issue suitable direction directing the respondents to treat the Financial Up-gradation granted under the order dated 9.8.1999 as a First Financial Up-gradation.*

*B*

- (iv) *That the Hon'ble Tribunal may be pleased to pass such and further order as may be deemed fit and proper in the circumstances of the present case.*
- (v) *The Hon'ble Tribunal may award costs of this application to the applicant against the respondents."*

2. The applicant on initial appointment joined as 'Valve man' on 30.06.1967 in the pay scale of Rs.75-1-85-EB-295. This scale was revised to Rs.210-4-226 EB-4-250-5-290 on the basis of the Third Pay Commission in 1973. In 1976 the applicant was promoted as 'Pipe Fitter' but the pay scale was not upgraded, as the pay scales of 'Valve man' and 'Pipe Fitter' were the same as per the Pay Commissions' recommendations. It was subsequently noticed that the revision of pay scale done in 1973 was incorrect and so it was revised to Rs.260-400/- in 1981. The applicant passed the trade test for Fitter Pipe Grade II on 24.03.2002. The respondents on 24.02.2003 issued an order by which the applicant was given the Second Financial Upgradation w.e.f. 09.08.1999 and the pay scale was fixed as Rs.4000-100-6000 (annexure-II to Compilation II). Being aggrieved the applicant met the respondents personally and pointed out that it should be First Financial Upgradation and not Second Financial Upgradation. Since there was no response, he represented on 19.10.2004 to the CWE and respondent No. 2, and requested that the order dated 24.02.2003 be modified to First Financial Upgradation (Annexure-III to Compilation II). Since there was no response, he filed this O.A.

3. The respondents vide their impugned order dated 17.12.2004 rejected the claim of the applicant on the ground that 3 grade structure pay of Pipe Fitter was upgraded from the pay scale Rs.210-290 to Rs.260-400/- w.e.f. 16.10.1981, which has been treated as the First Financial Upgradation, accordingly the Upgradation done on 09.08.1989 was treated as the second Financial Upgradation, hence the applicant's representation was rejected vide the impugned order dated 17.12.2004. The applicant contends that this impugned order is illegal and erroneous as the applicant was promoted from Valveman to Pipe Fitter and if the pay scale was enhanced, it would be applicable to all employees concerned and cannot be said to be a financial Upgradation specific to the applicant. Besides he argues that such an Upgradation of pay scale from Rs.210-290 to Rs.260-400 was more in the nature of

a policy decision and not a Upgradation as per the ACP Scheme in the case of an individual.

4. Reliance has also been placed on the copy of an order issued by the CE, referred to in para-14 of the O.A., which indicates as under: -

*"14. That the petitioner further brings on record the copy of the order issued by the Chief Engineer. A perusal of which will demonstrate that the employees who have been promoted from HS Grade IInd to HS Grade Ist in the pay scale of Rs.4000-100-6000 gaining any financial benefit on their promotion (in the scale of both the grades being identical) and have completed more than 24 years of service and have been granted only one financial up-gradation, are eligible for their second financial up-gradation in the scale of Rs.4500-7000. It is respectfully submitted that the petitioner is fully entitled to the benefit as indicated in the above mentioned order of the Chief Engineer. A copy of the order of the Chief Engineer is being filed herewith and marked as Annexure-V to Compilation No. II.*

5. In view of the above, the applicant states that the action of the respondents is wholly illegal and erroneous and violative of Article 14 and 16 of the Constitution of India and the impugned order should be quashed and set aside and all consequential benefits be made available to the applicant as prayed for in the relief para.

6. Denying the pleas taken by the applicant, the respondents have filed their detailed Counter Reply and in para-8 of the reply, they have submitted that the pay scale of Valveman and Pipe Fitter were identical, but on implementation of the three grade structure pay, the pay scale of Pipe Fitter was upgraded from Rs.210-290 to Rs.260-400 w.e.f. 16.10.1981, the applicant's pay was accordingly revised to this new upgraded scale of Rs.260-400, which has been considered as the 1<sup>st</sup> Financial Upgradation for the purpose of the ACP Scheme. The 2<sup>nd</sup> Financial Upgradation to the pay scale Rs.4000-100-6000 was done on 09.08.1999. The applicant has therefore been given two financial Upgradation as envisaged under the ACP Scheme. He is therefore not entitled to any relief as prayed for in this O.A. Since the O.A. is devoid of merit, it does not call for any interference by this Court and has urged that the O.A. be dismissed.

7. We heard Sri M.M. Sahai, learned counsel for the applicant and Sri Saumitra Singh for the respondents and perused the pleadings on record.

8. The main issue before us is whether any revision or Upgradation of pay scale on the basis of Pay Commission recommendation can be construed as a financial Upgradation under the ACP Scheme of the Government.

9. The line of argument put forth by the applicant is that the revision of pay scale from Rs.210-290 to Rs.260-400 effected in 1981 was applicable to all 'Pipe Fitter' as it was in pursuance of the Pay Commission recommendations or in other words as a result of a policy decision of Government and not an individual specific financial Upgradation as envisaged under the ACP Scheme. Therefore treating the above Upgradation/revision in pay scale as the first financial Upgradation is incorrect and illegal. The applicant in his Rejoinder Affidavit in paras-4 and 7 has reiterated the argument contained in the O.A. and as brought out above.

10. The respondents on their part filed an affidavit praying that the proceedings in the O.A. be kept in abeyance as the Union of India has filed SLPs in the Supreme Court, which are pending. It was also brought out in this affidavit that the Directorate of Personnel, MES; Engineer-in-Chief Branch, Integrated Headquarters of Ministry of Defence (Army), New Delhi had vide their letter dated 20.02.2007 informed that while restructuring the grades, certain categories of Industrial Personnel were upgraded from semi skilled categories, while certain other categories remained as semi-skilled eg. Valveman presumably because this category might not have scored adequate points in the job evaluation done by the Expert Classification Committee (ECC). As a result thereof certain Valveman approached various Courts of Law seeking the pay scale of Skilled Grade due to the reasons that other semi-skilled categories were upgraded to skilled while they (Valveman) were left out. Most of them got favourable judgments which were also implemented. In a few other cases the UOI filed SLPs in the Supreme Court which is still pending. In SLP No. 11442 of 2003 (converted to Civil Suit No. 1475 of 2004) filed by Union of India vs.

0/2/

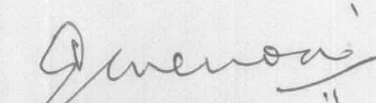
Sri Gopa Ram, stay was granted by the Supreme Court. In another SLP No. 19483/99 filed by Union of India vs. Sri Amar Nath & Ors. the matter has been remanded back to the High Court by the Apex Court (Annexures 1 & 2 of this Affidavit). During the course of hearing also the learned counsel for the respondents Sri Saumitra Singh had requested that this matter be kept in abeyance as the SLPs in the Supreme Court on this very issue were pending. After going through the submissions made in the O.A. and the Counter Affidavit and other papers annexed, we are of the considered view that the matters pending in the Supreme Court pertain to promotion from semi skilled to skilled category which are quite different from this case, where the question being adjudicated is whether the applicant is entitled to the Ist Financial Upgradation after grant of regular promotion before completion of 12 years regular service. Therefore, there appears to be no necessity to keep this case in abeyance as prayed for by the respondents' counsel.

11. Admittedly revision of pay scales as per a policy decision of Government or in pursuance of Pay Commission recommendations, which has universal applicability cannot be the same as financial Upgradation to which Government servant is entitled to based on specified years of regular service put in. However whether the applicant is entitled for such financial Upgradation or not has to be determined with respect to the orders governing the said ACP Scheme. In this connection, the relevant extract of the ACP Scheme issued by DO P&T vide OM No. 35034/1/99-Est (D) dated 09.08.1999 reads as under: -

*"5.1 The financial upgradations under the ACP Scheme in the entire Government service career of an employee shall be counted against regular promotions (including in-situ promotion and fast track promotion availed through limited departmental competitive examination) availed from the grade in which an employee was appointed as a direct recruit. This shall mean that two financial upgradations under the ACP Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee. If an employee has already got one regular promotion, he shall qualify for the second financial Upgradation only on completion of 24 years of regular service under the ACP Scheme. In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him."*

A simple reading of the above provision would indicate that financial upgradations shall be counted against regular promotions (including in-situ, fast track promotions availed through limited departmental examinations). The financial upgradations under the ACP Scheme shall be available only if no regular promotions are availed of during the prescribed periods (12 years and 24 years). In the instant case the applicant has already availed of one regular promotion i.e. from Valveman to Pipe Fitter in 1976 i.e. within the prescribed period of 12 years. The applicant's argument is that as the pay scales of Valveman and Pipe Fitter were identical and the so called promotion did not entail any Upgradation of pay scale. This argument is however not tenable as the pay scale fixed, as Rs.210-290 in 1973 which was found to be incorrect, was further revised to Rs.260-400 in 1981. Since the regular promotion was availed 3 years prior to completion of 12 years the Upgradation of pay scale from Rs.210-290 to Rs.260-400, has correctly been considered as the 1<sup>st</sup> Financial Upgradation for the purposes of the ACP Scheme. That in view of the matter the applicant's plea to treat the 2<sup>nd</sup> Financial Upgradation done to the pay scale of Rs.4000-100-6000 on 19.08.1999 as the first financial Upgradation has no merit and cannot be accepted. The actions of the respondents being in accordance with the provisions of the ACP Scheme are in order and cannot be faulted.

12. The applicant has not made out a case for grant of the reliefs as prayed in this O.A. The O.A. does not succeed and being devoid of merit is accordingly dismissed. No costs.

  
Member (A)

  
Vice Chairman