

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 13 DAY OF 4 2010)

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

Original Application No.215 of 2003
(U/S 19, Administrative Tribunal Act, 1985)

1. Yash Pal Mahay, S/o Shri M.R. Sharma, No.1 BRD, Air Force Station, Chakeri, Kanpur-208008 (Pass No.I/1496).
2. J.S. Katiyar S/o Late Sri M.R. Katiyar, No.1 BRD, Air Force Station, Chakeri, Kanpur-208008 (pass No.I/1487).
3. R.S. Gupta S/o Late Shri Sheo Shanker Lal, No.1 BRD, Air Force Station, Chakeri, Kanupur 208008 (Pass No.I/ 1488)
4. R.L. Verma, S/o Late Shri Babu Pal, No.1 BRD, Air Force Station, Chakeri, Kanupur 208008 (Pass No.I/ 1419)
5. Gulab Chandra S/o Shrii Ram Sumer, No.1 BRD, Air Force Station, Chakeri, Kanupur 208008 (Pass No.I/ 1492)
6. R.B. Dubey S/o Shri J.N. Dubey, No.1 BRD, Air Force Station, Chakeri, Kanupur 208008 (Pass No.I/ 1499)
7. Anil Kumar, S/o Late Shri Kasturi Lal, No.1 BRD, Air Force Station, Chakeri, Kanupur 208008 (Pass No.I/ 1053)

..... Applicants

Present for Applicants :

Shri S. Mandhyan

Versus

1. Union of India, through Secretary, Ministry of Defence, south Block, New Delhi.
2. Deputy Director (Personnel-Civilian), Air Headquarter, Vayu bhawan, New Delhi.
3. Air Officer Commanding, Air force Central Account Office, Subroto Park, New Delhi.

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4. Air Officer Commanding, 402 Air Force Station, Chakeri, Kanpur.
5. Commanding Officer, I BRD, Air Force Station, Chaeri, Kanpur.

..... Respondents

Present for Respondents : Shri Rajdev Tiwari

ORDER

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

By means of the present Original Application the Applicants have claimed following main relief(s):-

- (a) *issue any writ order or direction in the nature of certiorari quashing the office order no.21/2002 dated 30.07.02 (annexure A-1) to the O.A.*
- (b). *issue any writ order or direction in the nature of mandamus not to give effect to the order dated 30.07.2002.*
- (c) *issue any writ, order or direction in the nature of mandamus commanding the respondents not to deduct any amount from the salary of the applicants towards the arrears as made out by the respondents in pursuance of the order dated 30.07.2002.*
- (d) *issue any writ, order or direction in the nature of mandamus commanding the respondents to continue the applicants in the pay scale of Rs.5500-9000 which was accorded to them vide order dated 13.08.2001 and 14.08.2001.*

2. The applicant nos. 1 to 6 were initially appointed in the year 1965 as Instrument Repairer Group II (Pay Scale 110-115) in 1 BRD Air Force Station, Chakeri, Kanpur, whereas the applicant no.7 was appointed in the year 1964. As per Air force order no.78 of 1962 Technical Grades were divided in two groups of which Group II had further 03 Grades i.e. I, II & III and

Group 0I having 02 Grades i.e. I & II. On implementation of 2nd Central Pay Commission report, the separate Grades were merged in their respective Groups and again previously prevalent Group I & Group II remained. On completion of 3rd Central Pay Commission, 02 Group Structures was maintained while revising the pay scale of Group II from Rs.110-150 to 260-400 and for Group I from Rs.150-240 to Rs.380-560. Vide letter dated 07.11.1985, on the recommendation of the 3rd Central Pay Commission, 03 Grades structure was introduced by the Expert Classification Committee, according to which Group II bearing pay scale of Rs.260-400, remained the same though the category was given as skilled. Another post of High Skilled II was created in the pay scale of Rs.330-480 and the 3rd Grade was HS-I bearing pay scale of Rs.380-560 in which the Applicants were already placed. It is further stated that on recommendation of 4th Central Pay Commission the 03 Grades as recommended by 3rd Central Pay Commission continued, however, the pay scales were revised to HS-I under 3rd Central Pay Commission bearing pay scale of Rs.380-560 was revised on recommendation of 4th Central Pay Commission to Rs. 1320-2040.

3. According to the Applicants the recommendations of 5th central Pay Commission were made applicable with effect from 01.01.1996, the skilled category bearing pay scale of Rs.950-1500 was revised to Rs.3050-4590 and the 02 Grades of HS-II and HS-I

respectively bearing pay scale of Rs.1200-1800 and Rs.1320-2040 were merged in Highly skilled bearing pay scale of Rs.4000-6000 for all practical purposes and even as per the clarification of the DOPT Applicants did not get any promotion worth the mention, particularly in the wake of the fact that all through their entire service career they remained as Instrument Repairer, therefore, neither the nomenclature of their post has been changed nor they have been upgraded in scale. On 09.08.1999, DOPT introduced Assured Career Progression (ACP) Scheme for betterment of Central Government Civilian Employees, who had no avenue of promotion and to stop stagnation of the employees in that very trade. Since there were certain doubts about the Scheme as promulgated, several representations were filed and the department came out with the clarification vide O.M. dated 10.02.2000 that the scheme would be applicable even to those, who got promotion from lower pay scale to higher pay scale as a result of promotion before merger of pay scales, shall be entitled for upgradation under A.C.P. Scheme ignoring the said promotion. The first promotional benefits under ACP Scheme was granted on 21.02.2000 by placing the Applicants in pay scale Rs.5000-8000 w.e.f. the date they had completed 12 years of service (Annexure A-3 of the O.A.). Benefit of second promotion on completion of 24 years was granted on 01.02.2001 to the Applicants by putting them in pay scale of Rs.5500-9000, which

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was proper in the wake of the scheme and the clarifications (Annexure A-4 of the O.A.).

4. The grievance of the Applicants is that after giving the benefit of A.C.P. Scheme, vide order dated 02.06.2001 the respondents' organization has cancelled the order dated 01.03.2001 (2nd ACP Promotion) without any order for recovery. Against the order dated 02.06.2001, the Applicants filed detailed representations for giving the due benefit to the cases which were squarely covered under the A.C.P. Scheme hence the matter was again taken up and vide office order part II dated 13.08.2001 Applicants were granted in-situ promotion in the pay scale of Rs.5000-8000 as per authority of the Ministry of Defence dated 28.04.1999. Vide order dated 14.08.2001 second benefit under ACP to the pay scale Rs.5500-9000 was granted to the Applicants. An office order dated 30.07.2002 was issued, whereby earlier order was cancelled placing the Applicants in the pay scale of Rs.5000-8000. However, there is one more compelling fact that the authority of the Ministry of Defence dated 28.04.1999 which formed the basis of order dated 13.08.2001 still hold good and has not been cancelled, therefore, this order is otherwise bad in law as the authority letter relied upon was in respect of another employee not similarly situated like the Applicants. The said authority's letter is dated 13.05.2002, which is in respect of another employee namely

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Yogesh Chandra who is not similarly situated employee as that of the Applicants. Learned counsel for the applicant submitted that the Applicants did not receive any amount towards their salary for the month of November, 2002 and when enquiries were made, it is found that the entire salary payable to the Applicants have been adjusted against the arrears which has been accentuated in pursuance of the order dated 30.07.2002. It is submitted by the learned counsel for the Applicants that before recovery the amount from the Applicants' salary respondents have not given any show cause notice or opportunity to the Applicants.

5. In the counter reply filed by the Respondents, it is submitted that since the pay of the Applicants was wrongly fixed, which was subsequently corrected vide impugned order, and the Applicants were liable to refund the amount which they have drawn due to the wrong fixation of pay. The excess payment of salaries paid to the Applicants were directed to be recovered from the salary of the Applicants and thus the Air Force Central Accounts Office, New Delhi started deducting the salaries of the Applicants to recover the excess payment. Aggrieved by the said office order dated 30.07.2002 the Applicants have filed present application and the Hon'ble Tribunal vide its interim order dated 06.05.2003 issued direction to the respondents not to recover any amount from the pay of the Applicants till further orders and therefore, the recovery from the salary of the Applicants have

been stayed. It is also submitted that the case of the Applicants has been reviewed on the basis of clarification issued from the Ministry of Defence through the Headquarters Maintenance Command vide their letter dated 17.06.2003 and the pay of the Applicants have been refixed vide office order dated 19.03.2004, 20.03.2004, 22.12.2003 and 22.12.2003. It is stated that as per IVth CPC three grade pay scale structure was created i.e. skilled pay scale of Rs.950-1500, HS II Pay Scale of Rs.1200-1900 and HS I pay scale of Rs.1320-2040 and according to the Vth Central Pay Commission report all the above three scales were merged into one scale, but the scale of skilled grade i.e. Rs.950-1500/- was not merged. It is stated by the learned counsel for the applicant that Applicants were not eligible for II ACP in the scale of Rs.5500-9000/- therefore, it was rightly cancelled vide office order dated 02.06.2001. The recovery had been initiated from the Applicants because they were paid excess payment due to the wrong fixation of their pay. The amount which has already been recovered from the salaries of the Applicants was paid to them due to wrong fixation of second ACP. The case of the applicant has been reviewed and their pay have been fixed to redress their grievances.

6. Learned counsel for the applicant has filed Rejoinder Affidavit and denied the averments contained in the counter reply and submitted that there is no question of any wrong

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fixation, but it is only that the respondents have realized late that they were given rightful due to the Applicants. But for the fault of the respondents the Applicants cannot be made to suffer by succumbing to the recovery as has been sought to be made. Learned counsel for the applicant submitted that the fixation of pay scale was not due to any fraud or misrepresentation on the part the Applicants and the department had according to the scheme fixed the same, the recovery in any case cannot be made without giving any opportunity to them, therefore, the entire exercise was in futility and the same cannot be sustained from any angle whatsoever.

7. Learned counsel for the applicant has filed Supplementary affidavit on 06.10.2004 and submitted that the amount already deducted from the pay of the applicant Nos. 4 & 5 in the wake of the impugned order is liable to be recalled or set aside and they are entitled to the pay scale of Rs.5500-9000. Vide office order dated 19.03.2004 the order of fixation in the pay scale of Rs.5500-9000 was accorded in favour of the applicant nos. 2, 3 & 5 (Annexure SA-2). On 20.03.2004, similar order were passed in the case of the applicant Nos. 4 & 7 granting them pay scale Rs.5500-9000/-. On 20.05.2004 similar order was also passed in the case of the Applicant Nos. 2 & 6. It is pertinent to mention here that the applicant no.2 (retired on 31.07.2003), applicant no.6 (retired on 30.11.2004), applicant no. 5 (retired on

31.01.2005) and Applicant No.7 (retired on 31.05.2005), who had been accorded pay scale of Rs.5500-9000 and his pension has also been fixed accordingly. Only Applicant Nos. 1, 3 and 4 have not been accorded the same pay scale as admissible to other 04 Applicants which is an ambiguity without any jurisdiction.

9. We have heard learned counsel for the parties and perused the written argument filed by the learned counsel for the applicant.

10. It is argued on behalf of the Applicants that no show cause notice or opportunity has been granted to the Applicants before cancellation of benefit of ACP. Learned counsel of the Applicants would contend that since all the Applicants were appointed when second C.P.C. recommendation were in vogue and all of them are similarly situated and have retired, but granting different pay scale to Applicant Nos.2, 5, 6 and 7 and different pay scale to Applicant Nos. 1, 3, and 4 is a glaring example of hostile discrimination and said discrimination cannot be sustained in law granting different scale to one set and different scale to another set is wholly violative of Principle of Natural Justice and fare play. In our considered opinion the impugned order dated 30.07.2002 (Annexure A-1) is illegal, arbitrary and same is deserves to be quashed and set aside.

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11. We have also noticed that the respondents have granted the benefit of ACP Scheme to one Sri B.L. Katiyar and no recovery has been made from him and as such the respondents cannot act in a discriminatory manner and the action of the respondents is clearly violative of Article 14 and 16 of the constitution of India. We have also noticed that applicants have not misrepresented any fact nor played fraud in receiving the benefits under A.C.P. Scheme, the recovery passed by the respondents is wholly illegal, arbitrary and without jurisdiction. In order to buttress the aforesaid 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.**

12. A perusal of the aforesaid decisions clearly indicates 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. In the present case, it is established that the Applicants have not misrepresented any fact nor conceal anything from the notice of the respondents. Respondents themselves have granted the benefit under the previous of ACP Scheme to the best of their understanding.

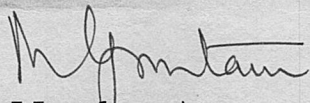
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13. We have given our anxious thought to the pleas advanced by the parties counsel and we are satisfied that the Scheme of ACP was introduced by the Government of India on 9.8.1999 by which two financial Upgradation were to be given, first after completion 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.

14. 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 Applicants due to fault of the respondents. The Applicants being in no way responsible for the same, if any over payment, has been recovered from the Applicants, the same be refunded to him.

15. In view of the aforesaid observations, the Original Application is allowed. The impugned order dated 30.07.2002/Annexure-1 of O.A is hereby quashed and set aside. The respondents are directed not to deduct any amount from the salary of the applicant and any amount already recovered from

his salary in pursuance of the impugned orders, the entire amount shall be refunded to the applicant within a period of four months from the date of receipt of certified copy of the order.


Member-A


Member-J

Sushil