

Judgment

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

...

original Application No. 615 of 2003.

this the 21st day of May'2004.

HON'BLE MR D.C. VERMA, VICE CHAIRMAN
HON'BLE MR D.R. TIWARI, MEMBER (A)

Krishna Gopal, S/o Late Brij Mohan Lal, R/o 62 A/2 B
pura Fateh Mohd (Ambedkar Nagar), near Bethni Convent
School, Naini, Allahabad.

Applicant.

By Advocate : Sri S. Lal.

Versus.

1. Union of India through Defence Secretary, Ministry
of Defence, New Delhi.
2. Director General EME (EME-Civ), Army Headquarters
DHQ PO New Delhi.
3. Commander, Headquarters, Base workshop Group,
EME, Meerut,
4. Commandant & M.D. 508 Army Base workshop, Allahabad
Fort.

Respondents.

By Advocate : Sri C. Prasad for Sri R.C. Joshi.

ORDER

PER D.C. VERMA, VICE CHAIRMAN

By this O.A., the applicant has claimed second
financial upgradation in the scale of Rs.5000-150-8000/-
w.e.f. 12.2.2000 under A.C.P. Scheme and consequential
benefits thereafter.

2. The facts, in brief, is that the applicant was
working as H.S.G. Gr.II w.e.f. 15.10.1984, was promoted
as H.S.G. Gr.I Fitter. After the Vth pay Commission,
the grades of H.S.G. Gr.II and Gr.I were merged w.e.f.
1.1.1996 in the scale of Rs.4000-6000/- . AS per the due

selection, the applicant was given second upgradation under the ACP Scheme w.e.f. 12.2.2000 in the grade of Rs.5000-8000/-. This order was, however, subsequently amended and the benefit of second upgradation was given from 12.2.2001 instead of 12.2.2000. The pay of the applicant was accordingly fixed. On 26.6.2002, the two earlier orders dated 12.2.2000 and 12.2.2001 were cancelled. Consequently, the increments granted under upgraded scale w.e.f. 12.2.2000 was cancelled. The applicant superannuated on 31.7.2002. The ^{pay} last drawn by the applicant was Rs.5900/- However, when the P.P.O. was issued, the last pay drawn by the applicant was recorded as Rs.5600/- in the scale of Rs.4000-6000/-. The retiral benefits were also directed to be paid in pursuance of ^{said} the P.P.O.

3. The grievance of the applicant is that the second upgradation could not have been cancelled by the respondents without giving any show-cause notice. The other submission is that because of the merger of two scales of H.S.G. Gr.II and Gr.I, the benefit of upgradation cannot be denied. In support of the second submission, the learned counsel has placed reliance on the decision of Ernakulam Bench of the Tribunal in the case of M.K. Rajan Vs. Union of India & Others reported in 2002 (2) ATJ 619, which was followed by Hyderabad Bench of the Tribunal in the case of G. Madhava Rao & etc etc. Vs. Union of India & Others reported in 2003 (2) A.T.J. 532.

4. The learned counsel for the parties have been heard at length.

5. The facts stated above are not disputed. The only point is whether the applicant after merger of two grades would or would not be entitled for second upgradation. In this connection, reference may be made to the O.M.

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no.35034/1/97-Estt.(D) dated 10.2.2000 whereby clarification on certain points of doubts have been issued. The relevant point is as below :

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S.No.	point of Doubt	Clarification
1.	Two posts carrying different pay scales constituting two rungs in a hierarchy have now been placed in the same pay scale as a result of rationalization of pay scales. This has resulted into change in the hierarchy inasmuch as two posts which constituted feeder and promotion grades in the pre-merged scenario have become one grade. The position may be clarified further by way of the following illustration : prior to the implementation of the Fifth Central Pay Commission's recommendations two categories of posts were in the pay-scale of Rs.1200-1800 and Rs.1320-2040 respectively; the latter being promotion post for the former. Both the posts have now been placed in the pay scale of Rs.4000-6000. How the benefits of the ACP Scheme is to be allowed in such cases ?	Since the benefits of upgradation under ACP Scheme (ACPS) are to be allowed in the existing hierarchy, the mobility under ACPS shall be in the hierarchy existing after merger of pay scales by ignoring the promotion. An employee who got promoted from lower pay scale as a result of promotion before merger of pay scales shall be entitled for upgradation under ACPS ignoring the said promotion as otherwise he would be placed in a disadvantageous position vis-a-vis the fresh entrant in the merged grade."

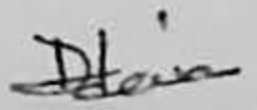
6. From the above, it is clear that an employee who was promoted from lower pay scale to higher pay scale as a result of promotion before merger of pay scales, shall be entitled for upgradation under ACP Scheme ignoring the said promotion as otherwise he would be placed in a disadvantageous position vis-a-vis the fresh entrant in the merged grade.

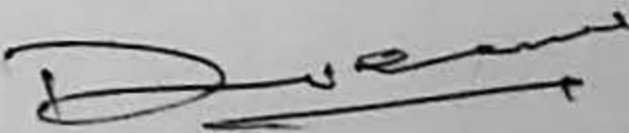
7. Ernakulam Bench of the Tribunal in the case of M.K. Rajan (supra) was also faced with similar kind of situation and thereafter noted that " it is obvious that for implementation of ACP Scheme, if the two posts in the hierarchy have been merged into one level, the promotion to the higher level before merger is to be ignored, otherwise it would result to an iniquitable and anomalous

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situation where the juniors would become entitled to the 1st financial upgradation, while seniors would not get it." When the similar matter came up for decision before Hyderabad Bench of the Tribunal, the view taken by Ernakulam Bench of the Tribunal was referred with approval and it was observed that denial of second upgradation was not justified. It was held that promotion to upgraded post prior to merger of pay-scales is to be ignored for the purpose of giving the benefit under the A.C.P. Scheme.

8. In view of the above, the O.A. is allowed. The impugned orders are quashed. The respondents are directed to provide the benefit of second upgradation ignoring promotion to upgraded post prior to the merger of pay scale and thereafter to fix his pay, provide all consequential benefits including pensionary benefits within a period of three months from the date of receipt of copy of this order. In case compliance of the order is not made within the aforesaid period of three months, the applicant would be entitled to interest @ 9% per annum on the payable amount w.e.f. the date the three months period expires till the date of actual payment. Costs easy.


MEMBER (A)


VICE CHAIRMAN

GIRISH/-