

(OPEN COURT)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 30TH DAY OF NOVEMBER, 2010)

PRESENT:

HON'BLE DR. K.B.S. RAJAN, MEMBER-J
HON'BLE MR. D. C. LAKHA, MEMBER-A

ORIGINAL APPLICATION NO. 659 OF 2003

(U/s, 19 Administrative Tribunal Act.1985)

Sri Krishna Sharma Son of Shri K.L. Sharma, Wireman,
Presently posted at Head Post Office, Moradabad.

.....Applicant

By Advocate: Shri R.P.S. Chauhan.

Versus

1. Union of India, through Secretary, Ministry of Communication, Department of Post, New Delhi.
2. Chief Post Master General, U.P. Circle, Postal Department, Lucknow.
3. Sr. Superintendent of Post Offices Moradabad Division-Moradabad.

..... Respondents

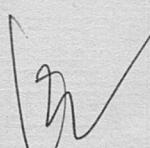
By Advocate: Shri Saurabh Srivastava.

O R D E R

(DELIVERED BY:- HON'BLE DR. K.B.S. RAJAN, MEMBER-J)

In this OA the grievance of the applicant is that he was inducted as Asst. Wireman, which designation was changed as Wireman and he was placed in the higher pay scale. At the material point of time, with the benefit of ACP Scheme, the applicant was placed in the scale of Rs 3200 - 4900/-.

However, without notice, the respondents have reduced the pay scale on the basis of their contention that the applicant is



not entitled to the higher pay scale and correspondingly, the excess amount paid to him was also sought to be recovered. Orders dated 06-05-2003 read with order dated 17-05-2003 (impugned) refers.

2. By an interim order respondents were restrained from effecting any recovery, vide order dated 06-06-2003.

3. An identical issue came up for consideration in another case OA No. 1018/2005 in which orders were passed by this Tribunal (One of us – the Judicial Member, being a member of that Bench). The details are as under:-

The facts of the case as per the applicant are as under:-

- (a) That, the applicant was appointed as Asstt. Wireman Ghazipur since 31.3.1986. The S.P.Os., Ghazipur issued Memo dated 9.8.1991 regularizing the applicant as Wireman in the scale of Rs. 950-20-1150-EB-25-1500 w.e.f. 24.1.91 and for treatment of the period prior to it referred the matter to D. G. Posts (Annexure No. A-9). In pursuance of clarifications conveyed by the P.M.G. Allahabad, S.P.Os Ghazipur further issued Memorandum dated 03.10.1994 whereby the services of the applicant were regularised as Wireman in the scale of Rs. 950-20-1150 – E.B.-25-1500 Since 31.3.1986 (Annexure No. A-10).
- (b) A.C.P. Scheme for financial upgradation was promulgated vide D.O.P. & Trg. O.M. dated 9.8.99 & 10.2.2000. In the Postal/Civil Wing/Electrical Wing a wireman gets next promotion to the post of Technician having scale Rs. 4000-100-6000. Accordingly the first financial upgradation of the applicant, who is wireman under A.C.P. Scheme had to be in the scale applicable to Technician, but the Supdt. Post Offices Ghazipur vide his memo dated 16.10.2001 granted first upgradation to the scale of Rs. 3200-85-4900 since 09.08.1999. In the same department and in the same circle wireman were given first financial upgradation in the scale of Rs. 4000-100-6000 in Kanpur G.P.O., Kanpur R.M.S. "K.P." Dn. In Lucknow Region under S.P.Os. Barabanki and in Allahabad Region by S.S.P.Os. Allahabad. {Annexure No. A-11, A-12, A-13 and A-14 refer respectively).
- (c) The applicant represented to the S.P.Os. Ghazipur on 28.6.2004 claiming correct upgradation but the S.P.Os. in his letter dated 03.08.2004 confirmed his order dated 16.10.2001 On the basis of decision issued by O/o P.M.G. Allahabad dated 13.12.2004. On the basis of decision issued by O/o P.M.G. Allahabad dated 13.12.2004 the S.P.Os. Ghazipur issued corrigendum on 12.4.2005 amending



his memo dated 03.10.94 (Annexure A-10) replacing the pay scale of the posts to which the applicant was appointed from Rs. 950-20-1150-EB-25-1500 to Rs. 800-15-1010-20-1150 vide Annexure A-1.

(d) Consequent upon this reduction further amendment to the memo dated 16.10.2001 (Annexure A-3) was ordered by the S.P.Os. Ghazipur whereby the financial upgradation under A.C.P. Scheme given to Rs. 3200-85-4900 was reduced and replaced by Rs. 3050-75-3950-80-4590 vide Annexure A-2.

(e) CAT Jaipur and Jodhpur Bench as affirmed by Hon'ble High Court of Rajasthan Jodhpur and upheld by Hon'ble Supreme Court mandated that pay scale of wireman in the department of posts since 01.01.1986 is Rs. 950-1500. (Annexure A20-22 refer). Since this judgment proclaims the pay scale of the wireman in the Deptt. of Posts for electrical maintenance of postal Division since 01.01.1986 this is a judgment-in-rem and is binding upon the department of posts through out India. But the Respondents are not obeying this order and evenning different units different scale are allowed under the same Respondents.

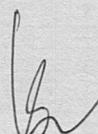
(f) The Respondents have erred in acting in contravention of provisions of Art. 142 of the Constitution of India by ignoring the judgment of Hon'ble CAT Jodhpur Bench, upheld by High Court of Rajasthan, and Supreme Court. The judgment is an order in rem. All the acts of the Respondent is thus illegal, arbitrary and in contempt of law of the land.

(g) The first upgradation to next higher grade was to be given. Even in other Divisions of Department of Posts it was accordingly given. Secondly the letter dated 20.10.2002 which is absolutely wrong and arbitrary, could not be applied with retrospective effect from 16.10.2001. The next higher grade in case of wireman stands decided by Hon'ble C.A.T. Jodhpur Bench, and upheld by Hon'ble Apex Court.

2. The version of the respondents is as under:-

(i) The first Financial Upgradation under Assured Career Progression Scheme was allowed to the applicant w.e.f. 9.8.1999 after completion of 12 years vide SPO's Ghazipur Memo no. B2/7-1/.ACP/Wireman/2001-2002 dated 16.10.2001 in the scale of Rs. 3200-4900/- . It is further submitted that the applicant represented to the SOP, Ghazipur vide representation dated 28.6.2004 that his financial upgradation has to be made in the scale of Rs. 4000-6000/- applicable to Technician of P&T Civil wing, whereas, it was made in the Postal Maill Overseer in the scale of Rs. 3200-4900/- . The said representation of the applicant was examined and order issued was reaffirmed because the scale of Rs. 3200-4900/- is the next higher scale of Rs. 3050-4590/- in the Department.

(ii) The applicant submitted an appeal to the DPS, Allahabad Region on 25.8.2005, which was forwarded to the Post Master General, Allahabad Region, who, vide his letter dated 13.12.2004 has intimated that the post of Wireman in Post Offices is isolated post which has been declared as dying cadre as per D.G. Post, New Delhi communication No. 2-12/2000PE I dated 23.10.2002. As per Para 3 & 5 of the Directorate Communication, there is a separate recruitment rule for the post of Wireman in the Department of Post & Department of Telecommunication Civil Wing, CPWD & other organization. Therefore, applying these rules in the applicant



Department will be erroneous and not appropriate as the Service of Employees working under a particular Department are governed by the Service and Recruitment Rules of the Department only.

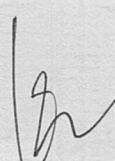
(iii) The scale of pay of Wireman was revised in pursuance of the Directorate of Communication vide order dated 23.10.2002. (Annexure No. CA-I)

3. The rejoinder filed by the applicant in nutshell states that the respondents have erred in acting in contravention of provisions of Art. 142 of the Constitution of India by ignoring the judgment of Hon'ble CAT Jodhpur Bench, upheld by High Court of Rajasthan, and Supreme Court. The judgment is in the nature of judgment in rem. All the acts of the Respondent is thus illegal, arbitrary and in contempt of law. It has further been stated therein that the first upgradation to next higher grade was to be given. Even in other Divisions of Department of Posts it was accordingly given. Secondly the letter dated 20.10.2002 which, is absolutely wrong and arbitrary, could not be applied on 16.10.2001. The next higher grade in case of wireman stands decided by Hon'ble C.A.T. Jodhpur Bench, and upheld by Hon'ble Apex Court.

4. In the supplementary counter, the respondents have stated that the ACP Scheme is only placement in the higher pay scale for grant of financial benefit and not promotion in the higher grade.

5. Counsel for the applicant argued that the pay scale attached to the post held by the applicant was Rs 950 – 1500 right from the beginning. Though the nomenclature of the post was first Assistant Wireman, later on, from the very date of appointment it was changed to Wireman, for, elsewhere also, for the scale of Rs 950 – 1500 the designation was wireman. This scale was replaced by the revised pay scale of Rs 3050 – 4590 w.e.f. 01-01-1996 under the Pay Commission recommendations. This scale was suddenly and without notice reduced to Rs 800 – 1150 (pre revised) and it was under the first ACP that the applicant was granted the scale of Rs 3050 – 4590 whereas in other departments, on grant of first ACP, the scale afforded to wireman was Rs 4000 – 6000. In support of the case, the counsel for the applicant produced an order dated 16th May 2008 in an identical case of Shri Purshottam Dass (OA No. 2054 of 2007 of the Principal Bench, and the Tribunal held as under:-

"10. Admittedly, the applicant was initially appointed as Assistant Wireman with effect from 12.1986 vide order dated 28.2.1986 (page 23). However, subsequently respondents themselves issued orders on 24.1.1991 to say that all those persons, who were appointed as Assistant Wireman were irregular because there was no post of Assistant Wireman, as such they should be regularized as Wireman after observing usual formalities. It was on the basis of respondents own letter dated 24.1.1991 that specific order dated 24.3.1992 was issued whereby applicant was regularized as Wireman in the pay scale of Rs.950-1500 from the date of his appointment as Assistant Wireman in the department (page 38), therefore, by virtue of order dated 24.3.1992, applicant was, in fact, appointed as Wireman in the pay scale of Rs.950-1500 with effect from the initial date for all purposes. This order was issued by the Sr. Superintendent of Post Offices, Saharanpur. Applicant continued



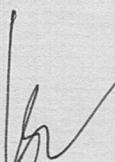
to draw his salary and was even granted the benefit of first ACP in the scale of Rs.3200-4900 with effect from 3.11.2001.

11. It was in the year 2003 that respondents ordered to revise his pay retrospectively and to make recoveries by issuing order dated 27.5.2003. This order was challenged by the applicant. We had quashed the order dated 27.5.2003 by giving liberty to the respondents to pass appropriate orders after following due process of law because earlier also respondents had not even given a show cause notice to the applicant before passing the order. They were also directed to keep in mind the judgment of Hon^{ble} Supreme Court in the case of Bhagwan Shukla Vs. U.O.I. and Others reported in JT 1994 (5) SC 253 and State of Rajasthan Vs. R. Dayal and Others reported in 1997 (10) SCC 419.

12. To our utter surprise respondents thereafter issued memorandum dated 8.2.2006 (page 77) wherein it was simply mentioned that his salary is to be fixed in the scale of Rs.2750-4000 instead of Rs.3200-4900, therefore, he may give his representation. Neither any reason was given in the said memorandum as to why they had to reduce his salary and from which date nor it showed that respondents had applied their mind. This was absolutely a vague notice. It goes without saying that giving of show cause notice is not an empty formality. The object of giving show cause notice is to put the person concerned on notice as to why the proposed action is required to be taken by the department giving the reasons, so that the employee may represent to the said reasoning by giving his own view point or facts as known to him. In the absence of reasons, the memorandum dated 8.2.2006, by no stretch of imagination, could be termed as a show cause notice, therefore, it is liable to be quashed on this ground alone.

13. Pursuant to memorandum dated 8.2.2006, applicant had submitted a detailed representation but ultimately respondents issued order dated 15.2.2007 by simply recording that he was appointed as Assistant Wireman w.e.f. 1.2.1986 and referring to the orders of DP Posts dated 23.10.2002 and fixing his pay in the lower scale with effect from 1.2.1986 in the scale of Rs.800-1150, w.e.f. 1.1.1996 in the scale of Rs.2650-4000 and w.e.f. 9.8.1999 in the scale of Rs.3050-4590. Accordingly, it was ordered that the pay of applicant would be drawn in reduced pay scale with effect from 1.2.1986.

14. We are rather surprised at the way, the respondents have passed this order also. In the counter affidavit respondents have themselves admitted that applicant was regularized as Wireman with effect from 1.2.1986 in the pay scale of Rs.950-1500 vide order dated 24.3.1992 and was paid the benefit of first ACP in the scale of Rs.3200-4900 with effect from 9.8.1999 vide order dated 3.11.2001. None of these orders were cancelled by the respondents nor it was explained as to why applicant was regularized in the first place as Wireman vide order dated 24.3.1992 and why order dated 24.1.1991 was issued by the office of the CPMG, UP Circle, Lucknow. It goes without saying that once applicant was regularized as Wireman by specific order, unless that order was cancelled, applicant's pay could not have been reduced by the respondents by treating him as Assistant Wireman that too in the manner as has been explained in above paras. In these circumstances, we have no other



option but to quash the memorandum dated 8.2.2006 as well as order dated 15.2.2007 because they are not maintainable.

15. Counsel for the respondents prayed that they should be given another opportunity to pass the correct orders. He placed reliance on the judgment of Hon'ble Supreme Court in the case of *The State of Haryana and Others Vs. Ram Kumar Mann* reported in JT 1997 (3) SC 450, but we find that judgment is not at all applicable in the facts of the present case. After all when we had quashed the orders of the respondents in the first OA, respondents were given opportunity to pass the orders, after following due process of law. If respondents do not understand what is due process of law and how orders are required to be passed, we cannot go on explaining to them each time as to what they are required to do. Moreover, we do not think any purpose would be served by again giving further opportunity to the respondents because respondents are still treating the applicant as Assistant Wireman whereas he was already regularized as Wireman way back in 1982.

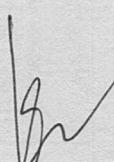
16. In view of above, OA is allowed and the memorandum dated 8.2.2006 as well as order dated 15.2.2007 are quashed and set aside. No order as to costs."

6. The above decision was challenged by the respondents in that OA before the High Court of Delhi, which, vide judgment dated 20-04-2009 in WP No. 8932 of 2008 upheld the decision of the Tribunal and dismissed the writ petition.

7. In yet another OA No. 493 of 2004, decided on 18th March, 2009, the Principal Bench, following the decision of the Jaipur Bench of the Tribunal in *Mahesh Chand & Others vs UOI (2000) 2 ATJ 124* and also the decision in OA No. 165 of 1996 in *re. Raja Ram and others vs Union of India and others* decided by the Jodhpur Bench of the Tribunal on 25-04-2000, which decision was not disturbed by the Apex Court when the respondents challenged the same through SLP No. 11283-11284 of 2001 (the SLP being dismissed vide order dated 01-03-2002) allowed the OA and restored the pay scale of the wire man to Rs 3050 - 4590. Review Application No. 26/2009 filed against the said order of the Principal Bench was also dismissed by order dated 15th May, 2009.

8. Counsel for the respondents has submitted that the higher scale granted to Wireman in Allahabad Region is under Review. He tried to distinguish the facts of the case in *Om Prakash vs Union of India (493 of 2004)* and *Purshottam Dass vs Union of India and Ors (OA No. 2054/2008)* from the facts of the case herein. This has been referred to in the written submission made by the counsel for the respondents as well.

9. Arguments were heard and documents perused. The Chief Post Master General, U.P. Circle, Lucknow, vide Annexure A-8 order dated 24-01-1991 designation of Assistant Wireman was regularized as Wireman after observing usual formalities. This has been referred to in para 10 of the order in *Purshottam Dass (supra)*. The downward revision of pay scales with retrospective effect has been made in both the cases. As such, it is futile to argue that the two cases are different. The two cases are identical in so far as the pay scale admissible to the applicant is concerned. Thus, the revision effected vide Annexure A-1 order dated 12-04-2005 bringing



down the pay scale from Rs 950 – 1500 1500 to Rs 800 – 1150, financial upgradation order dated 16-10-2001 (Annexure A-3) and Annexure A-2 whereby the pay scale had been reduced from Rs 3200 – 4900 to Rs 3050-4590 are liable to be quashed and set aside. Recovery if any effected shall be refunded to the applicant.

10. Coming to the issue of the benefit of ACP available, the parent order is of DOPT dated 09-08-1999. The Postal Department, adopting the same had issued an order dated 04-01-2000 issued separate orders. In so far as those who are not covered by the OTBP and BCR scheme, the scheme of ACP promulgated by the DOPT for Group B, C and D would be followed in the Postal Department. Admittedly, the applicant is entitled to the benefit of ACP as adopted by the Postal Department. The pay scale enjoyed by the applicant on the eve of his completing 12 years of service or 09-08-1999 whichever is later, is Rs 3050 – 4590. The question is what should be the pay scale after grant of First ACP. Where there is a regular promotional prospect for wiremen, the pay scale applicable to the promotional post would be available. It is the case of the respondents that the post of wireman in the Postal Department is a dying cadre and is an isolated post. As such, the standard pay scale adopted vide Schedule to the ACP Scheme dated 09-08-1999 alone would apply. We agree with the same. For, the scheme inter alia reads as under:-

7. Financial upgradation under the Scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts without creating new posts for the purpose. However, in case of isolated posts, in the absence of defined hierarchical grades, financial upgradation shall be given by the Ministries/Departments concerned in the immediately next higher (standard.common) pay scales as indicated in Annexure-II which is in keeping with Part-A of the First Schedule annexed to the Notification, dated September 30, 1997 of the Ministry of Finance (Department of Expenditure). For instance, incumbents of isolated posts in the pay scale S-4, as indicated in Annexure-II, will be eligible for the proposed two financial upgradations only to the pay scales S-5 and S-6. Financial upgradation on a dynamic basis (i.e., without having to create posts in the relevant scales of pay) has been recommended by the Fifth Central Pay Commission only for the incumbents of isolated posts which have no avenues of promotion at all. Since financial upgradations under the Scheme shall be personal to the incumbent of the isolated post, the same shall be filled at its original level (pay scale) when vacated. Posts which are part of a well defined cadre shall not qualify for the ACP Scheme on 'dynamic' basis. The ACP benefits in their case shall be granted conforming to the existing hierarchical structure only;

ANNEXURE - II

Standard/ common pay scales

(Reference Para. 7 of Annexure-I of this Office Memorandum)

Sl. No.	Revised pay scales Rs.	
1.	S-1	2,550-55-2, 660-60-3,200
2.	S-2	2,610-60-3, 150-65-3, 540
3.	S-3	2,650-65-3,300-70-4,000
4.	S-4	2,75-70-3,800-75-4,400
5.	S-5	3,050-75-3,950-80-4,590
6.	S-6	3,200-85-4,900
7.	S-7	4,000-100-6,000

[Signature]

11. An isolated post has been defined as a "stand alone" post having neither feeder grade nor promotional grade. Sl. No. 31 of the Point of doubt and clarification statement vide OM dated 10-02-2000 of the DOPT. For isolated posts the scales of pay for ACPs shall be the same as those applicable for similar posts in the same Ministry/Department/cadre and in the case of remaining isolated posts, the pay scales contained in Annexure II of OM dated 09-08-1999 shall apply. Clarification No. 10 of the above OM dated 10-02-2000 refers. The post of wireman in the respondents' organization is a dying cadre and is an isolated post. There is no comparable posts in the said department where promotion channels are available. As such, Annexure II alone would apply. This was what applied by the department as well and the case of the applicant is covered only by annexure II to the ACP scheme. According to the same, the pay scale next to the scale 3050 - 4590 is Rs 3200 - 4900. The scale of Rs 4000 - 6000 may be applicable in other departments where there has been a hierarchy, unlike the case of the applicant where the post of wireman is a 'stand alone' post. As such, safely we can hold that the applicant is entitled only to Rs 3200 - 4900 and Not Rs 4000 - 6000.

12. In view of the above, the **OA is allowed** to the following extent:-

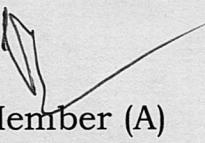
- (a) Impugned orders at Annexure A-1 to A-3 are quashed and set aside.
- (b) The respondents shall refund the recovery if any made in pursuance of the above orders at Annexure A-1 to A-3.
- (c) The pay scale of the applicant shall be restored to Rs 3050 - 4590 in the post of Wireman. Increments etc., shall be accordingly granted to the applicant for the period when his pay scale had been reduced.
- (d) The applicant is entitled to the benefit of ACP from the date he fulfills the conditions as contained in the scheme dated 9th August, 1999 read with order dated 04-01-2000 of the DG Post. The scale applicable on grant of ACP is Rs 3200 - 4900. Respondents shall work out the pay of the applicant in the respective pay scale of Rs 3050 - 4590 prior to grant of ACP and Rs 3200 - 4900 from the retrospective date of grant of ACP and pay the arrears to the applicant.

13. This order shall be complied with, within a period of three months from the date of receipt of certified copy of this order.

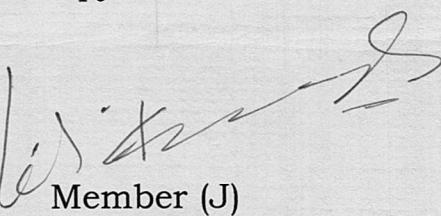
4. The counsel for the respondents very fairly submitted that in the event of an identical issue having been already decided, the law as laid down by the Apex Court is that the same is followed unless a different view is taken. Parties agree that this case is identical to that of the above case in OA No. We have no hesitation to agree with the decision in the other O.A. In view of the fact that



the case of the applicant is identical to the above case, following the above decision, this OA is also allowed. Respondents are directed not to reduce the pay of the applicant and the impugned orders dated 06-05-2003 read with order dated 17-05-2003 are hereby quashed and set aside. Time limit to comply with the order is three months from the date of receipt of copy of this order.



Member (A)



Member (J)

/S.V./-