

Reserved on 31.1.2012

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 10th day of February, 2012)

Hon'ble Mr. Sanjeev Kaushik, Member (J)
Hon'ble Mr. Shashi Prakash, Member (A)

Original Application No. 1287 of 2006
(U/S 19, Administrative Tribunal Act, 1985)

Hari Mohan Sahu, Ex-Carp. HS-I,
(PA No. 28041-A),
S/o Late Sri Ganesh Prasad,
R/o 470, Nai Basti,
Near Pandit Har Bhajan,
Jhansi.

..... Applicant

Present for Applicant : Shri B. D. Mishra.

Versus

1. Union of India through Defence Secretary,
Ministry of Defence, Government of India,
New Delhi.
2. The Commanding Officer,
1, BRD, A.F. Chakeri,
Kanpur.
3. Dy. C.D.A. (AF),
Subroto Park
New Delhi.

..... Respondents

Present for Respondents : Shri S. Srivastava.



ORDER

(Delivered by Mr. Shashi Prakash, Member (A))

The present OA has been filed by the applicant mainly praying for the following relief:

- (a) to direct the respondent No. 2 to consider the representation dated 15.12.2005 made by the applicant before him and pass a reasoned order.***

2. Briefly, the facts of the case are that the applicant was appointed in the grade of Carpenter and was promoted from time to time with financial up-gradations. In the year 1999 an Assured Career Progression Scheme (ACP Scheme) was introduced, which provided for two assured financial up-gradations to an employee on completion of 12 and 24 years of service. It has been averred by the applicant that he was granted two financial up-gradation in the pay-scale of Rs. 5000-8,000/- and Rs. 5500-9000/-, respectively on completion of 12 and 24 years of service. Subsequently, without giving any opportunity of hearing to the applicant, the respondents re-fixed the applicant's salary in the pay-scale of Rs. 5,000-8,000/- in place of Rs. 5,500-9,000/-, which had been granted to him earlier.

3. In view of the aforesaid re-fixation of applicant's pay-scale in the lower scale, the applicant is alleged to have submitted a representation dated 15.12.2005 before the respondent No. 2 for taking corrective action in the matter but his representation has not been considered so far. The applicant retired from service in January,

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2006 and his pensionary benefits were calculated based upon the pay-scale of Rs. 5,000-8,000/- which resulted in financial loss to him. Applicant has further alleged that some other similarly situated employees had been given pensionary benefits in the pay-scale of Rs. 5,500-9,000/- and applicant has been illegally denied the same benefits. It is the case of the applicant that re-fixation of his pay should have been done after affording him an opportunity of being heard and that reducing his pay-scale from Rs. 5,500-9,000/- to Rs. 5,000-8,000/-, is therefore, arbitrary and illegal and against the principal of natural justice. He has sought direction from the Tribunal for consideration of the representation dated 05.12.2005, submitted by him against the re-fixation order passed by the respondents.

4. No one appeared on behalf of applicant on the date of hearing. It is observed from the order-sheets that since last one year several dates were fixed in this case but the applicant was neither represented by a counsel nor he appeared in person.

5. Shri Saurabh Srivastava, counsel for the respondents stated that applicant had received the benefit of two financial up-gradation under ACP Scheme during his career and that his retiral benefits were correctly fixed as per the last pay drawn by him. The learned counsel argued that the representation of the applicant dated 15.12.2005 which has been annexed as Annexure-I of the OA is an after thought conceived by the applicant only after his retirement from the service. This is proved by the fact that the applicant has mentioned himself as Ex-carpenter HS-I in the signature block of the representation dated

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15.12.2006. He stated that the applicant had cooked up the entire case to mislead the Hon'ble Tribunal by submitting false, unfounded averments.

6. Learned counsel for the respondents further submitted that the applicant was promoted to Carpenter as highly skilled-II w.e.f. 07.02.1987 in the pay scale of Rs. 1200-1800/- and thereby, attained one promotion from the skilled grade to highly skilled grand-II. Thereafter, the grade of highly Skilled-II (Rs. 1200-1800) and highly Skilled-I (Rs. 1320-1240) were merged into the single grade of highly skilled w.e.f. 01.01.1996 in the pay scale of Rs. 4,000-6,000/- as per the recommendation of the V Central Pay Commission. As such the promotion of the applicant from skilled grade to highly skilled grade-II cannot be ignored and has to be treated as a promotion in terms of financial up-gradation. The second financial up-gradation under the ACP Scheme was granted to the applicant w.e.f. 09.8.1999 in the pay-scale of Rs. 5500-9000/-. However, since this fixation was objected to by the Dy. Controller of Defence Accounts, New Delhi in June, 2005, the pay-scale of the applicant was revised from the pay scale of Rs. 5500-9000/-, and corrected to the pay-scale of Rs. 5,000-8000/- which related to Charge-Man-II Carpenter. Taking into account the above facts, the counsel for the applicant argued that the benefit of two financial up-gradation as required under ACP were duly extended to the applicant and therefore, there is no merit in his claim and this O.A. is liable to be dismissed.

7. Perused the records and heard the counsel for the respondents. From the records it is evident that after grant of second financial up-

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gradation to the applicant in the pay-scale of Rs. 5500-9000/- an objection was raised by the Dy. Controller of Accounts in June, 2005 against the grant of pay-scale of Rs. 5500-9000/- as the second financial up-gradation in respect of certain employees which included the applicant. The objection was based on the consideration that these employees prior to giving effect of the ACP Scheme had already been extended the benefit of one promotion, in the pay-scale of Rs. 4,000-6000/- by being placed in the skilled grade. As such after 24 years of service they were eligible for second ACP only in the scale of Rs. 5000-8000/- skilled and not in Rs. 5,500-9000/- as had been done by the department (Annexure - 4). It is further seen that by the letter dated 18.08.2005 the respondents intimated the concerned employees including the applicant about the incorrect fixation of the second ACP granted to them in the pay scale of Rs. 5,500 - 9000 (Annexure - 5) and were asked to submit their representation against the re-fixation of pay scale by 30.8.2005. It was specifically stated in the letter that if no representation is received by 30th August, 2005 it will be deemed that the objection raised by Dy. CDA is corrected and suitable action will be taken in the matter. In view of this letter it is clear that the contention of the applicant that the revision of the pay-scale was made without giving him any opportunity is unfounded. In fact, the representation to which he refers is dated 15.12.2005, a date which is much later than the time limit prescribed (30.08.2005) by the respondents for filing of representation. Moreover, it is also observed that in their averments, the respondents mentioned that the aforesaid representation submitted by the applicant was an after thought and was submitted only after his retirement w.e.f. January

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31st, 2006 as evident from the fact that the applicant on the aforesaid representation has himself stated his designation as **Ex-Carpenter**.

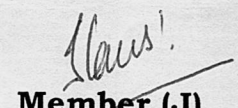
8. Having regard to the foregoing submissions made by the counsel for the respondents and the records on the proceedings, it is plain that the two financial up-gradations under the ACP Scheme, 1999 were granted to the applicant. The second financial up-gradation which was granted to him on 09.8.1999 in the pay-scale of Rs. 5500-9000/- had been done erroneously and the requisite correction of re-fixing of his pay-scale was done only after putting the applicant on notice to file his representation by letter dated 18th August, 2005 affording him an opportunity to submit his representation, if any, by 30th August, 2005 which he failed to do so.

9. The representation against the re-fixation of the pay-scale of the applicant by in his own averment has been shown as 15.12.2005, which is much beyond the date within which he was to submit his representation as prescribed by the respondents. Therefore, in the light of these facts there does not appear to be any legal infirmity regarding the action taken by the respondents in accordance with relevant rules and procedure. Hence, O.A. lacks merit and is liable to dismissed.

10. Accordingly, O.A. is dismissed. No order as to costs.


Member (A)

Shashi


Member (J)