

[Open Court]

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH ALLAHABAD**

THIS THE 18TH DAY OF OCTOBER, 2011

Present:-

HON'BLE MR. JUSTICE S. C. SHARMA, MEMBER-J
HON'BLE MR. D. C. LAKHA, MEMBER-A

Original Application No. 367 of 2006
U/s 19, Administrative Tribunal Act, 1985

1. G. L. Bhatia, S/o Shri M. R. Bhatia, Ticket No.178/EM/0856, Electrician (Highly Skilled), Ordnance Factory, Kanpur.
2. D. C. Rai, Ticket No.167/EM/1262 (Highly Skilled).
3. Ram Chandra, Ticket No.286/EM/1364 (Highly Skilled).
4. I. P. Sharma, Ticket No.31/EM/0860 (Highly Skilled).
5. Govind Singh, Ticket No 217/EM/1307 (Skilled).
6. B. P. Maurya, Ticket No.149/EM/1248 (Highly Skilled).
7. S. K. Monga, Ticket No.36/EEM/1142 (Highly Skilled).
8. R. K. Srivastava, Ticket No.140/EM/1240 (Highly Skilled).
9. Nar Singh, Ticket No.60/EM/1165 (Highly Skilled).
10. B. M. Srivastava, Ticket No.190/EM/0871 (Highly Skilled).

All the above petitioners are working in the Ordnance Factory, Kanpur.

.....Applicants
VERSUS

1. Union of India through Secretary, Ministry of Defence, North Block, New Delhi.
2. Director General, Ordnance Factory Board, 10-A, S. K. Bose Road, Kolkata.
3. Senior General Manager, Ordnance Factory, Kanpur.

.....Respondents

Advocate for the Applicant:- Sri Ashish Srivastava



Advocate for the Respondents:- Sri R. C. Shukla.

ORDER

Instant O.A. has been instituted for the following reliefs:-

“i). This Hon'ble court may be pleased to set-aside the impugned order dated 03-04-2006(Annexure-A-1 to this original application).

ii). The respondents may please be restrained from reducing the Pay Scale of the applicants from Rs.5000-8000/-.

iii). The respondents may please be restrained from making any recovery in pursuance of impugned order dated 03-04-2006 (Annexure-A-1 to this original application).

iv). Any other relief, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

v). Award cost of the petition in favour of the applicant.”

2. The pleadings of the parties in the nutshell are as follows:-

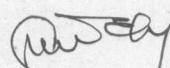
It has been alleged by the applicants that they were initially appointed as Wireman in the year 1977 in the pay scale of Rs.210-290/-, and in that cadre the next promotional post of Wireman was Electrician-B, which is the skilled post in the Grade of Rs.260-350/- as per rules an employee can be promoted on the post of Electrician-'B' after clearing the trade test. The applicants appeared in the trade test and after successfully qualifying the test they were promoted to the post of Electrician-'B' in the above mentioned scale. The applicants appeared in the trade test for promotion to Electrician-'A' (Highly Skilled-II) in the year 1981 and for that post

R.C.S.

the Electrician 'B' is the feeder cadre. The applicants passed the trade test and accordingly promoted to the post of Electrician-'A'. In order to evaluate the job contents and co-relate to substitute pay scale a committee was constituted namely Expert Classification Committee in the year 1981 and after taking in to consideration the efficiency of the applicants committee recommended for higher grade of Rs.260-400/- for Wireman and the recommendation was accepted by the Govt. of India. That the post of Electrician-'B' and 'A' was upgraded in view of E.C.C. report, however, the Electrician 'A' and 'B' are the promotional post to the wireman and hence the anomaly was created in the scale in the promotional cadre. The Electricians raised their voice regarding this discrimination and the matter was remained unsettled due to anomaly ^{and 2} the promotional avenues for the Electrician 'A' & 'B' were stagnated and due to this anomaly the wireman did not prefer to appear in the trade test for promotion to electrician 'B' because the pay scale of Wireman was higher to the Electrician 'B'. And due to stagnation in the Grade of Electrician 'B' and Electrician 'A' they could not get any promotion for about 20 years. Certain recommendations were made by the Vth C.P.C. and recommended the A.C.P. scheme for the Central Govt. employees and it was to be viewed as a safety net to deal with the problem of stagnation and hardship faced by the employees due to lack of adequate promotional avenues and only the financial benefits are being given under the A.C.P. scheme to the Govt.

Ranjay

servant and the first A.C.P. shall be granted after completion of 12 years regular service and Second A.C.P. after completion of 24 years of regular service and the under A.C.P. scheme no further designation is conferred on the applicants and they continued to discharge the same duties and responsibilities as earlier. A circular was issued for granting first A.C.P. vide order dated 03rd November, 1999 later on certain clarifications were made for implementation of the A.C.P. scheme and it was clarified that those employees who have already passed the trade test for grant of A.C.P. scheme, need not to undergo trade test again. All these applicants were ^{to} undergo the trade test that upgraded and select list was prepared and in this the A.C.P. benefit was provided to the applicants. The employees who have completed 24 years of regular service and got no promotion have been granted financial up-gradation in the pay scale of Rs.4,500-7,000/- and all the applicants granted second A.C.P., but the respondents vide impugned order dated 03rd April, 2006 withdrawn the benefits of A.C.P.-II on the ground that the employees have not qualify the D.G.O.F. competency test, that this was the wrong assertion of the respondents and under the A.C.P. scheme promotion is not to be granted and only financial up-gradation is being granted and the employees are not required to qualify the D.G.O.F. competency test, and that the impugned order is liable to be quashed.



3. Respondents contested the case and filed Counter Reply and denied from the allegations made in the O.A.. Though, what has been alleged by the applicants regarding service and facts and further alleged that first A.C.P. scheme was granted to these applicants in the pay scale of Rs.4,000-6,000/- w.e.f. 09th August, 1999 after completion of 12 years service till 09th August, 1999. That the applicants were also entitled for second financial up-gradation after 24 years of service in terms of the said scheme and subject to fulfillment of certain conditions like passing of Director General Ordnance Factories Electrical supervisory competency test etc. due to some mistake applicants were granted second financial up-gradation w.e.f. different dates when they completed 24 years of service. But different circular letters of the respondents required the applicants to qualify the D.G.O.F. competency test. A clarification was also received from the respondents and A.C.P.-II scheme granted to the employees was amended in the scale of Rs.4,000-6,000/-. As the applicants have not qualified the D.G.O.F. competency test hence they were not entitled for second A.C.P. and the impugned order dated 03rd April, 2006 ~~as~~ rightly been passed.

4. We have heard Sri Ashish Srivastava, Advocate for the applicant and Sri R. C. Shukla, Advocate for the respondents and perused the entire facts of the case.

R. C. Shukla

5. Learned counsel for the applicant placed reliance on a judgment passed by this Tribunal in O.A. No.42 of 2007 on dated 07th December, 2010 and it has also been alleged by the learned counsel for the applicant that these applicants are also the similarly situated persons and what has been laid down in that judgment is fully applicable to the facts of the present case. It is material to state that R. C. Shukla, Advocate was also the counsel for the respondents in O.A. No. 42 of 2007 and this judgment is in the knowledge of Sri R. C. Shukla, Advocate for the respondents, but Sri R. C. Shukla, Advocate stated that an application has been moved for correction of the order passed in the above mentioned O.A. and he tried to state that the order passed in the above mentioned O.A. has not attained the finality and the order has not been implemented as yet, but the learned counsel for the respondents admitted this fact that the judgment passed in the above mentioned O.A. has not been set aside by this Tribunal in Review Application or by any other higher Court in Writ Petition etc.. Learned counsel for the respondents has not disputed that these applicant are not the similarly situated persons, and we are concerned with what the principle has been laid down in the judgment. It is also relevant to reproduce the relevant part of the judgment of above mentioned O.A. and in our opinion the following portion of the order is relevant and is being reproduced as follows:-



"6. Fulfillment of normal promotion norms (benchmark, departmental examination, seniority-cum-fitness in the case of Group 'D' employees, etc.) for grant of financial upgradations, performance of such duties as are entrusted to the employees together with retention of old designations, financial upgradations as personal to the incumbent for the stated purposes and restriction of the ACP Scheme for financial and certain other benefits (House Building Advance, allotment of Government accommodation, advances, etc.) only without conferring any privileges related to higher status (e.g. invitation to ceremonial functions, deputation to higher posts, etc.) shall be ensured for grant of benefits under the ACP Scheme."

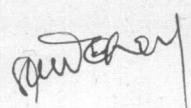
It is clear that for the benefit of ACP, the applicant must have qualified I the requisite test etc. which is applicable for promotion. As such in the instant case as according to the respondents, the applicant has not qualified in the DGOF Supervisory Competency Test, the question is whether there is any requirement of such qualifying in the trade test at the time when the applicant became eligible for consideration for ACP-II benefit. The applicant's initial date of appointment is being February, 1981, he becomes eligible for consideration for grant of second ACP in February, 2005. Vide Para 24 of the Counter, the DGOF Supervisory Competency Test was not existing prior to issue of Ordnance Factory Board's letter dated 13.8.2005 and in so far as ACP is concerned, the respondents are required to consider every case on completion of requisite period of service, and for convenience sake only two tests are prescribed in January and July vide Para 6.3 of the ACP scheme. Since the applicant ought to have been considered in the month of July, 2005 for grant of ACP-II benefit which date back anterior to the date 13.8.2005 when the test was introduced for promotion to higher grade, the applicant was not to be subjected to any such test for consideration for the benefit under the ACP scheme."

S. Venkateswara

6. Considering the order of the above mentioned O.A. we are of the opinion that the present case is fully covered with that judgment except certain variations regarding date of entitlement, date regarding admissibility of the ACP benefit scheme and in the impugned order the date of second ACP has been mentioned. As the applicants are similarly situated persons hence they are entitled to the identical treatment as has been held by the Hon'ble Apex Court. We are of the opinion that the respondents by impugned order dated 03rd April, 2006 had wrongly withdrawn the benefits of A.C.P.-II Scheme, no other facts have been alleged on behalf of the respondents to show that applicants are disentitled for the benefits of A.C.P.-II Scheme.

7. For the reasons mentioned above we are of the opinion that the applicants are similarly situated persons and they are entitled to the same treatment as has been done in O.A. No. 42 of 2007 and the impugned order deserves to be quashed.

8. O.A. is allowed impugned order dated 03rd April, 2006 is quashed and the respondents directed to grant the benefits of A.C.P.-II Scheme to these applicants from the date of their entitlement and from the stage when it has been stopped, arrears, if any, as a consequence of stoppage of pay shall also be paid to the applicants. Respondents are directed to comply with the order



within a period of three months from the date when the copy of this order is produced before him. Applicants shall produce copy of this order before the respondent No.3 at the earliest.

9. No order as to costs.



Member-A

/Dev/



Member-J