

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD**

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**Original Application No. 371 of 2006**

**Allahabad this the 7<sup>th</sup> day of February, 2012**

**Hon'ble Mr. Justice S.C. Sharma, Sr. J.M./HOD  
Hon'ble Mrs. Jayati Chandra, Member (A)**

1. B.K. Choubey, aged 65 years S/o Late Shri H.P. Chaturvedi r/o 5/91, Durga Housing Society Shiv Katra, Lal Bungla, Kanpur.
2. R.A. Tripathi, aged 64 years S/o Shri R.M. Tripathi, r/o C-926, Bishwa Bank, Barra, Kanpur.
3. J.P. Soni, aged 66 years S/o Late Shri Basudev, r/o EWS-4111, Avash Vikash, 3- Panki, Kanpur.
4. Har Dev Singh, aged 66 years S/o Late Shri Misri Singh, r/o LIG-1384, Avash Vikash 3-Panki, Kanpur.
5. Kamta Prasad, aged 64 years S/o Late Shri Swarika Prasad r/o New MIG-4, Barra-2, Kanpur.
6. M.N. Mishra, aged 65 years S/o Late Shri Mahadev Mishra, r/o Plot No. 616, Tej Nagar, Kanpur.
7. M.P. Tandon, aged 65 years S/o Late Shri H.N. Tandon, r/o 18-A-IV, Durga Housing Society Shiv Katra, Lal Bangla, Kanpur.

**Applicants**

**By Advocate: Mr. R.K. Shukla**

Vs.

1. Union of India Through the Secretary, Ministry of Defence (Finance) NEW DELHI-11.
2. The Controller General of Defence Accounts, R.K. Puram, NEW DELHI.
3. The Principal Controller of Finance & Accounts (Fys), 10-A, Saheed Khudi Ram Bose Marge, KOLKOTA-1.
4. The Joint Controller of Finance & Accounts (Fys) Incharge, Accounts Office, Ordnance Equipment Factory, Kanpur.

*[Signature]*

5. The Joint Controller of Finance & Accounts (Fys) Incharge, Accounts Office, Ordnance Factory, Kalpi Road, Kanpur.

**Respondents**

**By Advocates: Sri Anil Dwivedi**  
**Sri Ajay Singh**

**Reserved on 01<sup>st</sup> February, 2012**

**O R D E R**

**By Hon'ble Mr. Justice S.C. Sharma, Sr. J.M./HOD**

Instant O.A. has been instituted on behalf of 07 applicants for the following relief (s): -

"(i) To issue writ, order or direction in the nature of certiorari to quash the respondents order dated 22.8.2005  
 (Filed as Annexure A-I to the compilation No. II)

(ii) To issue a writ, order or direction in the nature of Mandamus directing the respondents to grant ACP benefit with effect from 9.8.1999 under the existing Rules.

(iii) To issue writ, order or direction in the nature of Mandamus directing the respondent to fix the petitioners pay under FR 22 in the light of pay fixation after giving the benefit of ACP and also pay arrears/difference of pay and allowances caused so on.

(iv) To issue writ, order or direction in the nature of Mandamus directing the respondent to compute the petitioners pension and other retiral dues with further direction of paying arrears of pension and other pensionery benefits with interest there on as per market rates.

(v) To issue any other order or direction as this Honourable Court may deem fit and proper in the circumstances of the case.

(vi) To award costs to the petitioners."

*R.W. Eley*

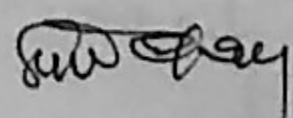
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2. The pleadings of the applicants may be summarized as follows: -

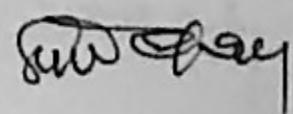
It has been alleged by the applicants that they were initially appointed on the post of Upper Division Clerk (for short UDC) w.e.f. the dates which have been mentioned before the name of each applicant. Thereafter, on the basis of seniority-cum-ACR grading, applicants were redesignated on the post of Functional and Non Functional Grade Clerk and later on as Auditor and Senior Auditor. As per provisions of 5<sup>th</sup> Central Pay Commission report, Assured Career Progression (for short ACP) Scheme was introduced in the Central Government departments. It was also introduced in the respondents' department w.e.f. 09.08.1999. As per ACP Scheme, financial up gradation was allowed to the employees after putting and qualifying 12/24 years of service. The purpose of implementation of this scheme is to provide financial up gradation in the cases of employees who have no prospects of promotion. The respondent No. 2 - the Controller General of Defence Accounts was required to constitute a screening committee for the purpose of processing the cases of employees of the Defence Accounts' department. But in the present case, the respondent No. 2 did not constitute

*S. S. Ray*

the screening committee for the purpose of processing the cases of the employees. Thereafter, the respondents issued a letter dated 04.03.2002 making compulsory to pass SAS Examination Part-I or Supervisor (Accounts) Examination for the purpose of granting ACP benefits. After the introduction of ACP Scheme w.e.f. 09.08.1999, the respondents hold the first examination of the Defence Accounts Department, namely Supervisor (Accounts) on 29.04.2002 whereas these applicants had already retired from service prior to conducting the examination on 29.04.2002. A clarification was issued by the Ministry of DOP&T regarding holding of the examination/test for those candidates who had already retired or who had died. In the case of Shri Ramesh Chandra, Ex. Senior Auditor of Accounts Officer, the respondent No. 2 has given a reply, and that reply may also be considered in the cases of applicants also. But the main spirit of the ACP Scheme was not considered by the respondents for financial up gradation of the employees who had completed 12/24 years of qualifying service. The passing of SAS Part I examination is meant for the promotion of Auditor to the post of Section Officer and later Assistant Accounts Officer, and so on up to the post of Joint Controller of Defence Accounts. But there is no bar of 12 or 24 years of qualifying service. An individual after putting five years of

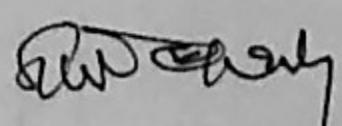


the screening committee for the purpose of processing the cases of the employees. Thereafter, the respondents issued a letter dated 04.03.2002 making compulsory to pass SAS Examination Part-I or Supervisor (Accounts) Examination for the purpose of granting ACP benefits. After the introduction of ACP Scheme w.e.f. 09.08.1999, the respondents hold the first examination of the Defence Accounts Department, namely Supervisor (Accounts) on 29.04.2002 whereas these applicants had already retired from service prior to conducting the examination on 29.04.2002. A clarification was issued by the Ministry of DOP&T regarding holding of the examination/test for those candidates who had already retired or who had died. In the case of Shri Ramesh Chandra, Ex. Senior Auditor of Accounts Officer, the respondent No. 2 has given a reply, and that reply may also be considered in the cases of applicants also. But the main spirit of the ACP Scheme was not considered by the respondents for financial up gradation of the employees who had completed 12/24 years of qualifying service. The passing of SAS Part I examination is meant for the promotion of Auditor to the post of Section Officer and later Assistant Accounts Officer, and so on up to the post of Joint Controller of Defence Accounts. But there is no bar of 12 or 24 years of qualifying service. An individual after putting five years of



service if nothing adverse has been commented upon can participate in SAS Examination. But in the clarification issued by the Ministry of DOP&T, condition of passing the examination has been waived. The applicants are suffering a lot in the pensionary benefits in comparison to those who had retired after availing the benefit of ACP Scheme in terms and conditions of the respondents. As the respondents have not granted the benefit of ACP Scheme hence, the O.A.

3. The respondents contested the case, filed the Counter Affidavit, and denied from the allegations made in the O.A. It has been alleged that vide order dated 09.08.1999 in order to deal with the problem of genuine stagnation and hardship faced by the employees for want of adequate promotional avenues, this scheme was introduced. But it has been provided under the scheme that it will not be automatic merely on completion of specified length of service. The individual will have to fulfill all the promotional norms. The ACP scheme is available to those employees who are otherwise eligible for promotion in all respect but promotion is delayed due to inadequate promotional avenues and thus stagnating due to this reason. The individual will have to fulfill the condition No. 6 of the ACP scheme which stipulates



fulfillment of normal promotion norms. As per the departmental recruitment rules, the employees will have to pass Part I of the Subordinate Accounts Service Examination or Supervisor (A/Cs) Examination for promotion to the grade of Supervisor (A/Ac) and if this is read with condition No. 6 of the ACP Scheme. Passing of either of the two examinations is essential for grant of 2<sup>nd</sup> financial up gradation in the scale of Supervisor (A/Ac). All those who had completed 24 years of service and fulfilled all the necessary conditions for grant of 2<sup>nd</sup> financial up-gradation under the ACP Scheme on 09.08.1999 and were already granted 2<sup>nd</sup> financial up-gradation from 09.08.1999 or subsequently when they have completed the requisite service. No up-gradation shall be granted under the ACP Scheme if an employee fails to qualify in the departmental/skill test prescribed for the purpose of regular promotion. The applicants have neither passed part-I of the Subordinate Accounts Service Examination nor Supervisory Examination as they have not fulfilled the conditions stipulated for grant of 2<sup>nd</sup> Financial Up-gradation, hence the applicants are not entitled for 2<sup>nd</sup> ACP. It is stated that whatever has been alleged in the O.A., is wrong and as the applicants have not qualified the examination, as provided, hence they are

*See Chay*

not entitled for the ACP. It is claimed that the O.A. lacks merit and is liable to be dismissed.

4. Rejoinder Affidavit has also been filed on behalf of the applicants in response to the Counter Affidavit of the respondents. In the RA, applicants reiterated the facts which have been alleged in the O.A.

5. We have heard Sri R.K. Shukla, Advocate for the applicants and Sri Anil Dwivedi and Sri K.K. Sahu, holding brief of Sri Ajay Singh, Advocates for the respondents, and perused the entire facts of the case.

6. It is an admitted fact that the Government of India, as per the recommendation of 5<sup>th</sup> C.P.C., introduced ACP Scheme for the Central Govt. Civil employees in all ministries/departments. It has also been provided in the scheme that it is available to those employees who are dealing with the problem of genuine stagnation and hardship due to lack of adequate promotional avenues. In para-6 of the ACP Scheme, it has also been provided: -

“6. SCREENING COMMITTEE”

6.1 *A departmental Screening Committee shall be constituted for the purpose of processing the cases for grant of benefits under the ACP Scheme.*

6.2 *The composition of the Screening Committee shall be the same as that of the DPC prescribed under the relevant Recruitment/ Service Rules for regular promotion to the higher grade to which financial up-gradation is to be granted.*

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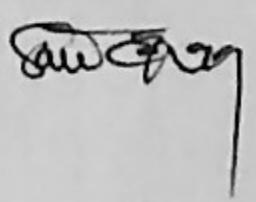
*However, in cases where DPC as per the prescribed rules is headed by the Chairman/Member of the UPSC, the Screening Committee under the ACP Scheme shall, instead, be headed by the Secretary or an officer of equivalent rank of the concerned Ministry/Department. In respect of isolated posts, the composition of the Screening Committee (with modification as noted above, if required) shall be the same as that of the DPC for promotion to analogous grade in that Ministry/Department."*

Hence, from perusal of the ACP Scheme it is evident that the benefit of ACP Scheme is not to be granted automatically to an employee but it is subject to condition No. 6 of the ACP Scheme. It has been argued by learned counsel for the respondents that this benefit under the scheme is to be extended only to such of the employees who had cleared the Part 1<sup>st</sup> of the Subordinate Accounts Service Examination or Supervisor Examination for promotion. As per the scheme, norms which are applicable in the case of promotion, shall also be applicable while granting the benefit of ACP Scheme and if an employee fails to qualify in the departmental/skilled test prescribed for the purpose of regular promotion then such benefit shall not be granted under the ACP Scheme. It is essential for granting second financial up gradation to the employee. It has been argued by learned counsel for the respondents that as the applicants had not qualified the part 1<sup>st</sup> of SAS examination or Supervisor examination

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hence the applicants are not entitled for up-gradation in the ACP Scheme.

7. It has been argued by learned counsel for the applicants that for conducting the SAS Part-I examination, a notification was issued by the respondents on 04.03.2002. In between 09.08.1999 and 04.03.2002, no notification was issued by the respondents for conducting the examination of the post of Supervisor. If the applicants might have remained in service then they might have appeared in that examination and as no examination of SAS Part-1<sup>st</sup> or Supervisor was conducted hence they have no occasion or opportunity to participate in the examination. Learned counsel for the applicants also argued that a clarification was issued by the Ministry of DOP&T for such of the employees who had retired after 09.08.1999 and prior to holding the examination. In such cases, condition of qualifying the examination shall stand waived. On behalf of the applicants, annexure A-3 has been filed. We have perused this clarification issued by the Ministry of DOP&T regarding grant of benefit of ACP Scheme to those who retired or expired after 09.08.1999 but before conducting of Trade Test. It has been provided in this clarified that in respect of cases where, for promotion and consequentially for ACP Scheme, there is a



requirement of passing of trade test but persons had retired or expired before the first trade test could be conducted by the concerned Organisation after introduction of the ACP Scheme. In their cases requirement of conducting the trade test may be waived and the suitability of such officers may be considered on the basis of their assessment reports to enable them to be considered for grant of ACP Scheme. On the strength of this clarification issued by the Ministry of DOP&T, it has been argued by learned counsel for the applicants that as the applicants had retired from service prior to conducting the SAS Part-I examination or Supervisor Examination hence under this clarification of the Ministry, the applicants are entitled for the benefit of ACP Scheme. Nothing has been alleged by the respondents in their Counter Affidavit that no such clarification was issued by the Ministry of DOP&T in the cases of employees who had retired earlier to conducting of trade test or had expired. Learned counsel for the respondents argued that a clarification was issued by the Ministry of Defence that one time relaxation from passing of Trade Test for granting ACP from 09.08.1999 i.e. date of implementation of ACP Scheme, is to be granted if the employee is otherwise eligible. It has been provided in annexure A-III, as under:

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*"DOPT has clarified that as a special case the employees who qualify the Trade Test in first attempt after 9.8.99 may be allowed benefit of ACP from 9.8.99 only and not from the date of passing of Trade Test. However, employee who qualify in the Trade Test in subsequent attempts will be allowed financial upgradation only from the date of passing of Trade Test. In that case the benefit should be given to an individual w.e.f. 9.8.99, who had earlier appeared in the Trade Test before 9.8.99. But who have not appeared in Trade Test at all or has not otherwise passed the Trade Test."*

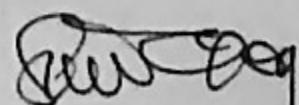
But this clarification of Ministry of DOP&T is not applicable in the case of applicants. This clarification is applicable to such employees who qualified the trade test in first attempt after 9<sup>th</sup> August, 1999 and in that circumstance to such employee the benefit of ACP Scheme shall be admissible w.e.f. 09.08.1999. It has been specifically alleged by the applicants that no test was conducted for SAS Part-1<sup>st</sup> examination or Supervisor Examination earlier to 04<sup>th</sup> March 2002 hence there was no occasion for the applicant to participate in the examination and to qualify the same. Hence, the clarification issued by the Ministry of DOP&T is applicable in the case of applicants in which the condition of qualifying the trade test has been waived. It has been alleged by the applicants that passing of SAS Part-1<sup>st</sup> examination is meant for the promotion of Auditor to the post of Section Officer and later Assistant Accounts Officer and so on up to the post of Joint Controller of Defence

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Accounts, and also for this examination there is no bar of 12 or 24 years of qualifying service. Hence, under the clarification issued by the Ministry of DOP&T, the applicants are entitled for the benefit of ACP scheme as all the applicants of O.A. had retired prior to 04.03.2002 and prior to examination which was to be conducted in the month of April 2002. The applicants have specifically alleged that each of them retired w.e.f. the date as shown below: -

<b>Applicants</b>	<b>Date of retirement</b>
1. B.K. Choubey	30.06.2001
2. R.A. Tripathi	31.12.2001
3. J.P. Soni	30.06.2000
4. Har Dev Singh	31.07.2000
5. Kamta Prasad	31.01.2002
6. M.N. Mishra	31.07.2001
7. M.P. Tandon	30.11.2000

Hence from perusal of the above statement, it is evident that all the applicants had retired prior to April 2002. Lastly, applicant No. 5-Kamta Prasad retired on 31.01.2002 whereas the notification for conducting the examination of SAS Part-1<sup>st</sup> was issued on 04.03.2002 and the examination was to be conducted in the month of



April 2002. This fact has not been controverted by the respondents in their Counter Affidavit.

8. It has been alleged by the respondents that after 09.08.1999, the trade test, as provided in the ACP Scheme, was conducted but the applicants failed to participate in the trade test – SAS Part-1<sup>st</sup> examination or Supervisor Examination, and if such candidates failed to participate in the test then the benefit will not be available to such an employee and as the applicants failed to qualify the SAS examination hence they are not entitled and it is not automatically. Learned counsel for the respondents also attracted our attention towards the condition provided by the Government of India for grant of benefit under the ACP Scheme. It has been provided in the condition that the ACP Scheme shall be available only if no regular promotion during the prescribed period (12 or 24 years) has been granted to an employee. If an employee has already got one regular promotion, he shall qualify for second ACP only on completion of 24 years of regular service under the ACP scheme. In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him. But it has been alleged by the respondents that the applicants were promoted twice during the service

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but the main contention of the respondents is that the applicants failed to qualify the trade test/SAS examination and under the circumstances the applicants are not entitled for the benefit under the ACP Scheme. Hence it will be presumed that the second promotion was not granted to the applicants so as to disentitle them for the benefit of second ACP and as no promotion was granted to the applicants, hence automatically applicants are entitled for second ACP after completing 24 years of service. But this benefit of ACP scheme is to be granted after qualifying the norms which have been provided for promotion of an employee in that cadre. In order to qualify that test, it was incumbent upon the respondents to conduct the examination and for the first time a notification was issued in the month of March 2002 to conduct the examination in April 2002 whereas the applicants had already retired before March 2002. Under these circumstances, as the applicants had already retired hence they are entitled to avail the benefit of clarification issued by the Ministry of DOP&T regarding waiver of qualifying the Trade Test. It has specifically been provided that the person who had retired or expired before the first trade test could be conducted, then to such employee waiver shall be admissible to qualify the trade test and in that circumstances the suitability of such person may be

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considered on the basis of the assessment report to enable him to be considered for grant of benefit of ACP Scheme. The respondents have not clarified regarding conducting of first trade test prior to retirement of these applicants and hence we are of the opinion that the applicants are entitled for the benefit of ACP Scheme in view of clarification and nothing has been alleged that according to the assessment of service records of the applicants, they are not entitled for grant of ACP Scheme. In the absence of ascertaining anything contrary, it will be presumed that there was nothing against the applicants.

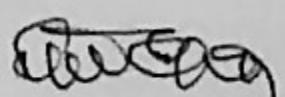
9. In the Rejoinder Affidavit, it has been alleged by the applicants that fulfillment of the normal promotional norms (Bench Mark, Departmental Examination, Seniority-cum-fitness in the category of Group 'C' employees etc.) is one of amongst other conditions but it does not state about giving of ACP benefits against the availability of promotional posts in higher grades, because in paragraph No. 3.1 of DOP&T O.M. dated 9.8.1999, it has clearly been stated that while in respect of these categories also promotion shall continue to be duly earned, and even after getting of higher scales under ACP benefits, they will continue to retain their old designation. Learned counsel for the applicants argued that in view of

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above, the ACP Scheme is quite different to regular promotion and has been introduced as a safety net to the stagnated employees after completion of 12 or 24 years of service without any regular promotion. Condition No. 6 is one of the other conditions as laid down in DOP&T O.M. dated 09.08.1999. The respondents have not specifically stated that the applicants failed to qualify the trade test after 09.08.1999 and prior to their retirement. Hence, in view of the clarification issued by the Ministry of DOP&T, applicants are entitled for the benefit of waiver because no trade test was conducted by the respondents for giving the benefit of ACP Scheme to the respondents.

10. For the reasons mentioned above, we are of the opinion that as after introduction of the ACP Scheme on 09.08.1999, prior to retirement of the applicants, no trade test or qualifying test was conducted by the respondents and moreover in view of the clarification issued by the Ministry of DOP&T, the applicants are entitled for the benefit of second ACP w.e.f. 09.08.1999. O.A. deserves to be allowed.

11. O.A. is allowed. The order dated 22.08.2005 (annexure A-1) is quashed and the applicants are directed to grant the benefit of second ACP to the applicants w.e.f. 09.08.1999 and the actual benefit may also be granted to



the applicants w.e.f. 09.08.1999 and after retirement pension of the applicants shall be revised and commuted and other retiral benefits shall also be payable to them along with arrears of pension etc. The Order shall be complied with by the respondents within a period of three months from the date when a copy of this Order is received by them. In case of non-compliance of the Order within a period of three months from the date of receipt of the copy of Order, the applicants shall be entitled to interest at the rate of 9% per annum on the arrears with effect from 09.08.1999 till the date of actual payment. The applicant shall also produce a copy of this Order to the respondents at the earliest. No order as to costs.

*T.Chandrasekhar*

Member - A

*Chandrasekhar*  
Sr. Member-J/HOD

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