

20

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

O.A No. 662/2006

, this the 3rd day of November, 2012.

CORAM

**HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE MR SHASHI PRAKASH, ADMINISTRATIVE MEMBER**

V.N. Srivastava, S/o late R.K. Srivastava, R/o F-49 Gujaini, Kanpur City,
Presently posted as Charge man Grade - II in Field Gun Factory, Kanpur.

... Applicant

By Advocate : Shri V. Budhwar

V E R S U S

1. Union of India through Secretary, Department of Defence Production, Ministry of Defence, Govt. of India, New Delhi.
2. Ordnance Factory Board, Ministry of Defence Govt. of India, 10-A, Shaheed Khudiram Bose Road, Kolkata through its Chairman.
3. General Manager, Field Gun Factory, Kalpi Road, Kanpur City.

... Respondents

By Advocate : Shri R.K. Tiwari.

ORDER

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

The applicant was initially appointed as Tracer w.e.f. 3rd August 1979
and on completion of seven years as tracer, he was placed in a higher pay

later on replaced by the scale of Rs. 4000 – 6000/-). The applicant was promoted as Draughtsman w.e.f. 24th of September 1994 in the aforesaid scale vide Annexure A-6. In terms of Ministry of Defence letter dated 1 July 1996, he was brought in the pay scale of Rs.1400 – 2300 (revised scale of Rs.5000 – 8000) w.e.f. first of January 1996. His designation was thereafter converted as Chargeman grade II w.e.f. 31st of July 1997 in terms of Ordnance Factory Board Letter dated 31st of July 1997 vide Annexure A-9.

2. Provision exists for the grant of financial upgradation in terms of Assured Career Progression Scheme, in accordance with which on completion of 24 years of service, an individual will be given one financial upgradation in case he had been promoted earlier once. As the applicant's promotion as Draughtsman was treated as first financial upgradation, he was granted the second financial upgradation w.e.f. 3rd August 2003 in the pay scale of Rs.5500 – 9000.

3. The Ordnance Factory Board observed that different factories followed different procedures in respect of promotion from Tracer to Draughtsman whereby some senior tracers were left without promotion, while juniors got the promotion. After consideration, the Ordnance Factory Board held that promotion after 10th of May 1993 to the post of Draughtsman are all treated as irregular and consequently such promotees

4. By another communication dated 7th April 2006 the Ordnance Factory Board held that grant of higher pay scale on completion of seven years as tracer, would also constitute a financial upgradation and the ACP scheme. Thus the applicant was considered as a beneficiary of the first financial upgradation in respect of his placement in the pay scale of Rs.1200 – 2040 w.e.f. 3rd of August 1986 under the ACP scheme. Consequently, in view of the fact that the next pay scale under the ACP Scheme is only Rs 4,500 – 7000, financial upgradation in the pay scale of Rs 5,500 - 9000 on completion of 24 years of service. He was accordingly issued with a show cause notice vide annex A-10 as to why his pay scale of Rs.5500 – 9000 should not be withdrawn, of course without any recovery. Representation filed by him was rejected by Annexure A-1 order dated 16 June 2006. By Annexure A-2 order read with Annexure A-3 order date it 21st of June 2006, the applicant was reverted from the post of Chargeman to the post of Tracer. His financial upgradation in the scale of Rs 5500 – 9000 has been withdrawn by Annexure A-4 order.

5. The applicant has, therefore, filed this Original Application, seeking the following reliefs:

- (i) To set aside the impugned order dated 16.6.2006 passed by the respondent No.3 rejecting the representation preferred by the applicant on 26.3.2006, as well as the orders dated 20.6.2006, 21.6.2006 and 21.6.2006 passed by the respondent No.3 (Annexure No.1, 2 3 and 4 respectively to Compilation No.1).

respondent No.3 rejecting the representation preferred by the applicant on 26.3.2006, as well as the orders dated 20.6.2006, 21.6.2006 and 21.6.2006 passed by the respondent No.3 (Annexure No.1, 2 3 and 4 respectively to Compilation No.1).

- (iii) To issue order, direction commanding the respondents to not to interfere in the peaceful functioning of the applicant as Chargeman Grade-II in the pay scale of Rs.1400-2300 as revised to Rs.5000-8000 and to grant him all consequential benefits attached thereto including salary on month to month basis as and when it falls due.
- (iv) To issue order, direction commanding the respondents to not to make any recovery pursuant to the impugned orders either for the purposes of recovery of ACP-II or for any other purposes in that regard and not to take any coercive action in that regard.
- (v) To issue any other suitable orders or directions, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

6. Respondents have contested the OA. According to them, action taken by them was in conformity with the relevant rules and regulations and the action taken was with a view to maintain uniformity as well.

7. The applicant had filed his rejoinder with which he had added a copy of the Judgment of the Bombay High Court in the case of **Union of India versus K.M. Khopkar**. The respondents have filed additional reply and the applicant in turn had filed additional rejoinder.

order dated 13 August 1994 the case of the applicant was considered and he was promoted as Draughtsman. As a special sanction was obtained, the same cannot be withdrawn. In addition, his promotion is not for Chargeman Gr. II but as Draughtsman and the post of Chargeman Gr. II held by him is by virtue of change in designation, which cannot be treated as promotion. He has further submitted that the respondents are relying upon letter dated 19th of April 2003 relating to ban on promotion which is totally inapplicable in view of the fact that clause 7 thereof provides that the post will be released in phases after adjusting the NGO as per the sanction. Further the ban imposed on recruitment/appointment relates to direct recruitment and not applicable to promotion. As regards withdrawal of ACP, the counsel argued that by virtue of the Bombay High Court Judgment added to the rejoinder, the question of withdrawal does not arise.

9. Counsel for the respondents reiterated the contents as contained in the reply as well as additional reply.

10. Arguments were heard and documents perused. The following three questions are to be addressed and the same would clinch the entire issue:-

- (a) Whether the upgradation from the erstwhile pay scale of Rs 260 – 430 to Rs 330 – 560 (replaced by the scale of pay of Rs. 1200 – 2040) after 7 years of service as Tracer effective from 03-08-1986

Scheme of 1999?

(b) Whether promotion granted to the grade of Draughtsman/conversion as Chargeman II is erroneous and reversion justified?

(c) Whether the applicant is not entitled to the financial upgradation in the scale of Rs 5500 – 9000 which was granted to him but which has been withdrawn.

11. In so far as (a) above is concerned, the initial post held by the applicant was Tracer and in 1979, it carried the pay scale of Rs 260 - 430. (This was replaced by the pay scale of Rs 975 – 1540 under the Fourth Pay Commission recommendations). In the wake of a CPWD Award, posts of Draughtsman III in the pay scale of Rs 900 – 1500 had been revised to the scale of Rs 1200 – 2040. As the post of tracer of Ordnance Factory was comparable to the post of Draughtsman III in the CPWD, the Government had issued an order upgrading the erstwhile pay scale of Rs 260 – 430 (whose replacement scale is Rs 900 – 1500) to Rs 330 – 560 (whose replacement scale is Rs 1200 – 2040). As this was denied to the tracers in the Ordnance Factory Board, the affected persons approached the C.A.T. and the case reached upto the Apex Court. The Apex Court in the case of **Union of India vs Debasish Kar** (1995) Supp (3) SCC 528 has discussed at length the matter relating to revision of pay scale of the

appropriate to give the extract from the judgment and the same is as under:-

"13. We will first take up the case of Draughtsmen in the Ordnance Factories. In CPWD the qualifications for direct appointment on the post of Draughtsman Grade II is Certificate or Diploma in Civil, Mechanical or Electrical Engineering from a recognised Institution with 6 months' practical training plus additional one year employment experience in an organisation or firm of repute and the posts not filled by direct recruitment are filled primarily by appointment of Draughtsmen Trainees. The Jabalpur Bench of the Tribunal, in its judgment dated 21-4-1987, has stated that it has been admitted by the Ordnance Factories Board that the relevant recruitment rules, namely SRO, 4 of 1956, is silent on the mode of filling posts of draughtsman and that the practice followed by the Ordnance Factory Board is as follows :

"By gradation of D'men trainees on successful completion of training as per scheme for the training of D'men at ATS/OFTI Ambarnath introduced vide M of D letter referred to above. Posts of D'men in OF's are filled primarily by appointment of D'men Trainees. However, a few posts are also filled by promotion of tracers with minimum 3 years' experience in that trade."

14. The Tribunal has observed that the scheme of training of draughtsmen at ATS Ambarnath was laid down in the Ministry of Defence's letter of 14-11-1969 which prescribes the various entrance qualifications and the curriculum and the period of training and that the entrance qualification is matriculation with two years' practical experience in Tools Room or 1-1/2 years' Draughtsman's course of ITI and that after selection 2-1/2 years' training is given which includes six months' working in factories and that according to clause 10 of the Scheme a Draughtsman Trainee will be graded either for the post of Senior Draughtsman or Draughtsman and that the scheme nowhere lays down that those trainees can be posted as Tracers. According to the Tribunal, the qualifications prescribed for draughtsmen in Ordnance Factories are similar or equivalent to those prescribed for recruitment in CPWD. The Tribunal has held that the decision of the Ordnance Factory Board based on the Sub-Committee report that the applicants (respondents herein) should be equated with Tracers and Draughtsmen Grade III of CPWD was fallacious. In this context, it would be

Tracers in the Ordnance Factories and the pay scales of Draughtsmen and Tracers in CPWD Senior Draughtsmen in the Ordnance Factories and Draughtsmen in the CPWD were placed in the pay scale of Rs 150-225, Draughtsmen in the Ordnance Factories and Assistant Draughtsmen in CPWD were placed in the scale of Rs 100-185 and **Tracers in Ordnance Factories as well as in CPWD were placed in the scale of Rs 60-150**. On the basis of the report of the Second Pay Commission in 1959 there was a slight modification in the pay scale of Senior Draughtsmen in Ordnance Factories. **Tracers in the Ordnance Factories and CPWD were placed in the same pay scale of Rs 110-200** and Draughtsmen in Ordnance Factories and Assistant Draughtsmen in CPWD were placed in the same pay scale of Rs 150-240. Senior Draughtsmen in Ordnance Factories were placed in the pay scale of Rs 205-280 while Draughtsmen in CPWD were placed in the pay scale of Rs 180-380. By Notification dated 1-9-1965, there was change in the designation of posts of drawing office staff in CPWD and Draughtsman was designated as Draughtsman Grade I, Assistant Draughtsman was designated as Draughtsman Grade II and Tracer was designated as Draughtsman Grade III. Thereafter on the basis of the report of the Third Pay Commission in 1973, **Tracers in the Ordnance Factories and Draughtsmen Grade III in CPWD were placed in the same pay scale of Rs 260-430**, Draughtsmen in Ordnance Factories and Draughtsmen Grade II in CPWD were placed in the same pay scale of Rs 330-560 and Senior Draughtsmen in Ordnance Factories and the Draughtsmen Grade I in CPWD were placed in the same pay scale of Rs 425-700. This would show that Tracer in Ordnance Factories has all along been treated as equivalent to Tracer/Draughtsman Grade III in CPWD and Draughtsman in Ordnance Factories has all along been treated as equivalent to Assistant Draughtsman/Draughtsman Grade II in CPWD. As a result of the revision of pay scales in CPWD on the basis of the Award of the Board of Arbitration, the pay scale of Draughtsman Grade III was revised to Rs 330-560, while that of Draughtsman Grade II was revised to Rs 425-700 and of Draughtsman Grade I was revised to Rs 550-750. The denial of similar revision of pay scale to Draughtsmen in Ordnance Factories would result in their being downgraded to the level of Tracer/Draughtsman Grade III in CPWD. Office Memorandum dated 13-3-1984 cannot, in our opinion, be construed as having such an effect.

CPWD inasmuch as in CPWD there is no further promotion after a person reaches the scale of Draughtsman Grade I while in Ordnance Factories a Draughtsman is entitled to be promoted as Chargeman Grade II and thereafter as Chargeman Grade I and as Foreman and that the post of Chargeman Grade II which is the promotional post for draughtsman was in the pay scale of Rs 425-700 and that placement of Draughtsman in the said pay scale of Rs 425-700 would result in Draughtsman being placed at the same level as the promotional post of Chargeman Grade II and, therefore, the benefit of the revision of pay scales under Office Memorandum dated 13-3-1984 cannot be extended to the Draughtsmen in Ordnance Factories. On behalf of the respondents it is disputed that there are no promotional chances for Draughtsman Grade I in CPWD. This question was not agitated in any of the matters before the Tribunal and we are, therefore, unable to entertain this plea urged by Shri Goswami on behalf of the appellants/petitioners. As regards the post of Chargeman Grade II being a promotional post for Draughtsman in Ordnance Factories and it being in the scale of Rs 425-700 at the relevant time, we are of the view that merely because of promotional post for Draughtsmen in Ordnance Factories was in the scale of Rs 425-700 cannot be a justification for denying the revision of pay scales to Draughtsmen and their being placed in the scale of Rs 425-700 on the basis of the Office Memorandum dated 13-3-1984 if such Draughtsmen are otherwise entitled to such revision in the pay scale on the basis of the said memorandum. Moreover, the provision regarding promotion of Draughtsman as Chargeman Grade II in Ordnance Factories was introduced by the Indian Ordnance Factories Group C Supervisory and Non-Gazetted Cadre (Recruitment and Conditions of Service) Rules, 1989 issued vide Notification dated 4-5-1989. The said Rules are not retrospective in operation. Here we are concerned with the revision of pay scales with effect from 13-5-1982 on the basis of the Office Memorandum dated 13-3-1984 and, at that time, the said rules were not operative. Therefore, on the basis of the aforesaid Rules Draughtsmen in Ordnance Factories cannot be denied the benefit of revision of pay scales on the basis of the Office Memorandum dated 13-3-1984. **The appeals and the SLPs as well as review petitions relating to Draughtsmen in Ordnance Factories are, therefore, liable to be dismissed.**" (Emphasis supplied)

12. The above decision of the Apex Court answers question (a) above

i.e. the upgradation of the pay scale of Tracers from 260 – 430 to 330 –

under the ACP scheme. It was a revision to bring the pay scale at par with the counterparts in the CPWD and the same had been extended to all in the Ordnance Factories and while doing so, by invoking the provisions of OM dated 19-10-1994 of the Ministry of Personnel, certain years of experience was specified. It cannot be held that merely on account of stipulation of seven years of service the higher pay scale provided comes within the ambit of ACP scheme, which relates to the year 1999. The decision given by the Mumbai High Court in the case of **Union of India and others vs K. M. Khopkar and others, (Writ Petition No. 6269 of 2005 decided on 11-12-2006)** vide RA-1 to the rejoinder, also fully applies to the case of the Applicant in this regard.

13. In so far as (b) is concerned, i.e. Whether promotion granted to the grade of Draughtsman/conversion as Chargeman II is erroneous and reversion justified, answer to this question is not tedious. The pay scale for Draughtsman as well as Chargeman is one and the same, i.e. 1400 – 2300. The applicant who had been a tracer with the pay scale of Rs 1200 – 2040 had been promoted as Draughtsman in the scale of Rs 1400 – 2300 and this post had undergone a change in its appellation – from Draughtsman to Chargeman Gr II. It does not mean that the applicant has been promoted from a lower grade to Chargeman Gr. II. Again, as rightly contended by the counsel for the applicant, special approval had been obtained before promoting the applicant to the said post on 13th August, 1994. Thus, viewed from any angle, there does not appear any

14. As regards the last question, i.e. whether the applicant is not entitled to the financial upgradation in the scale of Rs 5500 – 9000 which was granted to him and which has been withdrawn, here again, if the pay scale of tracer be held to be Rs 330 – 560 (and its corresponding replacement scale as per the IV and V Central Pay Commission Recommendations), the next promotional post carried pay scale of Rs 425 – 700 (replaced by Rs 1400 – 2300/Rs 5,000 – 8000) and the post next higher to the same is Rs 550 – 900 (replaced by the pay scale of 5,500 – 9000). Since the applicant has been the beneficiary of one promotion as Draughtsman/Chargeman Gr. II, he is entitled to be considered for further upgradation in the pay scale of Rs 5,500 – 9000 as the second financial upgradation on completion of 24 years of service right from the initial appointment as Tracer. i.e. w.e.f. 03-08-2003. Thus, the applicant had been rightly afforded the 2nd financial upgradation.

15. In view of the above, the OA fully succeeds. We have no hesitation to hold that the impugned orders are all bad in law and accordingly, Annexure A-1 to A-4 stand quashed and set aside. Consequently, the impugned orders cannot be given effect to at all. The applicant's designation as Chargeman Gr. II as well as his pay scale of Rs 5500 – 9000 from 03-08-2003 in the wake of grant of the second financial upgradation are to be kept in tact. No recovery of any amount shall be made on the basis of the orders at Annexure A-1 to A-4. Needless to

Upgradation in accordance with the provisions of the current MACP Scheme.

16. No cost.


SHASHI PRAKASH
ADMINISTRATIVE MEMBER


Dr K.B.S.RAJAN
JUDICIAL MEMBER

/TRS/