

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

(THIS THE^{30th}..... DAY OF *November* 2011)

HON'BLE MR.SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MR. SHASHI PRAKASH, MEMBER (A)

Original Application No. 774 of 2006
(U/s 19, Administrative tribunal Act, 1985)

Mohd. Shahid, aged about 61 years
Son of Late Abdul Khalique,
R/o village- Kohna, Post Office
New Jhunsi, district Allahabad.

.....Applicant

Present for Applicant: Shri. Swayamber Lal, Advocate

Versus

1. Union of India through Defence Secretary
Ministry of Defence, South Block,
New Delhi- 110011.
2. Director General Ordinance Services (DS-8C)
Army Headquarters, D.H.Q.P.O.
New Delhi- 110011.
3. Commandant,
Central Ordinance Depot Chheeki,
Allahabad.

.....Respondents

Present for Respondents: Shri. S.M.Mishra, Advocate

ORDER

(Delivered by Hon'ble Mr. Shashi Prakash, Member (A)

reliefs:

for

- (a) **To issue a writ, order or direction to the respondents in the nature of mandamus to grant the pay scale of Rs.5000-8000 from 9.8.1999 to the applicant by amending the order dated 11.4.2000 in which scale of Rs.3200-4900 has been granted to the applicant.**
- (b) **To issue directions to the respondents to pay the difference of arrears of pay and allowances from 9.8.1999 after fixation of pay in the scale of Rs.5000-8000 till the date of his retirement i.e. 30.11.2005 and thereafter revise the pensionary benefits from 1.12.2005 and pay the arrears along with 18% interest per annum from the date of due amount to the date of actual payment.**

2. The facts of the case are that the applicant was appointed as Mazdoor on 05.3.1963 in COD Chheeki Allahabad and reclassified as Upholster in 1966. He passed the supervisor test in 1972 thereby becoming eligible for promotion to the post of Charge man (II) in the scale of Rs.5000-8000. During his term as Upholster he was not granted any promotion.

3. In 1999 the Government of India introduced the Scheme of Assured Career Progression (ACP) providing for grant of two financial up-gradations in accordance with the provisions contained in Para 7 of the Scheme which reads as under (Annexure A-II)

"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 A-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.

The applicant was granted the second financial upgradation under this scheme in the scale of 3200-4900 by order dated 11.4.2000.

4. The learned counsel for the applicant has argued that the second financial upgradation provided to the applicant has been done arbitrarily and not in accordance with the provision of the ACP Scheme. His contention is that the post of Upholster, Saddler, Sawyer and wood makers etc are feeder post for promotion to the post of Charge man Part- II which is in the scale of Rs. 5000-8000 in terms of the instructions contained in letter dated 3.9.1999 relating to Revised Regrouping of Craftsmen (Annexure RA-1). Accordingly, the promotion of the applicant should have been to the post of Charge man Part-II in the scale of Rs.5000-8000 and not Rs. 3200-4900, having regard to the fact that the post of Charge man was in the hierarchy of the post held by the applicant. He further argued that the applicant submitted a representation dated 05.1.2001, to respondent no.3 requesting him to amend the order and provide him the second financial upgradation in the scale of Rs.5000-8000. Thereafter, he submitted several separate representations, the last being in February 2006. However the respondents have not acted on his representations so far. The applicant has retired on 30.11.2006.

5. The learned counsel for the respondents contended that the grant of second financial upgradation to the applicant in the scale of Rs.3200-4900 was made correctly. The applicant was initially appointed as mazdoor and thereafter he was promoted to the post of

Upholster which was an isolated trade. Therefore, the second financial upgradation granted to him was in accordance with the terms of Para 7 of provisions of ACP Scheme. The counsel for the respondents went on to argue that the submission made by the applicant regarding submission of representation/reminders to the respondent during his service period as well as thereafter are false and that the documents relating to the representation submitted along with the OA are fake, fabricated and malafide with the purpose of obtaining undue advantage of condoning delay in filing of the OA. In the Counter affidavit the respondents have also stated that all the letters of the applicant have been received by the same officer since January 2001 to January 2005, whereas no officer as Commander VSD have rendered the service in COD Chheoki for more than two years. It has been further mentioned that the seal of the Commander of VSD as Lt.Colonel came into existence only in July 2005. Prior to this no Lt.Colonel was posted as Commander VSD nor such a seal put therein. These facts go to prove that the representations are fabricated. In this regard an FIR dated 9.10.2006 had been lodged by the department in the police station Naini Allahabad with a view to ascertain the truth in the matter. The fate of the FIR is still not known. It has also been asserted that the office seal and stamp put on the second copy of the representations was fraudulent.

6. The learned counsel for the respondents further submitted that on introduction of ACP Scheme the promotion of the left out semi skilled and skilled trade man like Upholster, Sawyer and wood makers was ceased and hence their financial up-gradation was granted in the next higher pay scale of Rs.2750-4000 and Rs.3200-4900

respectively. In the meantime the Ministry of Defence by an order dated 20.5.2003 also modified all the trades (including left out trades) and classified them as skilled highly skilled and Master Craftsman in the industrial as well as in the non industrial trades w.e.f the date of the order.

7. In view of the above, the respondent have argued that the contention of the applicant that he was re-classified in the post of Upholster and hence his second grant of financial up gradation under ACP Scheme should have been counted from the date of his appointment as well as in next hierarchy of Charge man in the scale of Rs.5000-8000 is not tenable.

8. In the Rejoinder affidavit filed by the applicant on the question of the veracity of his representation, the applicant has stated that the specimen of seal put on the application of the applicant may be got verified through hand writing expert to find out its correctness. The applicant has expressed his willingness to bear the expenses of this exercise. The applicant has further stated that he visited the COD Chheoki on 27.8.2005 and handed over a reminder on 27.8.2005 in CR Section of the Depot. Thereafter he went to VSD and requested the office that as he had submitted applications dated 5.1.2001 and eight subsequent reminders in the office earlier, office seal was not put on these applications. The office then put the seal on the above application on 27.8.2005 which in effect amounts to implied acknowledgement. In view of this situation the applicant's counsel argued by the applicant that the contention of the respondents that the representations/applications submitted by the applicant are fabricated and false are not correct.

9. The counsel for the applicant again drew the attention of the Tribunal to the contents of the letter dated 3.9.1999 issued by Sena Ayudh Corps Abhilekh Karyalaya, Army Ordnance Corps Record Office, Post Box No.3, Trimulgherry P.O. Secunderabad (Annexure RA -I) which encloses a statement showing revised grouping of tradesmen for promotion to Senior Charge Man Part I cadre and Charge man Part II cadre of Charge Man. In this statement the list of the group of trades to be treated as feeder posts for promotion to the post Charge man part-II cadre, the post of Tailor which includes the trade of Tailor, Upholster has been mentioned. Having regard to the provisions of this statement, the counsel for applicant submitted that the financial benefit of the ACP Scheme should have been given to him as per the scheme for promotion to the post of Charge man Part-II as it was the next higher post in the hierarchy of the post occupied by the applicant.

10. Heard learned counsel for both the parties and perused the pleadings on record. While taking cognizance of various submissions made by the respondents, the limited point to be decided in this OA is whether the second financial up gradation given to the applicant in the pay scale of Rs. 3200-4900 was in consonance with the provisions of para 7 of the ACP Scheme. It is observed that the respondents have taken the stand that the post of Upholster is an isolated trade and therefore in terms of the provisions of Para 7 of the ACP Scheme the applicant was eligible only to promotion to immediately next higher pay scale which was 3200-4900. However, a perusal of the order dated 3.9.1999 of Sena Ayudh Corps Abhilekh Karyalaya, Army

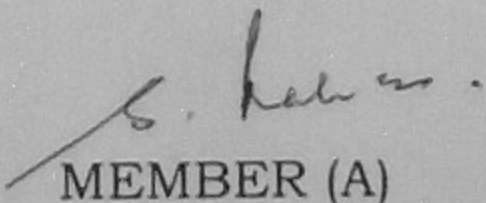
Ordnance Corps Record Office , Trimulgherry, Secunderabad (Annexure RA-1) issued in 1999 clearly shows that the post of Upholster is a feeder post for promotion to Charge man Part-II. This regrouping of tradesmen for purpose of promotion seems to have undergone some change vide letter dated 29.1.2007 of the department wherein it is seen that the post of Upholster inter alia has been omitted from the eligible posts for consideration of promotion to Charge man Part-II. However, ~~in~~ this regard it may be pertinent to note that the applicant was given the benefit of second financial upgradation on 1.4.2000. The revised grouping omitting the post of Upholster from the feeder post for promotion to Charge man Part-II was done only in 2007 (Annexure SCA-5) and therefore cannot be made applicable retrospectively. In the circumstances the point of time when the applicant was given the second benefit, the relevant instructions/Rules should be taken into account. This would imply that in this case the instructions issued on 3.9.1999 would be applicable under which the post of Upholster was including as a feeder post for promotion to the post of Charge man Part II. In view of this position, the fact that reclassification of trades into three categories of skilled, highly skilled and master Craftsman made by the Ministry of Defence in May 2003 with prospective effect does not appear to be relevant in the present case as this exercise was done much after the date (1.4.2000) from which the applicant was given second financial upgradation under ACP .

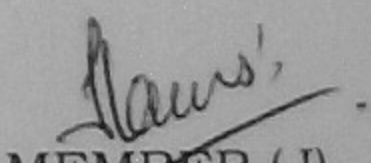
11. The Tribunal is not inclined to enter into the controversy regarding the veracity or otherwise of the representation submitted by

the applicant in view of enormously varying version of both the parties in this matter.

12. Here it may be relevant to mention that the issue of the maintainability of this OA on the ground that it is time barred raised by the respondents has to be seen in the back-ground of the factual variation in the submissions made on behalf of both the parties. As alleged by the applicant he has been submitting representations ever since January 2001. In this connection the learned counsel for the applicant has drawn the attention of the Tribunal to an order passed by the Central Administrative Tribunal Jaipur Bench on 12.12.2003 in OA No.493/02 **H.S. Shekhawat Vs. The Union of India and Ors** wherein it has been stated that issues pertaining to grant of higher scale of pay give continuing cause of action cannot be considered as hit by limitation. In this case since the applicant has been allegedly making representations since January 2001 till 2006, the Tribunal feels that the question of limitation is peripheral.

13. Having regard to the above, we feel that it will be just and proper if the representation submitted by the applicant dated 16.1.2003 is disposed of by a speaking and reasoned order by the Competent Authority in accordance with the relevant existing guidelines /rules applicable at the time when the applicant was due for the second financial up gradation under the ACP Scheme. This exercise should be completed within three months. With these observation the OA is disposed of. No Costs.


MEMBER (A)


MEMBER (J)

Uv/