

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 928 of 2006

Allahabad this the 6th day of Sept, 2012

**Hon'ble Mr. Sanjeev Kaushik, Member-J
Hon'ble Mr. Shashi Prakash, Member-A**

Girjesh Kumar Dubey s/o late Rudra Pratap Dubey, R/o LIG, 291
A.D.A. Colony, Neem Sarai, P.O. – Begum Sarai, Allahabad.

Applicant

In person

Vs.

1. Union of India, Through Secretary, Ministry of Defence, Bharat Sarkar, New Delhi.
2. Engineer-in-Chief, Army Headquarters, Sena Bhawan, New Delhi.
3. Chief Engineer, Headquarters Central Command, Lucknow.
4. Chief Engineer (Air Force), Nagpur.
5. Commander Works Engineer, HQs Commander Works Engineers, Allahabad.
6. Assistant Garrison Engineer (Indep) Air Force Manauri, Allahabad.

Respondents

By Advocate: Mr. Himanshu Singh

O R D E R

Delivered by Hon'ble Mr. Shashi Prakash, A.M.

In the present O.A. applicant has assailed the orders dated 20.05.2006 and 06.03.2006 passed by respondent No. 5 and Part II order No. 25/27 dated 18.06.2001

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passed by respondent No. 6 respectively whereby denying the pay scale of ₹ 5000-150-8000/- as second benefit to the applicant under A.C.P. scheme provided under Office Memorandum dated 09.08.1999.

2. The facts in the present O.A. as per the applicant are that the applicant was appointed as a Mazdoor (temporary) at Jalandhar Cantt. on 31.12.1969. Thereafter, he passed the examination for the post of Motor Pump Attendant-Group 'C' category vide CEJRC PTO No. 52/126/72 and appointed to the post on 19.05.1973. Subsequently, the applicant was promoted to the post of Refrigerator Mechanic after passing the trade test on 23.04.1984. The applicant also passed the trade test for further promotion on 28.05.2001 to the post of Refrigerator Mechanic HS-II and on 12.11.2001 for the post of Refrigerator Mechanic HS-I. He was given promotion w.e.f. 09.08.1999 under ACP Scheme in the pay scale of ₹ 4000-100-6000 vide Order dated 18.06.2001. It is submitted by the applicant that the Government of India, on the recommendation of 5th Central Pay Commission, introduced the Assured Career Progression Scheme (for short ACP Scheme) on 09.08.1999 for grant of 2 financial up gradation of Central Govt. employees who had put in 12/24 years of regular service in a particular

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cadre. As per the applicant, the aforesaid ACP scheme was applicable w.e.f. 01.01.1996 and according to which the posts of Refrigerator Mechanic HS-II and Refrigerator Mechanic HS-I were merged together in the pay scale of ₹ 4000-100-6000. Likewise the posts of Motor Pump Attendant and Refrigerator Mechanic were also merged together in the pay scale of ₹ 3000-75-3950-80-4590/- w.e.f. the year 1984. It is averred that the ACP Scheme provides for grant of two financial up-gradations if no promotion is granted within a period of 12/24 years of regular service in a particular cadre. The applicant has claimed that he had worked about 31½ years of regular service, as such, he is entitled for getting two financial up gradation but, he was granted only one up-gradation vide Order dated 18.06.2001 (annexure-3). Hence, the applicant submitted an application to Respondent No. 6 on 02.07.2004 and further on 10.10.2004 and 30.12.2005 to Respondent No. 3. The respondents gave a reply by the order dated 06.03.2006 to the effect that as per instruction, pay scale of ₹5000-100-8000, in 2nd ACP, is to be granted only to the employee recruited directly as a skilled worker. The applicant further submitted representation on 21.03.2006 having the same fate. Hence, aggrieved with the action on the part of respondents, the applicant has filed the present O.A.

3. The respondents have filed the Counter Affidavit refuting the claim of the applicant. They have alleged that all the orders impugned in the O.A. are self explanatory on the subject. The respondents have submitted that the applicant had never appeared in any separate trade test for the promotion on the post of Refrigerator Mechanic because he has been accorded the said promotion by virtue of merger of the MPA as Refrigerator Mechanic in 1984 and there was no change in the scale between MPA and Refrigerator Mechanic. The respondents while stating that the applicant was appointed as a Mazdoor w.e.f. 31.12.1969, have submitted that the applicant got 1st promotion from Mazdoor to MPA vide order dated 19.05.1973 after passing the departmental trade test. As such, the applicant is not entitled for the benefit of ACP. The applicant was not appointed as MPA directly on 19.05.1973 but had been promoted from Mazdoor to MPA and as such this has to be treated as 1st ACP and second ACP was granted in feeder category from Refrigerator Mechanic (skilled) to Refrigerator Mechanic HS-II in the pay scale of ₹4000-100-6000/-. The respondents have further submitted that as per para-5.1 of the D.O.P.T. letter dated 09.08.1999, two financial up gradations under the ACP Scheme in the Government service career of an

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employee shall be counter against regular promotions (including in-situ promotion and fast track promotion availed through Limited Departmental Competitive Examination) availed from the grade in which an employee was appointed as a direct recruit. This mean that two financial up gradations under the ACP Scheme shall be available only if no regular promotion during the prescribed periods (12 years and 24 years) have been available to an employee. If an employee has already got one regular promotion, he shall qualify for the 2nd financial up-gradation only on completion of 24 years under the ACP Scheme.

4. Heard, Shri G.K. Dubey-applicant who appeared in person and Shri Himanshu Singh, Counsel for the respondents and perused the pleadings on record.

5. In the present case, grievance of the applicant is that while under the ACP Scheme, which came into existence consequent to the recommendation of Vth Pay Commission, he was entitled for two promotions/financial up gradations. In actuality, in his 31 ½ years of service, as per the applicant, he was provided only one such benefit. It is the contention of applicant that he was initially appointed as MPA and after passing the relevant test he was promoted as Refrigerator Mechanic in the pay

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scale of ₹ 3000-75-3950-80-4590/- . As per the averment of the applicant, this cannot be treated as a promotion due to the fact that the pay scales of MPA and Refrigerator Mechanic had been merged in the pay scale of ₹3000-75-3950-80-4590/- and, therefore, cannot be treated either as promotion or financial up-gradation. He argued that only promotion which he received was on the post of Refrigerator Mechanic H.S.-II in the pay scale of ₹ 4000-6000/- . The applicant has claimed that under the ACP Scheme he is further entitled for a second ACP in the pay scale of ₹ 5000-8000/- .

6. The respondents have countered the claim of applicant on the ground that the statement made by the applicant that he was initially appointed as MPA is false and misleading. Counsel for the respondents argued that the applicant was initially appointed as Mazdoor (temporary) on 31.12.1969, and subsequently on completion of satisfactory service, he was made quasi permanent w.e.f. 31.12.1972 on the same post/grade vide order dated 08.02.1973. Thereafter, on passing the relevant test the applicant was promoted as MPA which was first promotion/financial benefit granted to him in 1973. According to the Counsel for the respondents, this promotion has to be treated as first jump in terms of the

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provisions of ACP Scheme. He further argued that the second promotion was granted to the applicant from the post of Refrigerator Mechanic (SK) to the post of Refrigerator Mechanic HS-II in the pay scale of ₹ 4000-6000/- on 28.05.2001. Hence in accordance with the provisions of ACP Scheme, two promotions/financial up gradations have already been granted to the applicant and he has no case for grant of any further promotion/financial up gradation.

7. The main issue on which the decision in this O.A. hinges upon is whether the initial appointment of the applicant is to be considered as a quasi permanent Mazdoor w.e.f. 31.12.1972 or as MPA w.e.f. 19.05.1973. A perusal of annexure-1 of Supplementary Counter Affidavit clearly indicates that the applicant had been appointed in quasi permanent capacity under the Government of India on the post/grade of Mazdoor w.e.f. 31.12.1972. The order had been passed on 08.02.1973 under the CCS (Temporary Service) Rules, 1965. It is further observed from the letter dated 07.02.1973 (annexure-2 of Supplementary Counter Affidavit) that the applicant has been strongly recommended for the post of Motor Pump Attendant subsequent to his passing of the relevant test, on account of which he was promoted as MPA on

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08.02.1973. The contents of both these annexure(s) clearly established that initially the applicant was appointed in the capacity of quasi permanent Mazdoor and not MPA. He was given the scale of MPA only after he had cleared the trade test. This was evidently a promotion. It is observed from the contents of the O.A. that on this point the applicant has deliberately chosen to remain vague and ambiguous with a view to create a confusion in this regard. As admitted by the applicant himself, he was given a financial up gradation in the pay scale of ₹4000-6000/-. Hence, taking into account the first promotion from Mazdoor to MPA and financial upgradation/promotion in the pay scale of ₹ 4000-6000/-, the applicant has received the benefit of two promotions/financial upgradation as envisaged in the ACP Scheme and therefore not entitled for any further benefit.

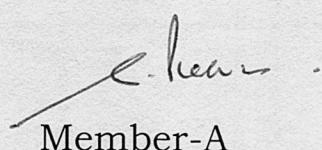
7. It is also to be noted that the claim of applicant for the pay scale of ₹ 5000-8000/- is not tenable in the light of clarification which has been provided in letter dated 10.10.2003 annexure-7 of the O.A. This is a letter addressed to the Chief Engineers of various commands issued by the Director General of Personnel/CSCC, Military Engineering Services, Engineer-in-Chief's Branch, Army Headquarters, New Delhi. The spirit of clarification

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is that only those employees who have been directly recruited as skilled tradesman are entitled for the first ACP in the pay scale of ₹4000-6000/- and the second ACP in the pay scale of ₹5000-8000/-. Since the appointment of the applicant was as a quasi permanent Mazdoor, which was an unskilled post, therefore, his claim for being granted the pay scale of ₹5000-8000/- is also not sustainable in view of the clarification provided in the above mentioned letter.

8. In view of the above discussion, we are of the firm view that there is no merit in the O.A. Accordingly, O.A. stands dismissed with no order as to costs.


Member-A
Member-J

/M.M/