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Reserved
(on 01.12.2016)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 8th day of **December** 2016

Original Application No. 402 of 2008

Hon'ble Dr. Murtaza Ali, Member - J
Hon'ble Ms. Nita Chowdhury, Member - A

Brij Bihari Lal Sharma, Son of Late M.B.L. Sharma, Resident of MIG-1806, Sector-7, Awas Vikas Colony (Pandit Deen Dayal Puram), Sikandara, Agra.

...Applicant

By Adv: Shri R.S. Gupta.

VERSUS

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. Director General of EME M.G.O's Branch, Integrated Head Quarter of Ministry of Defence (Army), DHQ-Post Office, New Delhi-110011.
3. Commandant, 509, Army Base Workshop, Agra Cantt.

... Respondents

By Adv: Shri S.N. Chatterjee.

ORDER

Delivered by Hon'ble Ms. Nita Chowdhury, Member - A

The present OA has been filed under Section 19 of the Administrative Tribunals Act, 1985 with the following reliefs:

"(a) issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 23.11.07 passed by Lt. Colonel Est. Officer for and on behalf of respondent No. 3 (Vide Annexure No. 1 to Compilation I to the OA).

(b) issue a writ, order or direction in the nature of Mandamus commanding and directing the respondents to grant the applicant two promotional

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scales; First, in the scale of Rs. 5500-9000/- and the second, in the scale of Rs. 6500-10500/- w.e.f. 9.8.99, the date of promulgation of Assured Career Progression Scheme (ACP); fix his salary accordingly and pay him pensionary benefits accordingly including the arrears to which he would have been entitled to had he already been granted aforesaid two promotional scales w.e.f. 9.8.99 together with interest therefore.

(c) issue such other and further suitable writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and the circumstances of the case.

(d) award cost of this application to the applicant."

2. The brief facts of the case as narrated by the counsel for the applicant are that the applicant was appointed as Instrument Mechanic Electrical (IME) by the respondent no. 3 in 509, Army Base Workshop, Agra Cantt. (for short Workshop). While working as IME in the Workshop applicant passed supervisory test in 1988 and on 18.04.94 the applicant was elevated as Master Craftman (for short MCM) having the pay scale equal to senior Chargeman (for short SCM) now redesignated as Chargeman-II (For short CM-II). Government of India, Ministry of Personnel grievances and pensions promulgated assured career progression scheme (for short ACP) for Central Government Civilian Employees envisaging

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two promotional scales to the employees who could not get promotions though entitled to the promotion. Being eligible for ACP, the respondents accorded two promotional scales to the applicant w.e.f., 09.8.99, first in the pay scale of Rs. 5500-8000 and the second in the pay scale of Rs. 5500-9000. Thereafter, the applicant came to know about the Daily Order Part-I & Part-II dated 10.10.2002 & 9.10.2002 respectively and realized that in place of two promotional scales i.e., Rs. 5500-9000 and 6500-10500, he has wrongly been given two promotional scales; first, in the scale of Rs. 5000-8000/- & second, 5500-9000/-. Representation to the same effect was made by applicant to respondent No. 3. Having realized, though belatedly, the aforesaid anomaly as to grant of two promotional scales to the applicant, the respondent No. 3 prepared the statement of case of the applicant for granting two promotional scales, first, in the scale of 5500-9000/- and second, 6500-10500 and forwarded the same to Head Quarter Base Workshop Gp. EME Cantt. Meerut and to EME Records, Secunderabad. Vide letter dated 20.04.2007, Head Quarter Meerut Cantt respondent no. 3 referred the case of the applicant again to Head Quarter Meerut Cantt with his recommendation to grant two ACP scales to the applicant; First, in the scale of Rs. 5500-9000/- and second, 6500-10500/-. Upon aforesaid reference, Head Quarter Meerut, Cantt

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forwarded the matter to respondent No. 2 for clarification. Upon aforesaid forwarding, respondent No. 2 passed the impugned order wrongly holding that applicant has correctly been granted First & Second ACP in the pay scale of Rs. 5000-8000 & 5500-9000 respectively.

3. Learned counsel for the applicant further submitted that the impugned order is illegal, arbitrary and contrary to ACP Scheme 09.8.99 and SRO 44 and has been passed without application of mind. Under SRO the first promotional post/avenue available to a MCM happens to be foreman with pay scale of Rs. 1600-2600 subject to fulfillment of criteria of promotion prescribed therein. The criteria of promotion from MCM to Foreman as prescribed therein happens to be "four years regular service in the grade i.e., MCM coupled with passing of trade test i.e., supervisory test."

4. Learned counsel for the applicant further contended that on the date of promulgation of ACP Scheme i.e., 9.8.99 the applicant already had five years regular service as MCM and had also passed trade test/supervisory test in 1988 as such the applicant became entitled to be promoted as Foreman as on 09.08.99. Under aforesaid ACP Scheme, the applicant became entitled to the first promotional scale of Foreman i.e., Rs. 1600-

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2600 on 09.8.99. Under the fifth Central Pay Commission effective from 01.01.96, the post of Foreman was redesignated as CM I and the pay scale was revised from 1600-2600 to 5500-9000. Thus, the applicant became entitled to first promotional scale of Rs. 5500-9000. The next promotional avenue available to the applicant happens to be to the post of Assistant Foreman (AFM) with the pay scale of Rs. 6500-10500. Under the aforesaid ACP Scheme for want of actual promotion to the post of AFM from CM-I, the applicant became entitled to second promotional scale i.e., Rs. 6500-10500 w.e.f., 9.8.99 payable to AFM. Further, as on 09.8.99 the applicant has already put in 28 years of service during which the promotional scales i.e., of Foreman (redesignated as CM-1) and of AFM became due to him.

5. Further, the learned counsel for the applicant submitted that one Shri B.N. Maiti (T.No. 6271), A MCM in the workshop has been paid the first ACP pay scale of Rs. 5500-9000 and 6500-10500 under the aforesaid scheme.

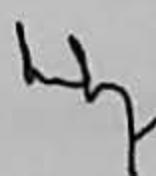
6. Notices were issued to the respondents who in turn filed counter affidavit stating therein that the applicant was appointed in Army Base Workshop Agra, on 02.08.1961 in the trade of Instrument Mechanic (Electrical). The applicant had



passed the trade test for promotion as supervisor i.e., Chargeman Grade-II during Nov., 1988. He was later elevated to Master Craftsman (hereinafter referred to as MCM) with effect from 18.04.1994 in the Pay scale of 4500-7500, which is not considered as a promotion.

7. Learned counsel for the respondents submitted as per the ACP Scheme introduced on 09.08.1999 and the rules stated therein the applicant was granted two financial upgradations as per the prescribed hierarchy of scales:- Ist Financial Upgradation in the Pay Scale of Rs. 5000-150-8000 w.e.f. 09.08.1999. and IInd Financial Upgradation in the Pay Scale of Rs. 5500-175-9000 w.e.f. 09.08.1999. On the basis of the aforesaid upgradations, the applicant submitted a representation dated 09.09.2002 to the Directorate General of EME stating that his name been omitted from the list of Seniority Roll of Group 'A' MCM for promotion to Chargeman Grade-I. The name of the applicant did not figure in the said seniority roll as he did not meet the following criteria as specified in SRO 149 of 2002:-

- (a) Master Craftsmen who have qualified supervisory test prior to 01.01.1996 and completed four years regular service as MCM, and

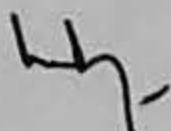


(b) Where juniors who have completed their qualifying service are being considered for promotion, their seniors would also be considered provided they are not short of requisite service by more than half of such qualifying service or two years, whichever is less.

8. Counsel for the respondents further submitted that the applicant vide his representation dated 24.05.2006 demanded grant of Ist Financial upgradation in the Pay Scale of Rs. 5500-175-9000 and IIInd Financial upgradation in the Pay Scale of Rs. 6500-200-10500 under the ACP Scheme. The case was referred to EME Records Office and Headquarter Base Workshop Group vide respondent No. 3 letter dated 09.09.2006 for issue of necessary clarification in this regard. EME Records Office vide letter dated 13.10.2006 and Headquarter Base Workshop Group vide letter dated 28.10.2006, confirmed that the Ist and IIInd Financial upgradations granted to the applicant in the pay scale of Rs. 5000-150-8000 and Rs. 5500-175-9000 respectively under the ACP Scheme is absolutely correct and the same was communicated to the applicant vide respondent No. 3 letter dated 21.11.2006. It is further submitted that the applicant was already placed in the pay scale of Rs. 4500-125-7000 on his elevation as MCM with effect from 18.04.1994. On introduction

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and implementation of the ACP Scheme, the applicant was granted two financial ungradations in the next higher pay scale as per the hierarchy in the pay scale of Rs. 5000-150-8000 and Rs. 5500-175-9000 to the ACP Scheme. Therefore, contention of the applicant that he was erroneously granted the benefit of financial upgradation under the ACP Scheme is absolutely wrong and not tenable. Vide letter dated 22.10.2007 as the applicant was informed that he has been granted the benefit of Ist and IInd financial upgradation under the ACP Scheme correctly. The SRO 44 of 1992 as referred by the applicant is not applicable in his case as SRO 44 relates to promotional avenues as Foreman from Senior Chargeman and MCM. Counsel for the respondents further submitted that a seniority Roll of MCMs was prepared by EME Records Office on 01.06.2002 for promotion of eligible MCMs to Chargeman Grade-I in accordance with SRO 149 of 2002. Since the applicant was elevated to MCM with effect from 18.04.1994 and had not completed four years regular service as MCM as on 01.01.1996 as per Clause (ii) of "Promotion" under Column 12 of the SRO, his name did not figure in the list of eligible candidates for promotion to Chargeman Grade-I. Therefore, the applicant remained as MCM (in the pay scale of Rs. 4500-100-7000) on the date of introduction/implementation of the ACP Scheme with effect from 09.08.1999 and as such was



granted two financial upgradations in the next higher scale in the Pay Scale of Rs. 5000-150-8000 and 5500-175-9000 with effect from 09.08.1999 as per the existing hierarchy of scales formulated under the ACP Scheme. It is further submitted that the post of Foreman was re-designated as Chargeman Grade-I by the Vth Central Pay Commission, effective with effect from 01.01.1996 is not wrong. But contention of the applicant that he became entitled for the first promotional scale of Rs. 5500-175-9000 is wrong and misconceived. At the time of implementation of the Vth Central Pay Commission i.e. on 01.01.1996, the applicant was MCM and consequent to implementation of the ACP Scheme, he was granted two financial upgradations in the pay scale of Rs. 5000-150-8000 and Rs. 5500-175-9000.

9. Learned counsel for the applicant filed rejoinder affidavit reiterating the facts as stated in the O.A.

10. Learned counsel for the respondents filed supplementary affidavit reiterating the facts as stated in his counter affidavit.

11. Heard the counsels for both the parties and perused the pleadings on record.

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12. The applicant was appointed in the year 1971 in the trade of Instrument Mechanic (Electrical). After qualifying the trade test for promotion as Supervisor i.e., Chargeman Grade-II in Nov 1988, the applicant was elevated to Master Craftsman (hereinafter referred to as MCM) with effect from 18.04.1994 in the pay scale of Rs. 4500-7000. After the introduction of the Assured Career Progression Scheme for Central Government Employees vide Order dated 09.08.1999, the applicant was granted two financial upgradations as per the prescribed hierarchy of scales formulated for financial upgradation as (a) 1st Financial upgradation in the pay scale of Rs. 5000- 150-8000 w.e.f. 09.08.1999 & (b) IInd Financial upgradation in the Pay Scale of Rs. 5500-175-9000 w.e.f. 09.08.1999.

13. Thereafter, the applicant says he realized that he has wrongly been given lower pay scale of Rs. 5000-8000 and 5500-9000 instead of 5500-9000 and 6500-10500 and represented for the same to the respondents. Thereafter, the impugned order dated 23.11.2007 was passed by the respondents stating therein that the applicant has correctly been granted first and second ACP in the pay scale of Rs. 5000-8000 & 5500-9000 respectively.

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14. It is clear from the averments and argument made by the learned counsel for the respondents that the applicant had been given the correct pay scale under the ACP i.e., Rs. 5000-8000 and 5500-9000 respectively as the applicant was elevated to MCM with effect from 18.04.1994 and as such had not completed four years regular service as MCM as on 01.01.1996 as stipulated under Clause (ii) of "Promotion" under column 12 of the SRO. Since, the applicant was MCM at the time of implementation of the ACP Scheme, he was granted financial upgradations in accordance with the hierarchy in the next higher scale of Rs. 5000-150-8000 and 5500-175-9000.

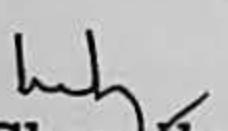
15. The respondents have also filed written submission in which they have reiterated the facts as stated in their counter affidavit and further submitted that the seniority roll of Master Craftsmen (MCM) was prepared on 01.06.2002, therefore SR0149 which was effective from the year 2002 was invoked. However, the applicant is repeatedly stressing upon applicability of SR044 of 1994 which was not applied at all while compiling the seniority roll of MCMs. SR044 deals with recruitment/promotion rules for the post of Foreman (Part-I cadre). The applicant had been made Master Craftsmen w.e.f. 18.04.1994 and therefore had completed only 1 year and 8 months in the grade of MCM as on 01.01.1996. Since, the

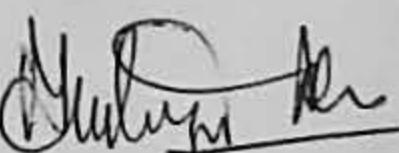
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applicant did not fulfil the requisite conditions for promotion from MCM to Chargeman I as per SR0149, his name did not figure in the seniority roll of eligible MCMs as on 01.06.2002.

16. Hence, we find the actions of the Respondents' fully justified in awarding the ACP's as per rules. No ground has been made out by the applicant for award of any relief.

17. In view of the above, the O.A. is dismissed. No order as to costs.


(Ms. Nita Chowdhury)
Member (A)


(Dr. Murtaza Ali)
Member (J)

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