

ETB 10

CENTRAL ADMINISTRATIVE TRIBUNAL

Jodhpur Bench, Jodhpur

O.A.No. 237/2003

December 15, 2004.

**CORAM: HON'BLE MR. KULDIP SING, VICE CHAIRMAN
HON'BLE MR.G.R.PATWARDHAN, MEMBER(A).**

1. Jaswant Ram son of Shri Roopa Ram, aged 38 years.
2. Naresh Kumar son of shri Satya Narain, aged 40 years.
3. Ram Pratap son of Shri Surja Ram, aged 40 years,
4. Nishan Singh son of Shri Bakshish Singh, aged 40 years.

All F/Pipe working in the office of the Garrison Engineer, (Army)
MES, Shri Ganganagar.

Applicants

By : Mr.Vijay Mehta, Advocate.

V E R S U S

1. Union of India, through the Secretary, Government of India, Ministry of Defence, Raksha Bhawan New Delhi.
2. Commander Works Engineer, (Army), MES, Shri Ganganagar.
3. Principal Controller of Defence Accounts, western Command, Chandigarh.
4. Chief Engineer, Bathinda Zone, Bathinda.
5. L A O (A), MES, Shri Ganganagar.
6. Garrison Engineer, (Army) MES, Shri Ganganagar.

...Respondents.

By : Mr. Vinit Mathur, Advocate.

O R D E R(ORAL)

(By Mr. Kuldeep Singh, Vice Chairman)

(K.S)

The O.A No. 237/2003 is a joint petition filed on behalf of four applicants as all of them have a common grievance regarding grant of benefit under ACP.

The facts as alleged by the applicants in brief are that the applicants Nos. 1 to 4 were appointed on 31.3.87, 28.3.87, 24.3.1987 and 19.10.87 respectively and they had completed 12 years of continuous service but have not availed of any promotion during this period. It is further stated that the Government of India has introduced "The Assured Career Progression Scheme" (ACP) to mitigate hardship of the employees and to provide financial upgradation on completion of 12 years of service.

2. The applicants further alleged that vide Order dated 06.12.2001, DOPT had clarified that employees who qualified the trade test in their first attempt after 9.8.99 may be allowed benefit of ACP from 09.08.99 only and not from the date of passing of trade test and in fact a copy of order of clarification has been filed as Annex. A/2. It is further stated that the respondents had arranged trade test in the month of September 2000 for giving benefits to the staff who have completed the 12 years of services. However, the applicants were not called upon to sit in the said trade test and therefore, the applicants submitted representation to the respondents requesting them to

JK

arrange trade test for them. Hence trade test had been held on 15.05.2001. The applicants were declared successful. Thereafter, the respondent No. 2 allowed the benefits of ACP to the applicants vide order-dated 13.09.2001 but the benefit has been allowed with effect from 15.05.01 (Annexure A-3). It is further stated despite the fact that the applicants had passed the trade test in their first attempt and no reasons have been given as to why the applicants have not been given the benefits from 09.08.99. Therefore, representations were made by the applicants which were forwarded vide annexure A/4, A/5 and A/6. In all these representations the Department had also recommended that the applicants ^{are} be entitled to get the benefits w.e.f. 09.08.99. However, vide Annex. A/1 the applicants have been informed that the reasons for non - appearance of the applicants in trade test held in September, 2000 is an administrative matter and the Govt. orders can not be ignored. Therefore the applicants have not been given benefits from 09.8.99. The applicants have challenged the same on the grounds that the order is illegal and deserves to be quashed. The action of the respondents is arbitrary and is violation of Article 14 and 16 of the Constitution of India and the applicants are eligible to get benefit w.e.f 09.08.99. It is further stated since the applicants were not called upon to appear in the trade test held in September 2000. It was not a fault of the applicants but it was due to some administrative error, the applicants

km

were not called upon to sit in the Trade tests held in September 2000 and therefore, the applicants cannot be punished for the mistake which was committed by the respondents. They cannot be ~~deprived~~ devoid of the benefit due to the administrative error.

The respondents have contested the O.A. The respondents in their reply have submitted that since proceedings of the court were in progress in Supreme Court against the judgement given in O.A 395/96, therefore, the applicants were not allowed to appear in the trade test held in September 2000. It is further stated that O.A. 395/96 was decided on 13.09.99 and the Government of India had accorded sanction for the implementation of the direction whereby the applicants were entitled to fixation of pay in their entitlement. As per this Sanction accorded by the Government of India, it is specifically mentioned it would be subject to review and recovery and subject to outcome of SLP being filed in Hon'ble Supreme Court of India. Therefore, the higher grade paid to the applicants is treated as a promotional scale for Pipe Fitter. Since the applicants have again appeared in the trade test in May, 2001 and again allowed to be paid pay of Pipe Fitter HS-II during a period of 14 years from the date of joining as against the authorisation after 24 years for ACP due to them, therefore, their case is not covered under the ACP to give benefit w.e.f. from 09.08.99.

K

1/12

1
F4

3. We have heard the learned counsel for the parties and perused the records.

4. The sole question to be decided in this case is whether the applicants are entitled to the benefit of ACP Scheme w.e.f. 09.08.99 as they have cleared the trade test in their first attempt when they were called upon. They were admittedly absent from the trade test held in May 2000. It is admitted that due to certain administrative reasons these applicants were not called upon to sit in the trade test held in May 2000. The counter affidavit filed by the respondents itself show that the trade test was held in May 2000 but these applicants were not called upon to appear in the trade test due to some litigation pending before the Hon'ble Supreme Court but subsequently after the representation they were allowed to appear in the test held in May 2001. However, all these applicants had passed the trade test in their first attempt. So the question arises whether the non-appearance of the applicants in the ~~said~~ test held in September 2000 was of their own volition or it was an administrative lapse. From the pleadings it is clear that these applicants were not called upon to appear in the trade test conducted in September 2000. So the applicants cannot be burdened with the liability of being absent from that test when they were not called upon to sit in the said test conducted in Sept. 2000. For the applicants test held in May 2001 was first attempt and the opportunity given to the applicants to appear in

Ku

the said test was the first opportunity. So it has to be declared as if the applicants have qualified the trade test in their first attempt. Thus we hold that the applicant's case is fully covered under the DOPT instructions dated 06.12.2001 (Annex. A/2). So the applicants are entitled to be given benefit of ACP w.e.f. 09.08.99. However, from the pleadings, it appears that one of the applicants had joined service on 19.10.1987. So it appears that on 09.08.99 he may not have completed 12 years of service. Keeping in view, the same we allow the O.A partly and direct the respondents to give the benefit of the circular placed at Annex. A/2 to all the applicants who had completed 12 years of service and passed the trade test in their first attempt, as per the instructions and clarifications issued by the DOPT as per Annex. A/1. However, the case of the applicant who had joined the service on 19.10.87 and had been completed 12 years of service by 09.08.99, may be dealt with separately. The compliance should be made within a period of three months from the date of the receipt of copy of this order. The O.A is disposed of accordingly. No costs.

S.R.
(G.R. Patwardhan)
Member (A)


(Kuldip Singh)
Vice Chairman

LG*

Perry
Weltz
10/10/09

10/10/09