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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 24 of 2003

Jodhpur, this the 2nd day of August, 2005

CORAM:

HON'BLE MR.J.K.KAUSHIK, JUDICIAL MEMBER

HON'BLE MR. G.R. PATWARDHAN, ADMINISTRATIVE MEMBER

Bhanwar Singh son of Shri Sayar Singh aged about 40 years, resident of H.No. P 890/8 MES Colony Air Force Jodhpur, at present employed on the post of Electrician SK in the office of AGE (E&M) I, Air Force Station, Jodhpur.

..... Applicant

(Mr. B. Khan: counsel for the applicant).

VERSUS

1. Union of India through Secretary to Govt. of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Commander Works Engineer (Air Force), Jodhpur.
3. Garrison Engineer MES (Air Force), Jodhpur.

.... Respondents

Mr. M. Godara, proxy counsel for
Mr. Vinit Mathur: counsel for the respondents

ORDER (ORAL)

Shri Bhanwar Singh has invoked the jurisdiction of this Bench of the Tribunal under Section 19 of the Administrative Tribunals Act, 1985, whereby he has questioned the validity of order dated 04.04.2002 (Annexure A/2) and letter dated 05.01.2002 (Annexure A/1) and has sought for quashing the same with further direction to the respondents to allow the benefits of first financial upgradation under the ACP Scheme to the applicant with effect from 09.08.1999 with all consequential benefits.

[Signature]

2. With the consent of learned counsel for both the parties, the case was taken up for final disposal at the stage of admission. We have, accordingly, heard the arguments advanced at the bar and have very carefully perused the pleadings as well as records of this case.

3. The brief facts of this case, considered necessary for adjudication of the controversy involved, are that the applicant came to be initially appointed as Lineman on 13.01.1983. The said post came to be re-designated as Electrical H.S. III (sic. H.S.II). The applicant appeared in the Trade test conducted for further promotion to the post of H.S. II in the year 1987 but he could not get success; rather failed. Subsequently, a scheme of financial upgradation popularly known as A.C.P., came to be introduced vide order dated 09.08.1999 which provides for two financial upgradations on completion of 12/24 years of service and on fulfilling the other eligibility conditions meant for promotion to the next post provided that he did not enjoy the normal promotion. There is a provision of trade test, which one is required to qualify for getting the benefits under the said scheme. Certain other conditions have been provided that in case one passes the trade test in the first attempt then he will get the due benefit under the said scheme from the date of the scheme or the date one completes 12 years of service but in case one does not so pass the trade test in the first attempt the benefit would be granted only from the date one passes the trade test.



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4. The learned counsel for the applicant has drawn our attention towards one of the order dated 15.02.2005 which came to be passed by this very Bench of the Tribunal in O.A. No. 65/2004 **Gurlal Singh Vs. Union of India & ors**, where both of us were the party to the order and has contended that the controversy involved in the instant case is squarely covered on all fours and the issue does not remain *re integra*. He has submitted that this case can conveniently be decided on similar lines. On the other hand, the learned counsel for the respondents has submitted that that case related only to a situation where the applicants failed to appear in the trade test prior to the cut off date i.e. 09.08.1999 and the situation which is arising in the instant case was not there. The facts of this case are dissimilar in as much as in this case the applicant appeared in the trade test but failed prior to the cut-off date i.e. 9.8.99.

5. A comprehensive reading of the aforesaid order dated 15.02.2005 passed in case of **Gurlal Singh** would make it evident that the very clarification which provides for failing of the trade test prior to the cut off date including that of non-appearing itself has been struck down. There seems to be some typographical error and instead of word 'of' appearing after failing, word 'or' should have been there in 3 line of para 10 of the said order. This position is very clear from the very theme, which has been adopted, and the order is quite comprehensive on the subject. We may hasten to add that if one does not appear in a trade test despite



being given an opportunity, cannot be put at better footing than the one who has appeared in the test and failed. We are of the firm opinion rather we have absolutely no hesitation in holding that the controversy involved in the instant case is fully covered by the verdict of this Bench of the Tribunal in the aforesaid case. A copy of the same is being placed on records and we find no necessity of narrating the submissions afresh and instead treat the discussions made therein shall be treated as a part of this order. If that were so, we apply the ratio of the said decision and decide this case on similar lines.

6. In the result, we find ample force in this Original Application and the same stands allowed, accordingly. The impugned clarification dated 04.01.2002 (Annexure A/1) and order dated 04.04.2002 (Annexure A/2) are hereby quashed and set aside. The respondents are directed to extend the benefits of first financial upgradation under A.C.P. Scheme to the applicant from due date i.e. 09.08.1999 with all consequential benefits. This order shall be complied with within a period of three months from the date of receipt of a copy of this order. No costs.

Sno
(G R PATWARDHAN)
Adm. Member

J.K. Kaushik
(J.K. KAUSHIK)
Judi. Member

Kumawat

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