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**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

Date of order: 15.02.2005

O. A. No.: 65/2004

Gurlal Singh : Applicant.

Mr. Vijay Mehta : Advocate for applicant.

VERSUS

Union of India & Ors. : Respondents.

Mr. Vinit Mathur : Advocate for respondents.



CORAM:

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

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

1. Whether reporters of local papers may be allowed to see the judgement? *yes*
2. To be referred to the reporter or not? *yes*
3. Whether it needs to be circulated to other Benches of Tribunal? *yes*


**[G.R. PATWARDHAN]
ADMINISTRATIVE MEMBER**


**[J. K. KAUSHIK]
JUDICIAL MEMBER**

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**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

Date of order: 15.02.2005

CORAM:

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

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

ORIGINAL APPLICATION NO.: 65/2004

Gurlal Singh son of Shri Shel Singh, aged 38 years, Electrician, working in the office of the Garrison Engineer, MES, Shri Ganganagar. R/o 666, Vinoba Basti, Shri Ganganagar.

...Applicant.

Mr. Vijay Mehta, Counsel for applicant.

VERSUS

1. Union of India through the Secretary, Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Commander Works Engineer, MES, Shri Ganganagar.
3. Garrison Engineer, MES, Shri Ganganagar.

...Respondents.

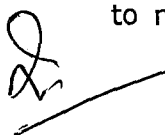
Mr. Vinit Mathur, Counsel for respondents.

ORDER

Per Mr. J.K. Kaushik, Judicial Member

Shri Gurlal Singh has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 and has sought the following relief: -

"The applicant prays that Order ANN A 1 and part of ANN A 3 as detailed herein above may kindly be quashed and the respondents be directed to accord benefits of ACP to the applicant from 15/10/99 and to make payment in pay scale 4000-6000 w e f 15/10/1999. Any





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other order, as deemed fit may also be passed. Costs may also be awarded to the applicant."

2. The factual matrix of this case depicts that the applicant was appointed on 15.10.1987 on the post of Lineman that has been subsequently re-designated as Electrician. He has completed 12 years of satisfactory continuous service and did not enjoy any promotion during the said period. The Government of India introduced a financial up-gradation scheme known as the Assured Career Progression Scheme (for brevity "ACP Scheme") vide memo dated 09.08.1999. The Scheme has been introduced primarily to meet the hardship of the employees in cases of stagnations. The Scheme provides to give one financial up-gradation on completion of 12 years of service and another financial up-gradation on completion of 24 years of service. The Ministry of Finance issued a clarification on 05.01.2002 based on the orders of DOP&T memo dated 06.12.2001 wherein it has been prescribed that the ACP benefits would be extended to the skilled category on passing the trade test. It has been further clarified that those employees who qualified the trade test in the first attempt after 09.08.1999 may be allowed benefit of ACP from 09.08.1999 and not from the date of passing of trade test. The clarification further states that no benefit of the said ACP shall be given to an individual w.e.f. 09.08.1999 who had either earlier appeared in the trade test before 09.08.1999 but failed or did not appear in the trade test. The applicant fulfilled the eligibility condition for grant of the benefits of first financial up-



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gradation under ACP Scheme and was called to appear in the trade test in which he passed successfully. Along with him there were number of employees who came to be approved for placement in the upgraded scale. As per the letter dated 15.10.1999, the applicant has been held to be eligible in the pay scale of Rs. 4000-6000. He has been placed in the scale of Rs. 4000-6000 w.e.f. September 2000 and not from 15.10.1999 as indicated in Annexure A/4. Thereafter, he submitted numerous representation to the authorities and he has been informed vide communication dated 17.12.2003 that since he did not appear in the trade test held on 15.11.1990 to 17.11.1990, he is not entitled to get the benefits of ACP w.e.f. 09.08.1999 and his representation was rejected without due consideration it. It is further averred that one Shri Roshan Lal and Ladhu Ram who also did not appear in the trade test held during 15.11.1990 to 17.11.1990 but passed trade test along with the applicant, have been granted to ACP benefit from 09.08.1999 vide PTO dated 21.05.2001. The applicant has, therefore, been visited with hostile discrimination. The application has been filed on number of grounds, which we shall take into consideration in the later part of this order.



3. The respondents have contested the case and have filed a very brief reply to the Original Application. The defence as set out in the reply is that as per the clarification issued on 06th December 2001, the benefit of first financial upgradation could

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not be extended from 09.08.1999 to the candidates who had earlier appeared in the trade test but failed or have not appeared in the trade test at all. Shri Ladhu Ram appeared in the trade test for Refg. Mech. HS-II on 02.12.1997 and failed. Entry to this effect exist at page 20 of the Service Book of the individual. Subsequently, Shri Ladhu Ram appeared in the trade test for Refg Mech HS-II on 12 September 2000 and passed. Entry made at page 22 of the Service Book. Similarly Sh. Roshan Lal appeared in trade test for Elect HS-II on 15-17 Nov. 1990 and failed. Subsequently, he also appeared in the trade test for Elect HS-II on 12 Sep. 2000 and passed. Both Shri Ladhu Ram & Sh. Roshan Lal were granted the benefits of ACP w.e.f. 09.08.1999 by LAO (A) Lal Garh Jattan as per PTO No. 7/10/2001 dated 12 Feb. 2001 and 7/3/2001 dated 12 Feb 2001, respectively, before the receipt of letter giving clarification on implementation regarding passing of trade test etc.



4. A short rejoinder has been filed on behalf of the applicant wherein it has been averred that alleged absence in the trade test in the year 1990 of the applicant will not entitled him from getting benefits under ACP Scheme from the date of completion of 12 years of service. It has been further averred that when the trade test was held the names of the candidates were pasted on notice board and the applicant was shown as a SC candidate whereas he does not belong to SC category. He submitted an application to this effect on 15.11.1990 and requested to cut the

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word 'SC' from the said letter. The respondents neither replied the application nor the word SC was ordered to be deleted before his name. It has been further averred that the applicant belongs to general category and there were at least 16 employees senior to him in the general category who were not called for trade test, having not come within the consideration zone. Therefore, the applicant was only called to appear in the trade test as a SC candidate and the question of sitting in the trade test did not arise since he was not at all eligible to undertake the trade test. The particulars of the seniors have been indicated and the facts amplified. The same is followed by an additional affidavit filed on behalf of the respondents. The respondents have submitted that Shri Ladhu Ram and Shri Roshan Lal were wrongly/erroneously granted the benefits of ACP Scheme although they were not so eligible and the orders granting them the said ACP benefits has been cancelled and the recoveries are being effected from them vide PTO dated 1st November 2004.



5. We have heard the arguments advanced at the bar by the learned counsel for the parties and have earnestly considered the submissions, pleadings and the records of this case.

6. Both the learned counsel for the parties have reiterated the facts and grounds raised in the respective pleadings of the parties. The learned counsel for the applicant has strived hard

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to demonstrate us that the main ACP Scheme does not provide for any impediment for the reason of failing or non-appearing in the trade test prior to the date of effective of the ACP Scheme i.e. 09.08.1999. The clarification cannot impose any additional conditions, which are not prescribed in the main scheme. The Ministry of Defence has no power to issue any clarification and that too inconsistent with the main provision of the scheme, which has been issued by the DOP&T. The conditions imposed vide Annexure A/3 have neither have any intelligible differentia or any basis for separate classification nor there is any nexus with the object sought to be achieved. The same does not meet the twine test of equality clause for making reasonable classification. He has contended that main scheme only envisages that one is required to pass the requisite test in the first attempt after 09.08.1999 and passing or failing or non-appearing earlier have absolutely no relevance. In this view of the matter, the impugned order at Annexure A/3 cannot be sustained. Therefore, the subsequent orders granting the benefits of the ACP Scheme from the date of passing of the trade test instead of from 15.10.99 as per ACP scheme, cannot be sustained and shall have to be treated as unconstitutional and arbitrary.



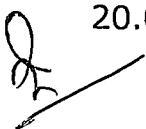
7. We would also examine the matter from yet another angle. The para 6 of the ACP scheme provides for the primary conditions for grant of benefits of financial upgradation and for

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that purpose one has to fulfil the requisite condition meant for normal promotion. The contents of the same are as under:

"6. Fulfillment of normal promotion norms (bench-mark, departmental examination, seniority-cum-fitness in the case of Group 'D' employees, etc.) for grant of financial upgradations, performance of such duties as are entrusted to the employees together with retention of old designations, financial upgradations as personal to the incumbent for the stated purposes and restriction of the ACP Scheme for financial and certain other benefits (House Building Advance, allotment of Government accommodation, advances, etc) only without conferring any privileges related to higher status (e.g. invitation to ceremonial functions, deputation to higher posts, etc) shall be ensured for grant of benefits under the ACP Scheme;"

8. The applicant having passed the requisite trade test at the first opportunity after the introduction of the ACP scheme, fulfilled the eligibility conditions meant for promotion to the higher post in scale 4000-6000. We may also notice that firstly in this case the applicant could not have been set to have appeared in the trade test or failed prior to 8.9.99 since he was not within the consideration zone and the factual aspect in this respect remains admitted in absence of any specific denial as per the rules of pleadings. Secondly there is no rule in the service jurisprudence where if one has failed or did not appear in a particular test, he could be debarred for normal promotion for an indefinite period. It is only in case where the transfer is involved which is conjoint with the promotion order, a debarring period of one year has been prescribed. But such is also not the case here. We are reminded of a decision of a coordinate Bench of the Tribunal at Mumbai in OA No. 129 of 2003 passed on 20.06.2003 in case of V. R. Patil vs. Union of India and Ors.,




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where there was a controversy as to whether one who has been debarred due to refusal of promotion but is otherwise eligible for grant of financial upgradation, could not be denied the benefits of financial upgradation for the reason of such refusal. The issue has been answered in negative. Therefore, the defence of the respondents has to be rejected.

9. It would be pertinent to point out that the policy decision shall have to meet the test of predictability. The promotion policy nowhere envisages that any benefits in future may be that of like financial upgradation etc. would be denied in case one fails in the trade test or had declined to undertake the such trade test prior to such schemes. The law relating to the predictability has been illustrated by a Constitution bench of the Hon'ble Apex Court in case of **S G Jaisinghani Vs. Union of India and Other AIR 1967 SC 1427** which is instructive on the subject and their Lordship of Hon'ble Supreme Court have held as under:



"It is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law.

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(See Dicey-"Law of the Constitution"-Tenth Edn., Introduction ex). "Law has reached its finest moments", stated Douglas, J.'

In the instant case the Annexure A/3 ex-facie dose not satisfy the aforesaid test and therefore the same shall have to be nullified and declared as bad in law on this count as well.

10. In the result, we find ample force in this OA and the same stands allowed. The impugned clarification at Annexure A/3, so far it provides failing of non-appearing in trade test prior to 9.8.99 as embargo to grant of benefits under ACP Scheme from 15.10.99, is hereby struck down and set aside. The respondents are directed to extend the said benefits of financial upgradation to the applicant from due date i.e. 15.10.99 with all consequential benefits within a period of three months from the date of receipt of copy of this order. No costs.




(G.R. Patwardhan)
Administrative Member


(J.K. Kaushik)
Judicial Member.

Kumawat

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MA 106/05 deed on 4-9-06
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& sent to Penn as on 13/10/06
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