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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR.**

Original Application No. 129/2005
Date of order: 15.11.2006

**HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER
HON'BLE MR. R.R. BHANDARI, ADMINISTRATIVE MEMBER**

1. Jasveer Singh son of Shri Baldeo Singh, aged 37 years, R/o 165 Govt. Labour Colony, Shri Ganganagar.
2. Subhash Chander son of Shri Jai Lal, aged 34 years, r/o Khywaliwalon Garo, Shri Ganganagar.
3. Balbeer Singh son of Shri Puran Singh, aged 39 years, r/o 12,ML, Shri Ganganagar.

All applicants are Pipe Fitter in the office of Garrison Engineer, Lalgarh Jattan, Shri Ganganagar.

...Applicants.

Mr. Vijay Mehta, counsel for the applicants.

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.

...Respondents.

Mr. Vinit Mathur and Mr. M. Godara, counsel for respondents.

**ORDER
(By Mr. J K Kaushik, Judicial Member)**

Shri Jasveer Singh, Shri Subhash Chander and Shri Balbeer Singh, the applicants, have preferred this Original Application for seeking the following reliefs:-

"The applicants pray that Order ANN A 1 and order mentioned therein may kindly be quashed and the respondents be directed to accord benefits of ACP to the applicants from the date of their completion of 12 years of service. Any other order, as deemed fit may also be passed. Costs may also be awarded to the applicants."

2. We have heard learned counsel for both the parties and have carefully perused the pleadings as well as records of this case.

[Signature]

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3. The material facts which necessitated of filing of this case, are that the applicants were initially appointed to the post of Valvemen in the pay scale of Rs. 850-1150 w.e.f. 23.03.1987, 28.03.1987 and 28.10.1987, respectively. The post of Valvemen at the relevant time was in skilled category in the pay scale of Rs. 950-1500 but the applicants were not given the requisite scale of pay. They filed an O.A. No. 163/2001, which came to be decided in their favour vide order dated 17.09.2002 and therefore, the applicants were allowed the due scale of pay of Rs. 950-1500 from the dates of their initial appointments. They have completed 12 years of service on 27.03.1999, 26.03.1999 and 27.10.1999, respectively, on the post of Valvemen without availing any promotion. An Assured Career Progression Scheme (for brevity, 'ACP Scheme') was introduced on 09.08.1999, to mitigate hardship of the employees. The said ACP Scheme provides for grant of two financial upgradations on completion of 12 and 24 years of service. The applicants remained under the same scale of pay for the period of 12 years and therefore became entitled for grant of the benefits of ACP Scheme to the next grade of Rs. 4000-6000 as per the provisions made in the Scheme. But their claims for grant of ACP was not entertained for the reason that they have already granted the higher pay scale of Rs. 950-1500 to the post of Valvemen and also promoted as Pipe Fitter w.e.f. 01.04.1999.

4. The respondents have filed a detailed counter reply to the Original Application and have averred that the applicants were allowed the pay of the skilled grade in the pay scale of Rs. 950-1500 in compliance with the directions of this bench of the Tribunal which is made subject to final outcome of Special Leave Petition pending before the Hon'ble Apex Court. They have also been given promotion to the next grade on 01st April 1999. Shri Jasveer Singh and Shri Subhash



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Chander have been given the promotions after completion of 12 years of service and Shri Balbir Singh before completion of 12 years of service. The benefits of first financial upgradation cannot be given since the very scale granted to the applicants for the present is subject to the final outcome of Special Leave Petition pending before the Hon'ble Apex Court. They are also not entitled to any financial gain since they have already been promoted to the post of Pipe Fitter (SK) and given pay fixation as per the rules. The grounds raised in the Original Application have been generally denied. The same is followed by a rejoinder to the reply whrein the copies of certain part-II orders have been annexed.

5. Both the learned counsel for the parties have reiterated the facts and grounds raised in their respective pleadings as noticed above. Learned counsel for the applicants has submitted that as per the clarifications at annexure A/4 and A/5, the applicants are entitled to the first financial upgradation since they have remained in the same pay scale ever-since their appointments. He has also submitted that even if, any promotion is made in the identical scale of pay, that would not make any difference as per the said clarifications.

6. Per contra, learned counsel for the respondents has submitted that the applicants have enjoyed further promotion to the post of Pipe Fitter (SK) w.e.f. 01.04.1999 and having enjoyed one promotion, they are not entitled for the benefits of first financial upgradation under the Scheme. On specific query regarding the pay scale to which the applicants were said to be promoted, learned counsel for the respondents submitted that the Pipe Fitter (SK) also carries scale of Rs. 950-1500 and the same was given keeping in view the position the applicants were holding since at the relevant time there was no order



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of their fixation of pay in pay scale of Rs. 950-1500 from their initial appointment. He further submitted that the very scale of pay granted to them from initial appointment is subject to the decision of the Hon'ble Apex Court. He has lastly contended that if the applicants are to be given the benefits of first financial upgradation, they shall have to pass the requisite trade test. In the rejoinder, learned counsel for the applicants was bit reluctant and submitted that they have already taken a trade test of the applicants. However, it was reconciled that the trade test was taken for the Pipe Fitter (SK) in the same pay scale and in which they have been initially appointed and not in the next higher post to which benefits under said scheme may be admissible.



7. We have considered the rival submissions put forth on behalf of both the parties. As far as the factual aspect of the matter is concerned, the same remains undisputed. In any case, it is a fact that all the applicants have remained in the same pay scale ever-since their appointments. The so-called promotions were also made in the same pay scale and the trade test passed also were for the same pay scale.

8. Now adverting to the legal aspect of the matter, we extract the contents of the relevant clarifications issued on dated 27.1.2000 (A/4) for clarifying the controversies involved in the instant case while considering the cases for grant of benefits under the ACP Scheme. The contents of the relevant portions are reproduced as under: -

"Whether the ACP Scheme is applicable to employees who were promoted from a post, which was carrying lower pay scale at the relevant time, to a post carrying higher pay scale but subsequently the pay scale of such lower post was upgraded at par with the pay scale of the promoted post based on job evaluation:

If the higher grade post to which posted on promotion carries identical pay scale, the individual will not be considered as having got one promotion."

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The bare perusal of the aforesaid clarifications makes it evident that the applicants are very much entitled for consideration of grant of benefits under the first financial upgradation from the dates of completion of 12 years of service or 09.08.1999 whichever is later.

9. As regards the confusion regarding the passing of the trade test is concerned, para 6 of the very ACP Scheme lays down that one is required to fulfill the eligibility conditions meant for regular promotion and for the post in the next grade a trade test is prescribed, therefore, the applicants shall have to undergo the requisite trade test and the passing of their trade test in the first instance would be essential for enjoying the benefits from the due dates as indicated above. The respondents may also treat the benefits granted under the ACP Scheme as subject to the outcome of the SLP which is said to be pending before the Hon'ble Apex Court.



10. In the premises, the Original Application has ample force and the same stands allowed. The impugned order dated 25.02.2005 (Annexure A/1) is hereby quashed. The respondents are directed to extend the benefits under ACP Scheme to the next grade in the pay scale of Rs. 4000-6000 in accordance with the rules in force and our observations made in penultimate para. In case the applicants are found fit for grant of the said benefits, they shall be entitled to all consequential benefits. This order shall be complied with within a period of three months from today. The parties are directed to bear their own costs.

R R Bhandari
(R R BHANDARI)
ADMINISTRATIVE MEMBER

J K Kaushik
(J K KAUSHIK)
JUDICIAL MEMBER

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