

के.प्र.अ. (प्रक्रिया) निषमावली के नियम 22 के अर्न्तगत ति: शुल्क प्रति

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

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**Original Application. Nos. 123,126,127, 159 &160/2006,
14/2007**

and

Original Application no. 95/2007

Misc. Application Nos. 168/2007 & 191/2007

Date of order: 11th September, 2008

Hon'ble Mr. D.Sankaran Kutty, Judicial Member.

Hon'ble Mr. Tarsem Lal, Administrative Member.

Dinesh Kumar, S/o of Shri Madan Prakash, aged 43 years, Valveman in the office of Garrison Engineer (AIR force) MES, Bikaner, R/o C/o Coffee House, Rani House, Bikaner.

: Applicant in O.A. No. 123/2006.

Tulsa Ram. S/o Shri Ratan Lal, aged 49 years, Valveman in the office of Garrison Engineer (S) MES Bikaner, R/o Mohalla Badi, Basolai, Bikaner.

: applicant in O.A. No. 126/2006 & MA No.168/07.

Om Prakash S/o Shri Chaina Ram aged 40 years, Valveman in the office of Garrison Engineer, Air Force, MES, NAL, Bikaner r/o T.14/3, MES Quarters, Nal, Bikaner.

Applicant in O.A. No. 127/2006
Respondent in M.A. No.191/2007

Shaukat Ali, Son of Shri Abdul Sattar, aged 50 years, valveman in the office of Garrison Engineer, Air Force, MES Bikaner R/o Near Prakash Chitra, Bikaner.

: Applicant in O.A. No. 159/2006

Morish Samson, S/o Shri Stiphon Samson, aged 43 years, Valveman in the office of Garrison Engineer, NAL, Air Force, MES, Bikaner, R/o MES campus, Bikaner.

: applicant in O.A. No. 160/2006.

Om Prakash Son of Shri Moda Ram, aged 45 years, Valveman in the office of Garrison Engineer, Army MES, Bikaner, R/o Near Tyagi Vatika, Dhobi Talai, Bikaner.

: Applicant in O.A. No. 14/2007.



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Krishan Gopal S/o Shri Diwan Chand, aged 47 years, Valveman in the office of Garrison Engineer, (Air force) MES, Suratgarh, District, Shri Ganganagar, R/o Ward No. 28, Near Pipali Chowk, Suratgarh, District, shri Ganganagar.

: Applicant in O.A. No. 95/2007.

Rep. By Mr. Vijay Mehta : Counsel for the applicants in all the OAs.

Versus

Union of India through the Secretary, Government of India, Ministry of Defence, Raksha Bhawan, New Delhi

R.1 in all the O.As. & M.A. No.168/2007
Applicant No.1 in M.A. No. 191/07 in O.A NO. 127/2006

Garrison Engineer, Air Force, MES, Nal, District Bikaner.

R.2 in O.A. No. 123/2006

AGE, E/M (Air Force) Nal Bikaner

R.3 in O.A. No.123/2006

Commander Works Engineer, Air Force, MES, Bikaner,
R.2 in O.A. Nos. 127,159 & 160/2006, 95/2007
R.3 in O.A. NOs. 126/2006, 14/2007
& M.A. No. 168/07.

Applicant No.2 in M.A. No. 191/07 in O.A. No. 127/06

Commander Works Engineer, Army (P) MES, Bikaner.

R.2 in O.A. Nos.126/2007, 14/2007.
& M.A.No. 168/07

Mr. M. Godara proxy counsel for
Mr. Vinit Mathur : counsel for the respondents in O.A. Nos.
123, 159 & 160/2006,127/2006,

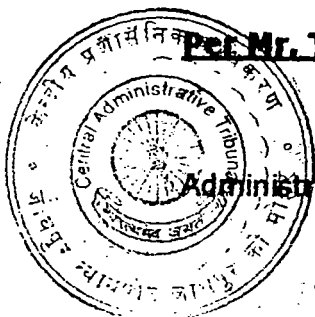
Smt. K. Parveen : Counsel for respondents in O.A. No. 14/2007.
126/2006,127/2006 & 95/2007

Shri Ravi Bhansali ; Counsel for R 1 & 2 in O.A. No. 95/2007

ORDER.

Per Mr. Tarsem Lal, Administrative Member.

All these applications were filed under Sec 19 of the
Administrative Tribunals Act, 1985. As the issue involved and the relief



prayed for in all these O.As are similar, they were heard together with the consent of learned counsel and are being disposed of by this common order. The facts of the case and pleadings have been taken from O.A No.123/2006 and supplemented from other OAs wherever applicable.

2. All the applicants were appointed as Valveveman in semi skilled category in the scale of pay of Rs. 800-1150 on the following dates:

<u>Name of the applicant.</u>	<u>O.A. No.</u>	<u>date of appointment.</u>
Dinesh Kumar-	123/2006	26.02.1988
Tulsa Ram	126/2006	July 1982
Om Prakash	127/2006	29.02.1988
Shaukat Ali	159/2006	07.06.1982
Morish Samson	160/2006	25.02.1988
Om Prakash	14/2007	07.01.1984
Krishan Gopal	95/2007	18.01.1978

They have prayed for a direction to the respondents to grant ACP in pay scale of Rs. 4000-6000, after completion of 12 years from the date of initial appointment and to make payment of such financial upgradation. They have also prayed that the respondents be restrained from subjecting them for the trade test for Pipe Fitter (HS)

3. The facts as relevant to the case are that the applicant was appointed as Valveveman on 26.02.88 in the Semi Skilled category in the pay scale of Rs. 800-1150, though he was entitled to get the scale of pay of Rs. 950-1500, Skilled category. Therefore, he filed O.A. NO. 51/2002, along with some other similarly placed persons, before this Bench of the Tribunal. This Tribunal vide its order dated 18.10.2002, directed the respondents to grant skilled category pay scale of Rs.



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950-1500 (pre-revised)/ Rs. 3050-4590 (revised). The respondents in compliance of this order granted the pay scale of Rs. 950-1500/Rs.3050-4590 to the applicant from the date of his initial appointment.

4. The Government of India, introduced a scheme called "Assured Career Progression" scheme on 09.08.99 (Annex.A/2). The Scheme provides two financial upgradations on completion of 12 & 24 years of service. The applicant having completed 12 years of service without availing any promotion on the post of Valveman, he was called upon to appear for a trade test on 26.02.2000 for grant of ACP. The applicant appeared in the trade test held on 09.02.2001, and he was declared as passed in the trade test vide order dated 26.03.2001 (Annex. A/3).

5. Subsequently, the respondent No. 2 vide order dated 06.01.2003, (annex. A/4) in modification of earlier order dated 30.04.2001, granted the ACP from 26.02.2000. Thereafter the respondent No.2 vide order dated 01.08.2005(Annex. A/5) fixed the pay of the applicant at Rs. 4000/- (on grant of first financial upgradation) in the scale of pay of Rs. 4000-6000. Though the said order was issued no payment was made to the applicant. Hence he submitted representations to respondent No. 3 on 16.11.2005 & 18.04.2006. The respondent No.3 forwarded his representations to respondent No. 2. The 3rd respondent vide his order dated 25.04.2006(annex. A/1) informed the applicant that since he had been erroneously granted the ACP benefits, the payment of arrears

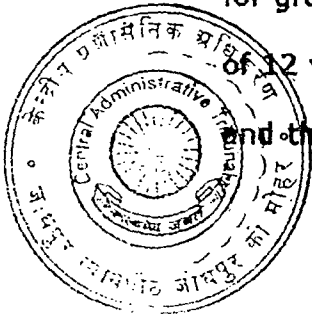


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has been withheld. However, the respondent No. 3 did not enclose copy of order dated 22.08.2005 mentioned in Annex. A/1, alleged to have been passed by respondent No. 2. The applicant states that Respondent No.2 also did not communicate order dated 22.08.2005 and before passing such order no opportunity was given to him. Therefore the applicant submits that the impugned order annex. A/1 has been passed in violation of principles of natural justice. He therefore prayed that since the action of respondents is arbitrary and discriminatory and is hit by Art. 14 and 16 of the Constitution of India, Annex. A/1 may kindly be quashed and costs awarded to the applicant.

6. The respondents have contested the O.A by filing a detailed reply, inter alia pleading that the applicant was initially appointed as Valve Man on 26.02.1988 in the semi skilled category in the pay scale of Rs. 800-1150. The applicant approached this Hon'ble Tribunal for granting him the pay scale of Rs. 950-1500 (Rs. 3050-4590) from the date of his initial appointment. This Tribunal vide its order dated 18.10.2002 and the Government of India, Ministry of Defence order dated 20.07.2003, directed that the category of Valve man born on the strength have been granted pay scale of Rs. 950-1500 (Rs. 3050-4590) from their initial date of appointment.

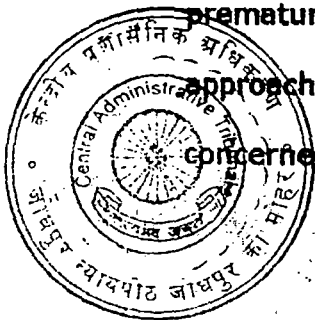
7. The respondents have stated that the applicant has filed a case for grant of ACP in the scale of pay of Rs. 4000-6000, after completion of 12 years. The pay fixation case was forwarded to LAO (A), Bikaner, and the Local Audit Office Bikaner has fixed his pay in the scale of Rs.



4000-6000 with effect from 28.02.2000. In the meantime, the LAO (A) has intimated that the said scale of pay of Rs. 4000-6000 would be admissible only to Highly Skilled Category. The applicant being in the semi skilled category, entitled for the benefits under the pay scale which is applicable only for the employees of the HS category.

8. The respondents have further stated that as for grant of benefit under the ACP scheme is concerned, passing of the trade test is mandatory. Since the applicant has passed only the test relating to pipe fitter grade, he has not passed the trade test for Highly Skilled Category and thus the benefits admissible to the employees on passing the HS category trade test are not admissible to the applicant. The ACP was erroneously granted to the applicant in the scale of pay of Rs. 4000-6000, which is admissible for highly skilled category and therefore the same has been ordered to be recovered from the applicant. The applicant has preferred this O.A against the recovery of excess payment paid to him by the respondents.

9. A representation was received from the applicant and the same was taken up with the higher authorities for clarification about the pay scale and the matter is still pending before the competent authority and the clarification is still awaited. Therefore, the present O.A is premature and is liable to be dismissed as the applicant has approached this Tribunal without waiting for the clarification from the concerned authorities. The respondents have pleaded that there is no



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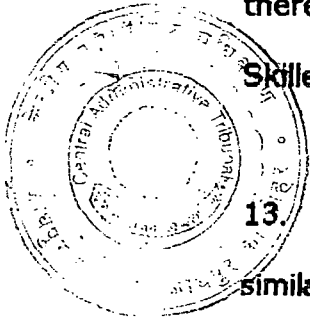
violation of Art. 14 and 16 of the Constitution of India and the O.A. deserves to be dismissed.

10. The applicant has filed rejoinder reiterating the averments already made in the O.A. The respondents have also filed additional affidavit reiterating the averments made in their reply.

11. Learned counsel for the parties have been heard. Both of them reiterated the arguments already made in their respective pleadings. The learned counsel for the respondents emphatically pleaded that the applicant was appointed as Valverman in the pay scale of Rs. 800-1150, whereas he has already been granted the pay scale of Rs. 950-1500 (Rs. 3050-4590) and therefore he is not entitled to the first financial upgradation of Rs. 4000-6000. He further pleaded that the applicant has not passed the Trade Test prescribed for promotion to the category of Highly Skilled in the pay scale of Rs. 4000-6000.

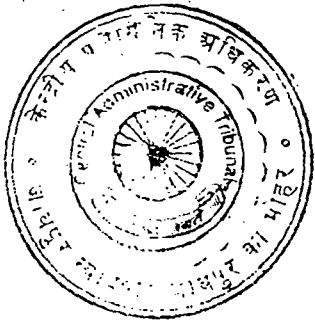
12. On the contrary, the learned counsel for the applicant has stated that he has passed the trade test for the post of Pipe Fitter and therefore, he is not required to pass the trade test again for the Highly Skilled category.

13. The learned counsel for the applicants further pleaded that in similar circumstances two of their colleagues have filed O.A. No. 325/2002, before this Bench of the Tribunal. The above O.A. was allowed by this Bench of the Tribunal vide its order dated 25.02.2004.



The learned counsel also submitted that in the above case, the respondents had filed D.B Civil Writ Petition No. 894/2005, before the Hon'ble High Court of Judicature for Rajasthan at Jodhpur and the said writ petition was dismissed by the Hon'ble High Court of Judicature for Rajasthan at Jodhpur vide judgement dated 15.02.2005.

14. The learned counsel for the respondents emphatically pleaded that in view of provisions made at para 6 of Annex. I (Conditions for grant of benefits under the ACP and the clarification No. 16 pertaining to the ACP scheme i.e. all promotion norms have to be fulfilled for upgradation under the ACP scheme . As such, no upgradation can be made, if any employee fails to qualify departmental/skill test prescribed for the purpose of regular promotion. He has also referred to clarification issued by the Ministry of Defence, under their ID No. 11(6)/98 D (Civ.I) dated 04.01.2002, which stipulates as under:



" 2. DOP & T has clarified that as a special case the employees who qualify the trade test, in first attempt after 09.08.99 may be allowed benefit of ACP from 09.08.99 only and not from the date of passing of trade test. However, employees who qualify in the trade test in subsequent attempts will be allowed financial upgradation only from the date of passing of trade test. In no case, the benefit should be given to an individual w.e.f. 09.08.99 who had earlier appeared in the Trade Test before 09.08.99 but failed or has not appeared in trade test at all or has not otherwise passed the trade test."

15. We have considered this case carefully and perused the documents placed on record. It is amply clear from the pleadings of the case that the applicant was initially appointed as Valve Man in the pay scale of Rs. 800-1150. He was granted the pay scale of Rs. 950-1500(Pre-revised)/Rs.3050-4590 (revised) by this Tribunal from the date of initial appointment on the post of Valve Man. Therefore, the argument of the learned counsel for the respondents is not sustainable

that the applicant has already been granted the pay scale of Rs. 3050-4590, therefore, the applicant is not entitled to financial upgradation under the ACP scheme after completion of 12 years with effect from the date of his initial appointment i.e. 26.02.1988.

16. As regards passing of the Trade Test for highly skilled category, following has been stipulated in para 6 of annex. I- Annex. A/2 of the instant O.A.) to the office memorandum dated 09.08.99, under which the orders relating the ACP for the Central Civilian employees has been issued.

Para 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;

17. It is further seen from clarifications issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, OM dated 10.02.2000, Clarification No. 16 reads as under:

S.No.	Point of doubt	Clarification.
16.	The relevant recruitment/service Rules prescribe departmental examination/skill test for vacancy based promotion. However, this need not be insisted for upgradation under ACPs.	As per the Scheme (Condition No. 6), all promotion norms have to be fulfilled for upgradation under the Scheme. As such, no upgradation shall be allowed if an employee fails to qualify departmental/skill test prescribed for the purpose of regular promotion.

It is seen in this case, that the benefit of ACP was sanctioned earlier by the respondents and approved by the Local Audit Officer, (Army)

Bikaner. But the same was withdrawn by the LAO (B) on reconsideration of this case.

18. Although the respondents have pleaded that trade test is required to be passed by the applicants for grant or giving any benefit under the ACP scheme for placing them in the pay scale of Rs.4000-6000/- but they have not placed any documents on record to show under which the applicants are required to pass the prescribed Trade Test. This case was adjourned on two days i.e. on 03.09.2008 & 04.09.2008 and the learned counsel for the respondents was advised to place on record copy of any rules/regulation/guidelines/circular under which the test has been prescribed. But when the case was finally heard on 08.09.2008 he had failed to produce any document under which such test has been prescribed. However, the learned counsel for the respondents emphatically pleaded that all the promotion norms are to be fulfilled for upgradation under the scheme.



It is considered that ACP scheme issued by the Government of India vide its order dated 09.08.99 is an omnibus scheme, applicable to all employees of various Ministries and Departments. Wherever test is required to be held, in such cases, the same is required to be prescribed under some rules or instructions. In the instant case, neither any Rules nor instructions have been placed on record by respondents nor a copy could be produced by the learned counsel for the respondents.

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20. It is pertinent to note here the operative portion of the order dated 25.02.2004 passed by this Bench of the Tribunal in O.A. No. 325/2002 [Rameshwar Ram and anr. Vs. UOI and ors.] the facts of which were similar to the present O.A under consideration of this Bench :-

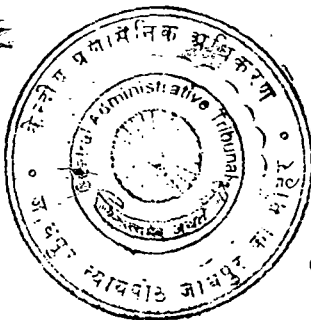
"9. In the conspectus of the above discussion, we find merit and substance in this Original Application and the same stands allowed. The respondents are directed to grant the benefits of first financial upgradation under ACP scheme in the pay scale of Rs. 4000-6000 from the due date with all consequential benefits; however, the arrears shall be restricted to three years prior to the date of filing of this Original Application. This order shall be complied within a period of three months from the date of receipt of a copy of this order. However, the parties shall bear their own costs."

21. In the above case D.B.Civil Writ Petition no. 894/2005 was preferred by the respondents before the Hon'ble High Court of Judicature for Rajasthan at Jodhpur. The said Writ Petition was dismissed by the Hon'ble High Court of Judicature for Rajasthan at Jodhpur vide its judgement dated 15.02.2005. While dismissing the above Writ Petition the Hon'ble High Court of Judicature for Rajasthan at Jodhpur, has observed as under:

" We have heard learned counsel for the petitioner and perused the order of Central Administrative Tribunal (herein after referred to as the 'Tribunal') dated 25.02.2004.

The respondent was denied benefit of Assured Career Progression Scheme (In brief 'ACP' Scheme) on completion of 12 year's service and having passed the trade test. The petitioner has tried to defend the case on the ground that the respondent had passed the trade test for promotion on the post of Pipe Fitter and that promotion has already been given. This aspect has been considered by the Tribunal in depth and similarly situated person has already been given the benefit of ACP scheme.

In our opinion, no case is made out for interference by this Court in exercise of powers under Article 226/227 of the Constitution of India."



22. Respondents have pleaded that in some similar cases SLPs have been preferred by the respondents and the same is pending before the Hon'ble Supreme Court of India. Counsel for both parties, however,

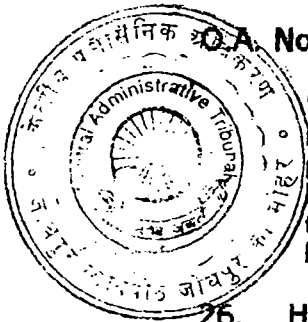
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confirmed that in none of the cases cited in this order, either of party has approached the Hon'ble Apex Court and no stay order by any Court has been produced before us.

23. We make it clear that the decision rendered by us in the instant cases, shall be subject to the outcome of SLPs, if any, preferred or pending before the Hon'ble Apex Court.

24. In view of the averment made in para 23 above, Misc. application No.191/2007 filed in O.A. No. 127/2006, preferred by the respondents for deferring the hearing of O.A. No. 127/2006 till the finalization of SLP No. 11442/2003 [Union of India vs. Gopa Ram], is hereby dismissed.

25. Misc. Application No. 168/2007 has been filed by the applicant in O.A. No. 126/2006, praying for the following relief:



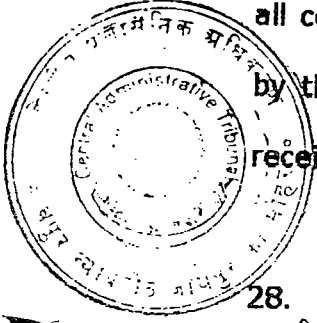
"That there is no provision in the rules giving right to the respondents to file affidavits and that too at any stage of the case. In view of the provisions contained in the Rules, the said additional affidavit cannot become part of the record and therefore deserves to be rejected. It is therefore, prayed that the said additional affidavit may kindly be ordered to be rejected with costs."

26. However, as these cases have been finally heard and decided, the said M.A does not survive.

27. In view of the above discussion the O.A Nos. 123,126,127, 159 & 160/2006, 14/2007 & 95/2007 are allowed. Misc. application Nos.168/2007 and 191/2007 are hereby dismissed. The respondents are directed to grant the benefits of first financial upgradation under

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ACP scheme in the pay scale of Rs. 4000-6000 from the due date with all consequential benefits. The above direction shall be complied with by the respondents within a period of three months from the date of receipt of a copy of this order.



28. No order as to costs.

[Tarsem Lal]
Administrative Member.

Jsv.

[D. Sankaran Kutty]
Judicial Member.


CERTIFIED TRUE COPY

Dated... 12.9.2008

N. G. D. S.

अनुभाग अधिकारी (न्याय.)
Section Officer (Judl.)
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
जोधपुर बेंच जोधपुर
Jodhpur Bench Jodhpur.

Part II and III destroyed
in my presence on 15/11/14
under the supervision of
section officer () as per
order dated 19/08/2014


Section officer (Record)