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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Date of decision: 25th May, 2011

**CORAM: Hon'ble Dr. K.B. Suresh, Judicial Member.
Hon'ble Mr. Sudhir Kumar Administrative Member.**

1. **Original Application No. 290/2007**

Bal Kishan s/o Shri Laxmi Narayan r/o Plot No. 252, Sector 'D', Sarswatinagar, Basni, Jodhpur, at present employed on the post of Lab Assistant under Senior Divisional Mechanical Engineer (Diesel), Diesel Shed, Bhagat Ki Kothi, North Western Railway, Jodhpur.

...Applicant

Mr. J.K. Mishra, counsel for applicant.

Versus

1. The Union of India through the General Manager, North Western Railway, Jaipur.
2. Senior Divisional Personnel Officer, North Western Railway, Jodhpur Division, Jodhpur.
3. Dy. Chief Chemist and Metallurgist (Estt), Carriage Workshop, North Western Railway, Ajmer.
4. Chief Works Manager, North Western Railway, Jodhpur.

...Respondents

Mr. Salil Trivedi, counsel for respondents 1,2 & 4
None for respondent no.3

..... Respondents

2. **Original Application No. 100/2008**

Kailash Vasandani s/o Shri Mangha Ranji G Vasandani R/o 18-E/129, Chopasani Housing Board, Jodhpur 342008, Jodhpur, at present employed on the post of Lab Assistant Grade-I under

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Senior Divisional Mechanical Engineer (Diesel), Diesel Shed, Bhagat Ki Kothi, North Western Railway, Jodhpur.

....Applicant

Mr. J.K. Mishra, counsel for applicant.

Versus

1. The Union of India through the General Manager, North Western Railway, Jaipur.
2. Senior Divisional Personnel Officer, North Western Railway, Jodhpur Division, Jodhpur.
3. Dy. Chief Chemist and Metallurgist (Estt), Carriage Workshop, North Western Railway, Ajmer.
4. Chief Works Manager, North Western Railway, Jodhpur.

....Respondents

Mr. Salil Trivedi, counsel for respondents 1,2,3 & 4

3. **Original Application No. 66/2008**

1. Krishna Kumar Sharma s/o Sh. Babu Lal Sharma R/o Laxmi Niwas, Vedon Ka Bas, Brahmpuru, Jodhpur.
2. Naresh Babu Sharma s/o Paras Ram Ji Sharma, R/o 434, 3/C Rod, Shardarpura, Jodhpur.
3. Santosh Kumar Singh s/o Shri Shiv Pujan Singh Qtr. No. 2301, Railway Colony, Bhagat Ki Kothi, Ner Bhagat Ki Kothi Railway Station, Jodhpur.

(All the aforesaid applicants are working as Laboratory Assistant(s) under the Senior Divisional Mechanical Engineer (Diesel), Bhagat Ki Kothi, North Western Railway, Jodhpur).

..... Applicants

Mr. N.K. Khandelwal, Counsel for the applicants.

Versus

1. The Union of India through the General Manager, North Western Railway, Headquarters office, Jaipur.
2. The Divisional Railway Manager, North Western Railway, Divisional Office, Jodhpur.



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3. The Senior Divisional Mechanical Engineer (Diesel), Bhagat Ki Kothi, North Western Railway, Divisional Office, Jodhpur.
 4. The Deputy Chief Chemist and Mythologist, (Carriage and Wagon), Workshop, North Western Railway, Ajmer Division, Ajmer.
 5. The Chief Works Manager (Workshop), North Western Railway, Divisional Office, Jodhpur.

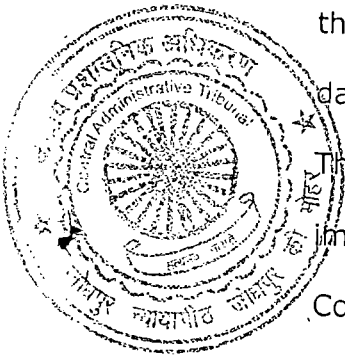
Mr. Salil Trivedi, counsel for respondents 1,2,3 & 5
None for respondent no.4.

..... Respondents

ORDER

Per Sudhir Kumar , Member (Administrative)

These three cases were clubbed together for the purposes of hearing and orders, and are therefore being dealt with together in this common order. The Railway Board's Circular RBE No. 187/98 dated 17.8.98 is the crux of the matter in these three cases. Through this circular, after examining the effect of the implementation of the recommendations of the 5th Central Pay Commission for introduction of new scales for certain categories of posts, on functional considerations, the Railways had decided to introduce the new pay scales in certain categories. It was ordered that the date of the effect of these instructions would be 01.8.1998 and in the case of Lab. Assistants in Medical Department, and Mechanical Department, certain different pay scales had been prescribed. A constitutionally valid distinction had been made in that circular, stating that all regular Lab. Assistants, who were in substantive capacity as such, in the pre-revised scale of pay of Rs. 975-1540/- as on 31.12.1995, before the introduction of new pay



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scales under the 5th Central Pay Commission w.e.f. 1.1.1996, would be eligible for being considered directly for promotion to the post of JCMA (pre-revised pay scale of Rs. 1600-2060/-, which had stood revised to Rs. 5000-8000/-), subject to availability of posts and fulfillment of other conditions, without reference to the condition of residency of 2 years in each of the intermediate pay scales of Rs. 1320-2040/- pre-revised (Rs. 4000-6000/- revised) and Rs. 1400-2300/- pre-revised (Rs. 4500-7000/- revised), and w.e.f. 1.8.1998, the three graded categories of Lab. Assistants were as follows:-



<u>Lab Assistant-III</u>	<u>Rs. 3050-4590</u>	70%
	Rs. 3200-4900/-, which was the earlier pay scale, was to be abolished, when all of them had been promoted to the higher pay scale and till then the scale being personal to the existing incumbents in that pay scale as on 1.8.1998.	0%
<u>Lab Assistant-II</u>	<u>Rs. 4000-6000</u>	20%
<u>Lab Assistant-I</u>	<u>Rs. 4500-7000</u>	10%

2. It was further prescribed that while the percentage of 70% in the Lab. Assistant Gr. III grade of Rs. 3050-4590/- would be reached only after all existing incumbents in the earlier abolished grade of Rs. 3200-4900/- had moved into the higher posts of Grade II or Grade-I by promotion/superannuation etc., but there was no such prescription in respect of 20% posts in Lab. Assistant Gr. II Rs. 4000-6000/-, and 10% of the posts in Lab. Assistant Gr.

296

I Rs. 4500-7000/-. Thus it is clear that w.e.f. 1.8.1998 the promotional hierarchy for the persons appointed before 1.8.1998 was Lab. Assistant-III Grade Rs. 3200-4900/- personnel to be promoted to the Lab Assistant-II Grade of Rs. 4000-6000/-, and then further to Lab Assistant-I Grade Rs. 4500-7000/-. Only in respect of those regularly appointed Lab Assistants, who were already in a substantive capacity in the pre-revised pay scale Rs. 975-1540/- (Rs. 3200-4900/-) as on 31.12.1995, the residency period of 2 years each in the next higher scales of Lab. Asstt. Grade II Rs. 1320-2040 (Rs. 4000-6000/-) and of Lab Asstt. Grade I Rs. 1400-2300/- (Rs. 4500-7000/-) was waived. Therefore, any Lab Assistant freshly appointed as such in substantive capacity from 1.1.1996 onwards in Grade III Rs. 3050-4590/-, or in the earlier grade of Rs. 3200-4900 abolished w.e.f. 1.8.1998 was supposed to move only to the next higher pay scale of Lab Assistant-II Rs. 4000-6000/- and Lab. Assistant-I Rs. 4500-7000/-, with residency condition of a minimum period of 2 years in those two higher pay scales.

3. The Judgment and order dated 26.8.2005 passed by the Principal Bench of this Tribunal in O.A. No. 2750/2004 (**S.K. Gupta & ors. Vs. Union of India & Ors.**) cited by the applicants of these three O.As. can be distinguished from the cases of present applicants. In **S.K. Gupta's** case, the issue before the Principal Bench was as to when the applicants therein had been promoted directly from the post of Lab Khalasi to the post of Lab Assistant, without occupying the intermediate post of Helper Khalasi, whether it amounted to one promotion, which would entitled them



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to the second ACP benefit to the next higher pay scale after 24 years of service, or it would amount to two promotions, which would disentitle the applicants therein from any ACP Scheme financial up-gradation to the next higher pay scale in their hierarchy. The Principal Bench of this Tribunal had held that since the Rules permit a direct promotion from the post of Lab Khalasi to Lab Assistant, bypassing the intermediate post of Helper Khalasi, so it cannot be implied that while promoting the applicants therein from the posts of Lab Khalasi to the posts of Lab Assistants, two promotions had been given to the applicants. Therefore, the Principal Bench ordered that after completion of 24 years of service in S.K. Gupta and Others' case the benefit of second ACP by way of next financial upgradation in their cases should only be to the grade applicable to the next higher posts in the hierarchy above Lab Assistants for the purpose of their regular promotion, and the Tribunal had held that since at that time the applicants therein were entitled for next promotion to the post of JCMA in the pay scale of Rs. 5000-8000/-, they were entitled to be given the 2nd financial upgradation under the ACP scheme also in the same grade of Rs. 5000-8000/-. It clear from the Judgment that the finding arrived at in S.K. Gupta & Ors. case by the Principal Bench was in personem only, applicable only to the cases of the four applicants before it, and was not in rem, as that Judgment could not have been made applicable to, or utilized as a precedent by anybody else, who had moved upwards in the regular course, from the post of Lab Khalasi to the intermediate post of



121

Helper Khalasi, and then to the next post of Lab Assistant, which would have amounted to his having availed of two promotions.

4. In the case of the present applicants in all the three O.As., it is not their case that they were regularly appointed in substantive capacity as Lab Assistants prior to 31.12.1995, when, like in the case of S.K. Gupta & Ors. (Supra), later on, they were to be considered to be eligible for being considered for promotion directly to the post of JCMA, in the pay scale of Rs. 1600-2660/- (revised to Rs. 5000-8000/-), subject to availability of posts, and fulfillment of other conditions, and without reference to the usual conditions of residency of 2 years each in the intermediate pay scales of Rs. 4000-6000/- and Rs. 4500-7000/-, as prescribed by Railway Board's Circular RBE No. 187/98 dated 17.8.1998.

5. But there is no denying the fact that any body who was substantively appointed as Lab Assistant III in the pay scale of Rs. 3050-4590/- after 1.1.1996, had to go through promotions in next two intermediate pay scales of Lab Assistants II Rs. 4000-6000/- and Lab Assistants I Rs. 4500-7000/-, with 2 years of residency in each of these two pay scales, and w.e.f. 1.8.1998, by virtue of operation of the RBE circular No. 187/98 dated 17.8.1998, every body among the substantively and regularly appointed Lab Assistants stood placed (a) either in the Lab Assistant Grade III, in the new pay scale, or in the old/abolished pay scale, or (b) Lab Assistant Grade II, or (c) Lab Assistant Grade I, depending upon the pay scale and personal capacity residency in a particular pay scale, as on that date of 1.8.1998.

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29

6. The Judgment of Principal Bench in **S.K. Gupta & Ors.** case (Supra) had nowhere held that the channels of promotion through the intermediate pay scales of Rs. 4000-6000/- for Lab Assistant Grade II, and pay scale Rs. 4500-7000/- for Lab Assistant Grade I, as ordered through the RBE Circular No. 187/98 dated 17.8.98, had been struck down by the Principal Bench. Therefore, it is clear that the applicants of the three O.As. herein, cannot claim for the intermediate pay scales of their promotional avenues (AVC) not being applicable to their cases after 1.8.1998. Therefore, their promotional avenues lie from the posts of Lab Assistants Grade III to Lab. Assistants Grade II, and onwards to Lab Assistant Grade I.

OA No. 290/2007

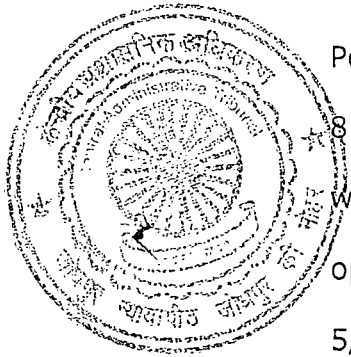
7. Coming to the specific cases of the applicants before us, it is seen that the applicant of O.A. NO. 290/2007 Bal Kishan was appointed as Lab Khalasi on 17.11.78. He was promoted to the post of Lab Assistant only on an ad-hoc basis w.e.f. 23.2.82. In fact he took the notional basis substantive appointment against the post of Lab Assistant (held by him till then in the ad-hoc capacity only) in the year 1990. He came before this Tribunal earlier in O.A. 05/1993, praying for regularization on the post of Lab Assistant post, maintaining his ad-hoc basis seniority, amongst other reliefs. This Tribunal had in its order dated 7.3.2000 in his earlier O.A. No. 5/1993 held that no selection written or oral was required to be conducted for regularization on the post of Lab Assistant, and the period of his ad-hoc appointment as Lab Assistant should have been considered for regularization on the



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130

basis of seniority-cum- suitability. The respondents came before this Tribunal in a Review Application, pointing out that the applicant Shri Bal Kishan did not possess the requisite qualification of Matriculation/Higher Secondary with Science as required for the posts of Lab Assistant, but the Review Application also came to be dismissed on 25.7.2000. Thereafter, the respondent department regularized the applicant Shri Bal Kishan on the post of Lab Assistant with retrospective effect w.e.f. 23.2.82 vide their order dated 2.11.2000, and the applicant was in the meanwhile also granted proforma seniority, even though the department had filed a Writ Petition in the Rajasthan High Court, and the order granting this benefit to the applicant mentioned that it would be subject to the final Judgment of the Hon'ble Rajasthan High Court on the Writ Petition.



8. The Writ Petition filed by the respondent department was admitted by the Hon'ble Rajasthan High Court, and the operation of this Tribunal's orders dated 7.3.2000 passed in O.A. 5/93, and the order dated 25.7.2000 passed in R.A. No. 13/2000, were both stayed until further orders by the Hon'ble Rajasthan High Court vide order dated 4.10.2000. However, since by that time the order of this Tribunal had already been implemented, subject to the outcome of the Writ Petition, on 18.9.2000 (Annexure A/5) a Bench of this Tribunal held that the stay granted by the Hon'ble High Court was infructuous. As a result, by virtue of these orders, the applicant Shri Bal Kishan stood appointed as Lab Assistant w.e.f. 23.2.82 in substantive capacity, even without his possessing the requisite educational qualification

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for the same, subject to the final orders of the Hon'ble High Court, and as on the dates 31.12.1995/1.1.1996, he was in the 4th CPC pay scale of Rs. 975-1540/-, equivalent of 5th CPC scale of Rs. 3200-4900/-. The said Writ Petition No. 2064/2001 is stated to be still pending before the Hon'ble High Court, and therefore it cannot be taken that through the conditional order for regularization of his appointment as Lab Assistant with retrospective effect 23.2.82 over a number of private respondents Nos. 4,5,6 & 7 of the O.A. No. 5/93, he had been appointed in substantive capacity, or that such an order, which was conditional from the very beginning, has become final. In that sense, the respondents have taken a specific plea that the **S.K. Gupta & Ors.** case (Supra) is not applicable in the instant case, as the same is distinguishable on facts.

9. Unless the issue is decided by the Hon'ble High Court finally in favour of the applicant Shri Bal Kishan, he cannot be allowed to claim his substantive appointment w.e.f. 23.2.82 as a Lab Assistant, and he cannot also claim further ACP benefits from the post of Lab Assistant, claiming parity with **S.K. Gupta** case (Supra). Therefore, it is clear that without being substantively appointed in the lower post first, grant of further benefits of financial up-gradations to higher pay scales under ACP Scheme cannot be allowed in his case. Therefore, the reliefs as prayed for by him in his O.A. cannot be granted.

O.A. No. 100/2008

10. Applicant of this O.A. submitted that the Advance Career Progression (ACP) Scheme, which ought to have been normally available to him for progression, of his career, has, in



his case, turned out to be in actual practice denial of the benefits due to him. He became a regular employee of the Railways on 12.8.1975 as Lab. Khalasi. He was granted an ad-hoc promotion as Lab. Assistant in the grade of Rs. 260-430/- on 8.12.1976 and was subsequently regularized w.e.f. 18.12.1979 in the Grade Rs. 975-1540/- (revised grade of Rs. 3200-4900/-). Also, it appears that in 1996, he also claimed for regularization by counting his experience against that ad-hoc posting, and filed an O.A. No. 303/1996 before this Tribunal, which was dismissed vide order dated 19.7.2000. Therefore, he could not get the benefits of regularization by counting his experience in that ad-hoc posting. He had, in the meanwhile, come to occupy the pay scale of Rs. 5000-8000/-, from which he stood reversed back to his substantive grade of Rs. 3200-4900/- by virtue of operation of the orders of this Tribunal.



11. In 1998, ACP Scheme was introduced, and, therefore a question arose as what pay should be paid to him, as, by then, as explained in para 1 itself above, for Career Progression purposes, two in between pay scales of Lab. Assistant Grade II Rs. 4000-6000/- and Lab Assistant Grade I Rs. 4500-7000/- had already been introduced. After having implemented the orders of this Tribunal dated 19.7.2000, the Respondent then fixed his pay from his substantive pay scale of Rs. 3200-4900, with ACP benefit, to the next higher Grade of Lab. Assistant Grade II in the scale of Rs. 4500-7000/- from 3.8.2000 onwards. He has a grievance that he was entitled to be placed directly into the scale of pay Rs. 5000-

8000/-, since he had already earlier been placed in that pay scale on an ad-hoc basis.

12. As mentioned above, the applicant of this O.A. No. 100/2008, Shri Kailash Vasandani, had earlier come before this Tribunal in O.A. No. 303/96, in which final orders were passed on 19.7.2000. The subject of that O.A. related to the declaration of the result of the written test taken by him for regularization on the post of Jr. Chemist and Metallurgical Assistant (for short JCMA) . The applicant had appeared in the written examination notified by the respondents on 5.1.1996, for filling 50% promotional quota posts of JCMA, in which the applicant and 8 others had been directed to appear in the written test, and the applicant had appeared in the said examination under protest (since he was already officiating in that post on an ad-hoc basis). The applicant had then submitted before this Tribunal that since only 2 posts of JCMA were lying vacant, and consequently only 6 persons could have been called to undertake that examination, but the respondents had instead called 9 persons, just to favour certain individuals . On the other hand the respondents had submitted that as against 7 posts of JCMA, only 4 persons were regularly selected candidates, and against 2 posts, persons (including the applicant) were working only on ad-hoc basis. Since, there were 3 clear cut vacancies of JCMA, 9 candidates were called to undertake the examination, but the applicant Shri Kailash Vasandani did not come out to be successful in the examination by securing 60% marks meant for proficiency ability, and therefore he was not called for viva voce.





13/3/21

13. The Bench called for the file relating to the examination process, and the file was produced, and the Bench had examined the same. After having considered the para 219 of the Indian Railways Establishment Manual (IREM) Vol. I in the context, the O.A. No. 303/1996 of the present applicant had been rejected, and the respondents had been allowed to fill in the one remaining post of JCMA also, which had been ordered to be kept vacant till then, as per the interim order of the Tribunal to keep one such vacancy till the consideration of the applicant's case.

14. As a result, as mentioned by the applicant himself in para 2 of the instant O.A., and described in para 10 and 11 above, he was first ordered to be reverted back to the post of Lab Assistant Grade III in the pay scale of Rs. 3200-4900 held by him in substantive capacity, and, thereafter, he was given ACP benefit, and his pay was fixed in the then available next higher pay scale of Lab. Assistant Grade II Rs. 4500-7000/- w.e.f. 3.8.2000, vide order dated 30.12.2002. The applicant has assailed this as not being as per his avenues of promotion (AVC). The claim of the applicant is that when he completed 24 years of service on 12.8.99, by then he had got only one regular promotion in the service career i.e. on 8.12.96, when he was promoted from his earlier post of Lab Khalasi, to the post of Lab Assistant in the pay scale of Rs. 260-430/- which was revised to Rs. 950-1500, and Rs. 3200-4900 under the 4th and 5th CPC respectively. His claim is that he became entitled for grant of 2nd financial upgradation under the ACP scheme w.e.f 1.10.99 in the pay scale of Rs. 5000-



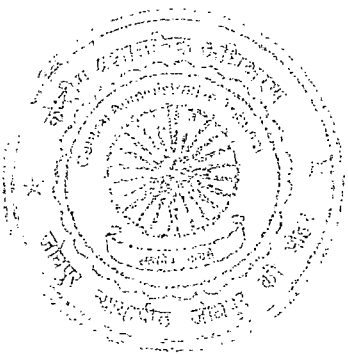
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8000, which he was not granted, and instead he was only granted the benefit of the pay scale of Rs. 4500-7000/- .

15. The applicant has further submitted that since the respondents have issued notification on 21.8.2007 for filling up the next promotional post of JCMA/CMA-2 in the pay scale of Rs. 5000-8000, and he also fell under the clear zone of consideration, and his name was also in the list, therefore denying to him 2nd financial up-gradation in that pay scale is irregular and illegal. The applicant had therefore prayed for the orders dated 30.12.2002 (Annexure A/1) dated 15.5.2007 (Annexure A/2) and dated 8.8.2007 (Annexure A/3), through which his pay was fixed first in the lower pay scale of Rs. 3200-4900/- substantively occupied by him at a particular level, and then he was denied the further financial up-gradation in the scale Rs. 5000-8000 applicable for JCMA, were liable to be struck down, and he was eligible for being granted 2nd financial up-gradation w.e.f. 28.8.99 in pay scale of Rs. 5000-8000/-.

16. Annexure A/1 dated 30.12.2002 cannot, however, be interfered with by this Tribunal as on today, because it was passed in compliance of the earlier orders of this Tribunal dated 19.7.2000 in O.A. No. 303/1996 filed by the applicant Sh. Kailash Vasandani himself. Therefore Annexure A/1 is upheld to be correct.

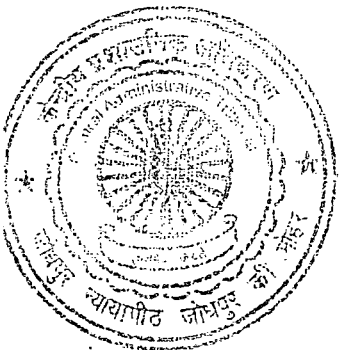
17. The issue therefore only remains about the validity and correctness of Annexure A/2 and Annexure A/3, which have been passed on the basis of RBE circular No. 187/98 dated 17.8.1998. As has already been discussed above, till 31.7.98, the next promotional post from the pay scale of Lab Assistant Rs. 3200-



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4900/- was to the pay scale of JCMA in the grade Rs. 5000-8000/-, and it was very fairly ordered through RBE Circular No. 187/98 that all regularly appointed Lab Assistants, who were substantively in the feeder pay scale of Rs. 975-1540/- (equivalent to pre-revised pay scale of Rs. 3200-4900/-) as on 31.12.1995, before the grant of Vth CPC Pay Scales, would automatically be eligible for being considered for promotion to the posts of JCMA in the scale of Rs. 1600-2660/5000-8000/-, subject to ~~the~~ the availability of posts and fulfillment of other conditions. But the promotional structure stood changed w.e.f. 1.8.1998 by virtue of operation of the said circular No. RBE 187 of 1998, and the pay scale Rs 3200-4900 was abolished, and made personal for the time being only to the persons already enjoying that pay scale, and the Lab Assistants were categorized into three categories, as discussed above, and the next higher promotional pay scales from Lab Assistants of Grade III, in pay scale of Rs. 3050-4590/- or in pay scale Rs. 3200-4900, were to be Lab Assistant Grade II Rs. 4000-6000, and Lab Assistant Grade I Rs.4500-7000/-, with two years' residency in each of the two higher pay scales.

18. The condition for grant of ACP benefits under para 1 of RBE Circular No. 233/1993 dated 01.10.1999 specifically states that ACP scheme envisages financial upgradation through merely placement in the next higher pay scale on a personal basis, and it does not amount to functional/regular promotion. When once w.e.f. the earlier date of 01.8.1998, itself for all the incumbents in the (abolished) pay scale Rs. 3200-4900/- personal to them, the next higher available pay scale of Lab Assistant Grade II Rs. 4000-



6000/-, had been prescribed, and the next higher pay scale above that was Lab Assistant Grade I Rs. 4500-7000/-, since the ACP Scheme envisages merely placement in the next higher available pay scale for grant of financial up-gradation, the applicant cannot claim a jump over these intermediate pay scales, which already stood prescribed w.e.f. 01.08.1998, prior to the issuance of the ACP Scheme on 1.10.1999, straightaway to pay scale into which he could have moved only on the basis of three regular promotions, Grade III to Grade II, Grade II to Grade I, and then from Grade I to the posts of JCMA.

19. Para 4 of the ACP Scheme circular RBE 233/1999 dated 1.10.99 further specifically states that the introduction of ACP scheme can have no effect on the normal regular promotional avenues available on the basis of vacancies, and para 5 states that vacancies based regular promotions, as distinct from financial up-gradation under the ACP scheme, shall continue to be granted after following the prescribed procedure as per relevant guidelines. In the table annexed as Annexure 2 to the RBE circular No. 233/99 prescribing ACP Scheme, pay scale of Rs. 3200-4900 has been shown as S-6 pay scale, and the next available pay scales are S-7 Rs. 4000-6000, S-8 Rs. 4500-7000, and S-9 Rs. 5000-8000/-. Therefore, when once the circular RBE No. 187/98 had already prescribed that w.e.f. 01.8.98, promotions shall be from pay scale S-6 to S-7 to S-8, before regular substantive promotion can be granted as JCMA in S-9 pay scale, the applicant cannot claim the benefit of jumping two levels of pay scales prescribed for grant of ACP benefits in the RBE circular No.



1/130

233/99 dated 1.10.99. Therefore, this O.A. cannot be allowed, as none of the prayers of the applicant survive.

OA No. 66/2008

20. The three applicants of this O.A. are not exactly similarly placed. Applicants 1 & 2 Sh. Krishna Kumar Sharma and Sh. Naresh Babu Sharma, were appointed on 27.07.1973 and 19.4.1977 respectively as Lab. Khalasi, and were promoted to the post of Lab Assistant in the grade of Rs. 260-430/3200-4900/- on 26.7.1978 and on 10.11.1990 respectively. The third applicant Sh. Santosh Kumar Singh, was appointed as Lab. Assistant directly, as a direct recruitee, on 14.2.1990. All these three applicants are also claiming that their due benefits of ACP Scheme ought to be granted to them from their post of Lab. Assistant to the posts of JCMA (CMA-II) in the Grade of Rs. 5000-8000/-, as was prayed for by the applicants of O.A. No. 290/2007 and 100/2008, also discussed above. The applicants 1. & 2 have completed 24 years of their service and having got only one promotion, are seeking 2nd Financial Up-gradation under the ACP Scheme. The applicant no.3 has completed 12 years of service as a direct recruit Lab. Assistant, and he is claiming his 1st ACP financial upgradation.

21. As mentioned in para 4.4. of their O.A. itself, all the three applicants have already been given the benefit of one financial up-gradation under the ACP Scheme from their substantive pay scale of Rs. 3200-4900/- to the next higher pay scale of Rs. 4000-6000/-. Their stand also, like that of the applicants of the earlier two O.As., is that the next promotional post from Lab Assistant being that of JCMA, the present financial



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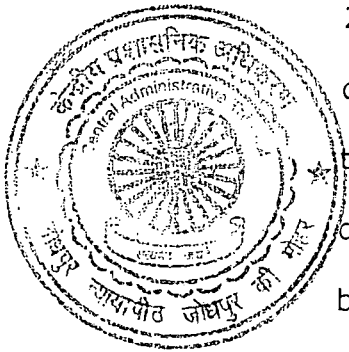
up-gradations provided to them are inappropriate. Only the first applicant no.1 has been granted the benefits of the Grade of Rs. 4000-6000/- in regular and substantive capacity also, while the other two have been granted that pay scale of Rs. 4000-6000/- as Financial Up-gradation under ACP Scheme (2nd ACP benefit in respect of Applicant no.2, and 1st ACP benefit for applicant no.3). They have also claimed that their cases are covered by the Judgment delivered by the Principal Bench of this Tribunal on 26th August, 2005 in the case of **S.K. Gupta and Ors. Vs. Union of India & Ors.** All their pleadings and grounds taken by them were parallel/similar to the two cases already discussed in detail above. In the result they had prayed for Annexure A/1 dated 8.8.2007 (issued by clubbing them with the applicant of O.A. No: 100/2008, assailed in O.A. No. 100/2008 also), to be quashed and set aside and had prayed that applicants 1 & 2 be allowed their 2nd ACP benefits on completion of 24 years of service to the grade of Rs. 5000-8000/-, and the applicant no.3 be granted his 1st ACP benefit itself in the grade of Rs. 5000-8000/-, since he had completed 12 years of service.



22. It is seen that 1st applicant has received 2nd promotion in his career already. He was first promoted from the post of Lab Khalasi to the post of Lab Assistant on 26.7.2008, (within 5 years of his initial appointment), as submitted by him in para 4.4. He has been further given the benefit of the next higher pay scale of Rs. 4000-6000/- in regular and substantive capacity already. The ACP Scheme is for those who do not get even one promotion at all in 12 years and do not get two promotions after 24 years of

substantive service. Since the applicant no.1 Sh. K.K. Sharma had already got his first promotion within 5 years of his joining service, and has also got his 2nd promotion also in substantive capacity, it appears that he ought not to be held entitled to grant of any ACP benefits whatsoever. The applicant no.1 was, however, entitled to the 2nd Financial benefit under the ACP Scheme Financial Up-gradation to the pay-scale of Rs. 4000-6000/- on 1.10.1999, the date of issuance of the RBE Circular 233/99 regarding ACP benefits, since he had already completed more than 24 years of his service prior to the date of issuance of that circular. From the pleadings it appears to us that the date of the substantive promotion granted to applicant No. 1 to the pay scale of Rs. 4000-6000/- could not be elicited by us. In case he was substantively promoted after 1.10.1999, it is held that he shall be entitled to his 2nd ACP Financial Up-gradation to the pay scale of Rs. 4000-6000/- for the period from 1.10.99 to the date of his substantive promotion also.

23. Applicant no.2 Sh. Naresh Babu Sharma appears to have been granted 2nd ACP benefit financial Up-gradation within 24 years of his joining on 19.4.1977. Therefore, in his case he does not appear to be entitled to any relief whatsoever. Similarly, the applicant no.3 had joined service on 14th February, 1990 as a direct recruitee Lab Assistant, and has been granted the 1st ACP benefit on completion of 12 years of his service. No further relief appears to be admissible to him as of now. Beyond this, no relief appears to be admissible to the three applicants of this O.A.



24. For ample measure, it is clarified that the above orders do not in any manner impinge upon or clash with the orders earlier passed by the Principal bench in the case **of S.K. Gupta & Ors. Vs. UOI & Ors.** (Supra) and by this Bench on 28.7.2010 in O.A. No. 15/2007 **Brahmdev Kumar Singh Vs. Union of India & Ors.,,** and also by the Principal Bench on 21.10.2008 in O.A. No. 725/2008 **Amit Kumar Chaurasia & Ors. Vs. Union of India & Ors.,** which were cited by the learned counsel for the applicant alongwith his written arguments.

25. All the three O.As. are disposed of accordingly, in view of the observations as above, but here shall be no order as to costs.



COMPARED &
CHECKED

SK

SK

SK

[Sudhir Kumar]
Administrative Member

[DR. K.B. SURESH]
Judicial Member

CERTIFIED TRUE COPY
Dated 27.5.11

अनुमान अधिकारी (न्याय.)
Section Officer (Jud.)
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
जोधपुर न्यायापीठ, जोधपुर
Jodhpur Bench, Jodhpur.