

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH: JODHPUR

ORIGINAL APPLICATION NO. 40/2009

Date of order: 21.07.2011

CORAM:

HON'BLE DR. K.B.SURESH, JUDICIAL MEMBER

HON'BLE MR. SUDHIR KUMAR, ADMINISTRATIVE MEMBER

Hast Mal Gahlot S/o Late Shri Kishan Lal Gahlot, aged about 47 years, R/o Near Bherudan Kothari Bangla, Behind Ram Dev Tent House, Rani Bazar Bikaner, presently working as Fitter Grade Mechanic (FGM) (Skilled Fitter) under the Assistant Garrison Engineer (E/M), Garrison Engineer (P), MES, Bikaner.

...Applicant.

For the applicant : Mr. Manoj Bhandari, Advocate.

VERSUS

- 1- Union of India through the Secretary to the Government, Ministry of Defence, Raksha Bhawan, New Delhi.
- 2- The Engineering-In-Chief (Army), DHQ, PO Kashmiri House, New Delhi.
- 3- The Commander Works Engineer (AF), MES, Air Force Campus Bikaner.
- 4- The Assistant Garrison Engineer (E/M), Garrison Engineer (P), MES Bikaner.
- 5- The Secretary, Government of India, Ministry of Personnel Public Grievances and Pensions, Department of Personnel & Training, New Delhi.

...Respondents.

For the respondents Mr. Sanjeet Purohit Advocate, for Respondents.

ORDER (ORAL)

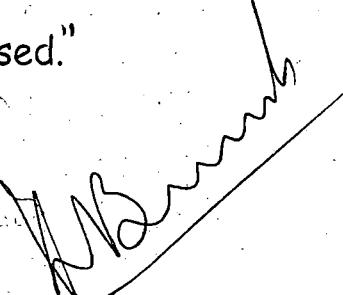
(Per Dr. K.B. Suresh, Judicial Member)

Heard both counsels.



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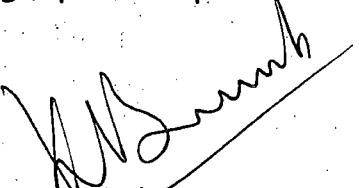
2. The matter in issue is in very short compass. Applicant who entered in service in 1983 claims his seniority for consideration for the II ACP by counting 24 years from the date of his initial entry into the substantive post. The ACP Scheme came into being in 1999. He passed a Trade Test and became eligible for grant of I ACP on 20.05.2002. In the matter of issue is in the clarification of a query by the concerned authority in paragraph 3 of Circular dated 10.12.2007 (Annex.R/1) i.e. "MoD was requested to clarify whether the first financial upgradation gets postponed on account of not passing the Trade Test, the 2nd ACP can be given after completion of 24 years of service or after 12 years of regular service from the date of granting 1st ACP." and the answer was given as in paragraph 3 of Circular dated 10.12.2007 (Annex.R/1) i.e. in paragraph 4 i.e. "MoD has clarified "if the 1st upgradation under ACP is delayed due to not fulfilling the requirement of proportion the 2nd financial upgradation would be given only after completion of 12 years after grant of 1st financial upgradation. In this connection a copy of declaration No. 57 issued by DoPT is enclosed."



But the crucial point is what is the requirement for getting the II ACP. Nowhere in the scheme it is mentioned that II ACP can be given only after 12 years after the I ACP. The only condition is that he must have completed 24 years of service. By no amount of presumption can a factual matter which is not present in the welfare scheme can be brought in the scheme. The purpose of the scheme is to prevent stagnation and to grant the benefit to those who have completed 24 years by giving the II ACP.

The condition relating to eligibility is applicable to ~~the only the~~ 12 years of service. By no amount of presumption can the I ACP in this case. The case would have been different had there been such stipulation attached to the II ACP, but, ^{also,} ~~there is none.~~ ^{but,} ~~there is none.~~ Therefore, the clarification given in paragraph 4 is clearly erroneous. It would appear that the Apex Court ruling was not clearly understood.

3. The learned counsel for the respondents would submit that there has to be some experience gained by a person after he gains eligibility in the I ACP, and that is the reason why they have given paragraph 4 explanation. But, it does



not appear to be correct in view of the fact that when the Hon'ble Apex Court considered this matter the matter was related to stagnation of the employee in service. The matter in question of qualification was in relation to I ACP alone and there was no mention to extend it to II ACP. That being so, paragraph 4 Annexure R/1 dated 10.12.2007 is erroneous. It is hereby quashed. The respondents are directed to grant the II ACP to the applicant calculating his eligibility from the date of his substantive appointment, with all consequential benefits.

4. In view of above, the OA stands allowed and disposed of accordingly. No costs.

(Sudhir Kumar) AM

(Dr.K.B.Suresh) JM

jrm