

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

**ORIGINAL APPLICATION NO. 303/2006
&
ORIGINAL APPLICATION NO. 144/2009**

Date of order: 17.2.2010

CORAM:

**HON'BLE MR. JUSTICE S.M.M. ALAM, JUDICIAL MEMBER
HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER**

OA NO. 303/2006

1. Ram Gopal Rankawat S/o Shri Kundan Mal Ji Rankawat, aged about 46 years, resident of Dadawari Ki Gali, Mandore, Jodhpur, at present employed on the post of Wireman in the office of Post Master General (Western Region), Jodhpur.
2. Balidass Vaishnav S/o Shri Moti Ram Ji, aged about 50 years, resident of Jagdamba Colony, Sector 'G', Pratap Nagar, Jodhpur, at present employed on the post of Wireman in the office of Senior Superintendent Post Office, Station Road, Jodhpur (Raj.).

...Applicants.

Mr. B. Khan, counsel for applicants.



VERSUS

1. Union of India through Secretary to Government of India, Ministry of Post Communication, Department of Post, Dak Bhawan, New Delhi.
2. The Post Master General, Western Region, Jodhpur (Raj.).
3. Senior Superintendent of Post Office, Head Post Office, Jodhpur (Raj.).

... Respondents.

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

**COMPARED &
CHECKED**

76/

OA NO. 144/2009

Raja Ram son of Shri Bhanwar Lal, aged 52 years, Wireman,
Head Post Office, Bikaner, r/o Shiv Niwas, Bartan Bazar, Bikaner.

...Applicant.

Mr. Vijay Mehta, counsel for applicant.

VERSUS

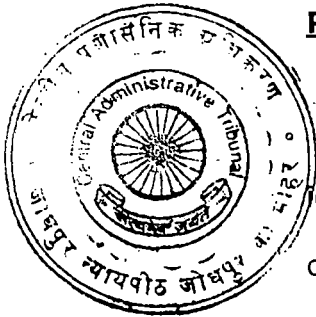
1. Union of India, through Secretary, Ministry of Communication (Dept. of Post), Sanchar Bhawan, New Delhi.
2. Superintendent of Post Office, Bikaner Division, Bikaner.

... Respondents.

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

ORDER

Per Hon'ble Dr. K.S. Sugathan, Administrative Member



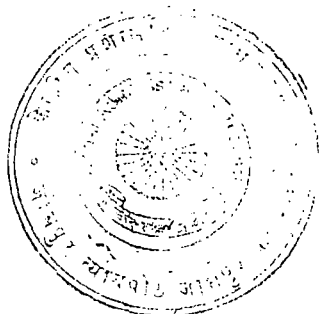
The issue involved in both the Original Applications is identical. Therefore both these OAs are disposed of through a common order.

Facts of the Case:

OA 303 of 2006

2. There are two applicants in OA No. 303 of 2006. Both the applicants were initially appointed as Wiremen in the pay scale of Rs.210-270. The said pay scale was revised to Rs.260-350 on the basis of the directions issued by this Tribunal in OA No. 165/1996. The corresponding pay scale in the V Pay Commission is Rs.3050-4590. The first applicant is working in the office of the PMG, Jodhpur. The second applicant is working in the office of SSP, Jodhpur. The applicants became entitled to

the benefit of financial up-gradation under the ACP Scheme on completion of 12/24 years of service as per the terms and conditions of the Scheme introduced by the Government of India on 09.08.1999. Vide order dated 24.03.2005 (in the case of the first applicant) and 05.08.2004 (in the case of the second applicant), the applicants were granted the second financial up-gradation in the pay scale of Rs.4000-6000 on completion of 24 years of service. They have been given the first financial up-gradation earlier in the pay scale of Rs. 3200-4900. The applicants have challenged the orders dated 24.03.2005 and 05.08.2004 on the ground that they are entitled to the pay scale of Rs.4000-6000 as the first up-gradation and to Rs.4500-7000 as the second financial up-gradation. It is contended by the applicants that there is no scale of Rs.3200-4900 for the category of Wiremen and that another Wireman Shri Raja Ram Swarnkar has been given first up-gradation in the pay scale of Rs.4000-6000 by order dated 26.09.2003 (Annex. A/6).

**OA 144 of 2009**

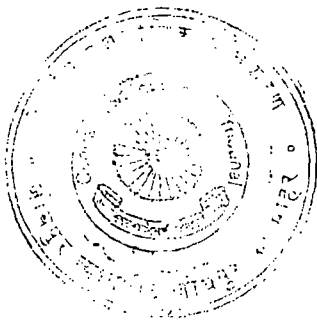
The applicant was appointed as Wiremen in the composite P&T Department on 18.02.1980. He is working in Bikaner. At the time of introduction of the ACP scheme he was in the pay scale of Rs.3050-4590. He was granted the first up-gradation to the pay scale of Rs.4000-6000 under the ACP scheme by order dated 26.09.2003. Subsequently he was granted the second up-gradation to the pay scale of Rs.4500-7000 by order dated 16.10.2006. However, subsequently on the basis of certain

clarification received from the Chief Post Master General, Rajasthan Circle, Jaipur, the pay scale granted for the first and second ACP were modified as Rs.3200-4900 and Rs.4000-6000 respectively. The said modification was done by orders dated 12.12.2006. The orders dated 12.12.2006 were challenged in OA No. 83 of 2007 in this Tribunal. The said O.A. was allowed with certain observations and directions. The interim order on the recovery of excess payment on account of the modification of the pay scales was made absolute. The orders dated 12.12.2006 were quashed on the ground that no show cause notice was given to the applicant and the respondents were given liberty to pass fresh orders after giving a show cause notice to the applicant. The respondents thereafter gave a notice to the applicant. A detailed representation was also submitted by the applicant in response to the said show cause notice. After considering the representation, the respondents passed fresh orders on 01.06.2009 fixing the upgraded pay scales as Rs.3200-4900 and Rs.4000-6000 (Annex. A/2). By a separate order dated 23.03.2009 it was also conveyed to the applicant that there will be no recovery of the excess payment as per the decision of the Tribunal in OA 83/2007(Annex. A/1). The applicant has challenged the orders dated 23.03.2009 and 01.06.2009 (Annex. A/1 and A/2) on the ground that Wiremen in Kanpur and Simla have been granted the pay scales of Rs.4000-6000 and Rs.4500-7000 as first and second financial upgradations and therefore there is discrimination. Copies of orders issued by Postal authorities in Kanpur and Shimla have



been placed on record (Annex. A/10, A/11 and A/12). The applicant has also relied on the clarification on the ACP scheme issued by OM dated 10.02.2000 (Annex. A/14) as well as the decision of the Madras Bench in OA No. 833 of 2006 (Annex. A/15).

3. The respondents have filed their reply in both OAs. It is contended in the reply that the post of Wiremen is an isolated post and therefore the applicants are entitled to financial upgradations as per the Standard Pay Scale contained in Annexure II of the ACP Scheme. It is clearly stated in para 7 of the ACP Scheme dated 09.08.1999 that in the case of isolated posts in the absence of defined hierarchical grades, financial upgradations shall be given in the immediately next higher pay scales as indicated in Annexure II of the Scheme. The applicants were holding the pay scale of S-5 i.e. Rs.3050-4590 and therefore entitled to the next higher scale of Rs.3200-4900 and Rs.4000-6000 (S-6 and S-7) as the first and second financial upgradations. Granting of higher scales in Kanpur and Shimla in individual cases may have been due to an error or because of some court cases. It cannot be taken as a basis for granting similar scales for which the applicants are not clearly entitled as per the Scheme. The issue of discrimination does not arise. If somebody is given some benefit erroneously others cannot claim same benefit as a matter of right. Such kind of equality is not contemplated in Article 14 of the Constitution of India.



4. We have heard at length the learned counsel for the applicants in both OAs Shri Vijay Mehta and Shri B. Khan and also the learned counsel for the respondents Shri M. Godara for Vinit Mathur. We have also perused the records carefully.

5. The issue for consideration in both OAs is whether the applicants are entitled to the pay scales of Rs.4000-6000 as the first financial up-gradation and Rs.4500-7000 as the second financial up-gradation under the ACP Scheme. The terms and conditions of the Scheme are available at Annex. A/13 in OA No. 144 of 2009. As per the scheme a Government employee is entitled to two financial up-gradations on completion of 12 and 24 years of service, if he has not received any regular promotion. The objective of the scheme is to mitigate the hardship arising out of stagnation in Government service. As per para 7 of the Scheme financial up-gradation is to be given in the next higher scale in the existing hierarchy. But in the case of isolated posts having no hierarchy the financial up-gradation is to be given to next higher scale in the Standard Pay Scales indicated in Annexure II to the Scheme. The full text of para 7 reads as follows:

"Financial upgradation under the Scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts without creating new posts for the purpose. However, in case of isolated posts, in the absence of defined hierarchical grades, financial upgradation shall be given by the Ministries/Departments concerned in the immediately next higher (standard/common) pay-scales as indicated in Annexure-II which is in keeping with Part-A of the First Schedule annexed to the Notification dated September 30, 1997 of the Ministry of Finance (Department of Expenditure). For instance, incumbents of isolated posts

in the pay scale S-4, as indicated in Annexure-II, will be eligible for the proposed two financial upgradations only to the pay-scales S-5 and S-6. Financial upgradation on a dynamic basis (i.e. without having to create posts in the relevant scales of pay) has been recommended by the Fifth Central Pay Commission only for the incumbents of isolated posts which have no avenues of promotion at all. Since financial upgradations under the Scheme shall be personal to the incumbent of the isolated post, the same shall be filled at its original level (pay-scale) when vacated. Posts which are part of a well-defined cadre shall not qualify for the ACP Scheme on 'dynamic' basis. The ACP benefits in their case shall be granted conforming to the existing hierarchical structure only; "

6. The relevant part of Annexure-II of the ACP Scheme is reproduced below:

**"ANNEXURE-II
STANDARD/Common PAY SCALES**

As per Part-A of the First Schedule Annexed to the Ministry of Finance (Department of Expenditure) Gazette Notification, dated September 30, 1997

[Reference Para. 7 of Annexure-I of this Office Memorandum]

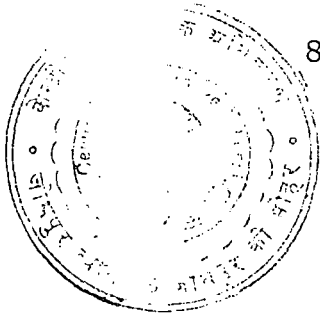


Sl. No.	Revised pay scales Rs.	
1	S-1	2,550-55-2,660-60-3,200
2	S-2	2,610-60-3,150-65-3,540
2-A	S-2A	2,610-60-2,910-65-3,300-70-4,000
3	S-3	2,650-65-3,300-70-4,000
4	S-4	2,750-70-3,800-75-4,400
5	S-5	3,050-75-3,950-80-4,590
6	S-6	3,200-85-4,900
7	S-7	4,000-100-6,000
8	S-8	4,500-125-7,000
x	xx	xxxxxxx"

(Source - Swamy's Compilation on Seniority and Promotion in Central Government Service).

7. The applicants are holding the posts of wiremen for which there is no hierarchy for promotion. Therefore, it has been rightly treated as an isolated post by the respondents. They were

in the pay scale of Rs.3050-4590 (S-5) when they became eligible for first up-gradation under the ACP Scheme. The next higher scale as per the Annexure II of the Scheme is Rs.3200-4900 (S-6) and the next higher to that scale is Rs.4000-6000 (S/7). Therefore, granting of the pay scales of Rs.3200-4900 and Rs.4000-6000 as the first and second financial up-gradation to the applicants is perfectly consistent with the terms and conditions of the ACP Scheme. The applicant has made a weak submission in the O.A. (144 of 2009) that the post in the hierarchy may be in the cadre of Technician in the pay scale of Rs.4000-6000 but no evidence has been produced to support this contention. As a matter of fact, this Tribunal has already recorded its finding on the issue while disposing of OA No. 83/2007. Para 19 of the order of this Tribunal reads as follows:



"19. It is amply clear from the facts of the case that the applicant was initially appointed in the pay scale of Rs. 210-270 which was revised to Rs. 260-350 in compliance of the orders of this Bench of the Tribunal as well as the Apex Court. The replacement scale of Rs. 260-350 was given by the 5th Central Pay Commission to Rs. 3050-4590. The next pay scale in the hierarchy is Rs. 3200-4900 whereas the applicant was given the 1st ACP in the pay scale of Rs. 4000-6000. Similarly, he was entitled to the pay scale of Rs. 4000-6000 on granting 2nd ACP whereas he was given the pay scale of Rs. 4500-7000 by mistake. However, before reducing the pay scales, which was granted to the applicant on account of 1st and 2nd ACP, no show cause notice has been given to the applicant."

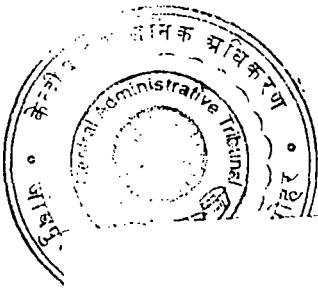
8. The clarification issued by the DOP&T dated 10.02.2000 and relied on by the applicants (clarification No. 3) clearly states that in such isolated cases, the Department should either follow the promotion scheme of 30.11.1993 read with OM dated 01.06.1998 or grant benefits as per para 7 of the ACP Scheme.

The promotion scheme of 30.11.1993 is not the subject matter here. Entitlement of a specific pay scale under the ACP scheme is the relevant subject matter in these OAs.

9. The learned counsel for the applicants relied on the judgment of the Hon'ble Supreme Court in **Union of India & Ors. vs. Satya Brata Chowdhary** - 2009 LAB. I.C. 731. We have gone through the said judgment. It is seen that the facts of that case are entirely different. The issue involved therein was the entitlement of the 5th Pay Commission pay scales to Time Keepers in different workshops of Eastern Railway. The controversy therein arose because time keepers in some workshops were treated as workers and in some other workshops as clerical staff. In the present case, the issue is the entitlement of the applicants to a specific higher pay scale under the ACP Scheme and not whether there is a wrong classification of their category. The learned counsel for the applicants also dealt at length about the issue of discrimination as some employees holding identical posts in Kanpur and Shimla have been granted a higher pay scale as financial up-gradation. However we are of the considered view that before any comparison is made with other similarly placed persons, the applicants have to first establish that they are entitled to the higher pay scale that is claimed by them under the ACP Scheme. If the applicants can establish that they are entitled to the higher pay scale and if such a higher pay scale has been given to similarly placed employees, the applicants' claim could have been legally justified. But that is not the case here. The reliance

placed by the learned counsel for the applicant on the order of the Madras Bench of this Tribunal in OA No.833 of 2006 cannot be pressed into service because the issue involved in that matter was the parity of pay between Technicians of Postal Department and the Telecom Technical Assistants in the Telecom Department. That has no connection with entitlement of specific pay scales under the ACP Scheme.

10. For the reasons stated above, the applicants' prayer that they are entitled to the higher pay scales of Rs.4000-6000 and Rs.4500-7000 as the first and second financial up-gradations cannot be sustained as per the provisions of the ACP Scheme. Both the Original Applications are therefore dismissed. There is no order as to costs.



Sd -

(DR. K.S. SUGATHAN)
ADMINISTRATIVE MEMBER

Sd -

(JUSTICE S.M.M. ALAM)
JUDICIAL MEMBER

nlk

CERTIFIED TRUE COPY
Dated 18.2.2010
[Signature]
अनुमान अधिकारी (न्याय.)
Additional Officer (Judl.)
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
जोधपुर न्यायपीठ, जोधपुर
Jodhpur Bench, Jodhpur.

दिनांक 17/2/10 के आदेशानुसार
मेरी उपस्थिति में दिनांक 9/2/16
को भाग-II व III पढ दिये गए।

अनुमान अधिकारी
केन्द्रीय प्रशासनिक अधिकरण
जोधपुर न्यायपीठ, जोधपुर

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19/12