के.प्र.अ. (प्रक्रिया) नियमावली के नियम 22 के अन्तर्गत निः शुल्क प्रति

CENTRAL ADMINISTRATIVE TRIBUNAL

O.A. Nos.191, 192, 193,195, 196, 197, 198, 199, 200, 201 and 215 of 2010.

JODHPUR:THIS IS THE 24th FEBRUARY, 2011.

CORAM :
HON'BLE MR. JUSTICE S.M.M.ALAM, MEMBER [J]
HON'BLE MR.SUDHIR KUMAR, MEMBER [A]

.....

1- Rakesh Mathur S/o Shri Jatan Mal aged 52 years, R/o 2-A-12, Pratap Nagar, Jodhpur.

2- Hanuta Ram Chaudhary S/o Shri Dunger Ram aged 51 years, R/o 97, Veer Nagar, Salawas, Jodhpur.

3- Sukh Ram S/o Shri Gokul Ram aged 54 years, R/o B – 26,Arvind Nagar, Jodhpur.

4- Suresh Kumar Lala S/o Shri Purshotam Lala aged 51 years, R/o 11/59H, Chopasani Housing Board, Jodhpur.

All applicant working on the post of Electrician HS under Garrison Engineer, Air Force, Jodhpur.

Applicants in OA 191/2010.

1- Babu Ram S/o Shri Poona Ram aged 48 years.
2- Kumbha Ram S/o Shri Sriram, aged 50 years.
3- Bala Ram S/o Shri Peera Ram, aged 47 years.
4- Babu Ram S/o Shri Khemea Ram aged 53 years.
5 Rajendra Prasad S/o Shri Kishna Ram aged 52 years.
6- Shera Ram S/o Shri Tulcha Ram aged 52 years.
7- Pratap Singh S/o Shri Mahdan Singh aged 48 years.
8- Asu Ram S/o Shri Khema Ram aged 48 years.

All applicants residents of village Uterlai, District Barmer and working in the cadre of HS under Garrison Engineer, Air Force, Uterlai, District Barmer.

Applicants in OA 195/2010

1- Sampat Lal Chauhan S/o Shri Mohan Lal aged 49 years, r/o P-21, Tilak Nagar-II, Bhadwasiya, Jodhpur.

2- Rajendra Singh S/o Shri Pabu Singh aged 54 years, r/o 66, Vidhya Nagar-A, Bhadwasiya, Jodhpur.

3- Ramesh Chand Limba S/o Shri Sohan Lal aged 51 years, r/o Behind Kalu Market, Jodhpur.

4- Bhanwar Singh S/o Shri Sayar Singh aged 48 years, r/o P-980/8 MES Colony, Air Force, Jodhpur.

5- Balbir Singh S/o Shri Ajit Ram aged 51 years, r/o 2/75, DDP Nagar, Madhuban, Basni, Jodhpur.

6- Mangla Ram S/o Shri Jaswanta Ram aged 59 years, r/o P-56/1, MES Colony, Air Force, Jodhpur.

All applicants working on the post of Electrician HS under Garrison Engineer, Air Force, Jodhpur.

7- Mohammad Ali S/o Shri Md. Umar, aged 51 years, r/o I/F Idgah, 5th Sardarpura Road, Jodhpur.

8- Amra Ram S/o Shri Lagu Ram @ Labu Ram aged 50 years, r/o Rajendra Nagar, Basani Ist Phase, Jodhpur.

Applicant Nos 7 and 8 Refri. Mechanic and Painter HS respectively in the office of the Garrison Engineer, Air Force, Jodhpur.

Applicants in OA 197/2010

Shyam Sunder Bohra S/o Shri Rani Shanker aged 63 years, Ex. Ref. Mechanic HS in the office of Garrison Engineer, Air Force, Jodhpur, r/o Near Munni Maharaj Mandir, Man Sagar, Mahamandir, Jodhpur.

Applicant in OA 219/2010

VERSUS

1- Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2- Commander Works Engineer, Air Force, MES, Jodhpur.
3- Garrison Engineer, Air Force, MES, Jodhpur.

RESPONDENTS

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1- Rakesh Sharma S/o Shri Jhoomer Lal aged 49 years, resident of 175, Roop Nagar, Paota C Road, Jodhpur.

2- Bhagwan Ram S/o Shri Rewat Ram Singh, aged 53 years, r/o Outside Chandpol, Vidhyashala School, Jodhpur.

3- Champa Lal S/o Shri Pratap Ram aged 52 years r/o Outside Chandpol. Opposite Vidhyashala School, Jodhpur.

4- Manohar Singh S/o Shri Kan Singh, aged 53 years, r/o Ganesh Nagar, Bhadwasia, Jodhpur.

5- Narain Lal S/o Shri Mishri Lal aged 52 years, r/o 11-12 Ganesh Nagar, Sangaria Fata, Jodhpur.

6- Govind Ram S/o Shri Ghewar Ram aged 52 years, r/o 41-45 Parihar Nagar, Bhadwasia, Jodhpur.

Applicant Nos. 1 to 4 working on the post of Carpenter HS, Applicant No. 5 working on the post of Carpenter and Applicant No. 5 working on the post of Mason HS under Garrison Engineer, Army (Centre), Jodhpur.

Applicants in OA 192/2010.

1- Bhagirath Singh Bhati S/o Shri Sita Ram, aged 48 years resident of 10, Nayapura, Lal Sagar, Jodhpur.

2- Rameshwar Singh Kachhwah S/o Shri Nathu Singh, aged 50 years, resident of Kachhwah Nagar, Nagori Bera, Mandore, Jodhpur.

3- Rajendra Kumar S/o Shri Kishan Lal aged 48 years, resident of Kumaharo Ke Mandir Ke Pas, Sardarpura 1st C Road, Jodhpur.

4- Babu Lal Verma S/o Shri Prahlad Ji Sain, aged 50 years, resident of 11/744, Chopasani Housing Board, Jodhpur.

5- Kishna Ram Choudhary S/o Shri Bhera Ram aged 52 years, resident of 41 Veer Teja Colony, Outside Mahamandir 3rd Pole, Jodhpur.

All applicants working on the post of Electrician HS under Garrison Engineer, Army (Centre), Jodhpur.

6- Sukan Raj Gehlot S/o Shri Likma Ram, aged 52 years, resident of 149 Ganga Bihar, Salawas Bye Pass Road, Jodhpur, working on the post of Electrician SK under Garrison Engineer, Army (Centre), Jodhpur.

Applicants in OA 193/2010

1- Ramesh Kumar S/o Shri Shiv Shanker Dayal aged 51 years, r/o 3 W 39. Kudi Bhagtasani, Jodhpur.

2- Sohan Singh S/o Shri Bhanwar Lal aged 55 years, r/o Kuchaman Ki Haweli, Mertigate, Jodhpur.

Applicant No. 1 is working on the post of Painter HS and Applicant No. 2 is working on the post of Carpenter HS under Garrison Engineer, Army (EP), Jodhpur.

Applicants in OA 196/2010

1- Mohan Lal S/o Shri Shivji Ram aged 55 years, r/o 6, 101, Subhash Colony, Jodhpur.

2- Devi Lal S/o Shri Peer Chand, aged 59 years, r/o Marwar Nagar, Mahamandir, Jodhpur.

3- Admon Homer S/o Shri Harbart H. Lal, aged 59 years, r/o 417 A, Sardarpura 1st 'C' Road, Jodhpur.

4- Hamid Khan S/o Shri Amir Khan, aged 57 years r/o 150- 51, Pathankot. Jodhpur.

5- Niranjan Kumar Roy S/o Shri Bipin Behari Roy, aged 54 years, r/o 113. Bhagat Ki Kothi, Jodhpur.

6- Fateh Singh S/o Shri Poonam Singh, aged 53 years, r/o 4 A, Jain Colony. Ratanada, Jodhpur.

Applicant Nos. 1 and 2 working on the post of Electrician HS, Applicant Nos. 3 to 5 are working on the post of FGM HS and Applicant No. 6 is working on the post of Fitter-Pipe HS under Garrison Engineer, Army (U), Jodhpur.

Applicants in OA 198/2010

1- Chhagan Lal S/o Shri Mana Ram Bhati, aged 58 years, r/o 108, Near Laxmi Temple, Maderna Colony, Jodhpur.

2- Mishri Lal S/o Shri Kishan Lal aged 51 years r/o Danwara Haweli, Ajay Chowk, Jodhpur.

3- Om Prakash S/o Shri Bhanwarlal aged 51 years, r/o Jata Bas, Mahamandir, Jodhpur.

4- Dileep Singh S/o Shri Lal Singh aged 58 years, r/o Purbion Ka Bas, Jodhpur.

5- Mool Chand S/o Shri Mishri Lal aged 54 years, r/o E-10, UIT Quarters, Pratap Nagar, Jodhpur.

6- Umed Ram S/o Shri Hari Ram aged 57 years r/o 6 B, Rajiv Nagar, Outside Mahamandir, Jodhpur.

Applicant Nos. 1 to 4 working on the post of Refr. Mechanic HS and Applicant Nos. 5 and 6 are working on the post of FGM HS under Garrison Engineer, Army(U), Jodhpur.

Applicants in OA 199/2010

1- Harish Kumar Tak S/o Shri Chhota Lal aged 54 years r/o 6, Gomala Jav, Main Road Raika Bera, Magra Punjla, Jodhpur.

2- Santosh Kumar S/o Shri Mohan Lal aged 49 years, r/o Bhadra Jun Ki Haweli, Barlon Ka Chowk, Jodhpur.

3- Jagdish Swaroop Mathur S/o Shri Anand Swaroop, aged 50 years, r/o 4-ka-8 Near Shopping Centre, Pratap Nagar, Jodhpur.

4- Sohan Lal Dave S/o Shri Ladu Ram aged 52 years, r/o 150, Roopnagar, Paota 'C' Road, Jodhpur.

5- Ramesh Chandra Negi S/o Shri Trilok Chand aged 54 years, r/o Parihar Nagar, Bhadwasia, Jodhpur.

6- Badri Narain Harsh S/o Shri Srichand, aged 56 years,r/o 5, Jai Narain Vyas Colony, New Chandpol Road, Jodhpur.

Applicant Nos. 1 to 5 working on the post of Electrician HS, Applicant No. 6 working on the post of FGM HS under Garrison Engineer, Army (U), Jodhpur.

Applicants in OA 200/2010

Parwat Singh S/o Shri Bahadur Singh aged 53 years, FGM HS in the office of Garrison Engineer, Army (I), Jodhpur, r/o BJS Colony, Near RTO Office, Jodhpur.

Applicant in OA 201/2010

VERSUS

1- Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2- Commander Works Engineer, Army, MES, Jodhpur.
3- Garrison Engineer, Army (C), MES, Jodhpur.

RESPONDENTS.

[For Applicants : Mr. Vijay Mehta]
[For Respondents:Mr.Mahendra Godara for Mr. Vineet Kumar Mathur]

...

ORDER
[PER SUDHIR KUMAR, MEMBER (A)]

These OAs have been filed against common respondents and similar reliefs have been prayed for in all of them. In view of this, all these OAs were heard together and reserved for orders.

2 The prayers made in these OAs for the respective applicants joining together to file these OAs jointly are also allowed.

3- The applicants of these OAs have been granted by the respondents the benefits of second ACP by orders issued on various dates, and are being paid salary in the VI Central Pay Commission Pay Band of Rs. 9300-34800 with Grade Pay of Rs. 4,200/-.

4- Prior to the VI Central Pay Commission, the respondents had merged the posts in the H.S.-II (Highly Skilled Category-II), and H.S.Category-I (Highly Skilled Category-I) cadres and designated all the holders of those posts as only Highly Skilled. It had also been specifically mentioned in the same orders that the posts of Master Craftsmen (MCM) shall not be a part of the hierarchy in promotional prospects of the applicants, and, therefore, the placement of an individual as a M.C.M. shall not be treated as a promotion (order dated 20th May.

2003). (Annex.A/1). A portion of the relevant instruction may be reproduced below as follows :-

> "2. The grade structure in the industrial as well as in the non-industrial trades wherever already available and the pay-scales of the Defence artisan staff shall stand modified w.e.f. 1.1.96 as under :-
>
> | | | |
> |---|---|---|
> | (i) | Skilled | Rs.3050-4590 |
> | (ii) | Highly Skilled (HS-I+HS-II) | Rs.4000-6000 |
> | (iii) | Master Craftsman | Rs.4500-7000 |
>
> 3.(a) Wherever the grade structure in the Industrial as well as in the Non Industrial trades is already existing in the ratio of 65:20:15, in the erstwhile Skilled : HS-II : HS-I, the merger of HS-II and HS-I shall be treated to have come into effect from 1.1.96 and the grade structure of Skilled and Highly Skilled categories shall be in the ratio of 65:35 (20+15).
>
> (b) The post of Master Craftsman shall not be part of the hierarchy and the placement in this grade will not be treated as promotion for Highly Skilled Grades either under normal promotion rules or under ACP Scheme.
>
> (c) xxxxx xxxxx xxxx xxxx
> (d) xxxxx xxxxx xxxx xxxx
> (e) xxxxx xxxxx xxxx xxxx
>
> 4. (i) xxxxx xxxxx xxxx xxxx
> (ii) xxxxx xxxxx xxxx xxxx
> (iii) xxxxx xxxxx xxxx xxxx
> (iv) xxxxx xxxxx xxxx xxxx
> (v) xxxxx xxxxx xxxx xxxx
> (vi) xxxxx xxxxx xxxx xxxx
> (vii) xxxxx xxxxx xxxx xxxx
> (viii) xxxxx xxxxx xxxx xxxx
> (ix) xxxxx xxxxx xxxx xxxx
>
> 5. The expenditure involved will be debitable to the respective Heads of Defence Services Estimates.
>
> 6. This issues with the concurrence of the Ministry of Defence (Finance) vide their U.O. No. 350/PB/03, dated 19.5.2003."

5- After this, the matter of extending the benefit of ~~Advanced~~ Assured Career Progression (ACP) to the industrial employees of the Forces was re-examined, and the Ministry of Defence of the Union of India (Respondent No.1) clarified the matter as follows, as are produced in Annex.A/2 dated 10.10.2003 :-

> "A decision had already been taken in consideration with DOP&T that Grade of Mastercraftsman (Pay Scale of Rs. 4500-7000) will not be treated as a part of hierarchy for grant of benefits under ACP Scheme. A clarification in this regard was issued on 15th December 2000. As Mastercraftsman (Rs.4500-7000) is not to be treated as a part of hierarchy, the employees who are in the Highly Skilled

1/18

grade (pay scale of Rs. 4000-6000) and are otherwise eligible for grant of ACP benefits, may be given financial upgradation under ACP Scheme in the pay scale of Rs. 5000-8000".

6- Since the ACP is not actually a promotion, and is only a financial up-gradation in lieu of promotion, a further clarification dated 14.03.2006 (Annex.A/3) was issued, stating that the second ACP in the grade of Rs. 5000-8000 has to be granted without insisting on passing of the trade test by the eligible H.S./M.C.M. category persons, even though the passing of trade test by skilled category personnel was held to be mandatory for eligible persons to get their first ACP benefit to move into the H.S.category in the grade of Rs. 4000-6000. The clarification that the second benefit for up-gradation to the scale Rs. 5000-8000 can be granted to the H.S. personnel without insisting on trade test was reiterated by the Engineer-in-Chiefs Branch through their clarificatory letter dated 11.06.2009 (Annex.A/4). As a result, as clarified through Annex. A/5 dated 29.11.2008, completion of 24 years of service, and being in the H.S. category already was the only requirement according to the applicants for grant of the benefit of second ACP financial up-gradation to the scale of Rs. 5000-8000.

7- The applicants are all under H.S. category. In the case of OA 191/2010 Rakesh Mathur plus three others, OA 195/2010 – Babu Ram plus seven others, OA 196/2010 – Ramesh Kumar plus 1 another and OA 197/2010 – Sampat Lal Chouhan plus 7 others, arrears under the second ACP financial up-gradation have been paid to the applicants, and their regular salary is also being paid according to the ACP benefit granted, and the pay fixation thereafter under the VI C.P.C. Recommendations. In the case of OA 192/2010 – Rakesh ~~Mathur~~ Sharma plus five others, arrears have been paid to applicant No. 1 only, though not to the other five applicants, and salary is being paid to all the applicants according to the benefit of ACP granted to them, and fixation of pay in the VI CPC Recommended pay

scale thereafter. But, the applicant No. 1 of that OA has apprehension of recovery of the arrears, and all the applicants have an apprehension of recovery of the ACP benefits itself from the salary already paid to them, by way of a reduction of their salary.

8- In the case of OA 193/2010 – Bhagirath Singh Bhati plus five others, OA 198/2010 –Mohan Lal plus five others, OA 199/2010 – Chhagan Lal plus five others, OA 200/2010 – Harish Kumar Tak plus five others and OA 201/2010 – Parwat Singh, though the arrears have not been paid according to the fixation of ACP benefit, but salary is being paid to all the applicants according to the ACP benefit provided to them, and fixation of their salary in the VI C.P.C. Pay scales thereafter, and they all have apprehension of recovery of the ACP benefit provided to them. In the case of OA 219/2010 neither the salary and the arrears have been paid according to the ACP benefit, and nor the pension has been paid according to the ACP benefit, and thereafter the fixation of pay in accordance with the VI CPC Recommended pay scale.

9- The fixation of pay of the applicants after grant of second ACP benefit was issued on various dates in the pre-revised pay scale of Rs. 5000-8000, and thereafter their salary was fixed in the revised pay band of Rs. 9300-34800 along with Grade Pay of Rs. 4200/- through orders passed on various dates in the year 2008. The fixation of pay in the VI CPC Recommended pay scales was issued on different dates from 2008 to 2010. However, in this bunch of applications, the applicants have come before this Tribunal because they have learnt that the respondents do not intend to make payment of arrears wherever the payment of arrears is due, but, on the contrary, they are taking steps to cancel the orders of up-gradation of their salary under second ACP benefit, as well as recovery of the arrears paid to some of them, and the applicants are apprehending that steps are

being taken to actually reduce their salary. This apprehension of the applicants arises from the fact that a list of some employees had already been sent alongwith a letter to the respondent No. 2, asking to cancel the ACP benefit granted to them, and to make recovery from them, although the applicants have not been served with any consequential orders or any show cause notice in this regard, asking them to show cause as to why any amounts should not be recovered from them, and the salary paid to them may not be reduced. These OAs have, therefore, been filed more as a response to the apprehension of the applicants, than out of an immediate cause of action which may have arisen adverse to the interests of the applicants.

10- The applicants have prayed that the orders of granting financial up-gradation under the ACP benefits scheme have been issued after getting and obtaining clarification from the highest authorities in the Ministry, and the command of the respondents, and, therefore, now the respondents have no authority whatsoever to cancel the orders of ACP upgradation benefits which have already been granted to the applicants. They have submitted that any such benefits granted to the applicants cannot be taken-away by the respondents unilaterally, without affording them an opportunity of being heard, as it would be in utter violation of the principles of natural justice. The applicants have submitted that all ACP up-gradations were granted after following all due process, and obtaining all approvals as necessary, and, therefore, the fixation of their salary with the ACP benefits cannot now be nullified by the respondents, as such an action on their part would be arbitrary and discriminatory, and violative of the rights of the applicants under Articles 14 and 16 of the Constitution of India.

11- Though differently worded, but the applicants of all these OAs have prayed that the proposed actions by the respondents may be quashed, and the

respondents may be restrained from canceling the orders of granting ACP up-gradation benefits to the applicants, and also that the respondents may be restrained from making any recovery from the applicants from their monthly salary, and also that they may be restrained from reducing the monthly salary of the applicants. They have prayed for recovery, if any, to be ordered to be refunded to the applicants, and any other reliefs, apart from cost, being awarded to them. They had also made interim prayers accordingly.

12- When the case in OA 195/2010 came up first for hearing before the Single Member Bench on 26.07.2010, which was heard by the S.B., interim orders were passed restraining the respondents from making any recovery from the pay of the applicants which they may have already started, till the next date, and it was made clear that the applicants would get their full pay without any cut in view of any recovery being made due to the cancellation of the orders of their financial upgradation, till the matter is heard further. Based upon this, similar orders of restrainment from recovery from the pay and emoluments of the applicants were passed in different OAs.

13- The respondents filed a reply written statement in each of these cases. They pointed-out that the applicants have approached this Tribunal only under an apprehension that recovery would be effected from them, and stated that even till the date of filing of the reply written statement, no order affecting the rights and pay of the applicants have been passed by the respondents. Since, in these cases, no such adverse order, affecting the rights of the parties, had been issued or attached, the respondents submitted that the OAs themselves are liable to be dismissed as being not maintainable. They had pointed-out that the pre-revised scale of pay Rs. 4000-6000 for both the cadres of HS-II and HS-I was merged w.e.f. 1.1.1996 by redesignating both these cadres as only H.S.(Highly Skilled),

and as per the instructions of up-gradation under the ACP Scheme, on completion of 24 years of service, the applicants were granted financial upgradation to the pre-revised pay scale of Rs. 5000-8000. They further conceded that after the merger of the pay scales HS-I and HS-II into a single pay scale of Highly Skilled, no trade test was considered necessary for granting the second ACP benefit, because there is no further line of promotion in this category, and the post of Master Craftsmen is not considered as promotion in the hierarchy and is a selection post. The respondents prayed that the OAs were thus not maintainable, as no cause of action had accrued to the applicants, in the absence of any orders adverse to their interest having been passed so far.

14- The applicants filed their rejoinders thereafter, and the case was heard in detail. In their rejoinders, the applicants have taken a stand that the respondents have nowhere denied that the apprehension of the applicants in regard to the likely reduction of their salary, or recovery of arrears of salary already paid to them, are un-founded and imaginary. In regard to the submission that these OAs are not maintainable unless they are supported by an impugned order, the applicants submitted that this Tribunal is a substitute of the High Courts in respect of the service matters, and stands vested with identical jurisdiction. It was submitted that it has been held time and again that in case any rights are threatened to be impinged upon, the Courts/Tribunals have ample powers to entertain petitions even without any adverse order having been passed. The applicants submitted that it is not necessary for any person who considers himself to be threatened, to wait till the actual threat has actually been carried out, and that in emergent situations, applications can be filed even against a decision which has been taken, but which has not been formally communicated. It was submitted that when there was a threat to any right pertaining to the service

matters, the employee is entitled to seek injunction from the Tribunal even without any formal order. They pointed-out that the respondents have taken contradictory stand inasmuch as they have themselves granted the benefits of second ACP up-gradation to the applicants, and now they are planning and corresponding for withdrawing the benefit, and for reducing the salaries payable to the applicants. It was further submitted by the applicants that from the reply written statement filed it is clear that the respondents also accept that the applicants have been rightly granted the benefits of second ACP, but, it appears that due to audit objections they wish to cancel those orders of granting ACP benefits and effect recovery. They, therefore, prayed for OAs to be allowed, and also produced as Annx.A/27 an instruction issued by the Union of India on 01.12.2010, by which it was ordered as follows :-

> "Subject : Restructuring of Cadre of Artisan staff in Defence Establishments in modification of 6th CPC recommendations – clarifications regarding.
>
> Consequent upon the issuance of MoD letter of even number dated 14th June 2010 on the above mentioned subject, clarifications were sought by various Defence Establishments and Staff Associations on the following issues :
>
> (i) Whether to treat the placement of 50% of the existing Highly Skilled Workers (Grade Pay : Rs. 2400) as Highly Skilled-I (Grade Pay : Rs. 2800) as promotion for the purpose of ACP; and
>
> (ii) To grant one time relaxation in respect of the employees who have already been granted financial upgradation in the pay scale of Rs. 5000-8000 in accordance with the ACPS between 01.01.2006 and 31.08.2008.
>
> 2. The matter has been considered in consultation with the Department of Personnel & Training and Ministry of Finance and it is clarified that :
>
> (i) Placement of 50% of the existing Highly Skilled Workers (Grade Pay: Rs. 2400) as Highly Skilled Worker Grade-I (Grade Pay : 2800) with effect from 01.01.2006 will be treated as promotion for the purpose of ACP; and
>
> (ii) While carrying out the restructuring as per Ministry of Defence letter of even number dated the 14th June, 2010,Financial upgradation (in the pay scale of Rs. 5000-8000), granted to the Highly Skilled Workers (in the pay scale of Rs. 4000-6000) between the period from 01.01.2006 to 31.08.2008 under ACP Scheme of August, 1999, will not be withdrawn as a one time measure.
>
> Sd/-
> [M.S.Sharma]
> Under Secretary to the Government of India."

15- During the arguments, in support of his contention, the learned counsel for the applicants cited the following cases :-

1 S.P. Sampath Kumar Vs. UOI and Ors.[1987 (1) SLR 182].
2 J.B. Chopra and Ors. Vs/ IPO and Ors. Supreme Court Service Rulings Vool. I Page 525.
3 D.A.V. College Bhatinda etc. Vs. The State of Punjab and Ors. [AIR 1971 SC 1731].
4. Prem Dass Adiwal Vs. UOI and Anr. [(1994) 27 ATC 368].
5. Purushottam Dass and Ors. Vs. UOI & Anr. [(1992) 21 ATC 282].
6. N.K. Murthy Vs. UOI and Ors. [(1989) 10 ATC 631].
7. Smt. ILa Chowdhary Vs. UOI and Ors. [(1989) 9 ATC 546].
8. Kuldip Kumar Bamania Vs. UOI and Ors. [(1991) 16 ATC 360].
9 Ashok Kumar Gupta and Ors. Vs. General Manager, Eastern Railways [(1986) (2) SLR 497].
10. State of Andhra Pradesh Vs. V.C. Subbarayudu [(1998) (1) SCT 407].

16- In the land mark case of S.P. Sampath Kumar (supra), the Hon'ble Supreme Court had held that since this Tribunal had been contemplated as a substitute and not as supplemental to the High Court in the scheme of administration of justice, this Tribunal should be a real substitute of the High Court not only in form and de jure, but in content and de facto also. The learned counsel for the applicants submitted that this gave powers to this Tribunal to give relief to the applicants even in cases of any apprehension of any adverse orders being passed against them.

17- In J.B. Chopra and Ors. (supra) a similar order had been passed by the Hon'ble Supreme Court, which the learned counsel submitted gave jurisdiction to this Tribunal to interfere in these cases at this stage itself.

18- In D.A.V. College Bhatinda's case (supra) in the context of Article 32 Petitions being filed before the Hon'ble Supreme Court, it had been laid down by the Apex Court that a petition can be filed before it when the fundamental rights are threatened, and the applicant need not wait till the actual threat has been

carried-out. The learned counsel for the applicants submitted that this ratio would apply to the proceedings before this Tribunal also.

19- In Prem Dass Adiwal (supra) this very Jodhpur Bench of the Tribunal had held that when there was a case of threatened reversion, the applicant was entitled to seek injunction from the Tribunal, as the decision to revert him had already been taken, though formal order was yet to be issued.

20- In the case of Purushottam Das (supra), the Principal Bench of this Tribunal had held that for approaching this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, there need not be a formal adverse order, and in emergent situation, applications can be filed even against a decision which is not formally communicated to the employee, and, in such emergent cases the rule of exhaustion of remedies can also be waived. The learned counsel for the applicants prayed that the benefit of this ratio should be made available to the applicants of the present OAs also.

21- In N.K. Murthy's case, (supra), the Madras Bench of this Tribunal had held that under Sections 14, 19 and 28 of the Administrative Tribunals Act, 1985, notwithstanding the absence of an order against which the applicant is aggrieved, an application would still be maintainable before this Tribunal.

22- In Smt. Lila Chowdhary (supra), the Principal Bench of this Tribunal had held that in order to attract Section 19 (1) of the Administrative Tribunals Act, 1985, and for an aggrieved person to agitate the service matter before this Tribunal, it is not necessary that there should be a formal order also.

23- In Kuldip Kumar Bamania (supra), the Principal Bench of this Tribunal had allowed an application to be entertained before the Tribunal under Section 19(1) of the Administrative Tribunals Act, 1985, Explanation 20 (1) and 20 (2), even against an apprehended order of termination.

24- In Ashok Kumar Gupta and Ors. (supra), the Calcutta Bench of this Tribunal had held that under the inherent powers this Tribunal was competent to give relief for the redressal of any apprehension in the minds of Government servants, provided specific act is committed, and the limitation or restriction that an employee can approach the Tribunal only when there is a grievance would not be valid.

25- In State of Andhra Pradesh (supra), the Hon'ble Supreme Court had held that if there is already a judgement of the Division Bench, and subsequently another Division Bench is of the opinion that it has to take a different view in a similar matter, the matter should, as a matter of propriety, be referred to a Larger Bench, as a matter of self-discipline that the Courts should observe, and the learned counsel for the applicants submitted that in view of the concurrent findings of this Jodhpur Bench of the Tribunal itself, as well as of the Principal Bench, New Delhi, and Kolkata Bench of the Tribunal, cited above, in these cases also this Bench was bound to provide relief to the applicants for their apprehension of reduction of salary.

26- The learned counsel for the respondents, on the other hand, vehemently argued against this plea and submitted that mere figments of imagination of the applicants cannot form the basis for giving rise to a cause of action for the case to be entertained before this Tribunal.

27- The learned counsel for the respondents also questioned the custody of the various documents pertaining to official correspondence in between the

respondents having been produced by the applicants of these OAs, and submitted that the applicants had not approached this Tribunal with clean hands, and, were, therefore, not entitled to any relief whatsoever.

28- We have heard the arguments in detail and given our anxious consideration to the facts of this case. It is clear that, as pointed out by the learned counsel for the respondents, the applicants have nowhere proved their rightful custody of the documents produced by them as Annexure in these OAs. But, this was an aspect which ought to have been pointed-out by the Registry at the time of examination of defects itself. Having entertained these OAs, and having heard them on various dates over a period of six months, it would not be proper today to reject these OAs merely on the technical ground that the applicants have not been able to prove their lawful and rightful custody of the documents produced by them, though their custody of the same remains of doubtful merit.

29- Coming to the substantive point of entertaining these applications on the point of mere apprehension of reduction of pay, or recovery of arrears already paid, in view of the concurrent orders of this very Bench and of the Principal Bench of this Tribunal, and Kolkata Bench of this Tribunal, that OAs can be entertained on the basis of apprehended danger to the service career of a Government employee also, our hands are tied, and we cannot go further into examining the legal merits of this argument any further. Since it has been unequivocally held earlier so many times that OAs can be entertained merely on the basis of apprehension of damage to one's service career, and that in such circumstances even the requirement of exhaustion of other remedies can also be waived, we hold that the applicants have a right to maintain these OAs before this

Bench, even without any formal order adverse to their interests having been passed so far.

30- Lastly, coming to the substantive merit of the grant of second ACP benefits and the correspondence produced by the applicants in which it appears that the respondents are under pressure from the audit parties, and in the face of audit objections, they are examining and considering the possible withdrawal of second ACP benefits granted to the applicants, it is clear that no such orders can be passed by the respondents without first issuing a show cause notice to the applicants in respect of any such proposed reduction in pay by way of withdrawal of second ACP benefits already granted to them.

31- It is, therefore, ordered that no such orders adverse to the interests of the applicants withdrawing the second ACP benefits granted to them, shall be passed by the respondents without first giving them an opportunity of being heard, after giving them a show cause notice explaining as to why and how this benefit was given wrongly earlier, and was now proposed to be withdrawn. Needless to add that no recovery can be made till then in respect of any benefit already given to any of the applicants under the ACP scheme of 9.8.99 by grant of second ACP benefit on completion of 24 years of their service.

32- However, in those cases where the financial benefits flowing out of the grant of second ACP benefits have not yet been paid out/disbursed to the applicants, we cannot obviously order for the disbursement of such arrears of second ACP benefits today when the respondents are re-examining the issue of grant of those benefits itself. Still, it is ordered that no orders cancelling or withdrawing the orders already passed in respect of such un-disbursed amount of financial up-gradation under second ACP benefit shall be passed in respect of any of the applicants without a similar show cause notice being first served upon the

concerned applicant, explaining as to why and how the ACP benefit sanctioned earlier was wrong, and was now proposed to be withdrawn, and giving him an opportunity of being heard, or filing a representation in this matter.

33- In respect of OA No. 219 of 2010, the applicant has since retired from service, and neither the arrears of his salary have been refixed according to the ACP benefits even today, and nor is he being paid pension according to the ACP benefit, and its fixation under the VI CPC scales. It is ordered that the respondents shall continue to pay atleast that amount of pension to the applicant which is admissible to the applicant without the inclusion of the second ACP benefit granted to him, and as and when the final decision regarding grant of second ACP benefit to him is taken, in case the decision is in his favour, the balance arising out of the arrears of his enhanced salary and the arrears of his enhanced pension payable to him shall be disbursed to him forthwith. If the decision goes against him, he shall have a fresh cause of action to seek redressal at the appropriate forum.

34- With these observations, all these OAs 191, 192, 193, 195, 196, 197, 198, 199, 200, 201 and 219 are disposed of. Needless to add that the applicants will have the liberty to again approach this Tribunal also, apart from other remedies, if any, if orders actually reducing their pay or pension are passed by the respondents after following the due process and procedure of law as directed above, and the principle of res-judicata would not be applicable then as they would have had a fresh cause of action. No order as to costs.

केन्द्रीय प्रशासनिक अधिकरण Central Administrative Tribunal जोधपुर न्यायपीठ

COMPARED & CHECKED

(Satish Kumar)

CERTIFIED TRUE COPY
Dated 28-2-17

अनुभाग अधिकारी (न्यायिक)
Section Officer (Judl.)
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
जोधपुर न्यायपीठ, जोधपुर
Jodhpur Bench, Jodhpur.

(S.M.M.Alam)
JM

दिनांक 21/4/16 के आदेशानुसार
मेरी उपस्थिति में दिनांक 21/4/16
को खण्ड-II से III नष्ट किए गए।

अनुभाग अधिकारी
केन्द्रीय प्रशासनिक अधिकरण
जोधपुर न्यायपीठ, जोधपुर