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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

ORIGINAL APPLICATION NOS. 171/2009, 172/2009, 173/2009 and 62/2010

Dated this the 7th day of April, 2011

CORAM

HON'BLE MR. JUSTICE S.M.M. ALAM, JUDICIAL MEMBER
HON'BLE MR. SUDHIR KUMAR, ADMINISTRATIVE MEMBER

O.A.171/2009

Giridhar Gopal Misra S/o late Shri Ram Gopal Misra
Working on the post of AEE (QS&C) in the office of
CWE Project Banar, Jodhpur Rajasthan
Through L.R Smt. Madhu Misra aged about 57 years
Resident of 186, Prasanna Sadean, Valabh Bari,
Kota (Rajasthan). .....Applicant

(By Advocate Mr. S.K. Malik)

Vs.

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

2. The Engineer-in-Chief, Engineer in Chief's Branch,
Army HQ, Kashmir House, New Delhi.11.

3. The Commander Works Engineer (Project)
Banar, Jodhpur. ..Respondents

(By Advocate Mr. Kuldeep Mathur)

OA172/2009

Rajendra Prasad Joshi S/o late Shri Shyam Lal Joshi,
Aged abaout 54 years, R/o outside Chandpole,
Near Taparia Open Well,
Kailashpuri, Jodhpur (Raj)
Presently working on the post of ACWE
(Contract) in the office of CWE Army,
Jodhpur Rajasthan. ...Applicant

(By Advocate Mr. S.K. Malik)

Vs.

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

2. The Engineer-in-Chief, Engineer in Chief's Branch,
Army HQ, Kashmir House, New Delhi.11.

3. The Commander Works Engineer (Army), Multan
Line, Army Area, Jodhpur . ..Respondents

(By Advocate Mr. Kuldeep Mathur)

O.A. 173/2009

Bajrang Singh Choudhary S/o Sri Umed Ram Choudhary,
Aged about 50 years, R/o Qr.No.25/2, Officers Colony
Air Force Area, Bikaner (Rajasthan) presently
Working on the post of ACWE (Contract) in the
Office of CWE Air Force, Bikaner (Raj). ...Applicant

(By Advocate Mr. S.K. Malik)

Vs.

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

2. The Engineer-in-Chief, Engineer in Chief's Branch,
Army HQ, Kashmir House, New Delhi.11.

3. The Commander Works Engineer
(Air Force), Bikaner. ..Respondents

(By Advocate Mr. Kuldeep Mathur)

O.A.62/2010

V.K.Sapre S/o late Shri J.R.Sapre,
Aged about 62 years R/o 80 Malaviya Nagar,
Golf Course Area Jodhpur retired from
The post of AGE (Contract) from the office
Of GE (I) Navy, Valsura Jamnagar (Gujarat). ...Applicant

(By Advocate Mr.S.K.Malik)

Vs.

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

2. The Engineer-in-Chief, Engineer in Chief's Branch,
Army HQ, Kashmir House, New Delhi.11.

3. The Garrison Engineer (I) Navy, Valsura, Jamnagar
(Gujarat) ...Respondents

(By Advocate Mr. Kuldeep Mathur)

ORDER

All the abovementioned 4 O.As are being taken up together for disposal as similar questions of facts and law are involved in these cases. The order is being passed in OA 62/2010 which will dispose of all the other three cases also.

2. The abovementioned O.As are filed by the applicants who are/were working as A.G.E (Contract)/ ACWE (Contract)/and AEE (QS&C) in the Engineering Service of Army, Navy and Air Force under the Ministry of Defence claiming 2nd financial up-gradation under the Assured Career Progression Scheme (for short ACP Scheme) in the scale of Rs. 10000-325-15200 on completion of their 24 years of service from 9.8.99 (in OA 171/2009 and 62/2010), from 9.11.2003 (in OA 172/09) and 27.10.2003 in OA 173/2009) along with a prayer to quash and set aside the policy dated 22.3.2007 (Annexure.A1) providing cut off date as on 17.2.2005 for giving the scale of Rs. 10000-152000.

3. The brief facts of the case are as follows.

The applicants were initially appointed on the post of Superintendent B/R-II/S.A.Grade II and later promoted to the post of S.A.Grade I. As a result of judgment passed by Central Administrative Tribunal Bangalore Bench, the pay of the applicants were fixed in the scale Rs. 2000-3200/2000-3500 with effect from 1.11.1991 at par with Junior Engineers of CPWD which was revised under the RPR 1997 in the scale Rs. 6500-10500. On 9.7.1999 the post of S.A-II and I were merged and re-designated as JE (QS&C) as per Government of India MOD and vide letter dated 23.1.2002 (Annexure.A2) the respondents adopted ACP Scheme for the Central Government employees in respect of Superintendent B/R (E&M)/SAS (re-designated as JEs) wherein a policy was adopted that on completion of 24 years of regular service the applicants will be entitled for grant of the benefit of 2nd ACP with effect from 9.8.99 and onwards. Despite clear instructions in the policy which was applicable to the applicants, respondents by letter dated 8.11.2006 (Annexure.A3) approved the name of the applicants for grant of 2nd financial up-gradation under the ACP Scheme in the scale of Rs. 8000-13500. However, this order was not made effective to the date of filing of the OA. It is stated that the respondents vide their impugned policy dated 22.3.2007 made cut of date on 17.2.2005 for grant of benefit under the 2nd ACP on completion of 24 years of service in the scale of Rs. 10000-15200 and the persons who had already been granted benefit of 2nd ACP in the scale of Rs. 8000-13500 before 17.2.2005 were ordered to continue to be in the same scale. As a result of which the applicants who were granted the

scale of Rs. 8000-13500 before 17.2.2005 could not be benefited from the enhanced scale of Rs. 10000-15200. It is further stated that the respondents vide letter dated 28.1.2009 approves panel for grant of benefit of 2nd ACP in the scale of Rs. 10000-15200 in respect of employees who were junior to the applicants and therefore, accordingly their pay has been fixed as per RPR 2008 (Annexures.A4 and A5). Thereafter the applicants made representations requesting the respondents to grant benefit of 2nd ACP in the scale of Rs. 10000-15200 but the said benefit was not given to the applicants. Applicants made representations to the respondents for granting them the scale of Rs. 10000-15200 instead of Rs. 8000-13500 as has been granted to persons junior to them but till date the fixation of 2nd ACP had not been done. Thereafter the applicants filed several representations but when the grievances of the applicants were not met the applicants preferred these original applications.

4. On filing of the OA, notices were issued and respondents appeared through lawyer and filed reply in the OAs. In all the OAs the pleading of the respondents is that the Government of India have circulated a policy dated 22.3.2007 wherein provision of granting 2nd financial up-gradation under the ACP Scheme in the pay scale of Rs. 10000-15200 has been inserted with a cut off date of 17.2.2005 with clear stipulation that only those who did not get benefit under the 2nd ACP or had not completed 24 years of service as on 17.2.2005 will be entitled to get the above pay scale. It has been further stipualted that those employees who had already got the benefit under the 2nd

financial up-gradation under ACP Scheme in the pay scale of Rs. 8000-13500 prior to 17.2.2005, this benefit of pay scale ie. Rs. 10000-15200 will not be applicable and since all the applicants were granted 2nd ACP prior to 17.2.2005 so they were continued to remain in the scale of Rs. 8000-13500. The contention of the respondents is that the decision taken by the respondents in this regard is correct and is in conformity with the policy of Government of India dated 22.3.2007.

5. In all the above mentioned OAs Shri S.K.Malik, Advocate appeared for the applicants whereas on behalf of respondents Shri Kuldip Mathur, advocate appeared and argued the case.

6. During the course of hearing, the learned advocate of the applicants submitted that all the four cases before this Tribunal are fully covered by the decision of the Central Administrative Tribunal, Bangalore Bench dated 24.2.2011 passed in OA 469/2008 in the case of Shri E.Unnikrishnan and 5 others Vs. Union of India and others. The learned counsel of the applicant had brought the said judgment of Bangalore Bench on record. Relying upon the above mentioned decision, the applicants' lawyer claimed that on the basis of the decision, the applicants are entitled for grant of benefit under 2nd ACP in the pay scale of Rs. 10000-325-15200 as and when they completed 24 years of regular service or with effect from 9.8.1999 whichever is later with all consequential benefits. On the other hand Shri Kuldip Mathur, learned counsel for the respondents submitted that although he agrees that the applicants are entitled to get the salary at par with the

salary which is being paid to their juniors on grant of benefit under 2nd ACP in the pay scale of Rs. 10000-325-15200 but the applicants will be entitled to receive the said pay scale by way of stepping up and not by way of grant of benefits under the 2nd ACP which had already been granted to them before 17.2.2005, the cut off date prescribed under policy of the Government of India dated 22.3.2007 (Annexure A1). We are of the opinion that the arguments advanced by the learned counsel of the respondents is correct as we are of the view that if the applicants are allowed to get the benefit under 2nd ACP in the scale of Rs. 10000-15200 from the date on which they were granted benefit under 2nd ACP in the scale of pay of Rs. 8000-13500 this will amount to grant of 2nd ACP to the applicants twice and so we are of the view that the applicants are only entitled for stepping up of their salary in the pay scale of Rs.10000-325-15200 from the date on which their juniors were granted benefit under the ACP Scheme in the scale of Rs. 10000-325-15200.

7. In the result these O.As are partly allowed and the respondents are directed to revise the pay scale of the applicants and grant the benefit of stepping up of pay and not the benefit of 2nd ACP to the applicants in the pay scale of Rs. 10000-325-15200 from the date on which their juniors were granted the said scale by way of grant of 2nd ACP. Accordingly respondents are directed to fix the pay of the applicants in the scale of pay of Rs. 10000-325-15200 within a period of three months from the date of receipt/production of a copy of this order.

-8-

8. Accordingly all the above mentioned O.As stand disposed of. In the circumstances of the case there will be no order as to costs.

Dated this the 7th day of April, 2011

SUDHIR KUMAR
ADMINISTRATIVE MEMBER

JUSTICE S.M.M. ALAM
JUDICIAL MEMBER

COMPARED & CHECKED

CERTIFIED TRUE COPY
Dated .. 08-4-11

Section Officer (Judl.)
केन्द्रीय प्रशासनिक न्यायाधिकरण
Central Administrative Tribunal
जोधपुर न्यायपीठ, जोधपुर
Jodhpur Bench, Jodhpur.

11/04/11