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**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

**O.A. No. 409/2011 & 410/2011**  
**Jodhpur this the 04<sup>th</sup> day of July, 2013.**

**CORAM**

**Hon'ble Mr.Justice Kailash Chandra Joshi, Member (J) and  
Hon'ble Ms. Meenakshi Hooja, Member (A)**

Pawan Kumar Singh S/o Shri Murlidhar Singh aged about 49 years, r/o Garrison Engineer, Army Suratgarh Cantt. T-1086/3, MES Colony, Suratgarh, Presently working as Highly Skilled Workman with the MES, Suratgarh.

.....Applicant in OA No. 409/2011

Mahaveer Prasad S/o Shri Bal Chandra, aged about 55 years, r/o Azad Chowk, Baghu Road, Ward No. 12, Suratgarh. Presently working as Highly Skilled Workman with the MES, Suratgarh.

.....Applicant in OA No. 410/2011

**(Through Advocate Mr Manoj Bhandari)**

**Versus**

1. Union of India through the Secretary, 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 Camps, Bikaner.
4. The Garrison Engineer (Army), Suratgarh.
5. The Secretary, Govt. of India, Ministry of Personnel Public Grievance and Pension, Department of Personnel and Training, New Delhi.

**(Through Advocate Ms K. Parveen)**

.....Respondents

  
ORDER (Oral)

**Per Justice Kailash Chandra Joshi, Member (J)**

The controversy in OA No. 409/2011 and 410/2011 is similar in nature. Therefore, both the OAs are being decided by this common order.

2. The short facts of the OAs are that Shri Pawan Kumar applicant in OA No. 409/2011 entered in the Govt. service as Mazdoor in the year 1981 and had completed 12 years of service in the year 1993 and 24 years of service in the year 2005 in the respondent-department if his services are counted from date of initial appointment as Mazdoor and if the same is counted from the date of appointment as Motor Pump Attendant, then he completed 12 years of service in the year 1996 and 24 years of service in the year 2008 respectively. The applicant in OA No. 409/2011 Shri Pawan Kumar was conferred the benefit of first financial upgradation under the ACP Scheme (issued by the Central Government in the year 2002) on 20.04.2002 vide order dated 27.01.2004. This order was passed by the respondent No. 4. The applicant completed 24 years of service in 2008 but he was not granted benefit of 2<sup>nd</sup> financial upgradation under ACP Scheme. The applicant gave representations for granting him benefit of 2<sup>nd</sup> financial upgradation under ACP Scheme but the same were rejected giving the reason that 1<sup>st</sup> financial upgradation to the applicant was granted in the year 2002, therefore, the 2<sup>nd</sup> financial upgradation can only be granted to him after completion of 12



years of service beginning from 2002 i.e. the 2<sup>nd</sup> financial upgradation shall be considered in the year 2014. The applicant has averred in the application that similarly situated persons who have been granted the 1<sup>st</sup> financial upgradation in the year 2002, have been granted the second financial upgradation after completion of 24 years of service, despite the fact that they have also passed the trade test in the year 2002 itself and he has cited the case of Shri Gauri Shanakar as at Annex. A/8 and similarly he cited the case of Shri Laxmi Narayan. By misinterpreting the order of the DoPT, the respondent-department has refused to grant 2<sup>nd</sup> ACP benefit to the applicant on the ground that he has not completed 12 years of service after granting 1<sup>st</sup> ACP under ACP Scheme.

The case of Shri Mahaveer Prasad in the OA No. 410/2011 is that he was initially appointed as Mazdoor on 20.01.1978 in the respondent-department and he passed the test of Driver Engine Static and was appointed on the said post from 08.02.1983. The applicant further passed the test of Fitter Grade Mechanic (HS-II) in the year 2003. The 1<sup>st</sup> financial upgradation was granted to him from 20<sup>th</sup> May, 2003 vide order dated 16.08.2004 but he was denied the second upgradation on the ground that he has not completed 12 years of service after grant of 1<sup>st</sup> financial upgradation under ACP Scheme. The applicant has averred that similarly situated persons Shri Laxmi Narayan and Gauri Shankar have been conferred such benefits and he has been wrongly denied

such benefit. He has annexed the copy of the order passed in favour of Shri Gauri Shankar as Annex. A/7.

3. In both these cases counsel for the applicant has also annexed the copy of the order dated 21.07.2009 passed in OA No. 40/2009 in the case of Hast Mal Gahlot vs UOI & Ors by the Division Bench of this Tribunal by which in similar matters the respondent-department was directed to grant the applicant 2<sup>nd</sup> financial upgradation under ACP Scheme after completion of 24 years of service from the date of his initial entry in the substantive post and further held that nowhere in the scheme it is mentioned that 2<sup>nd</sup> ACP can be given only after 12 years after granting 1<sup>st</sup> benefit under ACP Scheme. Therefore, the applicants in both the OAs have prayed to grant following relief(s) in :

O.A. No. 409/2011

- “(i) by an appropriate order or direction, the order dated 3<sup>rd</sup> May, 2008 may kindly be declared illegal and be quashed and set aside and the respondents be directed to confer the benefit of second financial upgradation under the ACP Scheme w.e.f. 10.01.2008 with all consequential benefits.
- (ii) by an appropriate order or direction, the respondents be directed to grant benefits of first ACP w.e.f. 1996
- (iii) by an appropriate order or direction, the clarification dated 10<sup>th</sup> Dec., 2007 issued by the D.O.P.T. may kindly be declared illegal and be quashed and set aside.
- (iv) any other appropriate order or direction which this Hon’ble Tribunal may deem fit just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.”

O.A. No. 410/2011

- “(i) by an appropriate order or direction, the order dated 3<sup>rd</sup> May, 2008 may kindly be declared illegal and be quashed and set aside and the respondents be directed to confer the benefit of second financial upgradation under the ACP Scheme w.e.f. 08.02.2007 with all consequential benefits.

- (ii) by an appropriate order or direction, the respondents be directed to grant benefits of first ACP w.e.f. 1995
- (iii) by an appropriate order or direction, the clarification dated 10<sup>th</sup> Dec., 2007 issued by the D.O.P.T. may kindly be declared illegal and be quashed and set aside.
- (iv) any other appropriate order or direction which this Hon'ble Tribunal may deem fit just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant."

4. By way of reply the department has averred that applicants are not entitled to get any such benefit because they have not completed 12 years of service after granting 1<sup>st</sup> ACP and as it is a condition precedent, therefore, they have been rightly denied.

5. Heard both the parties, perused record and considered the rival contentions. The applicants have sought relief to grant benefit of 1<sup>st</sup> financial upgradation under ACP Scheme from 1996 and 1995 respectively. Counsel for the respondents contended that ACP scheme itself become operation from its date of issue i.e. 09.08.1999. Para No. 8 of DoPT O.M. dated 09.08.1999 (Annex. A/14 in OA No. 409/2011 and A/13 in OA No. 410/2011) provides that "**8. The ACP Scheme shall become operational from the date of issue of this Office Memorandum.**" i.e. from 09.08.1999. Therefore, in our considered view benefit of 1<sup>st</sup> financial upgradation under ACP scheme cannot be granted before Scheme itself become operational i.e. any date prior to 09.08.1999. If the applicants have any grievance in this regard they may file fresh representation before the competent authority.

6. In Hast Mal Gahlot vs UOI & Ors, OA No. 40/2009, the Division Bench of this Tribunal in similar circumstances directed the UOI & Ors to grant the 2<sup>nd</sup> financial upgradation under ACP Scheme after counting 24 years of service from the date of initial appointment in the substantive post and further held that there is no condition of completion of 12 years of service after grant of 1<sup>st</sup> financial upgradation under ACP Scheme. Therefore, the Division Bench of this Tribunal quashed the paragraph 4 Annexure R/1 dated 10.12.2007 being erroneous in nature.

7. We see no reason to differ from the judgment passed in the above case. Therefore, in view of the judgment passed by the Division Bench of this Tribunal we also direct the respondent-department to grant 2<sup>nd</sup> upgradation under ACP Scheme to the applicants calculating 24 years of service from the date of initial appointment in substantive post with all consequential benefits.

8. In view of the above discussions both the OAs stands allowed. The order Annex. A/1 dated 03.05.2008 qua applicants in both the OAs is declared illegal and quashed. The MoD clarification in para No. 4 of letter dated 10.12.2007 issued by the office of 'Gen of Personnel/CSCC, Engineer-in-Chief's Branch, Army Headquarter, New Delhi' (Annex. A/9 in OA No. 409/2011 and A/8 in OA No. 410/2011) is also declared illegal and quashed. The respondent-department is directed to grant 2<sup>nd</sup> financial

upgradation under ACP Scheme to the applicants in both the OAs after calculating completion of 24 years of regular service from the date of initial appointment in substantive post or from the date of ACP Scheme coming into force i.e. 09.08.1999, whichever is later, with all consequential benefits. There shall be no order as to costs.

*Meenakshi Hooja*  
**(MEENAKSHI HOOJA)**  
**ADMINISTRATIVE MEMBER**

*9  
K.C. Joshi*  
**(JUSTICE K.C. JOSHI)**  
**JUDICIAL MEMBER**

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