

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH JODHPUR**

Dated: This the 20th day of Sept. 2016

HON'BLE DR. MURTAZA ALI, MEMBER - J

HON'BLE MS. PRAVEEN MAHAJAN, MEMBER-A

Original Application No.290/00164 of 2014

Sumer Singh Champawat Son of Shri Ratan Singh (Bamnu), aged about 50 years, residence of 496, New BJS Colony, Jodhpur at present employed on the post of Dy. Manager Marketing Central Wool Development Board, Jodhpur.

.....Applicant

Self.

V E R S U S

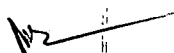
1. Union of India through the Secretary, Ministry of Textile, Udhog Bhawan, New Delhi.
2. Central Wool Development Board (CWDB) through its Chairman CWDB C-3, Shastri Nagar, Jodhpur.
3. Executive Director, Central Wool Development Board, C-3, Shastri Nagar, Jodhpur.
4. Sh. Anurag Purohit, Supervisor Wool Testing Centre Bikaner, Central Wool Development Board, C-3, Shastri Nagar, Jodhpur.
5. Sh. Ramesh Kumar Bundela Sr. Technical Assistant Industrial Service Centre Bikaner, Central Wool Development Board, C-3 Shastri Nagar, Jodhpur.
6. Shri. K.K. Goyal, Executive Director, CWDB, C-3, Shastri Nagar, Jodhpur.

..... Respondents

By Adv: Shri K.S. Yadav (Respondent No.1)

Shri Rakesh Arora (Respondent Nos. 2, 3 and 6)

Shri Hemant Kumar (Respondent Nos. 4 and 5).




ORDER**BY HON'BLE DR. MURTAZA ALI, MEMBER - J**

Through this OA filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant seeks the following reliefs -

"(i) That impugned order dated 28.3.2014 ordering to revision of pay scale of Sh. Anurag Purohit, Supervisor Wool Testing Centre Bikaner and Sh. Ramesh Kumar Bundela Sr. Technical Assistant ISC Bikaner presently posted at CWDB Jodhpur, issued by the 6th respondent and subsequent orders including order dated 2.4.2014 for fixation under ACPs in respect to these officials (Annexure A-1), may be declared illegal, irrational, impropriety, tainted with malafide of respondent No.6 and the same may be quashed and set aside and maintain hierarchy of applicant's post as per approval of 24th Governing Body (GB) of CWDB.

(ii) That respondent may kindly be directed to maintain the hierarchy in the CWDB as per R.R., as approved by the 24th GB of CWDB and the present pay scale of DMM Rs. 6500-10500 may be upgraded with scale of Rs.7500-250-12000 w.e.f. 01.01.1996 on notionally basis as already approved by the 24th Governing Body of CWDB held on 23rd May 2008 at Jaipur and accordingly



pay fixation may be approved for the applicant also.

- (iii) That respondent may kindly directed to maintain ACPs Rules as per RR/hierarchy and in any case first ACPs should not be given above the pay scale of promotional post (DMM) to Supervisor/STA. DMM is promotional post in present case for the Sh. Anurag Purohit Supervisor and Sh. Ramesh Kumar Bundela STA CWDB.*
- (iv) That the respondents may kindly be directed to initiate appropriate action and proceedings against the private 6th respondent for producing misleading facts due to which the applicant has suffered irreparable loss and mental agony and impose a cost Rs.50 lakh upon private respondent.*
- (v) That 6th respondent is found to misuse his official position or to abet and connive at improper and illegal acts, hence in the light of OM dated 6.10.1993, 6th respondent would render himself liable for disciplinary action for violation of Rules 3 of the CCS (Conduct) Rules, 1964, therefore respondents may kindly be directed to initiate appropriate action and proceedings against the private 6th respondent accordingly.*
- (vi) That the applicant has financially harassed by the 6th respondent with prejudice and malafide*

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intention so costs of this application may be awarded.

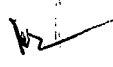
(vii) That any other direction, or orders, may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice".

2. Shorn off unnecessary details, the facts of the case are that the applicant was initially appointed on 16.1.1995 by deputation on the post of Dy. Manager Marketing (for short D.M.M) at Central Wool Development Board (for short C.W.D.B), Jodhpur and was absorbed on the same post on 1.4.1996. The C.W.D.B is an autonomous body registered under Societies Registration Act. The respondent No.4 Shri Anurag Purohit was appointed on the post of Incharge Supervisor in Wool Testing Centre Bikaner vide letter dated 27.7.1993 (Annexure A-4) and respondent No. 5 Shri Ramesh Kumar Bundela was appointed on the post of Senior Technical Assistant in Industrial Service Centre Bikaner vide letter dated 20.4.1995 (Annexure A-5). The Recruitment and Promotion Rules for the employees of the Board have been notified on 30.11.2006 (Annexure A-6). It has been alleged that the benefit of first ACP was wrongly provided to respondent Nos. 4 and 5

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in the pay scale of Rs.10000-15200 (new PB -3 GP 6600) by the respondent No. 6 which is higher than the scale of promotional post (DMM) ignoring the provisions of ACP Scheme by disturbing the hierarchy of applicant's post and with malafide intention.

3. In the reply filed on behalf of respondent NO. 1 to 3 and 6, it is stated that by the impugned order dated 28.3.2014, the private respondent Nos. 4 and 5 were given the benefit of 1st ACP and the applicant is not adversely affected by the said order, therefore, he has no locus standi to file the present O.A. It has also been stated that the applicant had joined the Central Wool Development Board on 1.5.1991 on deputation against the post of Research Assistant in the pay scale of Rs.1400-2300 and he was appointed against the post of Deputy Manager Marketing vide order dated 16.1.1995 (Annexure R-4). He was permanently absorbed on the post of DMM vide order dated 16.8.1995 (Annexure R-5) in the pay scale of Rs.6500-10500. An upgradation was granted to technically qualified staff of the Board i.e. Graduate Textile Engineers as per recommendation of 5th CPC. After pay revision, the pay scale of technically qualified staff was made equal to the pay scale admissible to Dy. Manager Marketing w.e.f. 01.01.1996.



After completing 12 years service, 1st ACP was granted to respondent Nos. 4 and 5 vide impugned order dated 28.3.2014 (Annexure A-1) and their pay was accordingly fixed vide order dated 2.4.2014. The allegation of malafide has vehemently been denied and submitted that all the allegations made by the applicant has been enquired into by two Members Committee and were found baseless (Annexure R-6). It is also stated that the impugned orders were issued by the respondent No. 6 according to Rules and there is no illegality in it. It is further stated that hierarchy will be maintained but the decision of 24th Government Body could not be considered as the pay scale sought by the applicant did not exist in CWDB book of sanction.

4. In the reply filed on behalf of respondent Nos. 4 and 5, it is stated that the post of Supervisor and Senior Technical Assistant are lower in the hierarchy than the Dy. Manager Marketing and their posts are feeder posts of Dy. Manager Marketing. The pay scale of Supervisor and Senior Technical Assistant was revised from Rs.5500-9000 to Rs.6500-10500 on the recommendation of 5th CPC w.e.f. 1.1.1996. The next higher pay scale in the department was Rs.10000-15200 and the ACP could only be granted in the said pay scale. It is

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further submitted that there is no basis of apprehension of applicant that the answering respondents, who are working on the post of Senior Technical Assistant/Supervisor, will become equal to Dy. Manager Marketing. The Secretary of Ministry of Textile has already approved the note (Annexure A-22) to the effect that the revision of pay scale of answering respondents will not affect the hierarchy in any manner on account of upgradation of pay scales of answering respondents and they have not been made equal to the post of DMM.

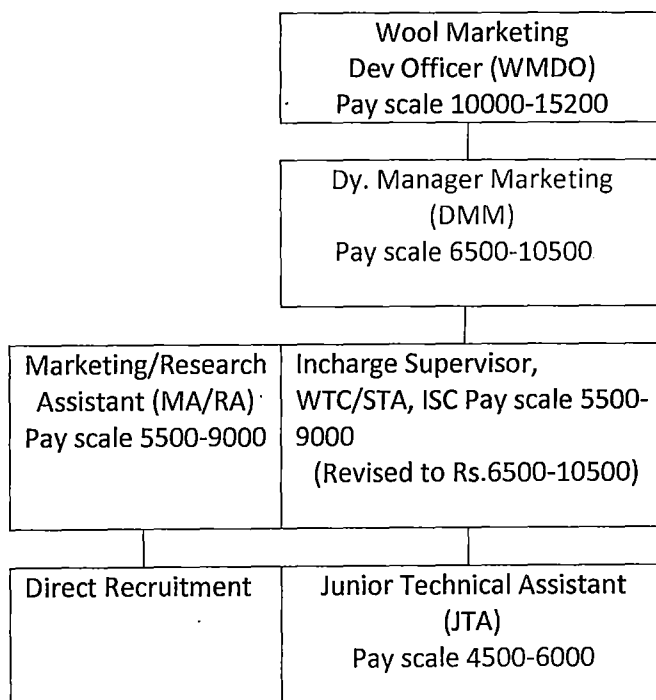
5. In the rejoinder to the reply filed on behalf of respondent Nos. 1 to 3 and 6, the applicant has reiterated the averments made in the O.A. and further stated that the impugned orders are adversely affecting the applicant because the pay scale of applicant has not yet been revised to maintain hierarchy. It has been alleged that inspite of the fact that 24th Governing Body Meeting of CWDB had also approved the upgradation of applicant's post with pay scale of Rs.7500-12000 w.e.f. 1.1.1996 on notional basis but it has not yet been upgraded. It has further been alleged that the financial upgradation cannot be allowed in a scale higher than the next promotional grade in view of OM dated 18.7.2001 (Annexure A-27) and, therefore, the respondent No. 6 has wrongly issued

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the order of fixation of pay for respondent Nos. 4 and 5 in the pay scale of Rs.10000-15200 whereas the applicant is still working in the pay scale of Rs.6500-10500. It is also stated that the Ministry of Textile has not approved 1st ACP in the pay scale of Rs.10000-15200 for respondent Nos. 4 and 5 and the OM dated 18.7.2001 (Annexure A-27) provides that the financial upgradation has to be allowed as per the existing hierarchy. The post of Supervisor is not an isolated post and as per R.R., the post of Incharge Supervisor and STA/WPC are the post having Dy. Manager Marketing as a promotional post and Junior Technical Assistant is also as feeder grade. However, the respondent No.6 had forwarded wrong information that Supervisor post is an isolated post vide letter dated 26.2.2014 (Annexure A-22). As the post of DMM has not yet been revised in the pay scale of Rs.7500-12000 to maintain hierarchy in the Organization, the applicant is being affected adversely by the impugned orders. The applicant had also submitted a representation dated 22.9.2008 (Annexure A-37) in respect of anomalies in 5th CPC but no action was taken by the department. On the other hand, the respondent No. 6 considered the representation of respondent Nos. 4 and 5 and illegally upgraded their pay scales.

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6. In the rejoinder to the reply filed on behalf of respondent Nos. 4 and 5, the applicant has given the promotional hierarchy of Incharge Supervisor/STA, as under -



It is submitted that if the pay scale of Incharge Supervisor/STA is revised to Rs.6500-10500, then the feeder and promotional post i.e. DMM will come in same pay scale and the financial upgradation cannot be allowed in a scale higher than the next promotional grade, which is in this case 'DMM'. It has been alleged that the 1st ACP order for respondent Nos. 4 and 5 in the pay scale of Rs.10000-15200 (equal to the post of WMDO) is illegal and against the guideline and rules of ACP. It is also stated that the promotional post of DMM is WMDO, hence applicant is entitled to get 1st ACP in the pay scale of Rs.10000-15200 and

the respondent Nos. 4 and 5 are not entitled to get pay scale of WMDO under 1st ACP. The Governing Body of CWDB had approved the upgradation of post of STA/Supervisor as well as DMM but the E.D. – CWDB issued orders only for upgradation of posts of STA/Supervisor and no order has yet been issued to upgrade the post of DMM.

7. The applicant has also filed a supplementary affidavit on 10.04.2015 and while relying upon the judgment of Hon'ble Supreme Court in the case of **Secretary, Govt of NCT of Delhi Vs. Grade – 1 DASS Officers Association** reported in **2014 STL (Web) 580 SC**. it has been stated that it was provided by 6th CPC that upgraded pay scale for the Section Officer will be available for all such Organization which have had a historical parity with CSS/CSSS, autonomous body like CVC, UPSC, CAT etc. which also covers the case of the applicant in the CWDB. The post in CWDB has historical parity with CSS/CSSS during implementation of 4th CPC, 5th CPC and 6th CPC and specially post of DMM was having historical parity with CSS/CSSS and DMM is also discharging the same functions, duties and responsibility in CWDB as their counterparts in CSS/Ministry. The applicant is also entitled to get the upgradation of his pay

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scale equivalent to CSS/CSSS employees which has already been approved by 24th Governing Body of CWDB.

8. In the case of *Secretary, Govt of NCT of Delhi* (supra), Hon'ble Supreme court has also dealt with the issue of grant of financial upgradation under ACP Scheme and held as under -

"14. In view of stipulations and conditions in the ACPS noticed above, it can be safely concluded that the financial upgradation under the ACPS is not only in lieu of but also in anticipation of regular promotion. In such a situation, the contention advanced on behalf of Appellants that financial upgradation claimed by the Respondents cannot be granted because the same would be much in excess of what the officer would gain on actual promotion in the hierarchy, is found to have substance. As a corollary, such claim of the Respondents must be rejected on the ground that persons having better claims on actual promotion could be fitted only in the promotional post of Grade II (Group B) of DANICS, i.e. Rs.6500-200-10500/- whereas the Respondents, on their claims being accepted, would get much higher pay scale of Rs.10000-325-15200/- available only to Grade I (Group A) in the DANICS. Such a situation would be violative of rules of fairness and Articles 14 and 16 of the Constitution of India. The claim of the Respondents had to be rejected as was done by the Tribunal in view of Clause 7 of the ACPS read with other relevant clauses as well as on the

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basis of aforenoticed ground. Fairness on part of State is a constitutional obligation and hence a pay scale, which regularly promoted employee earlier belonging to Grade I (DASS) could not get due to established hierarchy for promotion, cannot be granted to those like the Respondents on the plea that the financial upgradation to which they are found entitled as per existing hierarchy is too meagre. In case Respondents' claim was to be allowed on the ground accepted by the High Court that financial upgradation must be real and substantial, in case of regular promotion in future, employees like the Respondents would have to be reduced in their pay scale because actual or functional promotion as per established hierarchy can be only on a post in Grade II (Group B) in DANICS".

9. The applicant contended that in view of law laid down by Hon'ble Apex Court in the case noted above the respondent Nos. 4 and 5 could not be granted 1st ACP in the pay scale higher than the applicant without upgrading the post of applicant. He also relied upon the following judgments –

- (i) *UOI thr. Secretary Ministry of Defence Vs. Indian Navy Civilian Design Officers' Association thr. Swapan Deb & Anr. in W.P (C) No. 1006/2008 decided on 23.7.2010 by Hon'ble Delhi High Court.*

(ii) Yogeshwar Prasad & Ors. Vs. National Inst., Edu. Planning and Admn. & Ors. reported in SCC 2010 (14) 323.

(iii) Haryana State Minor Irrigation Tubewells Corporation & Ors. Vs. G.S. Uppal & Ors. reported in SCC 2008 (7) 375.

10. In the case of Indian Navy Civilian Design Officers' Association (supra), there was parity between JDOs and CTO (Design) till 4th Pay Commission but the 5th Pay Commission gave higher pay scale to CTO (Design). It is noted that the department had made a very strong plea for upgrading the pay scale of JDOs to that of CTO (Design) on the ground that functions performed by them are essentially identical and complementary. While relying on the various decisions of Apex Court, the Hon'ble High Court of Delhi has held that being that persons holding the post of JDO are required to supervise the work of Senior Foreman which post is also in the scale of Rs.7450-11500 which has resulted in disturbing the vertical relatively between the two posts and upheld the conclusion arrived at by the Tribunal.

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11. In the case of Yogeshwar Prasad (supra), the short question which arose for consideration before Hon'ble Apex Court as to why the appellants should not be given the pay scale of Rs.1640-2900 from the date when their counterparts have been given that pay scale in the Central Government? Applicant has drawn our attention to paras 1 & 2 at page 9 of said judgment which are being reproduced below –

“Mr.Amitesh Kumar, learned counsel appearing for the Institute-respondent no.1 tried to make out the case that duties, responsibilities and obligations of the appellants were different to their counterparts functioning in the Central Secretariat and they were justified in not giving the same pay scale. But we do not find any merit in the submission because the respondent Institute's stand all through was that the appellants be given the pay scale of Rs.1640-2900. At this stage, respondent no.1 cannot be permitted to take a somersault in this manner. The Union of India accepted the recommendations of the Vth and VIth Pay Commissions and are giving the appellants the same pay scale which their counterparts in the Central Government are getting. It may be pertinent to observe that these appellants were getting the same pay scale as was given to the employees of their categories in the Central Government up to 1.1.1986. The Union of India accepted the recommendation of the Vth and VIth Pay Commissions and are giving them same pay scale then how only during the IIIrd Pay Commission their

pay scale could be different? and how their duties, obligations and responsibilities became different only for a brief period?


In our considered view, the appellants are entitled to get the benefit of pay scale of Rs.1640-2900 which their counterparts were getting in the Central Government during the relevant period. In case this amount has not been paid, the same may be paid to the appellants by the Institute within three months from today".

12. While relying on paras 7, 9, 19, 22 and 25 of G.S. Uppal (supra) case, the applicant contented that the order for giving revised pay scale only to respondent Nos. 4 and 5 suffers from the vice invidious discrimination and is violation of Articles 14 and 16 of the Constitution of India and cannot be sustained because the very same decision/approval of the GB CWDB with regards to applicant has not yet been implemented due to prejudices.

13. It appears from the perusal of Minutes of 24th Governing Body Meeting of the Central Wool Development Board held on 23.5.2008 (Annexure A-16) that the proposal of restructuring of the posts held by respondent Nos. 4 and 5 was discussed and

their pay scale were revised from Rs.5500-9000 to 6500-10500 w.e.f. 1.1.1996 on notional basis and it was also resolved that the present pay scale of applicant is to be upgraded from Rs. 6500-10500 to Rs. 7500-12000 w.e.f. 1.1.1996 on notional basis. The main grievance of applicant is that by impugned order dated 28.3.2014 (Annexure A-1), the pay scale of respondent Nos. 4 and 5 were revised from 5500-9000 to 6500-10500 w.e.f. 1.1.1996 and respondent Nos. 4 and 5 were also given the benefit of 1st ACP in the scale of 6500-10500 by providing them the scale of Rs.10000-15200 but the pay scale of applicant was not revised from 6500-10500 to Rs. 7500-12000 as approved in the 24th Governing Body Meeting of the C.W.D.B held on 23.5.2008. Consequently, the pay scale of Respondent Nos. 4 and 5 reached to the scale of Rs.10000-15200 and the scale of applicant remained at Rs.6500-10500, which has not only disturbed the hierarchy but the applicant is suffering from financial loss.

14. In reply to the allegations made by the applicant, the respondents have taken the excuse for not revising the pay scale of applicant from Rs. 6500-10500 to 7500-12000 on the pretext that the pay scale of Rs.7500-12000 does not exist in CWDB Book of Sanction. It has not been explained on behalf of



respondents that when the pay scale of Rs.7500-12000 did not exist in the CWDB Book of sanction how it was proposed in the 24th Governing Body Meeting of the Central Wool Development Board held on 23.5.2008 and also got approved by the Governing Body the upgradation of pay scale of DMM to Rs.7500-12000 along with the upgradation of pay scales of respondent No.4 and 5. It shows that the great injustice has been done to the applicant by not granting revised scale of pay approved by the 24th Governing Body Meeting of the Central Wool Development Board and making the pay scale of respondent Nos.4 and 5 at par with the applicant which also disturbed the hierarchy of applicant's post.


15. The contention of applicant that respondent Nos. 4 and 5 have wrongly been given the benefit of 1st ACP in the pay scale of Rs.6500-10500 is not acceptable. As the pay scale of respondent Nos. 4 and 5 was upgraded by the 24th Governing Body Meeting of the Central Wool Development Board from Rs. 5500-9000 to Rs. 6500-10500 w.e.f. 1.1.1996, the respondents have rightly given the benefit of 1st ACP to them by providing next higher scale i.e. Rs. 10000-15200 and there is no violation of any provision of ACP Scheme. It has also been brought to our notice that the applicant was also given



the benefit of 1st ACP by providing him the higher pay scale of Rs.10000-15200 from due date, which was later withdrawn on an Audit Objection. The applicant had filed O.A No. 547 of 2011 and in the meantime, the said audit para was withdrawn and the O.A. was disposed of in the above terms. It appears that the applicant must have availed of the benefit of 1st ACP in the scale of Rs.10000-15200 from the due date and in this way it cannot be said that the respondent Nos. 4 and 5 have wrongly been given the benefit of 1st ACP by providing them pay scale of Rs.10000-15200, which is the same scale which the applicant is entitled to.

16. In view of the law laid down by Hon'ble Apex Court in the abovenoted cases, we are of the considered view that in order to maintain the hierarchy of the post of applicant, the respondents while considering the supervisory status of applicant, have to provide him higher pay scale than the respondent Nos. 4 and 5 as approved by the 24th Governing Body of CWDB.

17. Accordingly, OA is partly allowed and without quashing the impugned order of upgradation as well as fixation of pay



of respondent Nos. 4 and 5, we direct the respondents to consider to upgrade the post of applicant (DMM) from the pay scale of Rs.6500-10500 to Rs. 7500- 12000 as approved by the 24th Governing Body of CWDB w.e.f, 1.1.1996. They are also directed to create supernumerary posts in the approved pay scale of Rs.7500-12000 and treat the post of applicant upgraded from the date the post of respondent Nos. 4 and 5 were upgraded. This exercise must be completed within 3 months and the applicant shall be entitled to get all the consequential benefits after upgradation of his post w.e.f. 1.1.1996.

There is no order as to costs.


Member (A)


Member (J)

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(continues)

Dr. S. S. S. S.

Dr. S. S. S. S.
Newark Pa
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