

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.489/04

Friday this the 6th day of January, 2006

C O R A M :

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

C.I.Wilson,
S/o.Ilyppe,
Draftsman Grade III (Rtd.),
Small Industries Service Institute, Thrissur.
Residing at Ayanthole, P.O. Chungath House,
Thrissur – 3.Applicant

(By Advocate Mr.P.V.Mohanan)

Versus

1. Union of India represented by Secretary,
Ministry of Industry, New Delhi.
2. The Chief Controller of Accounts,
Ministry of Industry, Udyog Bhavan,
New Delhi – 110 011.
3. Accounts Officer (Administration),
Principal Accounts Officer,
Ministry of Industry, 517 D,
Udyog Bhavan, New Delhi – 110 011.
4. Senior Accounts Officer,
Pay & Accounts Office (SSI),
65/1, GST Road, Guindy,
Chennai – 600 032.Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

O R D E R

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant is a pensioner. He retired on superannuation on 31.5.2003 as Draftsman Grade III after rendering 33 years of qualifying service in Small Industries Service Institute. The pay drawn by him at the time of superannuation is Rs.6900/- in the time scale of pay of Rs.5500-9000/-. According to the applicant the terminal benefits should be fixed

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taking note of the last pay drawn at the time of retirement as emoluments.

But the pensionary benefits were scaled down arbitrarily without notice.

Therefore he has filed this application seeking the following reliefs :-

1. To call for the records leading to Annexure A-11 and Annexure A-17 and set aside the same in so far as it does not fix the monthly pension at the rate of Rs.3380/- and Death cum Retirement Gratuity at Rs.173052/- with effect from 1.6.2003.
 2. To direct the respondents to fix and disburse the monthly pension to the applicant to the tune of Rs.3380/- and the Death cum Retirement Gratuity at Rs.173052/- with effect from 1.6.2003 with interest at the rate of 18% per annum from the date of retirement till the date of payment.
 3. To direct the 4th respondent to disburse an amount of Rs.32623/- being the amount recovered from DCRG forthwith.
2. It is further submitted that the applicant commenced service as Tracer in the scale of pay of Rs.975-1540/- on 1.4.1966. There were only two posts of Tracer in the state of Kerala in the Department and the other post was held by one Shri.G Sivarajan who was junior to the applicant. He retired on superannuation on 31.10.2002 as Draftsman Grade III and his terminal benefits was fixed taking note of the last pay drawn as Rs.6750/- in the time scale of pay of Rs.5500-9000/- without scaling down the pensionary benefits. The next higher post to that of Tracer in the Department is Draftsman Grade II in the pre-revised scale of pay of Rs.1400-2300/. The method of recruitment as per the Recruitment Rule is direct recruitment. This is not a promotion post in the hierarchy. Therefore the applicant was denied promotion and he had been stagnated in the post of Tracer. The Government by OM dated 13.9.1991 allowed higher grade which was called "in situ promotion". By proceedings dated 15.7.1994 the applicant and G Sivarajan were granted in situ higher grade scale of pay of



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Rs.1200-2040/- with effect from 1.4.1992 and 1.6.1992 respectively. Normally the applicant should have been granted the scale of pay of the next post, namely, Draftsman Grade II but he was granted lower time scale of pay. After the implementation of the Vth Central Pay Commission the cadre of Tracer was redesignated as Draftsman Grade III in the scale of pay of Rs.4000-6000/- with effect from 1.1.1996. The applicant was redesignated as Draftsman Grade III with effect from 1.1.1996 and the pay was fixed at Rs.5300/- in the scale of pay of Rs.4000-6000/-. The in situ scale thus granted to the applicant had become infructuous with effect from 1.1.1996. The Government formulated Assured Career Progression Scheme as recommended by the Vth Central Pay Commission by which two financial upgradations will be granted to the Government servant on completion of 12 years and 24 years of regular service. It is stipulated in the order that existing time bound promotion scheme, including in situ promotion scheme may as per choice continue to be operational for the concerned categories of employees. However these schemes shall not run concurrently with the ACP Scheme. It is averred that the in situ promotion granted to the applicant has merely become infructuous in view of Annexure A-3 and that the in situ promotion will not count towards ACP benefits in respect of the applicant and directed to fix the pay in ACP. The basic pay of the applicant was thus fixed at Rs.6375/- with effect from 9.8.1999 and at the time of superannuation the pay drawn by the applicant was at Rs.6900/- in the time scale of Rs.5500-9000/-(Annexure A-7). It is further averred that the in situ promotion shall not count towards ACP benefits in respect of G Sivarajan and that in situ promotion given to G Sivarajan has become infructuous with effect from 1.1.1996 (Annexure A-8). By Annexure A-11 dated 28.5.2003 the Pay and Account Officer



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admitted a monthly pension of Rs.3144/- only and reduced Death cum Retirement Gratuity of Rs.163037 without taking note of the fixation of pay under ACP Scheme. The applicant claimed that he is entitled for the benefits.

3. Respondents have filed a detailed reply statement contending that the pensionary benefits of the applicant has not been scaled down arbitrarily. The PAO had directed the SISI, Trichur to re fix the pay of the applicant in terms of the DoPT OM dated 9.8.1999. The pay of the applicant had been re fixed by the SISI Trichur by order dated 6.8.2003 and the last pay drawn by the official is Rs.6375/- per month as per the revised LPC issued on 7.8.2003. The pensionary benefits of the official had been assessed based on this last pay drawn. The applicant had been granted in situ promotion with effect from 1.4.1992 carrying the pre-revised scale of Rs.1200-2040/- and the benefit of fixation of pay had been given to him by administrative Department. The redesignation of his post as Draftsman Grade III carrying the pay scale of Rs.4000-6000/- had been made only with effect from 1.1.1996 as recommended by the Vth Central Pay Commission and that also without the fixation benefit. In terms of Annexure A-1 two financial upgradations under the ACP Scheme in the entire Government service career of an employee shall be counted against regular promotions including in situ promotion. This means that two financial upgradations under the ACP Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee. Further the Doubt No.47 of the Annexure to the DoPT OM dated 18.7.2001 mentions that on introduction of ACPS the benefit of the Ministry of Finance OM dated 13.9.1991 (regarding in situ



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promotion) is to be withdrawn so as to allow the benefits under the ACPS in terms of the stipulation that no time bound promotion/in situ promotion scheme can run concurrently with the ACPS. Regarding the withdrawal of the benefit of higher grade drawn prior to 9.8.1999 the clarification issued was that the pay benefits already drawn up to 9.8.1999 in the higher grade allowed under the scheme of 13.9.1991 are not to be recovered. It is further submitted that the pay benefits of in situ promotion drawn after 9.8.1999 are to be recovered. Therefore since the applicant had already been granted in situ promotion with effect from 1.4.1991 and two financial upgradations under the ACPS with effect from 9.8.1999, the in situ promotion already granted needs to be withdrawn for grant of two financial upgradations under the ACPS. Hence the revised pay fixation suggested by the PAO is in accordance with the orders of the DoPT. The letter dated 8.3.2000 is only an opinion and not a clarification. The interpretation/clarifications on the scope and meaning of the provisions of the ACP Scheme is to be given by the Department of Personnel & Training in terms of para 11 to OM dated 9.8.1999. The case of Shri.G Sivarajan had been finalised independently by relying on the letter dated 8.3.2000 issued by the office of Development Commissioner, Small Scale Industries, New Delhi. Subsequently to the clarification issued by the DoPT on the specific point of doubt, the Internal Audit Party of Ministry of Industry had objected to the pay fixation of the applicant. The PAO had also directed SISI Trichur to revise the pay fixation of the applicant in accordance with the DoPT orders and clarifications. Accordingly the pay of the applicant had been refixed. The last pay drawn by the official is Rs.6375/- per month as per the revised LPC issued on 7.8.2003. The pensionary benefits of the applicant had been assessed based on this last pay drawn.

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4. We have heard Shri.P.V.Mohanan, learned counsel for the applicant and Shri.T.P.M.Ibrahim Khan,SCGSC, learned counsel for the respondents. I have gone through the various pleadings, evidence and material placed on record. Learned counsel for the applicant submitted that Annexure A-11 and Annexure A-17 are actuated by error apparent on the face of the records. It has been clarified by the Ministry that the in situ promotion granted not as a part of hierarchy shall not be counted as promotion for the purpose of ACP. The pay benefits already drawn up to 9.8.1999 in the higher grade allowed under the scheme of 13.9.1991 are not to be recovered. Therefore the impugned orders are not in strict compliance of the rules and regulations. Learned counsel for the respondents, on the other hand, persuasively argued that two financial upgradations under the ACP Scheme in the entire Government service career of an employee shall be counted against regular promotions including in situ promotion. This means that two financial upgradations under the ACP Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee.

5. We have given due consideration to the arguments advanced by the learned counsel. The OA has been filed by the applicant praying to set aside Annexure A-11 and Annexure A-17 impugned orders and direct the respondents to fix and disburse the monthly pension to the tune of Rs.3380/- and the Death cum Retirement Gratuity at Rs.173052/- with effect from 1.6.2003 with interest. The impugned orders are detailed orders issued by the PAO which according to the applicant is contrary to the rule position and without properly understanding the scheme available

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therein. The contention of the applicant is that these orders are error apparent on the face of the records. The applicant was stagnated in the grade of Tracer which was redesignated as Draftsman Grade III with effect from 1.1.1996. The Draftsman Grade III is an entry grade in the Department. Therefore, the benefit of ACP must be extended as the applicant was not granted promotion during the period of 24 years. Therefore, the fixation of pay granted under ACP Scheme is legal and justifiable and cannot be interfered with. The Apex Court has also declared that the pay and pension shall not be refixed based on audit objection. The contention of the applicant is that there is no normal promotion post in the hierarchy. The next higher post in the Department was to be filled up by direct recruitment. In situ promotion granted to the applicant was not to the next higher post nor to the scale of pay of the next higher post. Therefore, the applicant had never granted promotion during the tenure of his service. Thus he is entitled to get the benefit of ACP Scheme ignoring the in situ scale of pay granted to him. It had been felt that the facts mentioned in the DC SSI letter dated 8.3.2000 were not correct. It was also found that the grant of ACP I & II fixation benefit for promotion to Shri.CI Wilson was not correct since the official had already been granted in situ promotion with effect from 1.4.1992 in the scale of Rs.1200-2040 and granted pay fixation benefit for promotion, redesignated as Draftsman Grade III with effect from 6.1.1996 and granted the pay scale of Rs.4000-6000/- Since the official was granted 1st and 2nd ACP in respect to the post of Tracer now redesignated as Draftsman III the pay fixation made under FR 22(1)(a)(1) due to in situ promotion with effect from 1.4.1992 would automatically stands cancelled. The refixation of pay of the official suggested by the office is in accordance with the clarification to the Doubt No.47 mentioned



in the OM dated 18.7.2001. Now the short question for consideration is whether the refixation made as per Annexure A-11 is correct or not. My attention is drawn to Doubt No.47 of Annexure A-4 OM dated 18.7.2001 which is reproduced as under :-

Point of Doubt :- An employee was allowed promotion in a higher grade in terms of the Ministry of finance OM No.10(1) E/III/88 dated September 13, 1991. However, on introduction of ACPS the benefit of the said OM is to be withdrawn so as to allow the benefits under the ACPS in terms of the stipulation that no time bound promotion/in situ promotion scheme can run concurrently with the ACPS. Will the benefit of higher grade drawn prior to 9.8.1999 will also be withdrawn?

Clarification :- No. It will only be a switchover from the existing scheme to the ACP Scheme as on 9.8.1999. While determining his entitlements under ACPS on or after 9.8.1999, pay benefits already drawn up to 9.8.1999 in the higher grade allowed under the Scheme of September 13, 1991 are not to be recovered.

6. Annexure A-5 dated 8.3.2000 was on the subject of grant of in situ promotion/ACP benefits to Shri.CI Wilson, Draftsman Grade III, SISI, Thrissur. It is further stated that as such in situ promotion in respect of Shri.CI Wilson has merely become infructuous. In view of the clarification given in item No.I and II under DOPT OM dated 10.2.2000, the in situ promotion will count towards ACP benefit in respect of Shri.CI Wilson. Vide Annexure A-6 dated 13.7.2000 the applicant was granted ACP on the next higher promotional scale of Rs.5500-175-9000/- with effect from 9.8.1999. Thereafter, vide Annexure A-9 dated 14.6.2001 the same stand was reiterated by the Ministry of SSI & ARI in which it is made clear that the Internal Audit has not properly appreciated the meaning that in situ promotion granted to the officer has become infructuous consequent upon grant of the scale of pay of Rs.4000-6000/- to him with effect from 1.1.1996 in the regular post of Draftsman Grade III. No basis exists for denying the



benefit of in situ promotion to the officer prior to 1.1.1996 and the views taken by the Internal Audit are not in order. Internal Audit may be apprised of accordingly. Vide Annexure A-10 pension calculation sheet, the eligible pension has been calculated as Rs.3380/- This is reflected in Annexure A-12. Vide Annexure A-13 dated 1.9.2003 issued by the Deputy Director to the Pay & Accounts Officer it was made clear that the pay benefits already drawn from 1.4.1992 to 8.8.1999 in the higher grade by Shri CI Wilson, Draftsman Grade III (Retd on superannuation on 31.5.2003) allowed under the scheme of September 13, 1991 are not to be recovered. Finally Annexure A-15 letter was issued by the Senior Accounts Officer to the Director on 1.10.2003 which is reproduced as under :-

Sub :- Fixation of pay of Shri CI Wilson, Draftsman Grade III
(Retd on 31.5.2003) – Reg.

Ref :- Your officer letter No.A 20029/1/73-E dated 1.9.2003.

Please refer to your letter cited. In this connection it is stated that the DOPT clarification issued under item 47 of OM No.35024/1/97/Estt (D) (Vol IV) dated 18th July 2001 relates to non recovery of pay benefits already drawn by In situ promotion prior to 9.8.1999. Therefore, the excess drawal of Rs.60,014/- (due to refixation of pay) recovered in DCRG Bill need not have been recovered. The recovery of Rs.60,014/- made in his DCRG Bill may be refunded to the retired official by presenting a claim in the form of bill to this office for payment.

7. My attention is also drawn towards Annexure A-3 clarification which is reproduced as under :-

Point of doubt :-

Some employees have been allowed selection grade/in situ promotions though these grades are not a part of the defined hierarchy. Whether this is to be considered as promotion for the purpose of ACP? Also, what will be the situation if selection grade has been allowed in lieu of higher pay scale?



Clarification :-

Mobility under ACPs is to be allowed in the existing hierarchy. As such, if any selection grade/in situ promotion has been allowed to employees which are not a part of the hierarchy, it shall not be counted as promotion for the purpose of ACPs. For illustration sake, junior engineers of CPWD appointed in the grade of Rs.5000-8000/- are allowed the scale of Rs.5500-9000/- on completion of five years of regular service and the scale of Rs.6500-10500/- on completion of fifteen years of regular service. The scale of Rs.5500-9000/- is not a part of the defined hierarchy for them. In such cases, the pay scale which is not a part of the hierarchy may be treated to have been withdrawn. However fall in pay resulting out of this shall be protected by granting personal pay in the aforesaid direct entry grade to be adjusted against future increments. Moreover, as per condition No.13 of ACPS such existing (previous) schemes would be discontinued with the adoption of ACPS. However, in the case of common category of posts, the existing hierarchy in relation to a cadre would mean the restructured grades recommended by the fifth Central Pay Commission."

The issue was further clarified by OM dated 18.7.2001 which is extracted hereunder :-

Point of doubt :-

An employee was allowed promotion in a higher grade in terms of the Ministry of Finance OM No.10 (1)/E.III/88 dated September 13, 1991. However on introduction of ACPs, the benefit of the said OM is to be withdrawn so as to allow the benefits under the ACPS in terms of the stipulation that no time bound promotion/in situ promotion scheme can run concurrently with the ACPs. Will be benefit of higher grade drawn prior to 9.8.1999 will also be withdrawn?

Clarification :-

No. It will only be a switchover from the existing scheme to the ACP Scheme as on 9.8.1999. While determining his entitlements under ACPS on or after 9.8.1999 pay benefits already drawn up to 9.8.1999 in the higher grade allowed under the scheme of September 13, 1991 is not to be recovered.

8. From the above clarification, it is quite clear that the in situ promotion that has been granted is not in the normal hierarchy and that the post the applicant was holding (redesignated as Draftsman Grade III with effect from 1.1.1996) is the entry grade of the Department and any benefit that

has been drawn before that date cannot be withdrawn in view of the fact that another scheme has been introduced. Having accepted his eligibility through various orders and clarifications by the Department, the audit objection for denial of the same to the applicant on the ground that in situ promotion with effect from 1.4.1992 would automatically stands cancelled when the the applicant was granted the ACPs with effect from 1.1.1996 is not in the true spirit of rules that has been quoted above. Therefore, I am of the view that refixation made vide impugned orders is not in conformity with the rules and the applicant has succeeded in establishing his case to that extent. The applicant also pleaded that no recovery could be effected if it is not on the basis of the misrepresentation made by an employee. Respondents have no case that the applicant has made any misrepresentation. The benefit was granted to him by virtue of the alleged overlapping of two schemes. My attention is also drawn to the decision of the Hon'ble Supreme Court in 1994 (2) SCC 521 in Shyam Babu Vs. Union of India in which it was held that the excess amount paid cannot be recovered not attributable to the Government servant. It was also followed in the case reported in AIR 1980 SC 1562 in Union of India Vs. Rekha Majhi as also in 2005 (3) KLT 512.

9. Considering all the above aspects into consideration, I am of the view that Annexure A-11 and Annexure A-17 have been issued without proper appreciation of the rules/evidences and the same are to be set aside. Accordingly, I set aside both Annexure A-11 and Annexure A-17 orders in so far as it does not fix the monthly pension at the rate of Rs.3380/- as has been done in Annexure A-10. The applicant is entitled to the DCRG and all other benefits flowing out of this order but without any



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interest since the matter was delayed on account of various reasons. The respondents are directed to refix the pension and grant other available benefits to the applicant in terms of the observations made above as expeditiously as possible, in any case, within a period of four months from the date of receipt of a copy of this order.

10. The OA is allowed accordingly. In the circumstances, no order as to costs.

(Dated the 6th day of January, 2006)



**K.V.SACHIDANANDAN
JUDICIAL MEMBER**

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