CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application Nos. 518/2013 & 533/2013

Monday..., this the 15th day of February, 2016

CORAM:

Hon'ble Mr. U.Sarathchandran, Judicial Member
Hon'ble Mr.Rudhra Gangadharan, Administrative Member

O.A No.518/2013

1. K.Gopinatha Pillai
S/o.Krishna Pillai
MES 109046 Refrigeration Mechanic (HS)(Retd.)
Residing at Shanmughavilasom
Ezhakadavu P.O
Cherukole, Mavelikkara, Alappuzha

2. P.A Ravindran
S/o.Ayyappan
MES 109023 Refrigeration Mechanic (HS) (Retd.)
Residing at Padannakkari House
Kumbalanghi P.O
Cochin – 682 007

3. G.Vikraman
S/o.Govindan
A 6626625 Refrigeration Mechanic (HS) (Retd.)
Residing at Vismaya Paravoor P.O
Punnapra North – 680 014

4. P.N Sivarama Pillai
S/o.Narayana Pillai
MES 237854 Refrigeration Mechanic (HS) (Retd.)
Residing at Nelpurayil House
Ezhakadavu P.O
Cherukol, Mavelikkara

5. T.V.Joseph, S/o.Varkey
MES 109054, Refrigeration Mechanic (HS)(Retd.)
Residing at Thottumkathara House
Konthuruthy
Thevara P.O, Cochin – 682 013

6. S.M Sulaiman
S/o.Syed Mohamed
MES 144271(Refrigeration Mechanic (HS)(Retd.)
Residing at Rahi Manzil, Mangaram MSM/PO
Pandalam, Pathanamthitta ..... **Applicants**

(By Advocate – Mr.S.Sharan)

Versus

1. Union of India, Rep. By the Secretary to Government
   Ministry of Defence, Government of India
   New Delhi – 110 011

2. Southern Command Chief Engineer
   Pune – 444 401

3. The Chief Engineer (NW)
   Kochi – 682 004

4. Command Works Engineer (NW),
   Kochi – 682 004

5. Garrison Engineer (I) MES E/M(NW)
   Kataribagh, Kochi – 682 004

6. Engineer in Chief, Army Headquarters
   DHQPO, New Delhi 110 011 ..... **Respondents**

(By Advocate – Mr.N.Anilkumar, Sr.PCGC)

O.A No.533/2013

1. T.U.Rawther
   S/o.Thankan Rawther
   MES – 461936 Refrigeration Mechanic (HS)(Retd)
   Residing at Kollamparambil House
   Mangalam P.O, Pandalam P.O

2. K.K.Pushpangathan
   S/o.K.A Krishnan
   MES -109031, Refrigeration Mechanic (HS) (Retd.)
   Residing at Kumaroth House
   Kumbalanghy P.O
   Cochin – 682 007 ..... **Applicants**

(By Advocate – Mr.S.Sharan)

Versus

1. Union of India, Rep. By the Secretary to Government
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   New Delhi – 110 011

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6. Engineer in Chief, Army Headquarters
DHQPO, New Delhi 110 011 ..... **Respondents**

(By Advocate – Mr.N.Anilkumar, Sr.PCGC)

These Original Applications having been heard on 5.1.2016, the Tribunal on 15/2/16 delivered the following:

ORDER

By Hon'ble Mr.U.Sarathchandran, Judicial Member

Since the subject matter of these two cases are similar in nature, both the cases are disposed of by way of a common order.

2. The short question involved in these cases is whether the placement of the applicants from unskilled category to skilled category and further re-classification done are mere up-gradations or reclassification of the posts or whether the same is a promotion which would dis-entitle them to the benefits of the ACP Scheme.

3. Applicants in both these cases were initially appointed as Mazdoor under the respondents. According to them after qualifying the requisite trade test to the post of MPA, they have been posted in the category of MPA and later on being qualified in the trade test to the post of Refrigeration Mechanic, they were re-categorised as Refrigeration Mechanic H.S and HS II. All of them have now retired from service. Their grievance is that some of their colleagues have been given second ACP after completing 24 years of service, but they have not been

given the same benefits despite their aforesaid placements are only re-classification/re-categorisation and without involving any element of promotion.

4 Respondents contend that the applicants after their initial appointment as Mazdoor were promoted to the different categories like MPA/Refrigeration Mechanic etc and hence they are not eligible for 2nd ACP because the fitment of industrial personnel in MES has been done in different categories like unskilled, semi-skilled, skilled, HS, HS-I, each with different pay scales.

5 Applicants relied on Annexures A-6, A-7 and A-9 (all produced in O.A 518/13). Annexure A-6 reads as follows:-

> "**GRANT OF ACP TO DIRECTLY RECRUITE ERSTWHILE DRIVER COMPRESSORS LATER REDESIGNATED TO DRIVER ENGINE STATIC OR PROMOTED FROM DRIVER COMPRESSOR TO REFRIGERATOR MECHANIC**
>
> 1. Reference your No.132501/29-A/Pol Corr/899/EIB(S)(B/II) dated 10 August 2004.
>
> 2. As per clarification No.35 issued vide Annexure to DOP&T OM No.35034/1/197-Estt(D)(Vol.IV) dated 18 Jul 2001, it is clear that where all the posts are placed in a higher scale of pay, with or without a change in designation without requirement of any new qualification for holding the post in the higher grade, not specified in the RRs for the existing post and without involving any change in responsibilities and duties, then placement of all the incumbents against such upgraded post is not to be treated as promotion/up gradation.
>
> 3. Therefore, ACP is due to Driver Compressor either re-designated to DES or promoted to Ref Mech who were upgraded to skilled grade on the basis of code structure of the National classification of occupations. Hence, take action accordingly. "

6 Annexure A-7 reads as follows:-

"GRANT OF ACP TO DIRECTLY RECRUITED ERSTWHILE DRIVER COMPRESSORS LATER REDESIGNATED TO DRIVER ENGINE STATIC OR PROMOTED FROM DRIVER COMPRESSOR TO REFRIGERATOR MECHANIC

1. A case was taken up with E-in-C's Branch vide our letter No.132501/29-4/POL Corr/899/GIB(B)(B-II) dated 10 Aug 2004 that erstwhile Driver Compressor initially appointed in the pay scale Rs.85-128/210-290 and further promoted/re-designated to Refrigeration Mechanic/Driver – Engine Static can be given 2nd ACP in the pay scale of Rs.5000-8000 or not.

2. Clarification received vide E-in-C's Branch letter No.85610/47/ACP/OHD/0800 dt 08 Oct 2004 (copy enclosed) clearly state that 2nd ACP at pay scale 5000-8000 can be given,

3. Please take necessary action on pending cases. The representations received from India may be replied at your end or merit of the case keeping the above contention in view.
"

7 Annexure A-9 is a clarification issued by the DoP&T which reads as follows:-

"

Point of Doubt	Clarification
Point of Doubt:- Two posts carrying different pay scales constituting two rungs in a hierarchy have now been placed in the same pay scale as a result of rationalization of pay scales. This has resulted into change in the hierarchy in as much as two posts which constituted feeder and promotion grades in the pre-merged scenario have become one grade. The position may be clarified further by way of the following illustration: Prior to the implementation of the fifth Central Pay Commission recommendation, two categories of posts were in the pay scales of Rs.1200-1800 and Rs.1320-2040 respectively, the latter being promotion post for the former. Both the posts have now been placed in the pay scale of Rs.4000-6000. How the benefits of the ACP scheme is to be allowed in such cases.	Clarification:- Since the benefits of up gradation under ACP scheme (ACPS) are to be allowed in the existing hierarchy, the mobility under ACPS shall be in the hierarchy existing after merger of pay scales by ignoring the promotion. An employee who got promoted from lower pay scale to higher pay scale as a result of promotion before merger of pay scales shall be entitled for up gradation under ACPS ignoring the said promotion as otherwise, he would be placed in a disadvantageous position vis-a-vis the fresh entrant in the merged grade.

"

8 Applicant filed rejoinder producing Annexure A-10 document (O.A No.518/13) showing that the benefits claimed by the applicants have been given to similarly situated persons and Annexure A-11 seniority list indicating that persons recruited like the applicants as Mazdoors were given the benefit of second ACP and that the applicants have been arbitrarily dealt with.

9 An additional reply statement was filed by the respondents stating that applicants received only one promotion from unskilled category (Mazdoor) to the skilled category (Refrigeration Mechanic), ignoring their promotion from semi-skilled category (MPA) to skilled category (Refrigeration Mechanic). According to the respondents, applicants have therefore been granted two financial up-gradation of Rs.4000-6000 with effect from 9.8.1999 in the hierarchy of promotion of highly qualified category ignoring their promotion from MPA to Refrigeration Mechanic in accordance with Government of India O.M F.No.35034/1/97-Estt (D) (Vol.IV) dated 10.02.2000. It is also contended by the respondents that no provision of direct recruitment to the post of Refrigeration Mechanic exists in the Recruitment Rules up to 09 Aug 1999.

10 Heard both sides and perused the documents.

11 ACP is a financial up-gradation granted to the employees to avoid stagnation on account of the non-availability of promotional prospects, firstly at the end of 12 years and later on completion of 24 years without any promotion. The re-classification or re-categorisation of the posts will not be treated as promotion for the purpose of granting MACP for the obvious reason that by such process the employee is not getting the actual benefit of promotion with a higher scale of pay i.e, attached to the promotional posts.

12 In the instant case as can be seen from Annexure A-1 document "fitment of industrial person", it can be seen that the grouping of industrial personnel have been done into 5 distinct grades on the basis of degree of skill on the trade and responsibility. The five categories are :

	CATEGORY	PAY SCALE (Pre-revised)
1.	Unskilled	196-3-220EB-3-232
2.	Semi-skilled	210-4-226-EB-4-250-EB-5-290
3.	Skilled	260-4-290-EB-6-326-B-366-EB-8-390-10-400
4.	HS-II	390-8-370-10-400-EB-10-480
5.	HS-1	380-12-500-EB-15-560"

13 The aforesaid Annexure A-1 document dated 6.11.1987 states that the above mentioned 5 grade structure has come into effect from 16.10.1981. On a look at the different categories and pay scales as enumerated in the document dated 6.11.1987 marked as Annexure A-1 (at page 10 of the paper book in O.A 518/13), it can be seen that each category starting from unskilled is having a distinct pay scale, different from the other categories in an incremental order and highly skilled being with highest pay scale (pre-revised). Going by the contentions of the applicants in the Original Application, it can be deciphered that after having been appointed as Mazdoor they were subject to requisite trade test to the post of MPA and therefore on qualifying the trade test to the post of Refrigeration Mechanic they were posted as Refrigeration Mechanic, Refrigeration Mechanic HS and HS II on different dates. They all retired from HS-II position. The aforesaid statement in the O.A itself strongly indicate that they were conferred with after the trade test carried a different pay scale which strongly suggest that it was a promotion on each occasion. As stated earlier MACP is available only in the case of stagnation without promotion, notwithstanding the re-

categorisation/re-classification of the posts. In the instant case the applicant contends that their different gradations which finally culminated in HS II were mere re-classification or re-categorisation. It is difficult to understand such contentions in spite of the documents they relied on Annexures A-6 to A-9.

14 The applicant refers to other similarly situated persons who had obtained second ACP. In the additional reply statement respondents state that applicants too had been conferred with a second ACP ignoring their postings as MPA and semi-skilled. Though the respondents contend that explaining the situation under which the other persons named in the O.A who are said to be similarly situated as applicants are, the applicant cannot claim the benefit of equality unless the applicants during their case within the frame work of the ACP scheme which is a device for granting financial up gradation in lieu of promotion.

15 In the above circumstances, we are of the view that the cases put forth by the applicants is without any merits and we hold that they are only to be dismissed. Accordingly, the Original Applications are dismissed. Parties shall suffer their own costs.

(RUDHRA GANGADHARAN)
ADMINISTRATIVE MEMBER

(U.SARATHCHANDRAN)
JUDICIAL MEMBER

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