

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA NO.110 of 2006.

WEDNESDAY THIS THE 26th DAY OF MARCH, 2008

C O R A M

**HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER**

1 V.P. Jacob S/o V.C. Porinchu
Offset Machine Man, Govt. Of India Press
Koratty
residing at Vazhapilly house,
Koratty PO

2 V. Hariharan S/o S. Viswanathan
Offset Machine Man, Govt. of India Press
Koratty,
residing at Quarter No. 24/5
Khanna Nagar Colony
Kerala -680 309

Applicants.

By M/s S. Radhakrishnan, S. Rajmohan, Dr. Balakrishnan & Babu George

Vs.

1 The Manager,
Govt. of India Press
Khanna Nagar Post,
Koratty.

2 The Director of Printing
Directorate of Printing
B-Wing, Nirman Bhavan,
New Delhi-11

3 Union of India represented by the
Secretary, Ministry of Urban Development
Nirman Bhavan,
New Delhi.

Respondents

By Advocate Mr.TPM Ibrahim Khan, SCGSC

ORDER

HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER

The applicants in this OA are working as Offset Machine Man with effect from 27th June 1991 in the pay scale of Rs.4500-125-7000. They became eligible for the first financial up-gradation under the ACP Scheme on 27.6.2003. The respondents granted the first financial upgradation in the pay scale of Rs.5000-150-8000 applicable to Special Grade Offset Machine Man vide order dated 30.6.2003. It is the contention of the applicants that they are entitled to the grade of Technical Officer and the play scale of Rs.6500-10500 for the first financial up-gradation as per amendment in the recruitment rules that came into effect from 31.5.2003. According to the amended recruitment rules, Offset Machine Man is also a feeder category for the post of Technical Officer. The applicants have prayed for the following relief:

- (a) call for the records connected with the case
- (a.a.) Quash Annexure A-7 as it is patently illegal, arbitrary and against the letter and spirit of ACP scheme.
- (b) declare that the applicants are entitled to get the scale of pay of rs. 6500-10500/- on their 1st financial upgradation from the post of Offset Machine Man
- © direct the respondents to grant the scale of pay of Rs. 6500-10500 with effect from 27.6.2003 to the applicants on their 1st financial upgradation under the ACP scheme.
- (d) pass such other reliefs as this Hon'ble Tribunal madeem fit just and proper in the facts and circumstances of the case to grant.

2 The respondents have contested the OA. They have contended that the financial up-gradation as per the ACP scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts. As per clarification No.56 issued by the Department of Personnel and Training, in the case of common category posts the existing hierarchy shall be the standard hierarchy as approved by the Government. Even though the Government of India Press Koratty where the applicants are presently employed is not having the post of Offset Machine Man (Special grade) in the pay scale of Rs.5000-8000

such a post is available in sister organisations such as the Government of India Press Mysore. If financial up-gradation as claimed by the applicants is allowed it will result in vast disparities in entitlements. The issue regarding grant of financial up-gradation under the ACP scheme in respect of Offset Machine Man and Camerman was taken up with the Department of Personnel, which is the nodal Department for ACP scheme. But the Department of Personnel and Training has clearly stated that when a post is included in the lower grade only under 'failing which' category the same is not the immediate feeder grade nor is the promotion post the immediate promotional grade. Hence the post of Technical Officer is not the immediate promotion grade for the post of Offset Machine Man. Based on the opinion given by the Department of Personnel & Training, the OM dated 1.2.2005 was issued. This OM has superceded the previous letters dated 5.4.2004 and 22.4.2004 addressed to Government of India Press New Delhi. The recruitment rules of 1997 were amended in 2001 to provide for promotion opportunity to Offset Machine Man and Camerman for the higher position of Technical Officer under the 'failing which' clause. Originally the recruitment rules provided for promotion to the post of Technical Officer only from among Special Grade Machine Man, Artist Retoucher and Senior Artist. In 2001 by way of amendment it was provided that if Special Grade Offset Machine Man with six years service or Senior Artist/Artist Retoucher with three years regular service is not available, Offset Machineman or Camerman with eight years regular service will also become eligible. This does not mean that the post of Technical Officer becomes the immediate promotion post for Offset Machine Man. There were no amendments to the recruitment rules in 2003 for the post of Technical Officer, as contended by the applicant.

3 We have heard the learned counsel for the applicant Shri S Radhakrishnan and the learned counsel Ms.Jisha for TPM Ibrahim Khan. We have also studied the records carefully.

4 The issue for consideration in this OA is whether the applicants are entitled to the pay scale of Rs.6500-10500 as their first financial up-gradation under the ACP scheme. The applicants are presently in the pay scale of Rs.4500-7000. They have been given the first financial up-gradation in the pay scale of Rs.5000-8000 which is the next higher scale in the standard hierarchy. However the applicants are claiming that since they are eligible for promotion to the post of Technical Officer in the pay scale of Rs.6500-10500 they should have been given that pay scale. The respondents on the other hand have taken the stand that the post of Technical Officer is not the immediate promotion post for the posts held by the applicants. The eligibility of the applicants for the post of Technical Officer is only under the 'failing which' clause. They are not the main feeder cadre. For a clear understanding of the issue, we may look at the relevant parts of the ACP Scheme. The following extract from the para 7 of the OM dated 9.8.1999 by which the Scheme was introduced is relevant in this regard:

"7 Financial upgradation under the scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts without creating new posts for the purpose. However, in case of isolated posts, in the absence of defined hierarchical grades, financial upgradation shall be given by the Ministries/Departments concerned in the immediately next higher pay-scales as indicated in Annexure-II which is in keeping with Part-A of the First Schedule annexed in the Notification dated September 30, 1997 of the Ministry of Finance(Department of Expenditure). For instance incumbents of isolated posts in the pay scale S-4 as indicated in Annexure-II will be eligible for the proposed two financial upgradations only to the pay scales S-5 and S-6"

5 It is also useful to look at the purpose for which the ACP scheme was introduced. It is stated in the first paragraph of the OM dated 9.8.1999 that 'ACP scheme needs to be viewed as a safety net to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues'. The ACP scheme was introduced to overcome the problem of lack of promotional opportunities for long years in several cadres.

The framers of the scheme considered 12 years as a normal period in which an employee should be given one promotion to the next grade, to keep up his morale and efficiency. In the present case the applicants have been given the next higher pay scale. However they are claiming that as they are eligible for promotion to the next to next higher scale they ought to have been given that second higher scale as the first up-gradation. The Department of Personnel which is the nodal Department for the Scheme has clarified that when a post is included in the feeder category under a 'failing which' clause such a post cannot be construed as the immediate feeder post. Conversely, that promotion post also cannot be construed as the immediate promotion post for that feeder cadre. This interpretation appears to be line with the original scheme. As stated in the para 7 extracted above, 'the financial up-gradation shall be given to the next higher grade in accordance with the existing hierarchy in the cadre'. The amended recruitment rules relating to the post of Technical Officer reads as follows:

**MINISTRY OF URBAN DEVELOPMENT AND
POVERY ALLEVIATION
(DIRECTORATE OF PRINTING)**
New Delhi, the 12th June, 2001

GSR 438(E)- In exercise of the powers conferred by the proviso to article I309 of the Constitution the President hereby makes the following rules further to amend the Ministry of Urban Affairs and employment, Directorate of Printing Group-A and Group-B posts Recruitment Rules, 1996, namely:-

1(1) These rules may be called the Ministry of Urban Affairs and Employment, Directorate of Printing Group-A and Group-B Posts Recruitment (Amendment) Rules, 2001.

1(2) They shall come into force on the date of their publication in the Official Gazette.

2 In the Ministry of Urban Affairs and Employment Directorate of Printing Group-A and Group-B Posts Recruitment Rules, 1996 in the Schedule against serial No. (5) relating to the post of Technical Officer (Photolitho) in column; 12 under the heading; "Promotion" for the words "Offset Machineman (Special Grade) Artist Retoucher and Senior Artist with four years regular service in the grade" the following shall be substituted namely:-

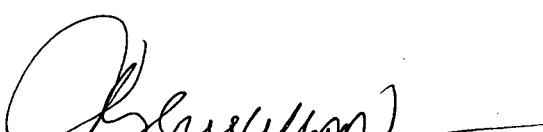

"Offset Machineman (Special Grade) with six years regular service in the grade, Senior Artists/Artist Retoucher with three years regular service in the grade, failing which

Offset Machineman or Cameraman with eight years regular service in the grade."

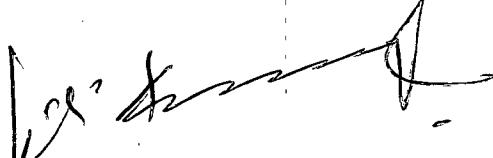
6 It is clear from the above amended rules that the main feeder cadres for the post of Technical Officer are Special Grade Offset Machineman, Senior Artists and Artist Retoucher. The post of Special Grade Offset Machine Man carries a higher pay scale compared to the applicants. Therefore the applicants cannot compare themselves with those occupying the posts of Special Grade Offset Machine Man. They are not on equal footing. In fact, those in the pay scale of Offset Machine Man (Special grade) would be eligible to get their second financial up-gradation to the pay scale of Technical Officer. We are therefore of the considered view that subsidiary feeder cadres such as those occupied by the applicants cannot be eligible to the pay scale of the promotion post for which they are made eligible with a 'failing which' clause. The purpose of making such a provision for promotion with a 'failing which' clause is to make available a window of promotion opportunity which may or may not materialise. However the existence of such a provision cannot entitle the employees of that cadre to equate themselves with the main feeder cadres. The original objective of the ACP scheme is to overcome the problem of genuine hardship faced by employees who are not able to get even one promotion to the next higher scale for many years and not to give unintended extra benefits to some cadres which have been provided with a window of promotion opportunity in a post that has a pay scale higher than the next higher pay scale.

7 For the reasons stated above, it is not possible to provide the relief sought by the applicants. OA is therefore dismissed. No costs.

Dated 26.3.2008



DR. K.S. SUGATHAN
ADMINISTRATIVE MEMBER



DR. K.B.S. RAJAN
JUDICIAL MEMBER

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