

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No.140/2005

WEDNESDAY THIS THE 2ND DAY OF NOVEMBER 2005

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

K.G. Soman S/o Govindan
Security Attendant-B
Naval Physical and Oceanographic Lab
Thrikkakara P.O. Kochi-21
residing at NPOL Quarters, Type-II
No.24, Thirkakara, Kochi-21.Applicant

By Advocate Mr. T.C. Govindaswamy

Vs.

- 1 Union of India represented by the Secretary
to the Government of India
Ministry of Defence, New Delhi.
- 2 The Director
Naval Physical and Oceanographic Lab
Thrikkakara P.O., Kochi-21
- 3 The Director General/Research and Development
Government of India, Ministry of Defence
Defence Research and Development Organisation
Directorate of Human Resources Development
B Wing, Sena Bhavan, New Delhi-110 011.Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC.

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The Applicant who is presently working as a Security Attendant B under the respondents, is aggrieved by the refusal on the part of the respondents in granting him the second financial upgradation in the scale of pay of Rs. 3050 - 4590 under the Assured Career Progression Scheme (ACP for short) by the impugned order marked as Annexure A 1.

2 The applicant was initially appointed as a Cook on 7.11.19 69 and was granted promotion in situ in the scale of Rs 775 – 12-871-14 -955-15-1030-20-1150 with effect from 1.1 1991 . He was fitted in the scale of pay -of Rs. 2610 - 3540 with effect from 1.1 1996 on the basis of the Recommendations of the Fifth Pay Commission. Later, he was granted the scale of pay of Rs. 2650-4000 with effect from 1.12.1998. Thereafter the Government introduced the Assured Career Progression Scheme, with effect from 9.8.19 99. However, the applicant was not granted the benefit of the second ACP. Meanwhile, the Ministry of Finance issued an order as at Annexure A-6 granting a replacement scale of pay of Rs. 2610-4 000 against the scale of pay of Rs. 775 -- 1150 with effect from 1.1.19 96. The Ministry also clarified that Group D employees who have the educational qualification of Matriculation may be granted the scale of pay of Rs. 3050 - 4590 as the second financial upgradation. It was also stated inter-alia that persons like the applicant are entitled to the second financial upgradation at least to the scale of pay of Rs 2750-4000, however no financial upgradation was granted to the applicant under the scheme and he submitted a representation dated 5.9.2002 which was rejected by the second respondent. The applicant thereafter filed an Original Application No 76 /2003 before this Tribunal which was disposed off directing the respondents to consider the grant of ACP from the due date and issue appropriate orders. The respondent has issued orders granting upgradation to the applicant only in the scale of pay of Rs. 2750-4000 and not to the scale of 3050 – 4590 to which the applicant is eligible.

3 The respondents in their reply have confirmed the service particulars as submitted by the applicant. They further stated that the post of watchman was designated a Security Assistant with effect from 14.7.1998 and the applicant was granted promotion in the same pay scale of 2650-4 000 which he was drawing on in situ promotion and subsequent revision of the pay rules. He was not allowed any financial upgradation or pay fixation benefits as he had already got the benefit of pay fixation on in situ promotion. After the introduction of the ACP scheme the existing scheme of in situ promotion was discontinued with effect

from 9.8.99 and the scheme was not to be applicable to those who have already got regular promotions. Therefore his representation was rejected as he had already been granted two promotions one on 1.4.19 91 and the second on 5.12.19 98 during his service span. Aggrieved by this decision, the applicant had filed OA No.76 /2003 and the respondents had then stated before the tribunal that a clarification was being obtained from higher authorities. The applicant was allowed fixation of pay in the revised new elongated pay scale of Rs 2610-4 000 with effect from 1.1.19 96 and the second financial upgradation has been granted in the revised hierarchical pay scale of Rs 2750-4000 with effect from 9.8.19 99. Accordingly he has exercised an option for fixation of pay in the above pay scale and accepting the said benefits. The respondents further state that according to the statutory rules and orders governing the organization at Annexure R1, the minimum educational qualification required for the post of Lower Division Clerks re-designated as Administrative Assistant in the Defence Research and Development Organisation(DRDO for short) is Senior Secondary School Certificate recognised by the Central/State Governments. The applicant has passed only the Secondary School Examinations and he is not eligible for promotion to the post of LDC in the D. R.. D. O. The claim of the applicant based on the Office Memorandum dated 1.6.2001 is not acceptable as that memorandum applies only to LDCs in Secretariat /non-Secretariat where Matriculation is the minimum educational qualification under the recruitment rules. Since the applicant does not fulfill the educational qualification required for promotion to the post of LDC, his present claim is not sustainable.

4 It is seen from the above that the applicant has already got the second financial upgradation under the ACP scheme and his claim is only restricted to getting the benefit of the pay scale of Rs.3054-4590 instead of Rs.2750-4000 granted to him. The claim is solely based on the Annexure A-7 order dated 1.6.2001 which inter-alia states in condition (ii) that 'where civilian employees of the Central Government are matriculates and are eligible for promotion to the post of LDCs the second financial upgradation in their case shall be the pay

scale of Rs 3050 4590. The respondents have stated that according to the recruitment rules of the Organisation for promotion to the post of Administrative Assistants, the qualification prescribed is Senior secondary School Certificate and therefore the applicant is not eligible for promotion to that scale. They have relied on the clarification that reference to LDC in the Office Memorandum dated 1.6.2001 is only in respect of the post of LDC's in Secretariat/non-Secretariat where Matriculation is the minimum educational qualification under the recruitment rules, that further to determine eligibility for promotion to the higher hierarchical scale the requirement of qualifications prescribed in the recruitment rules are necessary. The learned counsel for the applicant argued that there was no such stipulation in the Scheme introduced in 9.8.19 99 and any clarifications cannot overrule the basic tenets of the Scheme. We are unable to agree with this argument of the learned counsel for the applicant as ~~one~~ on Condition 6 in the Scheme did prescribe fulfillment of normal promotion norms for a grant of financial upgradation and this issue has been further clarified by the Department of Personnel and Training while issuing a series of clarifications to clear doubts in their memorandum dated 18.7.2000 in clarification no.53. The reference was made by the counsel for the applicant to the judgment of this Bench in V.E Chandran and others Vs. Union of India (2002(2)ATJ 47. A view has been taken in that case that the provision of two scales for upgradation for matriculates and non-matriculates is discriminatory and the possession of educational qualification does not appear to be a precondition for Gr D. to earn upgradation under the ACP scheme This judgment ~~had~~ also been followed by Division Bench of the CAT Chandigarh Bench in the case of Chunilal and another in OA No. 1252 of 2002 decided on 30.5.2 003. The legal position in respect of these two judgments referred to supra is that the CAT Chandigarh Bench in OA Nos. 125 and 465 of 2003 preferred the matter to a larger bench to resolve the conflict arising out of these two judgments and the judgment in the case of Mahinder Pal Sharma rendered by the Principal Bench of the CAT in OA 1342 of 2002, framing the question whether a person for getting financial upgradation under the ACP scheme is required to be possessed of educational

qualifications required for appointment by promotion to the next higher post. The full bench which met on 22 April, 2004 answered the question posed as under in para 40:

"A person for a grant of financial upgradation under the ACP scheme dated 9.8.1999 to the next higher grade or scale is required to possess the educational qualifications required for appointment to the higher post."

5 In view of the above decision, the applicant's claim has no merit since he does not fulfill the educational qualifications prescribed in the Recruitment Rules for the post of the Administrative Assistant in the D. R. D. O.

6 In the result the OA is dismissed. No costs.

DATED: 2.11.2005


GEORGE PARACKEN
JUDICIAL MEMBER

Sath. Nair
SATHI NAIR
VICE CHAIRMAN

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