

RESERVED

Central Administrative Tribunal Lucknow Bench Lucknow

O.A. NO. 33/2006

This, the <sup>28<sup>th</sup></sup> day of February, 2010

Hon'ble Mr. Justice A. K. Yog, Member (Judicial)  
Hon'ble Dr. A. K. Mishra, Member (Administrative)

Mani Ram Gautam, Ex. Senior Auditor A/c No. 8297782, 554/219, G/1,  
Arjun Nagar, Alambagh, Lucknow.

Applicant

By Advocate: In Person

Versus

1. The Union of India through its Secretary Ministry of Defence,  
New Delhi.
2. The Secretary DOPT New Delhi.
3. The C.G.D.A. R. K. Puram, West Block- New Delhi.

Respondents

By Advocate Sri Vishal Chaudhary for Km. A. Chaudhary.

ORDER

Delivered by Hon'ble Dr. A.K. Mishra, Member(A)

The applicant is seeking a direction to the Respondent No. 3 to waive the requirement of passing the test for grant of higher pay scale of Rs. 6500-200-10500 to the applicant under the Assured Career Progression (ACP) Scheme. In Para 5 of the application under the heading '*Grounds for relief with legal provisions*', he has relied upon a letter of the Department of Personnel and Training (DOP&T) which says that the requirement of passing the departmental test may be waived in appropriate cases, as described in that letter.



2. The applicant filed O.A. No. 500/2002 on which, the Tribunal directed the present Respondent No. 3 to decide his representation by a reasoned order. The respondents have passed such an order on 7.1.2003 and came to a finding that in terms of instructions of DOP&T dated 9.8.99 and 10.2.2000, there is a requirement for passing the departmental examination of Supervisor Accounts SAS Part-I before the applicant could be considered for upgradation under the ACP Scheme. Since, admittedly, the applicant had not passed the examination, the ACP could not be granted to him. This order has been challenged in the present O.A.

3. Relevant extracts of the letter dated 18<sup>th</sup> September 2003, Ministry of Defence referring to the advice of the DOP&T on which he is placing reliance is extracted below:

*".....The DOP&T has clarified that in respect of cases where , for promotion and consequentially for ACP Scheme, there is a requirement of passing of trade test but persons had retired or expired before the first trade test could be conducted by the concerned Organization after introduction of the ACP Scheme, in their cases requirement of conducting the trade test may be waived and the suitability of such officers maybe considered on the basis of their assessment reports to enable them to be considered for grant of ACP Scheme.....".*

4. The applicant, admittedly, has retired on 31.7.2001. He is seeking the benefit of second advancement under ACP Scheme after completion of 20 years of regular service which commenced on 10.5.1965.

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in the examination which he had not availed himself of. Therefore, it was argued that the concession granted in respect of exemption from the said examination could not be given to the applicant. Such a concession was granted only in respect of the candidates who retired, or expired before they could avail themselves of the opportunity of taking departmental examination. The respondents have placed reliance on the clarification given by the DOP&T which says that the concession is not available for candidates who had several opportunities both before 9.8.99 and after 9.8.99 to qualify in the SAS Part I examination, but could not do so. It says that the second financial upgradation could be given to them only from the date of passing of examination and not from 9.8.1999 when the scheme was introduced. The relevant letter dated 2.8.2004 has been annexed as CA-I.

6. The applicant has taken the ground that the ACP Scheme, introduced in the letter of DOP&T dated 9.8.99, does not specifically mention about the requirement of passing the trade test. Nevertheless, this issue has been subsequently clarified by the DOP&T which is the administrative department in respect of the ACP Scheme that where such Trade test/Skill test departmental examination is prescribed for the purpose of regular promotion such norms had to be fulfilled before granting upgradation under ACP Scheme. The clarification of the DOP&T has been enclosed to the letter dated 2.8.2004 referred to earlier.



7. The applicant himself does not contest this position, but seeks a direction for a waiver of this requirement on the ground that he had retired and had no opportunity to sit in the departmental examination. Now that it is established that examinations were held in the years 1999, 2000 and 2001, but the applicant did not avail himself of the opportunity, his prayer loses its force.

8. In the circumstances, it is difficult to allow his prayer for giving a direction to the respondent authorities to waive the requirement.

9. O.A. is dismissed. No costs.

*A. K. M. Shra*  
(Dr. A. K. M. Shra) 26/02/16  
Member (A)

*A. K. Yog*  
(Justice A. K. Yog)  
Member (J)

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