

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 342 of 2006

Reserved on 20.2.2013

Pronounced on 14/3/13

**Hon'ble Mr. Justice Alok K Singh, Member-J
Hon'ble Mr. D.C. Lakha, Member-A**

1. Aditya Ram, S/o Sri Mahesha Nand, R/o Type 2/50, GSI Colony, Sector Q, Aliganj, Lucknow.
2. Chand Deep Yadav, S/o Sri Kavi Yadav, R/o Village Ram Sala Post Singera, District Gazipur.
3. Chanana, S/o Sri Lacchoo, R/o House no.2 Harijan Colony, Gandhi Nagar, Jammu.
4. Amar, S/o Sri Palu Singh, R/o Village & Post Mani Karan, District Kullu, H.P.
5. P. Bhimaya, S/o Sri Pideni Chandriya, R/o Village Laddaputti, Post Ichapuram, District Sri Kapuram.
6. Ganga Dhar Chaudhary, S/o Sri Sham Rao Chaudhary, R/o Village Boogaon Road, Shiv Nagar, District Warda (Maharashtra).
7. Kishori Chaudhary, S/o Sri Sumai Chaudhary, R/o Village & Post Babupali, District Machubari (Bihar).
8. Som Bahadur, S/o Sri Narain Singh, R/o Village Sekha Post Arughat, District West no.2 Gorkha, Kathmandu (Nepal).
9. Mohan Singh, S/o late Laxman Singh, R/o A-182 Adil Nagar, Near Bhuyyan Devi Mandir, Kursi Road, Lucknow.
10. Balbir Singh, S/o Sri Mukund Singh, R/o Village & Post Kharkali Palli, Mala Badalpur, District Pauri Garhwal (Uttaranchal).

.....Applicants

By Advocate : Sri Yogendra Mishra.

Versus.

1. Union of India Ministry of Mines, Shastri Bhawan, New Delhi through its Secretary.
2. The Director General, Geological Survey of India, 27 Jawahar Lal Nehru Road, Kolkata.
3. Deputy Director General (NR), Geological Survey of India, Aliganj, Lucknow.

.....Respondents.

By Advocate : Sri Ganga Singh

O R D E R

By D.C. Lakha, Member(A)

Under challenge in this O.A. is the order dated 14.9.2005 passed by respondent no.3 in compliance of directions of this



Tribunal in O.A. no. 183 of 2005, whereby the claim of the applicants for granting IIInd financial up-gradation under ACP Scheme has been rejected. The applicants have prayed for quashing of this order as well as direction for fixing their pay-scale as per Ist ACP as Rs. 4000-6000/- instead of Rs. 3200-4900/-.

2. All the ten applicants have joined together in this O.A. to seek the benefit of IIInd financial up-gradation under ACP Scheme as per circulars dated 9.8.1999 and 10.2.2000. Detailing on the facts, the applicants have stated that they had already got the benefit of Ist financial up-gradation under ACP scheme on 24.4.2004 and all of them are working as Drilling Assistants since 1980 w.e.f. the different dates. All the applicants have completed more than 25 years of regular service and have fulfilled all the conditions for granting the IIInd financial under ACP Scheme and the department had already given this benefit to other similarly placed employees. The benefit of IIInd financial up-gradation under ACP Scheme being prayed for by them has been provided as per circular of Government of India, Ministry of Personnel, Public Grievances and Pensions (DoP&T) dated 9.8.1999. The relevant and brief provisions of the scheme as mentioned in Annexure no.1 of the circular is as under:

"The First Financial upgradation under the ACP Scheme shall be allowed after 12 years of regular service and the second upgradation after 12 years of regular service from the date of first financial upgradation subject to fulfillment of prescribed condition. In other words, if the first upgradation gets postponed on account of the employees not found fit or due to department proceedings etc. this would have consequential effects on the second upgradation which would also get deferred accordingly."

The applicants, in their averments in the O.A., have laid emphasis on the circular dated 9.8.1999 and its clarification by circular dated 10.2.2000 (Annexure-5 & 5-A) stating that the benefit under ACP shall be given to employees of Group 'B' 'C' and 'D' on completion of 12 years & 24 years of regular service. The said benefit is available subject to the condition no. 4 of Annexure no.1 of the circular dated 9.8.1999, which has been referred to, in condition no15 which reads as under:

"Subject to condition 4 above in cases where the employees have already completed 24 years of regular service with or without a promotion, the second financial upgradation under scheme shall be granted directly. Further, in order to

rationalize unequal level of stagnation, benefits of surplus regular service (not taken into account for the first upgradation under the scheme) shall be given at the subsequent stage (second) of Financial upgradation under the ACP scheme as a one time measure. In other words, in respect of employees who have already rendered more than 12 years, but less than 24 years of regular service beyond the first 12 years shall also be counted towards the next 12 years of regular service required for grant of the second financial upgradation and, consequently they shall be considered for the second financial upgradation also as and when they complete 24 years of regular service without waiting for completion of 12 years of regular service after the first financial upgradation already granted under the Scheme."

In para 4.5 of the O.A., it is stated that it is no-where pointed out in circular dated 9.8.1999 that the benefit of IIInd ACP can be given only to those employees who are having the requisite qualification for the concerned promotional posts, but the respondent no.4 has misinterpreted the circular and denied the same to them. Referring to another order dated 31.8.2004 (Annexure-4), they have tried to fortify their claim quoting the following paragraph of this order:

"It has been decided that the Lab Assistant (Chemical) Grade III of GSI who had completed 24 years of service and were eligible for second financial upgradation under ACP Scheme as on 18.5.2001 as per provisions of revised recruitment rules for the post of JTA (Chemical) in GSI but did not satisfy the training clause prescribed for promotion in this grade while they had the qualification below graduate (non-matriculate) be allowed second financial upgradation under ACP Scheme in the scale of pay of Rs. 5000-8000/- with effect from 18.5.2001 after observing all formalities. Here it is relevant to mention that the applicant has been working in the department before 1971 and there substantive appointment has done on later dated of 1980 they all are eligible for financial upgradation of pay scale 5000-8000/-.

Referring to another notification dated 18.5.2001 (Annexure no.6) GSR-264 which is about amendment in the Recruitment Rules, 1968, the applicants have averred that the post of Junior Technical Assistant (Drilling (in short JTA (D) is promotional post and only in case of non-availability of candidates (employees) for promotion, direct recruitment can be made, Drilling Assistants who have 8 years of regular service are eligible for promotion for the post of JTA (D). The applicants have been working as Drilling

Assistants vide order dated 27.4.2000 in the pay scale of Rs. 3200-4900/- . As per this notification, all non-Matriculate employees, who were working as Drilling Assistants have been promoted as JTA (Annexure-7). Some of the employees have been given the benefit of ACP on the recommendations of Screening Committee vide Office Order dated 25.11.2004 (Annexure-8), but the applicants, though have completed prescribed service norms, have been denied this benefit. Vide office order dated 1.5.2004 (Annexure-9) two Drilling Assistants namely S/Sri S.S. Rawat and Ram Sewak Lal were promoted as Junior Technical Assistant in the pay scale of Rs. 5000-8000/- w.e.f. 6.1.2004, but the applicants have not got promotion as yet.

The applicants personally as well as with the office bearers of Staff Union met the respondent no.2 from time to time and they were promised that their matter would be looked into, but inspite of their representation to respondent no.1, no action has been taken in favour of the applicants. The applicants are eligible even in view of their blameless service career and there is no disciplinary proceeding either pending or decided against the applicants and as such they are eligible for being given IIInd financial upgradation under ACP Scheme on merits. Since their claim has not been considered in a reasoned manner, rather the same has been rejected by way of impugned order; they had to knock the door of this Tribunal by way of filing the present O.A.

3. The respondents have contested the case of the applicants by filing Counter Affidavit in which para-wise comments have also been given. The claim of the applicants has been vehemently denied stating that they are not eligible in view of ACP Scheme issued vide circular dated 9.8.1999 by DoP&T and subsequent clarification dated 10.2.2000. Their claim has been considered and since they are not found suitable for grant of IIInd financial upgradation under ACP Scheme, the impugned order has been passed and there is no illegality in this order. The applicants do not fulfill the normal promotional norms as prescribed in the relevant Recruitment Rules for second financial upgradation under ACP Scheme; as they have to fulfill the qualifications and conditions necessary for normal promotion to the next higher rank (i.e. J.T.A). The applicants have misinterpreted

the circular dated 18.7.2001 (Annexure CA-1) which has been issued to clarify certain doubts about ACP Scheme. In this matter, point of doubt at sl. No. 53 is more relevant, which is referred to in para 6 of the CA as under:

"It is clearly mentioned that various stipulations and conditions specified in the Recruitment Rules for promotion to the next higher grade, including higher/additional educational qualification as prescribed are required to be met even for consideration for financial upgradation under ACP Scheme."

It is stated in the Counter Affidavit that as per of Recruitment Rules, the minimum qualification of Matriculation is essential alongwith 8 years regular service in the grade of Drilling Assistant for promotion to the post of JTA (D). As these officials do not possess the minimum qualification of Matriculation, they are not entitled for second financial upgradation under ACP Scheme in the grade of JTA (D). It is not only completion of 24 years of regular service, which is necessary for 2nd ACP, but it is also essential to fulfill the educational and experience qualifications. In reply to contents of para 4.8 of O.A., it is stated that the hierarchy of Chemical Stream is entirely different in comparison to hierarchy of Drilling Stream. Hence the benefit available to Lab Assistant (Chemical) Gr.III of GSI who had completed 24 years of service being eligible for 2nd financial upgradation under ACP Scheme even if they are non-matriculate, is not available to the applicants because they belong to different streams. It is emphatically stated in para 11 of the Counter Affidavit that promotion to the post of JTA (D) is being done from Drilling Assistants who are having 8 years of regular service and have minimum educational qualification of High School. Replying to Annexure-7 of the O.A. as mentioned in para 4.10 the respondents have denied its reliability stating that the same is not authentic. It is also added that no Non-Matriculate Drilling Assistant has been promoted to the post of JTA (D) after the revised Recruitment Rules or Rules dated 10.12.2001. It has also been added in the Counter Affidavit that at no point of time there has been any assurance given to the applicants or GSI Staff Union to decide the matter of 2nd financial upgradation under ACP Scheme in favour of the applicants. On receipt of their representation and also as

per directions of this Tribunal, the case of the applicants has been considered as per applicable rules for the scheme and impugned order has been passed with reference to rules and circulars.

4. On behalf of applicants, Rejoinder Affidavit has also been filed in which almost all the averments made in the O.A. have been reiterated with denial to the different assertions made by the respondents in their Counter Affidavit.

5. We have heard the learned counsel for both sides and have also gone through the pleadings. Admittedly, the circular of DoP&T dated 9.8.1999 provides for the scheme of ACP with all parameters. Learned counsel for the applicant has argued, in support of averments made in the O.A. and RA, that the respondents have given the benefit of 1st ACP to the applicants, but the benefit of 2nd ACP has been denied vide impugned order in spite of the fact that some other employees, similarly placed, have been given this benefit. He has referred to para 4.10 and 4.11 with Annexure nos. 7, 8 & 9 of the O.A. in this respect. That is how the respondents have adopted discriminatory attitude towards the applicants. The applicants are entitled to the benefit of second ACP as per circular of Government of India DoP&T as referred to in the O.A. also, it shows the malafide intention of the respondents. It has also been argued on behalf of the applicants that Lab Assistants (Chemical) Gr.III have been given the benefit of 2nd ACP vide letter dated 25/31.8.2004 (Annexure-4) in spite of the fact that they were Non-Matriculate. On behalf of respondents, replying to the contentions of counsel for the applicants, it has been argued that the impugned order has rightly been passed by respondent no.3 because the applicants did not qualify for the benefit of 2nd ACP Scheme as per circulars dated 9.8.1999 and 10.2.2000, with further clarification issued vide circular dated 18.7.2001 (Annexure CA-1) about which mention has already been made in their Counter Affidavit. Reemphasizing on these clarifications, counsel has pointed out that at sl. No.53, it has been clarified that in terms of condition no.6 of the DoP&T O.M. dated 9.8.1999 only those employees who fulfil all promotional norms, are eligible to be considered for benefit under ACPS. Various stipulations and conditions specified in the Recruitment Rules for promotion to next higher grade including

higher/additional educational qualification, if prescribed, would need to be met even for consideration under ACPS. In support of averments made in the Counter Affidavit, the counsel has emphasized that the applicants do not possess educational qualification of Matriculation, which is prescribed as per Recruitment Rules for the post of JTA (D) for promotion. That is why, they have not recommended by the Committee. This has not been controverted on behalf of the applicants. He has also contended that the employees, about whom orders at Annexure nos. 7, 8 and 9 as pointed out in defence of the applicants, pertain to different category. Annexure -7 relates to the list of promotion (dt. 18.5.2001) regarding Non-Matriculate Technical Assistants to the post of JTA (D). Annexure no.8 is the office order dated 25.11.2004 granting financial upgradation to JTAs, Head Mechanic/Lab Assistants. Vide order dated 1.5.2004 (Annexure-9) two Drilling Assistants have been promoted to the post of JTA (D). The authenticity of Annexure no.7 has already been pointed out to be doubtful in the Counter Affidavit to which no reply has been given in the Rejoinder controverting the same. There is no mention of educational qualification against names of the employees at Annexure nos. 8 & 9. Hence, the applicants cannot get benefit of these orders especially the order at Annexure no.9 which pertains to two Drilling Assistants who have been given promotion. This is infact an order of promotion and not of granting ACP and that is why educational qualification of these employees is not mentioned in this order.

6. We have given thoughtful consideration to the pleadings and the arguments of both sides and have also gone through the different documents on record alongwith the impugned order. The case of the applicants has been rejected for want of minimum required educational qualification as per Recruitment Rules for granting IInd ACP in the pay scale of Rs. 5000-8000/- We are inclined to agree with the averments and contentions of learned counsel for the respondents. Accordingly, we find that O.A. is devoid of any merit. The impugned order is a well reasoned and speaking order which does not call for any interference at this level. The O.A. is accordingly dismissed with no order as to costs.

(D.C. Lakha)
Member(A)

Girish/-

Alok Kumar Singh
(Justice Alok K Singh)
Member (J)

14.3.13