

CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH.

Original Application No.301/2001.

Tuesday, this the 28th day of August, 2001.

Hon'ble Shri Justice Ashok Agarwal, Chairman,  
Hon'ble Smt. Shanta Shastry, Member (A).

S.C.Matai,  
Flat No.29,  
Chitralekha Apartments,  
Near RC Church,  
Colaba,  
Mumbai - 400 005.  
(By Advocate Shri A.I.Bhatkar)

...Applicant..

v.

1. Union of India through'  
The Secretary,  
Ministry of Defence,  
DHQ PO,  
New Delhi - 110 011.
2. The Engineer-in-Chief's  
Branch (E1B), Army HQ.,  
Kashmir House, DHQ P.O.,  
New Delhi - 110 011.
3. The Chief Engineer (Navy)  
Mumbai, 26, Assaye Building,  
Colaba,  
Mumbai - 400 005.

...Respondents.

(By Advocate Shri R.R.Shetty for  
Shri R.K.Shetty)

: ORDER (ORAL) :

Smt. Shanta Shastry, Member (A).

The relief sought by the applicant in this OA is to direct the Respondents to grant second financial upgradation to him w.e.f. 9.8.1999 under the Assured Career Progression Scheme (for short, ACP Scheme) and to pay the arrears of pay and allowances consequent upon granting of the relief with an interest at the rate of 18% p.a. till the actual payment of the arrears. The applicant has further prayed to revise the pensionary benefits and to grant the difference in pay with interest at the rate of 18% p.a.

2. The applicant was initially recruited on 20th June, 1964 against the quota of Degree Holders as Superintendent B/R Gr.I. He was promoted as Assistant Engineer (Civil) in February, 1984 on ad-hoc basis and on regular basis w.e.f. 13.6.1986. The applicant submits that this is the only promotion he earned during his entire service career of 35 years. The applicant has retired from service on 31.12.2000. // The applicant submits that the Government of India have introduced ACP Scheme based on the recommendations of Vth Central Pay Commission w.e.f. 9th August, 1999 providing two financial upgradations viz. one after completion of 12 years of regular service and the second after completion of 24 years of service provided no promotions were granted to the employees. Where one promotion is already granted, the second upgradation is to be given after completion of 24 years of regular service.

3. Though this is the admitted position, the applicant submits that the respondents are unnecessarily delaying the case of the applicant.

4. The Respondents have filed their written reply. According to the Respondents, the scheme of ACP is not applicable in the case of the applicant. Applicant belongs to the Military Engineering Service in MES, where a scheme of pay upgradation on time-bound basis in the prevailing hierarchy is already admissible and therefore, the applicant's case is to be governed by the time-bound one time promotion scheme and not by the ACP Scheme. According to para 13 of the <sup>Acpl</sup> Scheme dt. 9.8.1999 existing time-bound promotion schemes, including in-situ promotion scheme, in various Ministries/Departments may, as per

choice of the administrative Ministry/Department continue to be operational for the concerned categories of employees. In case of switching over from the existing time-bound promotion scheme to the ACP Scheme, all stipulations made under the former (existing) scheme would cease to be operative and the ACP Scheme shall have to be adopted in its totality. The Learned Counsel for the Respondents submits that the time-bound one-time promotion scheme is still in operation in the MES and therefore, the ACP Scheme cannot be made applicable in the present case.

4. Further, the applicant is also not entitled to upgradation even under the existing time-bound one-time promotion scheme of the MES, because according to that scheme the employee is entitled to upgradation to the higher scale after completion of 5 years w.e.f. 1.1.1986 and further upgradation after completion of 15 years w.e.f. 1.1.1991. Since the applicant had already got his <sup>regular</sup> <sub>on</sub> promotion <sup>on</sup> 13.6.1986, he can neither get the benefit of the first upgradation after 5 years, nor can he get the benefit of upgradation after 15 years from 1.1.1991 as he had already retired on 31.12.2000. Therefore, according to the Learned Counsel for the Respondents this policy decision has been taken by the Respondents in pursuance of the Judgment of the Bangalore Bench of the Tribunal in OA No.1337, 1364-1365/1994 and other similar OAs. This decision was taken on 25.4.1996.

5. The Learned Counsel for the applicant submits that he has been denied the benefit both ways and the scheme of the MES dt. 25.4.1996 does not apply in his case because the time-bound one-time promotion is for employees upto the level of Assistant

Engineers only. The applicant is already an Assistant Engineer and therefore, this particular scheme will not apply, hence ACP Scheme should be made applicable in the applicant's case.

6. We have heard the Learned Counsel for both the parties and have perused the pleadings. After careful consideration, we find that the applicant is being denied promotion\$ under both the schemes. In our considered view, since the applicant is not covered by the scheme on 25.4.1996 of the MES he deserves to be considered for the benefit under the ACP Scheme implemented w.e.f. 9.8.1999, though the applicant has completed 12 years of service in the promoted post of Assistant Engineer as in 1998, since the scheme of ACP Scheme has been brought into force on 9.8.1999, the applicant's case shall be considered for promotion w.e.f. that date as already prayed by him. The learned counsel for the Respondents has also stated that the applicant's case has been referred to the higher authorities for consideration under the ACP scheme. We direct the respondents to expedite the considerations of the case of the applicant under the ACP Scheme and to grant him the necessary relief with all consequential benefits including the revised pensionary benefits based on that. He may also be granted arrears of difference in pay due to the upgradation w.e.f. 9.8.1999. This exercise may be completed within a period of four months from the date of receipt of copy of this order. We do not order any interest in this case. The OA is disposed of with the above directions. No costs.

*Shanta Shastray*  
(SHANTA SHASTRY)  
MEMBER(A)

B.

*Agarwal*  
(ASHOK AGARWAL)  
CHAIRMAN