

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
CIRCUIT COURT SITTING AT GWALIOR**

Original Application No. 257 of 2005

Jabalpur this the 14th day of December, 2005.

**Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member**

Arun Vidwans, S/o Late Shri Manohar Rao Vidhwans,
Aged about 53 years, Section Officer III/541,
Shastri Nagar, Thatipur, Gwalior M.P. **-Applicant**

(By Advocate – Applicant in person)

VERSUS

1. Comptroller and Auditor General of India,
10, Bahadur Shah Zafar Marg, New Delhi -110002.
2. The Principal Account General (Civil & Commercial) M.P.
Audit Bhawan, Jhansi Road, Gwalior M.P. - **Respondents**

(By Advocate – Shri M.Rao)

ORDER

By M.P. Singh, Vice Chairman –

By filing this Original Application, the applicant has sought the following main reliefs :-

“8.1to quash the impugned order (Annexure A/1) in its entirety.

8.2to direct the respondents to fix the pay of the applicant according to Table 'B' mentioned in this Original Application.”


2. The brief facts of the case are that the applicant was appointed as Auditor under the respondents on 13.2.1973. He was granted first promotion on 21.8.1989 as Senior Auditor. On the recommendations of the 5th Central Pay Commission, the Government of India issued Assured Career Progression Scheme (hereinafter referred to as 'the ACP Scheme') for grant of two financial upgradation after completion of 12 and 24 years service respectively, with effect from 9.8.1999. In pursuance of the ACP

Scheme, the applicant was granted the financial upgration to the post of Supervisor in the pay scale of Rs.6500-10500. Accordingly, the pay of the applicant was fixed at Rs.7500/-after granting him the benefit of FR 22(I)(a)(1)[old FR 22-C]. He was also granted the special pay of Rs.80/- per month on account of his clearing the Section Officers' Grade Examination Part-II (for short 'SOG-II'). It is stated by the applicant that the SOGE-II is a qualification examination for promotion to the post of Section Officer (Audit) whereas the post of Supervisor is a promotional post based on seniority-cum-fitness. The post of Supervisor is a Group-C (non-gazetted) post. The applicant was promoted as Section Officer on regular basis w. e. f. 22.12.2003 and at that time the applicant was drawing Rs.8100 + Rs.80 (special pay) in the pay scale of Rs.6500-10500. After his promotion as Section Officer, the respondents have fixed his pay vide order dated 23.2.2004 at Rs.7900/-. The applicant has contended that by qualifying the examination and getting higher post of Section Officer, and being entrusted with higher responsibilities, his pay has been reduced by the respondents. According to the applicant since the post of Section Officer is higher than the post of Supervisor, his pay should have been fixed by allowing the benefit of FR 22(I)(a)(1) [old FR 22-C]. To support his claim, the applicant has relied upon the pay fixation formula which is being adopted by the respondents in the case of Senior Audit Officers, who are working in the scale of Rs.2200-4000 (pre-revised) or Rs.8000-13500(revised), when they are promoted to Junior Time Scale (Group-A), although the pay scale of both the posts i.e. Senior Audit Officer as well as Junior Time Scale is the same i.e. Rs.8000-13500. The applicant has contended that this problem arose for the first time when the persons working as Senior Accounts Officer (Group-B) were promoted to Junior Time Scale (Group-A). The DOPT issued guidelines dated 20.12.1993 and 17.11.1993 directing that their pay should be fixed in accordance with FR 22(I)(a)(1). The



applicant has submitted his representation, which was rejected by the respondents. Hence this Original Application.

3. The respondents in their reply have stated that the applicant on completion of 24 years of service was granted the second financial upgradation in the scale of Rs.6500-10500 under the ACP Scheme with effect from 9.8.1999. After having passed the SOGE-II, he was given regular promotion to the post of Section Officer with effect from 22.12.2003 in the time scale of Rs.6500-10500. His pay in the promotional post of Section Officer was fixed with reference to his pay of Senior Auditor because the financial benefit allowed under the ACP scheme was not accruable to the applicant at the time of regular promotion of Section Officer. The respondents in their reply have also submitted that the benefit given and the pay drawn under the ACP scheme has no bearing on the mode of pay fixation on promotion to the post of Section Officer. Hence his representation dated 28.5.2005 (Annexure-A-6) was rightly rejected. The respondents have also submitted that though the applicant was granted financial upgradation in the pay scale of Rs.6500-10500 of the post of Supervisor, under the ACP Scheme but he was never promoted to the post of Supervisor on regular basis. As per point 9 of instructions contained in Annexure-I to the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training), New Delhi OM dated 9.8.1999 (Annexure-A-2), the financial benefit allowed under the ACP Scheme shall be final and no pay fixation benefit shall accrue at the time of regular promotion i.e. posting against a functional post in the higher grade. Since the applicant was promoted to the functional post of Section Officer on 22.12.2003, therefore, his pay was fixed with reference to the post of Senior Auditor plus special pay of Rs.80/- for qualifying the SOGE-II. This is in tune with the headquarters' clarification letter dated 10.3.2003 (Annexure-R-III). In view of these submissions, the respondents have submitted that the present



Original Application is devoid of any merit and is liable to be dismissed.

4. Heard the applicant in person and the learned counsel for the respondents.

5. The applicant who argued his case in person, has submitted that he has got the financial upgradation to the post of Supervisor w.e.f.9.8.1999. His pay was fixed by granting him benefit of FR 22(I)(a)(1) and after passing the SOGE-II, he has been promoted to the functional post of Section Officer and, therefore, his pay was required to be fixed in the grade of Section Officer by granting him the benefit of FR 22(I)(a)(1). However, the respondents instead of granting him the benefit of FR 22(I)(a)(1) have fixed his pay with reference to the pay in the lower scale of Senior Auditor Rs.5500-9000 and fixed his pay which was less than what he was drawing on the post of Supervisor.

6. On the other hand, the learned counsel for the respondents has submitted that the applicant was given only financial upgradation to the post of Supervisor in the pay scale of Rs.6500-10500. After passing the SOGE-II he has been regularly promoted to the post of Section Officer and his pay was required to be fixed with reference to the pay he would have drawn on the post of Senior Auditor in the pay scale of Rs.5500-9000 and not with reference to the pay he was drawing as Supervisor. He has also drawn our attention to the clarification given by the Comptroller and Auditor General of India vide Annexure-R-III.

7. We have given careful consideration to the rival contention.

8. The admitted facts of the case are that the applicant on completion of 24 years of service was granted the financial upgradation under the ACP Scheme on the post of Supervisor in the pay scale of Rs.6500-10500 w.e.f. 9.8.1999. After passing the SOGE-II, he was promoted to the functional post of Section Officer, which was also in the pay scale of Rs.6500-10500. At the time of granting his financial upgradation, to the post of



Supervisor, the applicant was granted the benefit of FR 22(I)(a)(1) and his pay was fixed at Rs.7500/- per month.. The applicant's pay on his promotion to the functional post of Section Officer has now been fixed at Rs.7900/- vide order dated 23.2.2004, which is less than the pay which he was drawing while working as Supervisors, i.e. Rs.8100 + Rs.80 (special pay). This pay he was drawing after earning the increments in the grade of Supervisor (Rs.6500-10500). Para 9 of the instructions contained in Annexure-I to the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training), New Delhi OM dated 9.8.1999 (Annexure-A-2), stipulates as under:-

“9. On upgradation under the ACP Scheme, pay of an employee shall be fixed under the provisions of FR 22(I)(a)(1) subject to a minimum financial benefit of Rs.100/- as per the Department of Personnel and Training Office Memorandum No.1/6/97-Pay.I dated July 5, 1999. The financial benefit allowed under the ACP Scheme shall be final and no pay fixation benefit shall accrue at the time of regular promotion i.e. posting against a functional post in the higher grade”.

In terms of the above instructions, it is clear that on upgradation under the ACP Scheme, the pay of an employee shall be fixed under the provisions of FR 22(I)(a)(1) subject to a minimum financial benefit of Rs.100/- and the financial benefit once allowed under the ACP Scheme shall be final and no pay fixation benefit shall accrue at the time of regular promotion i.e. posting against a functional post in the higher grade.

9. We find that the post of Supervisor is a Group-C post, although in the identical pay scale of Rs.6500-10500. The applicant has already been granted the benefit of FR 22(I)(a)(1) when he was granted the benefit of financial upgradation under the ACP Scheme in the scale of Rs.6500-10500. It is also an admitted fact that the applicant was not regularly appointed on the post of Supervisor. Therefore, he is not entitled for further benefit of FR



22(I)(a)(1) as claimed by him while he was regularly appointed on the post of Section Officer.

10. We further find that the applicant's pay which he was drawing as Supervisor by earning increments in the pay scale of Rs.6500-10500, cannot be reduced, as Para 9 (ibid) of the ACP Scheme clearly stipulates that the financial benefit allowed under the ACP Scheme shall be final. The ACP scheme does not provide that the services rendered on the post in which financial upgradation is granted, should not be taken into consideration while fixing the pay of an employee when he is granted regular promotion to a functional post. It also does not provide that pay has to be fixed with reference to lower post. For the reasons recorded above, we find some force in the submissions made by the applicant.

11. In the result, this Original Application is partly allowed. The respondents are directed to fix the pay of the applicant in the grade of Section Officer with reference to the pay drawn by him in the post of Supervisor + special pay as per rules. However, it is made clear that the applicant will not be entitled for benefit of FR 22(I)(a)(1) at the time of his regular promotion to the post of Section Officer. The respondents are directed to implement the aforesaid directions and grant consequential arrears, if any, to the applicant within a period of three months from the date of communication of this order. No costs.

(Madan Mohan)
Judicial Member

(M.P.Singh)
Vice Chairman

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पृष्ठान्त सं. ओ.सं. जवल्पुर, ति.
प्रतिनिधि
(1) सति. जवल्पुर
(2) जवल्पुर, ति.
(3) प्रजा पी. वि.
(4) जवल्पुर, ति.
सूचना एवं आवरण. कार्य.

Arvind Singh
Dinner
M. Rao BN
Guw.

27/12/85

Issued
27/12/85