

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 979 of 2004
with Misc. Application No. 1344/2004
Jabalpur, this the 21st day of March, 2005

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

Sumil Kumar Salariya, S/o. late Shri N.C. Salariya, aged about 57 years, and 31 others.

... **Applicants**

(By Advocate - Shri Munish Saini)

V e r s u s

Union of India, through the
Secretary, Ministry of Defence
(Finance), New Delhi.

and 4 others. ... Respondents

(By Advocate - Shri Gopi Chourasia on behalf of Shri S.A. Dharmadhikari)

ORDER

By M.P. Singh, Vice Chairman -

The learned counsel for the applicants has filed MA No. 1344/2004 under Rule 4(5)(a) of Administrative Tribunals (Procedure) Rules. MA is allowed and the applicants are permitted to join together.

2. By filing this Original Application the applicants have claimed the following main reliefs :

"8.1 to set aside the order Annexure A-18 dated 28.7.2004 passed by the respondents,

8.2 to direct the respondents to produce
clarification UO No. 2855/Estt.D/04 dated
14.7.2004,

8.3 to call for the whole record relating to the steps taken for consideration and rejection of the representation made by the applicants,

8.4 direction to the respondents to grant the benefit of second financial upgradation under the Assured Career Progression Scheme to the applicants since 9.8.1999 instead of 29.4.2002.

8.5 quash the clarification UO No. 2855/Estt.D/04 dated 14.7.2004 (if any) the copy of which has not been supplied to the applicants."

3. The brief facts of the case are that the applicants were initially appointed as Auditors by direct recruitment and later have been promoted as Senior Auditors in the Accounts Office of the Gun Carriage Factory, Jabalpur. The Department of Personnel and Training had introduced the Assured Career Progression Scheme (hereinafter to be referred as ACP Scheme) vide letter dated 9th August, 1999. As per this scheme, the employees who were stagnating and have got no promotion in their service career can be considered for grant of two financial upgradation, first after completion of 12 years of service and second after completion of 24 years of regular service. The scheme also provides that "fulfilment of normal promotion norms (benchmark, departmental examination, seniority-cum-fitness in the case of Group-D employees etc.) for grant of financial upgradations, performance of such duties as are entrusted to the employees together with retention of old designations, financial upgradations as personal to the incumbent for the stated purposes and restriction of the ACP Scheme for financial and certain other benefits (House Building Advance, allotment of Government accommodation, advances, etc.) only without conferring any privileges related to higher status (e.g. Invitation to ceremonial functions, deputation to higher posts, etc.) shall be ensured for grant of benefits under the ACP Scheme." The applicants have got only one promotion from Auditor to Senior Auditor during their service career of 25 to 34 years of service. It is contended that all the applicants have completed more than 24 years of service as on 9.8.1999 however, the benefit of the said ACP Scheme for second financial upgradation has not been extended to them. As per the recruitment rules, the Senior Auditors are eligible for promotion to the next higher grade of

Supervisor (Accounts)/Section Officer (Accounts) on passing the prescribed departmental examination. The respondent No. 2 had laid down a schedule for conducting the examination and issued directions that since the scheme is required to be introduced immediately, Controllers may ensure that the screening committee complete their work immediately to process the case of the eligible officers. In the present case, the departmental examination was held by the respondents on 29th April, 2002. The applicants have passed the test and they have been given the benefit of second upgradation from the date of passing their test on 29.4.2002. The grievance of the applicants is that they should be granted the benefit of second upgradation from 9.8.1999. The applicants further submitted that the Principal Bench of the Tribunal has already allowed the claim of the similar applicants holding that the first examination was held on 29.4.2002 and the applicants qualified the same and as such the benefit of ACP Scheme would relate to 9.8.1999. Hence, this Original Application is filed.

4. The respondents in their reply have stated that it was clarified by the DOP&T that normal promotion norms have to be fulfilled for upgradation under the ACP Scheme. As such no upgradation shall be allowed if an employee fails to qualify departmental/skill test prescribed for the purpose of regular promotion. Therefore, granting the benefit of second financial upgradation under ACP Scheme w.e.f. 9.8.1999 without qualifying departmental/skill test or exam is not tenable. The applicants had earlier filed OA No. 747/2002 claiming the benefit of second ACP w.e.f. 9.8.1999 instead of 29.4.2002. As per the judgment of the Tribunal dated 16.2.2004 in OA No. 747/2002, the applicants were directed to make fresh detailed represen-

tations within one month from the date of receipt of copy of the order. Thereafter, the respondents were directed to take a decision on the representation after consulting the Ministry of Personnel for grant of relaxation as has been done in the case of Tradesmen. According to them, the matter was taken up with the DOP&T and it has been viewed by them vide UO dated 14th July, 2004, that the concession given to tradesmen for whom the required trade test for the purpose of ACP was belatedly conducted and it could not be extended to the Sr. Auditors because they had several opportunities both before 9.8.1999 and after 9.8.1999 to qualify the but have only qualified the examination SAS Part-I examination held in April, 2002 and such persons shall be eligible for second financial upgradation under ACP Scheme only from the date of passing the examination and not from 9.8.1999. On the basis of the above clarification given by the DOP&T, ^{an} the order was passed and the applicants were informed accordingly. According to the respondents, as the SAS Part-I examination has been conducted prior to 9.8.1999 and even after 9.8.1999 during 11/99, 9/2000 and 9/2001, in view of the clarification issued by the DOP&T, the claim of the applicant for grant of ACP benefits with effect from the 9.8.1999 cannot be accepted. As regards/ judgment of the CAT, Principal Bench in OA No. 3109/2003 dated 3.6.2004, the same has already been challenged in the Hon'ble High Court of Delhi taking into consideration the DOP&T clarification, and the CWP No. 18774/2004 is still pending in the Hon'ble Delhi High Court.

5. Heard the learned counsel for the parties and perused the pleadings and records very carefully.

6. The question for consideration is whether the applicants are entitled for grant of second financial

upgradation w.e.f. 9.8.1999. The applicants have earlier filed OA No. 747/2002, which was disposed of by the Tribunal vide order dated 16.2.2004 with the following observations :

"8. We have heard the learned counsel for the parties and carefully considered the rival contentions of the parties and we find that the scheme of Department of Personnel for ACP dated 9.8.1999 provides that the financial upgradation can be granted only on fulfilment of normal promotion norms i.e. the bench mark departmental examination, seniority-cum-fitness in the case of Group 'D' etc. In this case the applicants have not passed the departmental examination i.e. SAS examination which is the mandatory requirement for next promotion to the post of Section Officer/Supervisor (Accounts). The respondents have, therefore, decided to conduct ability test just to grant the benefit of second financial upgradation to the applicants under the ACP Scheme. Therefore, the test could not have been conducted on 9.8.1999 or immediately after 1999. The first such test has already been conducted on 29.4.2002, and the applicants have been given the benefit from that date. Hence, the contention of the respondents is correct that the applicants cannot get the benefit from earlier date i.e. 9.8.1999 as the said scheme itself requires fulfillment of normal promotion norms.

9. However, we find that the Ministry of Defence has already taken up the matter with the Department of Personnel & Training and the Department of Personnel & Training has clarified that as a special case the employees who qualify the trade test in first attempt after 9.8.1999 may be allowed the benefit of ACP from 9.8.1999 only and not from the date of passing of trade test, as is evident from Annexure A-10 reproduced above. In this case it is the admitted position that the first test after 9.8.1999 was conducted by the respondents only on 29.4.2002.

10. In the circumstances we deem it fit to dispose of this OA by directing the applicants to make their fresh detailed representations within 1 month from the date of receipt of a copy of this order and if they comply with this order the respondents are directed to take a decision on their representation after consultation with the Ministry of Personnel for grant of relaxation, as has been done in the case of Trademan within a period of 4 months from the date of receipt of aforesaid representation of the applicants. With the above directions, the OA is disposed of. No costs."



In pursuance of these above directions the applicants have filed representations Annexure A-16 to the respondents. The respondents vide their order dated 28th July, 2004 (Annexure A-18) have rejected the representations of the applicants. The applicants in support of their claim have relied upon the judgment of the Principal Bench dated 3rd June, 2004 passed in OA No. 3109/2003. The Tribunal while deciding the said OA has held as under :

"6. Moreover, SAS examination Part-I was not an examination subsequent to promulgation of ACP Scheme on 9.8.1999. The benefit of ACP was denied to the applicant from 9.8.1999 on the ground that in first attempt the applicant has failed to qualify the examination is not justifiable. Assuming the clarification of the DOP&T is correct the first attempt would be counted after 9.8.1999. If an examination has been notified earlier to the promulgation of the Scheme would not count as first available examination after promulgation of the Scheme. Accordingly, undisputedly the next SAS examination was held in 2002 which the applicant had qualified on 29.4.2002 as such would count first attempt and the benefit of ACP would relate to 9.8.1999.

7. Accordingly, OA is allowed, impugned order is set aside. Respondents are directed to accord to the applicant benefit of ACP Scheme w.e.f. 9.8.1999 till 29.4.2002 with all arrears to the applicant and consequential benefits in respect of retiral dues. The directions shall be complied with within a period of three months from the date of receipt of a copy of this order. No costs."

Earlier the Tribunal vide its order dated 16.2.2004 has disposed of the OA No. 747/2002 by directing the applicants to make a fresh representation to the respondents on the ground that the Ministry of Personnel & Training had clarified ^{that} as a special case the employees who qualified the trade test in first attempt after 9.8.1999, be granted/allowed the benefit of ACP from 9.8.1999 only and not from the date of passing of trade test. The respondents were directed to take a decision on the representation after consultation with the Ministry of Personnel for grant of relaxation as has been done in the case of Trademen. The respondents have now rejected the representations of the applicant on the plea that the

concession given to trades-man for whom the required trade test for purpose of ACP Scheme was held belatedly would not extend to Sr. Auditors who had several opportunities both before 9.8.1999 and after 9.8.1999 to qualify in the SAS Part-I examination but could do so only in the examination held in April, 2002 and such person shall be eligible for second ACPS in grade of Supervisor (Accounts) only from date of passing the examination and not from 9.8.1999 as claimed by the applicants. In the earlier passed in OA No. 747/2002 judgment/it was an admitted position that the first test after 9th August, 1999 was conducted by the respondents only on 29th April, 2002. All the applicants had qualified in the first available chance. Even at the time of disposal of the OA No. 3109/2003 by the Principal Bench of the Tribunal, the undisputed position was that the first examination after introduction of the ACP Scheme (9th August, 1999) was held on 29th April, 2002. The applicants in paragraph 4.8 of the OA have mentioned that the respondents have intermingled the exam introduced for Supervisor grade ~~examination~~ and the SAS Part-I examination for grant of benefit of second financial upgradation under the ACP Scheme, though both are totally different. If the respondents are treating SAS Part-I examination as equivalent to Supervisor Grade examination then the candidates who have been declared pass in the Supervisor Grade examination should be allowed to give SAS Part-II examination. The applicants have also stated that the Supervisor Grade examination was introduced and was conducted for the first time after 9.8.1999 on 29.4.2002, whereas, there was no such information prior to 7.7.2000 that those who will clear the SAS Part-I examination will be granted benefit of second financial upgradation under the ACP Scheme. The respondents have not controverted this fact in their reply and have only stated that SAS Part-I

examination has been conducted even after 9th August, 1999 during 11/1999, 9/2000 and 9/2001 and have rejected the claim of the applicants on the plea that the Senior Auditors had several opportunities to qualify in the trade test both before 9.8.1999 and after 9.8.1999. They have therefore tried to distinguish their case from the case of other persons for which special concession was granted by way of granting the benefit from 9th August, 1999, treating their case as special case, who qualify in the trade test on first attempt after 9th August, 1999. We further find that in Annexure A-11 dated 15.5.2002, approval has been accorded for grant of second financial upgradation with effect from 29.4.2002 on the basis of the result of the Supervisor (A/es) examination held on 29.4.2002 and not on the basis of SAS Part-I examination. The respondents have granted the benefit of financial upgradation to the Tradesmen with effect from 9th August, 1999 ^{denying the same to the applicants, and} ~~denying the applicants~~ this denial of the respondents amounts to hostile discrimination. We also find that the present case is squarely covered by the judgment of the Principal Bench passed on 3rd June, 2004 in OA No. 3109/2003. We respectfully agree with the said judgment and of the considered view that the decision so taken in the said judgment quoted above shall mutatis mutandis applicable to the present case.

7. In the result the Original Application is allowed and the impugned orders dated 28.7.2004 (Annexure A-18) and the UO dated 14.7.2004 are quashed and set aside. The respondents are directed to grant the applicants the benefit of second financial upgradation with effect from 9th August, 1999 instead of 29th April, 2002 within a period of four months from the date of receipt of a copy of this order. The applicants shall be entitled for all arrears from 9.8.1999 to 29.4.2002 with consequential benefits. No costs.

8. The Registry is directed to supply the copy of memo of parties to the concerned parties while issuing the certified copies of this order.

(Madam Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

"SA"

पूरांकन सं ओ/न्या..... जबलपुर, दि.....
प्रतिलिपि अध्ये विरतः—
(1) सचिव, राज्य व्यापार व वाणिज्य संस्थान, जबलपुर
(2) आकेश धी/धीरानी/इ..... के काउसल
(3) पत्त्यार्थी श्री/धीरानी/इ..... के काउसल
(4) बंतपाल, योग्या, जबलपुर कामगारी क्षेत्र
सूचना एवं अवधारणा कामगारी क्षेत्र
उप राजसभाव

W. Scars. Dd. 187
S. D. G. K. D. 188
Dd. 188

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