CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 135 of 2004
Original Application No. 136 of 2004
Original Application No. 142 of 2004
Original Application No. 143 of 2004
Original Application No. 144 of 2004
Original Application No. 177 of 2004
Original Application No. 178 of 2004
Original Application No. 179 of 2004
Original Application No. 187 of 2004
Original Application No. 220 of 2004
Original Application No. 227 of 2004
Original Application No. 228 of 2004

Jabalpur, this the 23rd day of August, 2005

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

1. **Original Application No. 135 of 2004** :

Om Prakash Yadav .... Applicant

2. **Original Application No. 136 of 2004** :

Damodar Ram Alias Damodar Lal Nishad .... Applicant

3. **Original Application No. 142 of 2004** :

Rajendra Kumar .... Applicant

4. **Original Application No. 143 of 2004** :

Jai Kishan Sharma .... Applicant

5. **Original Application No. 144 of 2004** :

Gulam Mohammad .... Applicant

6. **Original Application No. 177 of 2004** :

Gangaram Malviya .... Applicant

7. **Original Application No. 178 of 2004** :

Suraj Singh Netam .... Applicant

8. **Original Application No. 179 of 2004** :

Ratan Singh Gondiya .... Applicant

9. **Original Application No. 187 of 2004** :

Hukumchand Gehlot .... Applicant

10. **Original Application No. 220 of 2004** :

P. Naidu .... Applicant

11. **Original Application No. 227 of 2004** :

Suresh Sharma .... Applicant

12. **Original Application No. 228 of 2004** :

Shafi Mohammad .... Applicant

(By Advocate – Shri A.K. Sethi in all the Original Applications)

Versus

Union of India and Others .... Respondents in all the OAs

(By Advocate – Shri Umesh Gajankush in all the Original Applications)

ORDER (Common)

By M.P. Singh, Vice Chairman –

As the issue involved in all the aforementioned cases is common and the facts and grounds raised are identical, for the sake of convenience these Original Applications are being disposed of by this Common order.

2. By filing these Original Applications the applicants have claimed the following main relief :

"A/ the respondents be directed to consider the applicant's case for grant of benefit of ACP scheme by giving 2 financial upgradation from the pay scale of Rs. 225-308/- (revised pay scale Rs. 3050-4590/-) to the revised pay scale of Rs. 4000-6000/- with retrospective effect from the date of his eligibility/entitlement, and thereafter to sanction and pay the arrears within specified time to the applicant accordingly."

3. For the purpose of brevity, only the facts of Original Application No 135 of 2004 are given.

4. The brief facts of the case as stated by the applicant in OA No. 135 of 2004 are that the applicant was appointed as Counter in the Industrial establishment of Bank Note Press, Dewas vide order dated 22nd March, 1974 (Annexure A-1) in the pay scale of Rs. 250-290/-. The respondent No. 2 vide order 16th September, 1979 has granted the applicant the pay scale of Rs. 225-308/- instead of Rs. 210-290/-, in pursuance of the re-categorization of the post of Counter with effect from 1st February, 1979 and it was re-designated as Examiner. Thereafter the applicant was promoted to the post of Junior Checker in the pay scale of Rs. 260-400/- (pre-revised) vide order dated 12th July, 1984. The Government of India, introduced the Assured Career Progression Scheme (in short ACP Scheme) for the Central Government civilian employees with effect from 9th August, 1999. As per this scheme in the case of acute stagnation in the cadre or in isolated post, two financial up-gradations (as recommended by the Fifth Central Pay Commission and also in accordance with the agreed settlement dated 11th September, 1997 (in relation to Group-C and Group-D employees) entered into with the staff side of the National Council (JCM)) are granted to Group-B, C and D employees on completion of 12 years and 24 years of regular service respectively. Isolated posts in Group A, B C and D categories which have no promotional avenues shall also qualify for similar benefits on the pattern indicated above. According to the applicant he has been granted only one promotion to the post of Junior Checker on 12th July, 1984. Thereafter, he has not been granted any promotion. Therefore, he is

eligible for grant of second up-gradation under the ACP scheme. According to the applicant on re-categorization of the post of Counter and substitution of the pay scale of Rs. 210-290/- (pre-revised) by the pay scale of Rs. 225-308/- cannot be said to be a promotion as according to re-categorization nothing new has been done but vide order dated 13.8.1979 the post of Counter has been re-categorized/re-designated as Examiner. The another ground taken by the applicant is that prior to the date of re-categorization he was getting the pay of Rs. 226/- in the pay scale of Rs. 210-290/- and on re-categorization of the post of Counter to Examiner the applicant was fixed at the minimum pay of Rs. 225/- in the pay scale of Rs. 225-308/- and consequently the applicant's pay was reduced from Rs. 226/- to Rs. 225/- per month. The benefit of FR-22(I)(a)(1) was not granted to him. On re-categorization his pay was fixed under FR-22(I)(a)(2). The applicant has submitted several representations one of which is dated 9.9.2003. Despite that, he has not been granted the second financial up-gradation. Hence, this Original Application is filed.

5. The respondents in their reply have stated that the applicant joined the Bank Note Press as a Counter in the pay scale of Rs. 210-290/- (Annexure R-1) on 4.3.1974. Thereafter the Government of India re-categorized the post of Counter in Control Section, vide Ministry of Finance's letters dated 13.8.1979 & 16.9.1979. In all there were 294 Counters in Control Section as on 1.2.1979 and out of which 204 posts of Counter was re-categorized from the scale of Rs. 210-290/- to Rs. 225-308/- to the post of Examiner and 90 posts remained as Counter. In the letter dated 13th August, 1979 itself the Government clearly stated that on re-categorization their pay shall be fixed under FR-22(I)(a)(2). Accordingly, the re-categorization was not treated as promotion and their pay was fixed under FR-22(I)(a)(2).

5.1 During the year 1999 the Government introduced the ACP scheme vide letter dated 9th August, 1999. While examining the cases of re-

categorization, a doubt arose as to how to treat the cases of re-categorized posts for the purpose of grant of ACP. Accordingly, the matter was referred to the Ministry and the Ministry in consultation with the DOPT informed vide their letter dated 7.10.2002 that on re-examination of the case, they have found no merit in the present proposal, since whether or not FR-22(I)(a)(1) can be applied at this stage on practical considerations, cannot be a ground for not treating the placement of Counters against post of Examiners on promotion for purposes of ACP scheme. The respondents have further submitted that the DOPT's clarification in reply to point of doubt No. 35 of OM No. 18.7.2001 is quite categorical and the present case is fully governed by this clarification. They have also observed that even as a general policy upon restructuring of a grade involving redistribution of post, placement against newly introduced grade in hierarchy to the extent of up-gradation of posts is a case of promotion. Hence, the OA deserves to be dismissed.

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

7. The learned senior counsel for the applicants Shri A.K. Sethi has submitted that the Ministry vide their letter dated 16th September, 1979 has only re-categorized the post of Counter and it was not a promotion, for the applicants. According to him, the respondents in paragraph 2 of their reply have themselves admitted that re-categorization was not treated as promotion and it was because of this fact the applicants were not given the benefit of fixation of pay under FR-22(I)(a)(1). Their pay was fixed under FR-22(I)(a)(2) which itself indicates that it was simply placing the applicants from the post of Counter to the post of Examiner in the pay scale of Rs. 225-308/-. He further submitted that prior to the re-categorization, the applicants were drawing the pay of Rs. 226/- in the pay scale of Rs. 210-290/- and after re-categorization their pay has been fixed at the minimum of pay of Rs. 225/- in the pay scale of Rs. 225-308/-. It

shows that had it been a case of promotion then the pay of the applicants drawing at that point of time could not have been reduced from Rs. 226/- to Rs. 225/- plus Rs. 1 as personal pay. Thus, the applicants have got only one promotion i.e. from the post of Examiner to the post of Junior Checker and thus they are entitled for the second financial up-gradation i.e. of 24 years.

8. On the other hand the learned counsel for the respondents has submitted that as per the clarification sought by the Ministry of Finance from DOPT, the re-categorization of the posts of Counter to the post of Examiner will amount to promotion. According to him out of 294 posts of Counters, only 204 posts were placed in the grade of Examiners in the pay scale of Rs. 225-308/- (pre-revised) and the remaining 90 posts are still in the lower pay scale of Rs. 210-290/- (pre-revised) of Counter. Had it been a case of re-categorization and placing them in the higher pay scale the entire 294 posts of Counters would have been re-designated as Examiners in the pay scale of Rs. 225-308/-.

9. We have given careful consideration to the rival contentions made on behalf of the parties and we find that the applicants were appointed as Counters. Vide order dated 16.9.1979 certain posts of Counters in the pay scale of Rs. 210-290/- (pre-revised) were re-designated as Examiners and were granted the pay scale of Rs. 225-308/- in pursuance of the re-categorization of the posts of Counters to Examiners with effect from 1.2.1979. It was not treated as promotion and hence they were not granted the benefit of FR 22(I)(a)(1) and in fact the respondents themselves have admitted in their reply that re-categorization was not treated as promotion and therefore the applicants pay were fixed under FR-22(I)(a)(2). We also find that the applicants have got only one promotion i.e. from the post of Examiner to the post of Junior Checker. They have also completed 24 years of services and have become eligible for grant of second financial up-gradation under the ACP scheme. We have perused the ACP Scheme

introduced by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training vide Office Memorandum dated 9th August, 1999. Paragraph 5.1 of conditions for grant of benefits under the ACP scheme Annexure-I provides as under:

> "5.1 Two financial upgradations under the ACP Scheme in the entire Government service career of an employee shall be counted against regular promotions (including in-situ promotion and fast-track promotion availed through limited departmental competitive examination) availed from the grade in which an employee was appointed as a direct recruit. This shall mean that two financial upgradations under the ACP Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee. If an employee has already got one regular promotion, he shall qualify for the second financial upgradation only on completion of 24 years of regular service under the ACP scheme. In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP scheme shall accrue to him."

Paragraph 9 further provides 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."

10. We further perused FR-22(I)(a)(2) and it provides as under :

> "When the appointment to the new post does not involve such assumption of duties and responsibilities of greater importance, he shall draw as initial pay, the stage of the time-scale which is equal to his pay in respect of the old post held by him on regular basis, or, if there is no such stage, the stage next above his pay in respect of the old post held by him on regular basis:
>
> Provided that where the minimum pay of the time scale of the new post is higher than his pay in respect of the post held by him regularly, he shall draw the minimum as the initial pay:

Provided further that in a case where pay is fixed at the same stage, he shall continue to draw that pay until such time as he would have received an increment in the time scale of the old post, in cases where pay is fixed at the higher stage, he shall get his next increment on completion of the period when an increment is earned in the time scale of the new post.

On appointment on regular basis to such a new post, other than to an ex cadre post on deputation, the Government servant shall have the option, to be exercised within one month from the date of such appointment, for fixation of his pay in the new post with effect from the date of appointment to the new post or with effect from the date of increment in the old post."

11. From the facts discussed above it is quite abundantly clear that the applicants were only placed in the newly designated/created posts of Examiners on re-categorization of posts and were not promoted. Paragraph 5.1 of the ACP Scheme as quoted above provides that financial up-gradations under the ACP Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee. In its paragraph 9 it is provided that on up-gradation under the ACP scheme the pay of an employee shall be fixed under the provisions of FR 22(I)(a)(1). Thus, it is clear that the applicants were not promoted in the year 1979 from the posts of Counter to the post of Examiner. No assessment of eligibility/suitability was made by the Departmental Promotion Committee against the re-designated post at that point of time i.e. in the year 1979. The next promotional post of the applicants was only Junior Checker from the post of Counter/Examiner. All the applicants were promoted as Junior Checker and they are eligible for the second financial up-gradation under the ACP scheme. The respondents have not been able to produce any document, whereby they could show that the post of Examiner is a promotional post for the post of Counter and that the applicants have been re-designated on the post of Examiner from Counter on the recommendations of the duly constituted Departmental Promotion Committee. Moreover, there is no assumption of duties and responsibilities of greater importance when the applicants were

placed in the re-designated post of Examiner in the pay scale of Rs. 225-308/- in the year 1979 and hence, it is because of this reason the applicants were not granted the benefit of FR-22(I)(a)(1). We also find that the applicants were placed in the minimum pay of Rs. 225/- in the pay scale of Rs. 225-308/- of Examiner, although they were getting more pay in the post of Counter i.e. Rs. 226/- in the pay scale of Rs. 210-290/-.

12. For the reasons mentioned above, we are of the considered opinion that all the aforementioned Original Applications deserves to be allowed. Accordingly, we allow all the Original Applications and direct the respondents to grant all the applicants the benefit of second financial up-gradation under the ACP scheme in the revised pay scale of Rs. 4000-6000/- from the due date with all consequential benefits within a period of three months from the date of receipt of a copy of this order.

13. The Registry is directed to place a copy of this order in all the connected files.

14. The Registry is also directed to issue the copy of memo of parties to the concerned parties while issuing the certified copies of this order.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

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