

Central Administrative Tribunal
Jabalpur Bench

OA No.617/04

~~Given~~ this the 21st day of June, 2005.

C O R A M

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

1. Smt.Tulsa Namdeo
Widow of Ram Sajivan
Record Supplier
Section General Administration
Establishment, Gun Carriage Factory
Jabalpur.
2. Smt. Anima Das
Wife of Manohar Lal
Record Supplier, Section Bill
Gun Carriage Factory,
Jabalpur.
3. Smt.Rajni Yadav
Wife of Narendra Singh Yadav
Record Supplier
Section Engineering Office
Gun Carriage Factory
Jabalpur.
4. Smt.Ketaki Bai
Widow of Anil Tiwari
Record Supplier, Section P.V.(Provision)
Gun Carriage Factory, Jabalpur.
5. Ku.Chhaya Verma
Daughter of Nandan Verma
Record Supplier, Section C.R.S.
(Central Registry)
Gun Carriage Factory
Jabalpur.
6. Mohanlal Chadhar
Son of late Basori Lal
Record Supplier
Store Receipt Office
Gun Carriage Factory



Jabalpur.

7. Shiv Dayal Dharam
Son of Late Shyam Lal
Blue Printer
Section Design and Document Office
Gun Carriage Factory
Jabalpur.
8. Smt. Sarala Chauhan
Widow of Late P.C. Chauhan
Record Supplier
Section Design and Document Office
Gun Carriage Factory
Jabalpur.
9. Smt. Aruna Thakur
Wife of Ajay Thakur
Record Supplier, Section Security Office
Gun Carriage Factory
Jabalpur.

Applicants

(By advocate Shri S. Nagu)

Versus

1. Union of India through
Secretary
Ministry of Defence Production and
Supplies, New Delhi.
2. Chairman
Ordnance Factory Board
Ayudh Bhawan
10-A, Shahid Khudiram Bose Road
Kolkata.
3. Senior General Manager
Gun Carriage Factory
Jabalpur.

Respondents.

(By advocate Shri K.N. Pethia),

ORDER

By Madan Mohan, Judicial Member



By filing this OA, the applicant has sought the following reliefs:

- (i) Quash the orders dated 7.7.2004 (Annexure A8) and consequential factory order dated 7.7.2004 (Annexure A9).
- (ii) Declare that the orders are per se arbitrary, unlawful and unwarranted in the eyes of law.
- (iii) Direct the respondents to continue paying the applicants salary in the correct up gradation pay scale under the ACP Scheme (3200-4900) as awarded to them by the orders passed in 2001-2002.

2. The brief facts of the case are that the applicants were initially appointed on various posts as Record Supplier, Fireman Grade -II, Peon, Daftry and Aaya in the scale of Rs.2650-4000. The Government with the object of lifting stagnation in the cadres introduced ACP Scheme. The scheme provided that an employee who has received no promotion and has completed 12 years of service will be given the first ACP up gradation, which will be to the higher grade. If the employee has completed 24 years of service without any promotion, then he will be entitled for second ACP up gradation. In case the employee has already received one promotion/upgradation in his career then he will be entitled to only one ACP up gradation. The majority of applicants received promotion/upgradation after more than 12 years and applicant No.6 received his promotion after more than 24 years. The applicants were given ACP (Assured Career Progression) up gradation in the lower scale of Rs.2750-4400 instead of Rs.3200-4900. Hence they have become entitled to at least one ACP up gradation. On receipt of representations from the applicants, the Ordnance Factory Board issued necessary instructions, based on which the applicants were rightly awarded ACP up gradation from the scale of Rs.2750-4400 to 3200-4900. This pay fixation in the higher scale was done under the provisions of FR 22 (1)(a)(1). Suddenly a show cause notice dated 8.4.2004 was issued by respondent No.3 seeking to withdraw the ACP up gradation granted to the applicants in 2001-2002 in the pay scale of Rs.2750-4400. The applicants replied to



the show cause notice (Annexure A7). However, the respondents issued the impugned orders dated 7.7.2004 marked as Annexures A-8 and A-9 withdrawing the benefit of ACP up gradation to the scale of Rs.3200-4900. This is apparently illegal. Hence this OA is filed.


3. Heard learned counsel for both parties. It is argued on behalf of the applicants that the impugned orders are vitiated as it is in contravention of the specific clarification given by Ordnance Factory Board vide letter dated 28.11.2000 pursuant to which the next higher pay scale of Tracer i.e. 3200-4900 was rightly awarded to the applicants. He further argued that granting lower pay scale to the applicants is against the Recruitment Rules i.e. SRO No.149 dated 26.7.1991.

4. The respondents have filed a reply in which they have contended that the applicants are record suppliers and their service conditions are governed under SRO 149 of 1991 (Annexure A2) and as per the SRO, their next promotion post is to that of Tracers in the scale of Rs.3200-4900 (S-5 scale). The respondents as a policy decision vide letter-dated 20.4.99 (Annexure R1), decided to revise the pay scale of Tracers with 7 years of service from Rs.3200-4900 to Rs.4000-6000. Tracers who have not completed 7 years of service on 20.4.99 shall be placed in the old scale of 3200-4900 till they complete the tenure. In the letter dated 20.4.99, it was also categorically mentioned that there shall be no further induction to the post of Tracers in the Ordnance Factories organizations and suitable amendment to the Recruitment Rules shall be made. Thus it was decided to stop any further induction to the post of Tracers. As per the ACP Scheme authorized by the Government of India, those who are stagnating without further promotion, after completion of 12 years of service, have to be placed in the next higher grade of S-4 scale (i.e. Rs.2750-4400) and after completion of 24 years of service in the S-5 scale of Rs.3050-4590 respectively. The respondents accordingly



placed the applicants in their respective scales of S-4 and S-5 after completion of 12 and 24 years of service. The respondents had granted the applicants a scale of Rs.3200-4900 (S-6 scale) superceding two scales i.e. S-4 & S-5 respectively. It was done based upon the clarification issued by respondent No.2 vide letter dated 28.11.2000. The applicants were inadvertently given the S-6 scale of Rs.30004900 pending clarification from Ministry of Defence. Accordingly the respondents had reverted the applicant to their old scale after issuing them a show cause notice. The action of the respondents is in accordance with law and in order.

5. After hearing learned counsel for both parties and perusing the records, we find that the respondents have issued a clarification dated 28.11.2000 stating that Blue Printers should be given the ACP pay scale of Tracer since as per the SRO their next higher hierarchical promotion was to the post of Tracer. We have perused Annexure A3, based on which respondent No.3 has issued consequential Factory Orders Part-II dated 16.2.2001 and 17.8.2002 (Annexures A4 & A5 respectively, by which the applicants were rightly awarded ACP up gradation from the scale of Rs.2750-4400 to 3200-4900. We have also perused Annexure A12, which defines the ACP Scheme. We have perused Annexure R1 letter dated 20th April 1999 of the respondents, in which it is mentioned that there shall be no further induction to the post of Tracers in the Ordnance Factories organization and suitable amendment to Recruitment Rules shall be made. This letter is apparently against the rule position on the subject. We have perused the ruling cited on behalf of the applicants 1998 (8) SCC 469 – K.Kuppuswamy and another Vs. State of T.N. and others, decided on February 5, 1996 in which the Hon'ble Supreme Court has held that "Statute Law – Rules – Statutory rules, held cannot be overridden by executive orders or executive practice – Hence, where the rules framed under Art.309 had not been amended, the Government could not act contrary to such rules merely because it had taken a decision to



amend them". We have perused Annexure A2 filed on behalf of the applicants, about which the respondents' counsel argued that this is not correct but the respondents have not filed it while they could have explained as to why they have not filed it.

6. Considering all facts and circumstances of the case, we are of the considered opinion the OA deserves to be allowed. Hence the OA is allowed. The impugned orders Annexures A8 & A9 are quashed and set aside, The respondents are directed to restore the up gradation under the ACP Scheme granted to the applicants i.e. Rs.3200-4900 with all consequential benefits within a period of three months from the date of receipt of a copy of this order. No costs.

(Madan Mohan)
Judicial Member

M.P.Singh
Vice Chairman

aa.

पृष्ठंकन सं ओ/न्या.....जबलपुर, दि.....

प्रतिलिपि अर्जो धातः:-

(1) सचिव, उच्च न्यायालय का एक्सेक्यूशन, जबलपुर

(2) आवेदक श्री/श्रीमती/वधु.....को वाकिल

(3) प्रत्यक्षी श्री/श्रीमती/वधु.....को वाकिल

(4) न्यायालय, जे.एम. जबलपुर न्यायाधीश

सूचना एवं आवश्यक कार्यवाही हेतु

उप-रजिस्ट्रार

Speed
4.7.25

P. N. 994 DN 03
K. M. P. Singh