

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,  
JABALPUR**

**Original Application No. 968 of 2004**

**Jabalpur, this the 1<sup>st</sup> day of April, 2005**

Hon'ble Shri M.P. Singh, Vice Chairman  
Hon'ble Ms. Sadhna Srivastava, Judicial Member

Guru Datt Mishra & 5 others. .... Applicants

(By Advocate – Shri Mukesh Shukla)

**V e r s u s**

Union of India and 2 others. .... Respondents

(By Advocate – Shri S.A. Dharmadhikari)

**O R D E R**

**By Ms. Sadhna Srivastava, Judicial Member –**

By means of this Original Application the applicants have challenged the order dated 20.2.2002 (Annexure A-3), 10.12.2003 (Annexure A-5) and the order dated 20.10.2004 (Annexure A-8) through which the financial up-gradation granted to the applicants under Assured Career Progression Scheme (in short ACP scheme) with effect from 9.8.1999 and the excess amount paid to each applicants in the scale of Scientific Assistant (Rs. 5500-175-9000/-) would be recovered from the date of drawl.

2. The brief facts of the case are that while the applicants have been working as Senior Observers, the respondents had introduced ACP scheme through Office Memorandum dated 9.8.1999 to provide grant of two up-gradations in service career and to give relief where there is stagnation. Since all the six applicants had not actually got any promotion they were given the benefit of the said scheme through order dated 11.9.2000, containing in Annexure A-2 whereby their placement is shown

in the next higher scale of Scientific Assistant in the pay of Rs. 5500-175-9000/- from 9.8.1999 and in the case of D.K. Das (applicant No. 2) financial up-gradation has been given effect from 2.12.1999. The applicants were also granted arrears of difference of pay and allowances. Prior to this the applicants Nos. 1, 3, 4, 5 and 6 were granted promotion on the post of Scientific Assistant in the year 1997 and the applicant No. 2 was granted promotion on the post of Assistant Metrologist-II in the same year, but due to certain family problems, the applicants could not accept the promotion on that time and refused such regular promotion. The respondents have issued an office memorandum dated 20.2.2002 proposing to withdraw the financial benefits granted to the applicants under the ACP Scheme and to recover the excess payment made to them. All the applicants submitted representations to the respondents, but the respondents have issued the office order dated 10.12.2003 through which they have withdrawn the benefit of ACP Scheme given to them with retrospective effect which is from 9.8.1999 and 2.12.1999 (in the case of D.K. Das) with further direction to recover the excess payment made to them as a result. The learned counsel for the applicants pleaded that on regular promotion an employee could be debarred for one year and thereafter would be eligible once again for it. He pleads that there is no provision under the rules to withdraw the benefit of ACP promotion as they have actually not availed the regular promotion. Hence, they have prayed for quashment of the orders dated 20.2.2002 (Annexure A-3), 10.12.2003 (Annexure A-5) and the order dated 20.10.2004 (Annexure A-8) and direction to the respondents to refund back the recovered amount on denial of granting the ACP promotion and also enhance the correct salary accordingly. Their submissions are that the refusal of promotion prior to 9.8.1999 would not deprive them the benefit of ACP up-gradation. In support of their argument the learned counsel for the applicants has relied upon the judgment of the CAT Mumbai Bench passed in OA No. 129/2003, V.R. Patil Vs. Union of India & Ors., decided on 20<sup>th</sup> June, 2003.

3. While contesting the case of the applicants the respondents have filed the detailed reply. They have already repeated the facts as mentioned by the applicant and stressed that all the applicants were offered promotion prior to introduction of the ACP scheme but all of them have refused the same on their own volition. The ACP scheme has been introduced in a view to give atleast two promotions to the employees in the entire career, where the Government servant could not be offered any promotion to the next higher grade and also to give the reliefs to the employees who are stagnating in the entry grade. The learned counsel for the respondents has stated that it is to be treated as a compliment. Since all the applicant had been provided with an opportunity of regular promotion which they have refused, they cannot be given the benefit of ACP scheme and also they cannot claim to be said to be stagnating in the entire grade.

4. We have heard the learned counsel for the parties and perused the pleadings.

5. In this case the whole controversy relates to the ACP scheme. The copy of the scheme has been placed on record as Annexure A-1. It provides that after the recommendation of the Vth Central Pay Commission, the ACP scheme has been formulated to deal with the problems of stagnations or hardship faced by the employees due to non-adequate promotional avenues. Annexure A-1 gives the condition for grant of this benefit.

5.1 Para 5.1 of the said scheme says that two financial up-gradations under the ACP scheme in the entire Government service career of an employee shall be counted against regular promotions availed from the grade in which an employee was appointed as a direct recruit. This shall mean that two financial up-gradations under the ACP scheme shall be available only if no regular promotions during the prescribed periods (12 & 24) have been availed by an employee. If an employee has already got

one regular promotion, he shall qualify for the second financial up-gradation only on completion of 24 years of regular service under the ACP scheme.

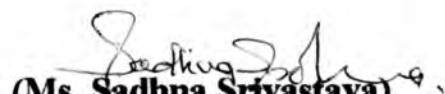
5.2 The learned counsel for the respondents has drawn our attention to the clarification issued by the Ministry of Personnel, Public Grievances and Pension (Annexure R-1) vide office memorandum dated 18<sup>th</sup> July, 2001. Serial No. 38 of the said clarification provides that the ACP scheme has been introduced to provide relief in cases of acute stagnation where the employee despite being eligible for promotion in all respects are deprived of regular promotion for long period due to non-availability of vacancies in the higher grade. The cases of holders of isolated posts have also been covered under the ACP as they do not have any promotional avenues. However, where a promotion has been offered before the employee could be considered for grant of benefit under the ACPs but he refuses to accept such promotion, then he cannot be said to be stagnating as he has opted to remain in the existing grade on his own volition. As such, there is no case for grant of ACPs in such cases. The official can be considered for regular promotion again after the necessary debarment period. In view of this clarification issued by the DOP&T the applicants have no case as all the applicants have refused promotion earlier, hence they cannot be said to be stagnated as they have opted to remain in the existing grade on their own volition. Therefore, there is no case for grant of ACP scheme. During the course of arguments the learned counsel for the applicants has made a statement at bar that all the applicants have got the regular promotion after necessary debarment period. In the light of the above the ACP benefits granted first and subsequently withdrawn in the light of the DOP&T office memorandum dated 18<sup>th</sup> July 2001 is just and proper. We have also considered the judgment placed by the applicants in

the case of V.R. Patil & Ors. (supra). In that case it appears that the clarification dated 18<sup>th</sup> July, 2001 has not been produced before the Bench because in paragraph 4 of their judgment they have observed that "[I]n view of the clear language of the scheme itself, we cannot accept the clarification given by the authority at the local level, other than DOPT". Since in the instant case we have perused the clarification dated 18<sup>th</sup> July, 2001 issued by the DOP&T and as such this case is distinguishable on this point alone.

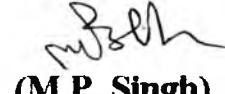
5.3 Although we have held that the applicants are not entitled for the ACP scheme in view of the clarifications issued by the DOP&T vide OM dated 18<sup>th</sup> July, 2001, but as they have received the higher pay and arrears since 1999 due to no fault of theirs and the financial up-gradation is being refused vide order dated 20.10.2004 with effect from 9.8.1999 and 2.12.1999 in the case of applicant No. 2, in pursuance of the clarification dated 18<sup>th</sup> July, 2001 issued by the DOP&T, it shall be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps be taken to recover or adjust the excess amount paid to them due to the fault of the respondents. The applicants are in no way responsible for the same. The order dated 20.2.2002 (Annexure A-3), 10.12.2003 (Annexure A-5) and 20<sup>th</sup> October, 2004 (Annexure A-8) to the extent of recoveries are hereby quashed. If any recovery has been made from the pay of the applicants, the same shall be refunded back to the applicants within a period of two months from the date of receipt of a copy of this order.

6. Hence, the Original Application is allowed in part. There shall be no order as to costs.

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

  
**(Ms. Sadhna Srivastava)**  
 Judicial Member

"SA"

  
**(M.P. Singh)**  
 Vice Chairman