

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR  
.....

Original Application No. 170/2002

Jabalpur, this the 25th day of June, 2004

Hon'ble Shri M.P. Singh, Vice Chairman  
Hon'ble Shri Madan Mohan, Member (J)

Krishna Kumar Sahu  
S/o Shri N.P. Sahu  
Aged about 49 years,  
Chargeman Gr.II,  
Ordnance Factory, Khamariya,  
R/o 129, Sanjivani Nagar,  
Jabalpur.

...Applicant

(By Advocate: Shri S.Paul)

-versus-

1. Union of India through  
Secretary,  
Ministry of Finance,  
New Delhi.
2. The Chairman/D.G.O.F.,  
Ordnance Factories Board,  
10-A, Shahid Khudi Ram Bose Marg,  
Kolkata.
3. The General Manager,  
Ordnance Factory, Khamariya,  
Jabalpur.

...Respondents

(By Advocate: Shri P. Shankaran)

ORDER (ORAL)

By Madan Mohan, Judicial Member -

By filing the present original application, the applicant has sought for the following main reliefs:-

- i) Upon holding that the applicant is entitled to get the 2nd upgradation under ACP Scheme w.e.f. 8.8.2000, command the respondents to grant 2nd upgradation to the applicant from 8.8.2000 with all consequential benefits.
  - ii) consequently command the respondents to pay the arrears alongwith interest on delayed payment.
2. The brief facts of the case are that the applicant was initially appointed as Lab. Technician w.e.f. 8.8.1976. Thereafter the applicant was appointed on the post of Supervisor B/Chemical w.e.f. 13.6.1983, which post was



subsequently re-designated/merged as Chargeman Gr.II w.e.f. 10.5.1993. Pursuant to the recommendations of Vth Central Pay Commission, a Scheme was formulated by the Govt. which is known as A.C.P. Scheme for the central Govt. civilian employees, with a view to provide financial up gradation to the stagnated employees. It is categorically submitted that the applicant was initially appointed in the pay scale of Rs. 360-560 and the pay scale of Supervisor B was also same. On re-designation as Chargeman Gr.II also there was no change in the pay scale/emoluments. Hence, the applicant was stagnating in the pay scale of Rs. 360-560/- x revised as 1400-2300. Pursuant to the Vth Central Pay Commission the pay scale of Rs. 1400-23000 is now revised to Rs. 5000-8000/-. Thus the applicant is continuously placed in the same pay scale without there being any promotion/ upgradation of the pay scale.

2.1 As per the ACP Scheme the stagnating employees are to be given two financial upgradation after 12 and 24 years of service respectively. The applicant completed his 12 years of service on 8.8.1988 and 24 years service on 8.8.2000. Vide order dated 17.5.2000 (A/2) the applicant has been given one financial upgradation as per the ACP Scheme and accordingly the applicant's pay-scale is upgraded to Rs. 5500-9000/-. However, the applicant was entitled for 2nd financial upgradation after completion of 24 years of service on 8.8.2000 which has not yet been granted to him, while certain juniors to the applicant have been given such benefit. Aggrieved by this, the applicant preferred a representation dated 11.8.2000 (A/4) followed by yet another representation dated 14.5.2001 (A/5). A detailed representation was again submitted by the applicant on 18.6.2001 to the respondents. The respondents <sup>sitting</sup> are/tight over the matter and have not yet decided the representations of the applicant. Hence, this O.A. has been filed.

3. Heard the learned counsel for the parties.

4. It is argued on behalf of the applicant that the



applicant has been given 1st financial upgradation after completion of his 12 years of service on 8.8.1988 but the 2nd financial upgradation as per the ACP Scheme to which he is entitled has not yet been granted to him after completion of 24 years of service on 8.8.2000. It is further argued that at the relevant point of time there was nothing adverse against the applicant which may come in the way of granting 2nd financial upgradation to the applicant. Learned counsel also drawn our attention to the O.M. dated 10.2.2000 issued by the Ministry of Personnel, Public Grievances and Pensions, Deptt. of Personnel and Training on the subject "Assured Career Progression Scheme for the central government civilian employees - clarifications regarding" to support the claim of the applicant.


5. In reply, the learned counsel for the respondents argued the applicant has been given his due 1st financial upgradation after completion of his 12 years of service on 8.8.1988. His case for second financial upgradation was considered alongwith his other juniors for placement in the pay scale of Rs. 6500-10500. But he was not granted the same as then he was facing departmental action under Rule 16 of CCS(CCA) Rules, 1965 which culminated in imposition of penalty of withholding of increment for a period of one year without cumulative effect vide order dated 9.5.2001, which expired on 1.8.2002.

6. In reply to the above arguments of the respondents, the learned counsel for the applicant argued that the applicant was chargesheeted vide O.M. dated 18.12.2000 containing the allegation of October, 2000 and the same was followed by the punishment vide order dated 9.5.2001. He further argued that perusal of the chargesheet and punishment order reveals that as on 8.8.2000 on which date the applicant had completed 24 years of service and became entitled for 2nd financial upgradation under ACP Scheme, the applicant was under cloud and therefore there was no justification in not



giving 2nd financial upgradation to the applicant as on 8.8. 2000. Hence, withholding of 2nd financial upgradation under the ACP Scheme to the applicant is bad in law.

7. After hearing the learned counsel for the parties and careful perusal of the record, we find that admittedly the applicant was given his due 1st financial upgradation after completion of 12 years of service on 8.8.1988. The question to be decided before us is whether the applicant is entitled for the 2nd financial upgradation under ACP Scheme after completion of 24 years of service or not. It is seen that the alleged chargesheet was issued to the applicant vide order dated 18.12.2000 which contained the allegation of October, 2000 and the same was followed with the punishment order dated 9.5.2001 (RJ3). It goes without saying that the charges framed against the applicant were relating to October, 2000 i.e. much after the date when the applicant had completed his 24 years of service for becoming entitled for the 2nd financial upgradation. Hence, we are of the view that any subsequent conduct of the applicant i.e. after 8.8.2000, the date on which he became entitled for 2nd financial upgradation, cannot disentitle him for grant of second financial upgradation. We have also perused the clarificatory O.M. dated 10.2.2000, as referred to in preceding paragraphs, which says that "Since the benefit of upgradation under ACP Scheme (ACPS) are to be allowed in the existing hierarchy, the mobility under ACPS shall be in the hierarchy existing after merger of pay scales by ignoring the promotion. An employee who got promoted from lower pay scale to higher pay scale as a result of promotion before merger or pay scales shall be entitled for upgradation under ACPS ignoring the said promotion as otherwise he would be placed in a disadvantageous position vis-a-vis the fresh entrant in the merged grade. In the present case the applicant was initially appointed as Lab. Technician w.e.f. 8.8.1976 and was subsequently appointed on the post of Supervisor B/



Chemical w.e.f. 13.6.1983 which post was subsequently merged or re-designated as Chargeman Gr. II w.e.f. 10.5.1993. The pay scale of the applicant from the initial designation to that of the merged post was the same, but was revised to Rs. 5000-8000 by the recommendation of the Vth Central Pay Commission. Hence, that cannot be treated as the financial upgradation and the same has to be ignored in view of the above clarification given by the Ministry of Personnel, Public Grievances and Pensions, Deptt. of Personnel & Training vide its OM dated 10.2.2000.

8. Having regard to the facts and circumstances of the case and in the light of above discussions, we are of the considered opinion that the applicant is entitled to the 2nd financial upgradation after completion of his 24 years of service on 8.8.2000 with all consequential benefits.

9. In the result, the O.A. is allowed. Respondents are directed to grant the applicant 2nd financial upgradation under ACP Scheme after completion of his 24 years of service i.e. w.e.f. 8.8.2000. The applicant will also be entitled for all consequential benefits. This order be complied with by the respondents within a period three months from the date of its receipt. No costs.

(Madan Mohan)  
Judicial Member

(M.P.Singh)  
Vice Chairman

|NA|

Issued  
on 19-7-04  
BS

पृष्ठांकन सं ओ/ब्या.....जबलपुर, दि.....  
पत्तिलिपि अर्को शिवा-  
(1) सल्लिब, इस्व न्यायकाला जल लल शिएला, जबलपुर S. Paul  
(2) आवेदक श्री/श्रीमती/श्री .....के काउंसल P. Shankar  
(3) पदवर्ती श्री/श्रीमती/श्री .....के काउंसल  
(4) संवेदना, के प्रजा, जबलपुर न्यायमंडल  
सचाला एवं आवश्यक वर्गजाही हेतु  
उप रजिस्ट्रार 19-7-04