

Central Administrative Tribunal, Jabalpur Bench, Jabalpur
Original Applications Nos.23/01, 113/02 & 327/02

Bilaspur this the 3rd day of February 2005.

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

(1) **Original Application No.23/01**

1. B.K. Mistry S/o B.N.Mistry
aged about 45 years, Auditor
Account office,
Ordnance Factory,
Khamaria and 34 others

Applicants

(By Advocate – Shri S.Paul)

Versus

1. Union of India
through its Secretary,
Ministry of Defence,
New Delhi.
2. The Union of India
through its Secretary,
Ministry of Personnel, Public Grievances
& Pension, Department of Personnel & Training
North Block, New Delhi.
3. The C.G. D.A.
West Block-Vth
R.K. Puram,
New Delhi-66
4. The Principal Controller of Accounts(Fys)
10-A, S.K. Bose Road,
Calcutta-1.
5. The C.D.A. Ridge Road,
Jabalpur

(By Advocate – Shri S. A.Dharmadhikari)



(2)

Original Application No. 113 of 2002

Bhola Nath Verma,
S/o Late Shri Mewalal,
Aged about 62 years,
R/o Gram Post shahzadpur,
District Kaushambi(U.P.)

Applicant

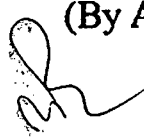
(By Advocate – Shri S. Paul)

VERSUS

1. Union of India,
Through its Secretary,
Department of Irrigation,
(Central Water Commission),
New Delhi.
2. Union of India,
Through its Secretary,
Ministry of Personnel
Public Grievance & Pension,
D.O.P.T, North Block,
New Delhi.
3. Chief Engineer,
Central Water Commission
Narmada Bhavan, Block No.3,
Paryavas Bhawan,
Ground Floor, Arera Hills,
Jail Road, Bhopal (M.P.)
4. Executive Engineer,
Central Water Commission,
Narmada Divisiona, Block
No.3, Paryavas Bhwan,
Ground floor, Arera Hills,
Jail Road, Bhopal(M.P.).
5. Junior Engineer,
Central Water Commission,
Bhanot, District Mandla (MP).

Respondents.

(By Advocate – Shri Om Namdeo)



(3)

Original Application No. 327/02

1. D.P. Yadav S/o late Shri R.S. Yadav, aged about 60 years, Retd. Senior Auditor, R/o House No.907, North Civil Lines, Jabalpur. And 11 others.

Applicants

(By Advocate – Shri S.Paul)

Versus

1. The Union of India through its Secretary, Ministry of Personnel, Public Grievances & Pension, Department of Personnel & Training North Block, New Delhi.
2. The Controller General of Defence (Accounts), West Block-V, R.K. Puram, New Delhi.
3. The Controller of Defence (Accounts), Ridge Road Jabalpur (MP)
4. The Joint Controller of Defence, Accounts PAO (ORS) Corps of Signals, Jabalpur(MP)

Respondents

(By Advocate – Shri S.P. Singh)

COMMON (O R D E R)

By M.P. Singh, Vice Chairman -

As the issue involved in the aforesaid OAs is common and the grounds are similar, for the sake of convenience these OAs are being disposed of by this common order.

the

1.1 We have treated/OA No.23/01 as a leading case for the purpose of disposal of these OAs.

2. In OA No. 23/2001, the applicants have sought the following main reliefs :-

(ii) Set aside para 6 of O.M. Dated 9th August, 1999-Annexure-1 and clarification No.16 of O.M. Dated 10.2.2000 Annexure A-2.

(iii) Consequent upon quashing of aforesaid provisions, the respondents be directed to give the benefit of ACP scheme to the

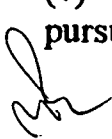


applicant after completion of 12 & 24 years of service along with all consequential benefits.”.

2.1 In OA No.113/2002 the applicant has sought the following main reliefs :-

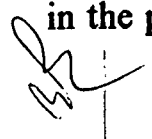
- (b) Set aside the order dated 30.3.2001 Annexure A/1.
- (c) Consequently, direct the respondents to pay the benefits arising out of the order dated 8/18.9.2000 to the applicant as arrears of back wages till his retirement;
- (d) Respondents be further directed to refix/recalculate the retiral dues of the applicant by treating his pay-scale Rs. 3050-4590/- with all consequential benefits;
- (e) The respondents be directed to count the period from 1982 to 1992 for the purposes of calculating pension;
- (f) The arrears arising out of aforesaid recalculation/revision be paid to the applicant within a stipulated time as deemed fit by this Hon'ble Court with interest on delayed payment;
- (g) If necessary, set aside ACP Scheme Para 6 of O.M. Dated 9.8.99 Annexure A/3 & clarification No.16 dated 10.2.2000 Annexure-A/4;
- 6(h) In alternatively, respondents may be directed to fix the pension and other, retiral dues treating the pay of the applicant of Rs.3,580/- as on 1.4.2000.”

2.2 In OA No.327/2002 the applicants have sought the following main reliefs :-

- (ii)to quash the para 6 of the impugned order dated 9.8.1999 (Annexure A/1) and clarification No.16 of Office memo dated 10.2.2000(Annexure A/2)
 - (iii) to quash the rejection order dated 14.11.2000 and June, 2001(Annexure A/6 & a/10)passed by the department.
 - (iv) Upon holding that the applicants are entitled to get the seconds financial upgradation on completion of 24 years of service under the ACP Scheme, this Hon. Tribunal may kindly be pleased to command the respondents to grant second financial upgradation in pay scale of Rs.5500-9000/- along with interest on delayed payment till date of realization.
 - (v) to restrain the respondents from taking examinations in pursuance to the Circular dated 7.3.2002(Annexure A/3).”
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3. O.A. 23/2001 :-The brief facts of this case are that the applicants, 35 in number, were appointed as Primary School Teachers under Dandakarnya Project(hereinafter referred to as 'the DNK Project') during the period 1962 to 1972 and working as such upto their redeployment in the year 1987/1988 in the pay scale of Rs. 950-1500/- 1200-2040. They pay scale of Rs. 950-1500/Rs.1200-2040 were given to the applicants as per the recommendations of the 4th Central Pay Commission in the year 1986. Subsequently, a National Commission on teachers under the Chairmanship of Prof. D.P.Chattopadhyay had made various recommendations concerning pay & service conditions of teachers at school level. Pending Govt. decision on the report of the National Commission on teachers, fourth Central Pay Commission recommended the replacement scales for the school teachers. Accordingly these scales were implemented vide Ministry of Finance Notification No.5 dated 13th September & 22nd September 1986. Subsequently, a decision was taken by the Government on the recommendations of the Chattopadhyay Commission and accordingly order dated 12.8.1987(Annexure -A-4) was issued. However, the DNK project authorities did not grant the revised pay scales recommend by the Chattopadhyay Commission. The revised pay scales so recommended by the National Commission were higher than the pay scale of Rs. 950-1500 and Rs.1200-2040. The revised pay scales for Primary School Teachers recommended by the Chttopadhyay commission were Rs.1200-2040; Rs.1400-2600; and Rs. 1640-2900. In pursuance of the decision of the Hon'ble Supreme Court, the applicants who had worked as Primary School Teachers were given the pay scale of Rs. 1200-2040 and senior scale of Rs.1400-2600(on completion of 12 years service). The pay scale of Rs.1200-2040 and Rs. 1400-2600(IV CPC) were further revised by the Vth CPC as Rs.4000-6000 and Rs. 5000-8000 respectively.

3.1 The applicants have claimed that in the DNK project they were Primary School Teachers and became entitled to get the pay scale of Rs.5000-8000 from 1.1.1986 by virtue of the order of the Hon'ble Supreme Court. Although they were made to join as Clerks in the present department in the pay scale of Rs. 950-1500 and Rs. 1200-2040 and, were appointed as




Auditors in the pay scale of Rs. 4000-6000, they are actually holding the pay scale of Rs. ⁵⁰⁰⁰5500-8000 in the capacity of teachers in DNK project and not because of their subsequent promotions in the present department. In the present department they are still stagnating in the pay scale of Rs.5000-8000 which they are holding by virtue of grant of senior scale in the post of primary school teachers i.e. Rs.1400-2600 w.e.f. 1.1.86 subsequently revised to Rs.5000-8000 on the recommendation of Fifth Central Pay Commission.

3.2 As per the scheme known as Assured Progression Scheme (for short 'ACP Scheme') introduced vide Govt. of India's order dated 9.8.1999 (Annexure-A-1) two financial upgradations – one after 12 years of regular service and another after 24 years of service are allowed to the Central Government civilian employees, in all the Ministries/Departments.

3.3. As per Recruitment Rules, no auditors can be granted the pay scale of Rs.5500-9000 without passing the SAS examination. As per the ACP scheme all norms including departmental skill test prescribed for the purpose of regular promotion are required to be fulfilled. As the applicants did not fulfill the condition for grant of pay scale of Rs.5500-9000 they were not granted the 2nd financial upgradation.

3.4. The respondents have stated the applicants are drawing the higher scale i.e. Sr. Auditor's scale of pay Rs.5000-8000 being designated as Auditor. Under the ACP scheme only the directly recruited Auditors who have completed 24 years of service in this department and have qualified the SAS Part-1/Supervisor Exam. ^{in 2} In conformity with the clarification given under point of doubt No.16 vide DOP & T O.M. No.35034/1/97 Estt(D) dated 10.2.2000 are eligible for grant of financial upgradation. The respondents have also stated that the applicants have got three promotions during their service period and their services have not been discontinued from their appointment as Primary School Teacher and they have been allowed the pay scale of Clerk and Auditor after the ^{re-}red-deployment in the Defence Account Department. Now they are drawing the higher scale of Sr.

Auditors of Rs.5000-8000 being designated as Auditor and Auditor's scale of pay of Rs.4000-6000. Therefore, the applicants are not eligible for financial upgradation.



4. O.A. 327/2004 :- The facts of this OA are somewhat similar to those as stated above in OA 23/2001. In this OA 327/2004 also, the applicants were recruited to the post of Auditors. They have already completed 24 years of regular service but the respondents have not granted ^{them} ~~him~~ the financial upgradation under the ACP Scheme since they have not passed the Supervisor (Accounts) or S.A.S. Part-I Examination.

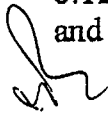
5. We find that in both these Original Applications Nos 23/2001 and 327/2004 the applicants are seeking a direction to quash para 6 of the ACP Scheme dated 9.8.1999 and Clarification No.16 of Office Memorandum dated 10.2.2000 issued by the Govt. of India, Ministry of Personnel Public Grievances and Pensions, Department of Personnel and Training, and further consequent upon quashing the aforesaid provisions the respondents be directed to grant the financial upgradation under the ACP Scheme to the applicants. We find that the respondents vide their letter dated 14.11.2000 (Annexure-A-6 to OA 327/2002) have stated that the individuals who have not qualified either departmental supervisor (A/cs) or SAS Part-I or SAS Part-II examination are not eligible for consideration of financial upgradation under ACP Scheme.

6. Vide order dated 15.7.2004 passed in Original Application No.23/2001 this Tribunal has raised the following question for consideration by a Full Bench:

“Whether all norms including bench mark, departmental examination, seniority-cum-fitness, and all other conditions required for regular promotion are to be insisted upon for granting financial upgradation under the ACP scheme as required under condition no.6 reproduced above, although under the financial upgradation a person continues to hold the same post and performs the same duties and responsibilities and it also does not grant him the privileges related to higher status (e.g. invitation to ceremonial functions, deputation to higher posts, etc.)”

Thereafter, the matter was referred to the Hon'ble Chairman for constitution of a Full Bench, and vide order dated 6.1.2005 the following orders of the Hon'ble Chairman were communicated to this Bench:

“Kind attention of the Bench may be invited to the decision dated 8.12.2004 of the Full Bench at Chandigarh in OA Nos 125/CH/2003 and 465/CH/2003, Perhaps the need for Larger Bench may not arise.”



As all the aforementioned three Original Applications were clubbed together, these Original Applications were listed for hearing. Accordingly, We have heard the learned counsel of parties and carefully gone through the order dated 8.12.2004 passed by the Full Bench of Chandigarh in O.As Nos.125/CH/2003^(X) and 465/CH/2003. We find that in the said O.As before the Chandigarh Bench, the following issue was considered :

“Whether a person, for getting financial upgradation under the ACP Scheme dated 9.8.1999 to the next higher grade/scale is required to be possessed of educational qualifications required for appointment/promotion to the next higher post, carrying the same scale which is to be given now under the Scheme as a financial upgradation”.

The aforementioned Full Bench has decided the aforementioned question in the following terms:-

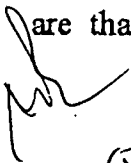
“Answer:

A person for grant of financial upgradation under the ACP scheme dated 9.8.1999 to the next higher grade/ scale is required to possess the educational qualifications required for appointment/promotion to the next higher post carrying the same scale”.

Although the specific question before the Full Bench at Chandigarh was fulfillment of the educational qualification required for the post for granting second financial upgradation, the Tribunal ²have in their Judgment have discussed and ²have stated that all normal promotion norms are required to be fulfilled for grant of second financial upgradation. Thus, the validity of all these conditions required for grant of second financial upgradation has been upheld by the Full Bench.

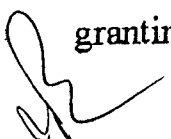
7. We find that both these Original Applications 23/2001 and 327/2002 are covered in all fours by the aforesaid decision of the Full Bench. Therefore, the applicants in the these Original Applications are not entitled for grant of financial upgradation under the ACP Scheme as they have not fulfilled all the normal promotion norms.

8. O.A.113 of 2002 :- The brief facts of this case as stated by the applicant are that he was initially appointed as Khalasi on 23.9.1971 under the

 (X) Krishan Kumar Vs. UOI

respondents. He has completed 24 years of service in the year 1995 and accordingly he became entitled to get the benefit of the ACP Scheme. The respondents have issued an order dated 8/18.9.2000 (Annexure-A-5) whereby the applicant has been given the pay scale of Rs.3050-4590 w.e.f. 9.8.1999. The applicant attained the age of superannuation on 30.6.2000 and retired from service. According to the applicant he was working in the pay scale of Rs.2650-4000 at the time of his retirement. His pay was fixed on 1st April, 1999 as Rs.3,510/-. The next increment of the applicant was due from 1.4.2000. Therefore, the applicant was entitled to get the pay of Rs.3580/- and accordingly, his pension should have been fixed at the rate of Rs.1790 (half of the amount of Rs.3580/-) . However the pension of the applicant has been fixed at Rs.1498/- without any justification. He has submitted his representation. However, the respondents have not fixed his pension as per the last pay drawn by him. Hence this O.A.

8.1 According to the respondents as per the ACP scheme, it is mandatory to have the same qualification and requirement which is provided for the promotional post to become eligible for financial upgradation under ACP scheme. As per Annexure-R-3, 20 employees out of 29 were not possessing the required qualification. Hence respondents were left with no alternative but to adhere to relevant rules/procedure and cancel the order of all the 20 employees including the applicant, who were found to be non-eligible for grant of 2nd ACP. The respondents have further stated, that although it was not feasible to grant the scale of Rs.3050-4590 as 2nd Financial upgradation under the ACP Scheme to the Khalasis of the work charged establishment of Central Water Commission, due to their non eligibility on account of non-fulfillment of educational qualifications (Matric Pass), the Govt. has sympathetically taken a view on such categories of persons and has now decided as a special concession to grant the scale of pay of Rs.2750-4400 as 2nd financial upgradation to such persons, provided they fulfill all other relevant criteria of the scheme, vide circular letter dated 21.8.2002 (Annexure-R-6). The respondents have further submitted that the first order granting 2nd ACP financial upgradation in the scale of Rs.3050-4590 was




issued on 8/18.9.2000(Annexure-R-2) in which the educational qualification required for the higher post were not considered by mistake. In order to correct the said mistake, a review Departmental Screening Committee was held in which the required qualifications as per recruitment rules(Annexure-R-4) were considered and the revised orders dated 30.3.2001(Annexure-R-5) correcting the earlier mistake was issued. The applicant did not have the required qualification i.e. Matric or equivalent. Therefore, he was not eligible for grant of 2nd Financial upgradation under the ACP scheme. Hence, the second orders were issued correcting/cancelling the first order after following the due procedure. The applicant was factually not affected financially as the first order dated 8/18.9.2000 was not implemented in respect of the applicant till the date of issue of the order cancelling it. Therefore, cancellation of order had no bearing on the fixation of his pension and any financial consequences. In view of these facts, the respondents have submitted that this Original Application has no merit and is liable to be dismissed.

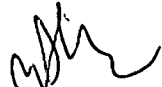
8.2 We have considered the contentions of both the parties in OA 113/2002. We find that the applicant was granted the scale of Rs.3050-4590 by mistake as he was not possessing the educational qualification of Matric or equivalent which makes him eligible for grant of 2nd financial upgradation under ACP scheme. As the respondents have corrected the mistake by holding a review DPC in which the required qualifications as per the recruitment rules were considered and thereafter the revised order dated 30.3.2001 was issued, we do not find any irregularity in the action taken by the respondents. However, we find that the respondents in para 2 of the additional return filed on 19.4.2004 have stated that the Government has relaxed the said condition of education qualification vide circular dated 21.8.2002(Annexure-R-6) and a scale of Rs.2750-4400 has been allowed to those, who were not possessing

the educational qualification and orders to this effect have been issued by the Department allowing all the remaining candidates except Shri Bhola Nath Verma(applicant) pending decision of the court(Annexure-R-8). We make it clear that the decision in this OA will not^{come} in the way of the respondents to grant the pay scale of Rs.2750-4400 to the applicant .

9. In the result, for the reasons stated above, all the aforementioned three Original Applications are dismissed, however, without any order as to costs.

10. The Registry is directed to affix a copy of memo of parties of the OAs Nos 23/01 and 327/02 while issuing the certified copy of this order to the parties.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

rkv.