

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 23rd September, 2008

ORIGINATION APPLICATION NO. 60/2007

CORAM:

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. B.L. KHATRI, ADMINISTRATIVE MEMBER

Smt. Mangi Bai wife of Shri Ghanshyam aged about 46 years, resident of Near Ek Minar Mazjid, Kumharo Ka Mohalla, Chhaoni, Kota. Presently working as Safaiwala (Group D) in the office of Deputy Commissioner, Custom and Excise, Central Excise and Custom, Kota (Rajasthan).

....APPLICANT

(By Advocate: Mr. C.B. Sharma)

VERSUS

1. Union of India through Secretary to the Government of India, Department of Revenue, Ministry of Finance, New Delhi.
2. Commissioner, Central Excise, Jaipur-I, NCR Building, C-Scheme, Jaipur.
3. Deputy Commissioner, Central Excise & Custom, Kota.

.....RESPONDENTS

(By Advocate : Ms. Kavita Bhati proxy counsel to Mr. Kunal Rawat, Sr. Standing Counsel)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

"(i) That the entire record relating to the case be called for and after perusing the same respondents may be directed to allow the applicant next higher scale Rs.2610-3540 with effect from 22.06.2001 by quashing letter dated 15.11.2006 (Annexure A/1) with all consequential benefits.

(ii) That respondents be further directed not to apply prescribed promotional norms for placement in higher scale and only seniority cum fitness standard made applicable in the case of applicant.

(iii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.

(iv) That the costs of this application may be awarded."

2. Briefly stated, facts of the case are that the applicant is working as Safaiwala Group 'D' in the Department since 22.06.1989. As per the ACP Scheme, as promulgated vide order dated 09.8.1991 (Annexure A/3), the applicant was entitled for placement for higher scale on completion of 12 years of service. According to the learned counsel for the applicant, the applicant has completed 12 years of service on 22.06.2001 but she has not been granted the placement of higher scale of Sepoy till date. She has also made representation. The appropriate authority vide impugned order dated 15.11.2006 rejected the representation of the applicant holding that she does not fulfill the prescribed promotional norms for the post of Sepoy and is not eligible for promotion to the grade of Sepoy as well as grant of financial upgradation to the pay scale of Sepoy under the ACP Scheme. It is this order which is challenged in this OA.

3. Notice of this application was given to the respondents. The respondents have filed their reply. In the reply, the respondents have stated that the case of the applicant for grant of financial upgradation under the ACP Scheme was considered by the Committee in its meeting held on 06.02.2002, 23.10.2003, 15.03.2004 and 05.07.2005 for subsequent panel periods but either she remained absent or she was declared failed in the prescribed physical test and literacy test. Her height was found below the prescribed height (15 $\frac{1}{2}$ Cms) as required in terms of the Recruitment Rules of Sepoy Group 'D'. Accordingly, she was found unfit for aforesaid financial upgradation in the pay scale of Sepoy Group 'D' under the ACP Scheme.

4. We have heard the learned counsel for the parties and have gone through the material placed on record. The fact that the financial benefit under ACP Scheme can be granted to a person if such person fulfills the eligibility criteria as stipulated in the recruitment rules is not in dispute. Thus we see no infirmity in the action of the respondents in not granting financial upgradation to the applicant in the pay scale of Sepoy Group 'D' as she does not fulfill the requisite eligibility criteria.

5. Learned counsel for the applicant has drawn our attention to Para No. 3 of impugned order dated 15.11.2006 (Annexure A/1) and thus argued that since the applicant has stagnated in the same pay scale for the last about 20 years, it is a case where the power of relaxation can be exercised as per the recruitment rules. As can be seen from Para No. 3 of the impugned order, the applicant is not found fit for grant of ACP as she was declared fail in the physical test and her height was below 152 Cms. At this stage it will also be useful to quote Para No. 4 of the advertisement dated 05.04.2008 vide which the post of Sepoy was advertised so far as it is relevant in the case of the applicant and thus reads as under:-

"4. PHYSICAL STANDARD:FOR MALE MINIMUM

(i) Height 152 Cms
 (ii) Weight 48 Kgs

FOR FEMALE MINIMUM
(Height Relaxable by 2.5 Cms & weight by 2 kgs. For Gorkhas, Garhwalis, Assamese and members of the Scheduled Tribes)"

6. Thus from the portion, as quoted above, it is clear that there is power vested with the appropriate authority to grant relaxation upto 2.5 Cms in physical standard for SC Female candidates. Admittedly, the applicant belongs to Reserved category (SC) As per the provisions,

as quoted above, she is entitled for relaxation in height. Thus, we are of the view that it is a case where appropriate authority can consider relaxation in height in terms of the aforesaid provisions as the applicant has stagnated in the same pay scale for about 20 years without any benefit of financial upgradation.

7. In view of what has been stated above, the competent authority may consider the feasibility of granting relaxation to the applicant in terms of aforesaid provision and also consider whether applicant can be granted financial upgradation as per the Scheme even if such relaxation in physical standard/height is given to the applicant. Such exercise shall be done within a period of three months from the date of receipt of a copy of this order.

8.. With these observations, the OA is disposed of with no order as to costs.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

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