

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

OA No.060/01087/2014

Pronounced on : 19.01.2017

Reserved on : 12.01.2017

CORAM: HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

1. MES No.303891, K.K. Mujral son of Sh. Des Raj, retired as Assistant Surveyor of Works, Office of Chief Engineer, Bhatinda Zone, Bhatinda, presently R/o 1013, Phase-IV, Mohali.
2. MES No.455126, H.S. Mavi son of Sh. Gurbax Singh, retired as Assistant Surveyor of Works, Office of Chief Engineer, Western Command, Chandimandir, presently resident of 1159, Sector 43, Chandigarh.
3. MES No.304396, Charaj Lal son of Sh. Ram Avtar, retired as Assistant Surveyor of Works, Office of HQ Chief Engineer, Chandigarh Zone Chandigarh, presently resident of 780, Sector 13, Urban Estate, Karnal.
4. MES No.304184, Tara Singh son of Sh. Rattan Singh, retired as Assistant Surveyor of Works, Office of HQ Chief Engineer, Jalandhar Zone, Jalandhar, presently resident of 21, Lal Bagh, Ludhiana.
5. MES No.304273, Naresh Chander Tuli son of Sh. H.L. Tuli, retired as Assistant Surveyor of Works, Office of HQ Chief Engineer, Bhatinda Zone, Bhatinda, now resident of 26, Doctors Enclave, Patiala.
6. MES No.303906, Rameshwar Dass Garg son of Sh. K.M. Garg, retired as Assistant Surveyor of Works, Office of Chief Engineer, Western Command, Chandimandir, presently resident of 680, Sector 7, Kurukshetra.
7. MES No.305413, Charanjit Singh Pasricha son of Sh. Trilochan Singh, retired as Assistant Surveyor of Works, Office of HQ Chief Engineer, Chandigarh Zone, Chandigarh presently resident of 2994, Phase 7, Mohali.

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8. MES No.304172, Khuswant Lal Sharma son of Shri Dwarka Dass, retired as Assistnat Surveyor of Works, Office of Chief Engineer, Northern Command, Udhampur, presently resident of 18, Golden Park, Ambala Cantt.
9. MES No.304207, Tarsem Lal, retired as Assistant Surveyor of Works, Office of HQ Chief Engineer, Chandigarh Zone, Chandigarh, presently resident of H.No.889, Shiwalik Group Housing Society, Sector 49-A, Chandigarh.

.....**APPLICANTS**

BY ADVOCATE: Sh. Shailendra Sharma.

VERSUS

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. The Engineer in Chief, Ministry of Defence, Army HQ, New Delhi.
3. The Chief Engineer, Western Command, Chandimandir, Distt. Panchkula.
4. The Chief Engineer, Northern Command, C/o 56 APO.
5. The Chief Engineer, South Western Command, Jaipur.

.....**RESPONDENTS**

BY ADVOCATE: Sh. Sanjay Goyal.

ORDER

HON'BLE MRS. RAJWANT SANDHU, MEMBER (A):-

1. The present Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:-

- "8 (i) That impugned order dated 21.08.2014 (Annexure A-6) passed by respondent no.2 be quashed.
- (ii) The respondents be directed to release the financial benefits accrued to the applicants from the date of their promotion as Asstt. Surveyor of Works (ASW).
- (iii) The respondents be directed to grant the benefit of 2nd ACP of the Scale of Rs.10000-15200 to the applicants had completed more than 24 years of service much prior

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to 09.08.1999 and had secured only one promotion in their entire service career.

- (iv) The respondents be further directed to re-calculate the retiral benefits of the applicants after re-fixing their pay after granting the actual financial benefits and release the same with interest."

2. It is stated in the OA that the applicant no.1 was appointed as Suptt. B&R Grade-II on 09.08.1963 in the Military Engineering Service (for short MES). The applicant continuously worked in that capacity till 1981 when the Surveyor Cadre and B&R Cadre were demerged and accordingly the applicants were re-designated as Surveyor Asstt. Grade-I which post was further subsequently re-designated as Junior Engineer in the year 1996. The service particulars of the applicants in tabulated form are as under:-

Sr. no.	Name	Date apptt.	Date of promotion as JSW/ASW	Date of retirement
1.	MES No.303891, K.K. Mujral	09.08.1963	Feb. 1996 01.04.1993	30.09.2002
2.	MES No.455126, H.S. Mavi	02.08.1963	Feb. 1995 April 1993	29.02.2004
3.	MES No.304396, Charaj Lal	23.07.1963	Feb. 1995 01.04.1993	30.09.2003
4.	MES No.304184, Tara Singh	16.07.1963	Feb. 1995 01.04.1993	31.08.2002
5.	MES No.304273, Naresh Chander Tuli	10.09.1963	July 1991 01.04.1993	31.03.2002
6.	MES No.303906, Rameshwar Dass Garg	07.11.1963	July 1991 01.04.1993	30.04.2005
7.	MES No.305413, Charanjit Singh Pasricha	04.10.1963	July 1991 01.04.1992	29.02.2004
8.	MES No.304172, Khuswant Lal Sharma	27.06.1963	July 1991 01.04.1993 April 1996	30.04.2000
9.	MES No.304207, Tarsem Lal	02.07.1963	April 1994 01.04.1995	31.10.2002

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3. The services of applicants were earlier governed by the Rules Known as "MES (Surveyor of Works Cadre) Recruitment Rules 1985 published vide SRO 39 of 1985. As per 1985 Rules, from the Post of Surveyor Assistant Grade-I, the next promotion was Asstt. Surveyor of Works (ASW) and further Asstt. Surveyor of Works were eligible for promotion to the post of Surveyor of Works. The Rules of 1985 were amended in the year 1994. Since the post of Surveyor Assistant Grade-I was re-designated as Junior Engineer, so from the post of Junior Engineer, the next promotion was Junior Surveyor of Works (JSW) and thereafter the next promotion was Asstt. Surveyor of Works (ASW) and finally the promotion was Surveyor of Works. The applicants were the senior most employees and working as Surveyor Assistant Grade-I and were eligible as per Rules 1985 for promotion to the post of Assistant Surveyor of Works (ASW) for the vacancies for the year 1993-1994 so far as applicants no.1 to 6 are concerned. Applicant no.7 became eligible for promotion to the post of Assistant Surveyor of Works (ASW) in the year 1992-93. Similarly applicants no.8 & 9 became eligible for promotion to the post of Assistant Surveyor of Works (ASW) in the year of 1996-97 and 1995-96 respectively. However, the respondents did not constitute the DPC for the promotion of the applicants despite the repeated requests made by the applicants. The respondents promoted applicants no.1 to 4 & 9 as Junior Surveyor of Works in the year 1996-97, 1995-96 & 1994-95 under the amended Rules of 1994 despite the fact that the applicants were eligible for promotion to the post of Assistant



Surveyor of Works (ASW) in the year 1993-94. Similarly applicants no.5 to 8 were promoted as Junior Surveyor of Works in the year of July 1991 even before the approval / finalization of the New RRs of 1994 though they were eligible for promotion to the post of ASW in the year 1992-93 and 1993-94. Applicant at no.8 was promoted and working as Junior Surveyor of Works when he was reconsidered for the post of JSW and promoted to the post of ASW in the year of 1996-97. The applicant at serial no.9 became eligible for promotion to the post of ASW in the year 1995-96.

4. Although the applicants were eligible for promotion to the post of Asstt. Surveyor of Works (ASW) under the Rules of 1985 and the vacancies for the post of Asstt. Surveyor of Works (ASW) were available, but the respondents did not constitute the DPC, so there was a lot of resentment among the employees. Finally the respondents convened the Review Departmental Promotion Committee in the year 2009 for promotion to the post of ASW for the vacancies for the year 1992-93 to 2004-2005 in compliance to the directions of Hon'ble CAT, Ernakulum Bench. The Review DPC promoted the applicants as Assistant Surveyor of Works in the year 2009 after the retirement of the applicants. Copy of the Panel for promotion to the post of Assistant Surveyor of Works in the Department for the vacancies for the year 1992-93, 1993-94, 1995-96 and 1996-97 reflecting the names of the applicants is annexed (Annexure A-2 to A-5).

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5. After the implementation of the recommendations of the 5th Pay Commission, the respondents introduced Assured Career Progression Scheme (AC) w.e.f. 09.08.1999. The object of the scheme was to compensate the employees by placing them on next higher scale on account of their non promotion due to non availability of promotional avenues. The 1st and 2nd ACP had to be granted on completion of 12/24 years of service, if the employee had not received any promotion. The applicants had completed 24 years of regular service upto Nov. 1987. Copy of the ACP Scheme of 1999 and government letter dated 23 January, 2002, are annexed (Annexure A-1). The Col. 2 of Appendix 'B' to Govt. letter dated 23 Jan. 2002 is reproduced:-

"Erstwhile Surveyor Assistant Gde I/JSW holding degree in Civil Engineering or having passed Final / Direct Exam of IS (I) and erstwhile Surveyor Assistant Grade-II Holding Diploma in Civil Engineering or having passed Intermediate with 10 years regular service in the grade and promoted as Assistant Surveyor of Works before 21 July 1994 or yet to be promoted in accordance with the Recruitment Rules notified vide SRO 39."

The applicants were promoted as Assistant Surveyor of Works (ASW), but only notional benefit of promotion and no financial benefits were given to the applicants despite the fact that the applicants had discharged the duties of higher responsibility. Even the respondents vide speaking order dated 21.08.2014 (Annexure A-6) have confirmed that in functional hierarchy of the department JSW and ASW have same functional charter of duty (para 3(I)(c) refers. The applicants gave representations to the respondents by highlighting their plight and requested that since they have discharged the duties of ASW without getting any financial benefits

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and hence they are entitled for the financial benefits from the date of discharging of duties/actual date of promotion and consequently their retiral benefits should be re-calculated and arrears should be given to them. Since no action was taken by the respondents to decide the representation of the applicants, so the applicants approached this Tribunal by way of filing OA No.1127/PB/2013. This Tribunal vide order dated 16.08.2013 disposed of the OA with the direction to the respondents to decide the representation of the applicants within a period of two months. In view of the order passed by this Tribunal, the respondent no.2 passed the order on 21.08.2014 (Annexure A-6) and rejected the claim of the applicants by totally overlooking the judgment Annexure A-7. Hence this OA.

6. In the grounds for relief it has, inter alia, been stated as follows:-

- (i) The vacancies to the promotional post of Asstt. Surveyor of Works (ASW) were available with the respondents in the year 1992 and onwards and the applicants were fully eligible for promotion to the said post. But the respondents did not convene the DPC for the reasons best known to it despite the repeated representations on the part of the applicants. The applicants were finally promoted vide order Annexure A-6 after their retirement. The applicants cannot be penalized by holding that the applicants are only entitled for notional fixation and not the actual financial benefits when there was no lapse on the part of the applicants.
- (ii) The impugned order dated 21.08.2014 (Annexure A-6) passed by respondent no.2 is totally illegal, arbitrary, violative of Article 14 of the Constitution of India as well as principles of natural justice as well as violative of judgment of Hon'ble Principal Bench in a case OA No.809/2009 titled as Gauri Shankar Sharma and others Vs. Lt. Governor of Delhi and others, decided on 05.02.2010 which squarely covers the case of the applicants.

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7. In the written statement filed on behalf of the respondents, it has been stated that anomaly in promotion hierarchy of Surveyor Cadre was corrected through various Court orders. In compliance with the direction of Hon'ble CAT, Ernakulum Bench, judgment dated 22.12.2005 (Annexure R-2) in OA No.466/2003 and OA No.749/2003 and upheld by the Hon'ble High Court of Kerala vide its order dated 03.08.2006 (Annexure R-3) respectively, Review DPC was conducted in three stages as under:-

“First Stage: R-DPC for the year 1992-93, 1993-94 & 1994-95 (upto July 1994) for erstwhile SA-1 to ASW as per SRO 39/1985.

Second Stage: R-DPC for the promotion from erstwhile SA-1 to JSW for vacancy year 1989-90 to 2001-02 as per SRO 292/1989.

Third Stage: R-DPC for the promotion of JSW to ASW from 1994 (21st July 1994 to 31st March 1995) to 2004-05 as per SRO 142/1994.

Consequent to the above R-DPCs following panel were issued:-

(a) Panel for promotion from SA-1 to ASW for the year 1992-93, 1993-94 & 1994-95 (upto Jul. 1994) issued vide this HQ letter No.B/42C33/R-DPC/ASW/1992-93 to 2004-05/E1 (DPC-1) dated 30th January 2009.

(b) Panel for promotion from SA-1 to JSW for the vacancy year 1989-90 to 2001-02 issued vide this HQ letter No.B/42033/R-DPC/JSW/1989-90 to 2001-02/E1 (DPC-1) dated 30th January 2009.

(c) Panel for promotion from JSW to ASW for the vacancy year 1994-95 (21st July 1994 to 31st March 1995) to 2004-05 issued vide this HQ letter No.B/42033/R-DPC/ASW/1994-95 to 2004-05/E1 (DPC-1) dated 30th January 2009. The applicants were promoted to the post of JSW/ASW in the following manner:-

Sr. no.	MES No. & Name of the applicant	Vacancy year against which promoted	Vacancy year against which promoted to ASW	Remarks
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		to JSW		
1.	303891 Sh. K.K. Mujral	-	1993-94 w.e.f. 01 April, 1993	Promoted directly from SA-1 to ASW through first stage R-DPC
2.	455126 Sh. H.S. Mavi	-	1993-94 (01 Apr. 1993)	-do-
3.	304396 Sh. Charaj Lal	-	1993-94 (01 Apr. 1993)	-do-
4.	304184 Sh. Tara Singh	-	1993-94 (01 Apr. 1993)	-do-
5.	304273 Sh. Naresh Chander Tuli	-	1993-94 (01 Apr. 1993)	-do-
6.	303906 Sh. Rameshwar Dass Garg	-	1993-94 w.e.f. 01 Apr. 1993	-do-
7.	305413 Sh. Charanjit Singh Pasricha	-	1992-93 w.e.f. 01 Apr. 1992	-do-
8.	304172 Khuswant Lal	1989-90 (01 Apr. 1989)	1996-97 (01 Apr. 1996)	Through second stage R-DPC applicant was promoted to the post of JSW. Thereafter, applicant was promoted to the post of ASW through third stage R-DPC.
9.	304207 Sh. Tarsem Lal	1989-90 (01 Apr. 1989)	1995-96 (01 Apr. 1995)	-do-

The R-DPCs were conducted in 2008 and panels were issued on 30 Jan. 2009, whereas applicants retired from service before the conduction of these RDPCs. Hence, they were promoted to the post of JSW/ASW notionally w.e.f. 01 Apr. of vacancy year against which they were promoted to their respective post.

8. Regarding the financial upgradation under ACP Scheme it is stated that:-

“Recruitment Rules vide SRO-39/1985 for promotion from the grade of SA-1 to ASW were applicable till 20th July 1994 and these were superseded by Recruitment Rules published vide

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SRO-142 dated 21st July 1994 which stipulated that the hierarchy of promotion upto the grade of EE (QS&C) prior to 17th February 2005 at the time of ACP Scheme (09.08.1999) is as under:-

50% (as per SRO-142/1994)

SA-1/JE(QS&C)→JSW/AE (QS&C) ————
(As per SRO-292/1989) (As per SRO-39/1985*)

$$\text{ASW/AEE(QS\&C)} \rightarrow \text{SW/EE(QS\&C)}$$

Directly recruited through UPSC 50%”

ACP Scheme, applicable w.e.f. 09.08.1999, stipulates that those employees who were not granted two promotions during 24 years of regular service will be granted two financial upgradation as per the promotional hierarchy provided they fulfill the eligibility criteria for promotion to that grade as per recruitment rules. Also the financial upgradation under ACP Scheme is to be granted as per the promotion hierarchy in the existing recruitment rules. Assistant Surveyor of Works is the second post in the promotion hierarchy of SA when the ACP Scheme came into force (prior to 17th February 2005). Through the R-DPC held in accordance with order dated 22nd December 2005 of CAT, Ernakulum Bench, applicants had already been promoted to the post of Assistant Surveyor of Works against the vacancy year 1992-93 or 1993-94 or 1995-96 or 1996-97 before the date of introduction of ACP Scheme i.e. 09 August 1999. Hence, they are not eligible for grant of 2nd Financial upgradation under ACP in the pay scale of Rs.8000-275-13,500 (pre-revised).

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9. Ministry of Defence letter No.85610/47/Supdts/CSCC/236/D (Works) dated 23rd January 2002 quoted by the applicants in para VII of OA was superseded vide revised appendix B-I of GOI letter no.85610/ACP/47/Supdts/CSCC/3192 (D-Works) dated 22nd March, 2007. The appendix B-2 of the MoD letter dated 22nd March 2007 has also been superseded vide GOI, Ministry of Defence letter No.CC-3/85610/47/A C P/Supdts/6th CPC/CSCC/3933/2010 (D-Works-II) dated 18th March, 2011 (Annexure R-1). Contents of MoD letter dated 18th March 2011 is brought out as under:-

“Since new hierarchy have come into existence on 17.02.2005, the benefits under ACPs may be reviewed and allowed the 2nd Financial upgradation to the eligible officials subject to fulfillment of promotional norms of EE (QS&C) (pre-revised scale of Rs.10,000-325-15,200 revised to grade pay of Rs.6600) w.e.f. 17.02.2005 or on completion of 24 years of regular service, whichever is later. However, no benefits under ACPs would be allowed after 31st August 2008.”

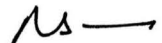
As per above letter, the scale of Rs.10,000-325-10,500 under ACP Scheme is to be granted w.e.f. 18th February 2005. But the applicants are not eligible for grant of second financial upgradation under ACP Scheme neither in the pre-revised pay scales of Rs.8000-275-13,500 or in the scale of Rs.10,000-325-15,200.

10. It is also stated that as highlighted in the speaking order issued vide this HQ letter no.B/42034/Legal Suvr/E1 (DPC) dated 21.08.2014, both post of JSW & ASW having same functional role, there is no question of higher responsibility.

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11. Arguments advanced by learned counsel for the parties were heard, when learned counsel for the applicants reiterated the facts and grounds taken in the OA. He stated that although the applicants had been belatedly promoted with retrospective effect as ASW, but this promotion was ordered in 2009 on notional basis and the applicants did not get any financial benefit for their years in service although their retiral benefits were revised keeping in view the pay fixation till their date of retirement (on notional basis). While in service the applicants were denied the benefit of 2nd ACP although they got only one promotion as JSW during this period. So on both counts the applicants suffered substantial financial loss.

12. Learned counsel for the respondents stated that a similar matter had been decided through OA No.060/01097/2014 **Kamal Kumar Gadi vs. Union of India & others** vide judgment dated 06.08.2015 and the OA was rejected. He also stated that in 2009 the applicants were promoted as ASWs with retrospective effect from dates ranging from 01.04.1992 to 01.04.1996 as per table (para 7 above). Since during their service which commenced as SAs they earned two promotions as JSW and ASW and these promotions were effectively granted prior to Aug. 1999 the applicants could not claim 2nd ACP whether in the scale of Rs.8000-13500 or Rs.10,000-15200. Also since the promotions were allowed on notional basis, the applicants did not actually work as ASWs, therefore, arrears of salary were not payable.

13. We have given our carefully consideration to the matter. Kamal Kumar Gadi (supra) is not relevant to the claim in the present OA although relief sought is similar but the attendant circumstances are materially different. From the material on record and the submissions of learned counsel for the parties, it is clear that the applicants who were inducted in service as Superintendent B&R Grade-II/Surveyor Assistant Grade-I got only one promotion as JSW during their service life. Logically, therefore, they were entitled to 2nd ACP when the ACP Scheme came into force w.e.f. 09.08.1999. However, for reasons best known to the respondents the 2nd ACP was not granted to the applicants. Later, on account of various orders of the Tribunal/Courts the Review DPCs were held and the applicants were promoted as ASWs in 2009. Thus, while the applicants did not get the benefit of 2nd ACP, even the promotion as ASW granted in 2009 with retrospective effect as per dates indicated in the table in para 7 above, was on notional basis and the pay of the applicants was refixed on yearly basis till the date of their superannuation. The retiral benefits were released on the basis of their notional pay on this date. The applicants therefore, suffered a loss during the service in not getting the 2nd ACP timely although they were clearly entitled to the same. Later, when the applicants did get promotion as ASW from back dates, again they did not get the actual salary for this period as refixation of pay was done on notional basis. 

14. To us, these acts of the respondents appear to be patently unfair. Hence, accepting that in 2009, the applicants were promoted as ASW with retrospective effect from the dates ranging from 01.04.1992 to 01.04.1996 and also accepting that 2nd ACP cannot now be allowed to the applicants w.e.f. 09.08.1999, keeping in view the fact that they have been granted the promotion as ASWs from dates prior to 09.08.1999, we direct that the pay fixation on promotion of the applicants as ASW shall result in arrears of pay being released to the applicants on actual basis w.e.f. their date of promotion as ASW to the date of their superannuation. Additionally, interest @ 6% per annum shall be released on the basis of monthly accruals till the actual date of disbursement of the amount of arrears. The release of arrears alongwith interest may be completed in respect of each applicant within a period of three months from the date of receipt of a certified copy of this order being served upon the respondents. The OA is partly allowed with these directions. No costs.

(JUSTICE M.Š. SULLAR)
MEMBER (J)

(RAJWANT SANDHU)
MEMBER (A)

Dated: 19 .01.2017

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