

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O.A. No.060/00498/14

**Reserved on: 13.05.2015
Pronounced on: 25.06.2015**

**CORAM: HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)
HON'BLE DR. BRAHM A. AGRAWAL, MEMBER (J)**

MES No. 360197 Baldev Singh, FGM (HS) Retd. From the Office of GE (U)
Ambala Cantt., presently 479 Gali No. 2 Topkhana Bazar, Ambala Cantt.

.....Applicant

BY ADVOCATE: SH. SHAILENDRA SHARMA

VERSUS

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. The Engineer in Chief, Army HQ, New Delhi.
3. The Chief Engineer, Western Command, Chandimandir.
4. Commander Works Engineer, Ambala Cantt.
5. Garrison Engineer (U), Ambala Cantt.

...RESPONDENTS

BY ADVOCATE: MR. ARVIND MOUDGIL

Ab

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

1. This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:-

- “(i) That the impugned order Annexure A-4 be quashed and the respondents be directed to postpone the date of grant of ACP to the applicant from 2001 to 9.8.1999 when the applicant has already completed 24 years of service.
- (ii) That the respondents be directed to refix the pay of the applicant w.e.f. 1.1.2006 after the implementation of the recommendation of 6th Pay Commission.
- (iii) That the respondents be directed to re-determine the retiral benefits including pension of the applicant on the basis of last pay drawn after refixation.
- (iv) That the respondents be directed to release all the arrears alongwith interest @ 18% p.a.

2. This is the second round of litigation. Earlier, the applicant had filed OA No. 994-HR-2013 which was disposed of by the Tribunal vide order dated 11.7.2013 with direction to the respondents to decide the legal notice and the representation filed by the applicant. Respondent No. 3 thereafter vide order dated 9.9.2013 rejected the representation of the applicant on the ground that the applicant had appeared in the trade test in the year 1995 and failed to qualify the same and since the applicant had passed the trade test in the second attempt on

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20.07.2001 (Annexure A-4), the ACP was rightly granted to him with effect from that date.

3. It is stated in the OA that after the implementation of the recommendations of 5th Pay Commission w.e.f. 1.1.1996, the respondents introduced Assured Career Progression Scheme (ACP) w.e.f. 9.8.1999 (Annexure A-1) according to which if an employee has not secured any promotion on completion of 12/24 years of service, then he was entitled to be placed on the next higher scale of Rs. 4000-6000/5000-8000. As per this ACP Scheme of 1999, the incumbent had to pass the trade test. Since there were a ~~large~~ number of employees who had completed more than 24 years of service much prior to 9.8.1999 i.e. the date of introduction of ACP Scheme of 1999 like the applicant, so a question arose as how to deal with a situation where an employee has completed more than 24 years of service much prior to 9.8.1999. The respondents after considering this aspect, issued a clarification vide letter dated 15.12.2003 to the following effect:-

“The matter has been examined in consultation with DOPT and DOPT have confirmed that those employees who have completed 12/24 years of service after 9.8.1999 but before the date of conducting the first Trade Test may be granted financial upgradation under ACP Scheme from the date of their completion of 12/24 years of service.”

RS _____

4. The applicant was appointed as Pump House Operator on 1.4.1971 and his services were placed at the disposal of Garrison Engineer (N) Ambala Cantt. He had completed his 12/24 years of Service much prior to introduction of ACP Scheme dated 9.8.1999. Further, the Trade Test after the introduction of ACP Scheme of 1999 was held for the first time in Ambala Cantt on 26.6.2001 and result was declared on 20.7.2001 and 20.12.2001. This becomes clear from the letter dated 1.11.2004 issued by respondent No. 4 (Annexure A-3). The applicant had also cleared the trade test in the year 2001 and further in view of letter Annexure A-2, the applicant was entitled for the benefit of 1st/2nd ACP w.e.f. 9.8.1999 as the applicant had completed 25 years of service in the year 1996. However, the respondents vide letter No. 1461/ACP/1953/EIC dated 24.6.2004 recommended the grant of ACP to the applicant w.e.f. 9.8.1999. The name of the applicant figured at Sr. No. 35 in the FGM Skilled Category in the list attached to the letter dated 24.6.2004. Surprisingly, instead of granting of ACP w.e.f. 9.8.1999, the respondents granted the ACP to the applicant w.e.f. 30.6.2001 without assigning any reason. Further though the applicant had completed more than 28 years of service and was entitled for the benefit of 2nd ACP, yet the benefit of only one ACP was granted to the applicant. 18

5. It is further stated that the benefit of ACP has been granted to persons junior to the applicant from the date of recommendation. The names of three persons who were junior to the applicant and yet the ACP was granted to them from the date of recommendation i.e. 9.8.1999 have been listed as:-

- A. MES No. 371351 Lajja Ram
- B. MES No. 371352 Mehar Ram
- C. MES No. 369508 Gopal Krishan

All the above mentioned three persons were appointed in the year 1976 and were junior to the applicant and had completed 24 years of service in the year 2000 i.e. much after the applicant. But the benefit of ACP had been granted to these persons w.e.f. 2000 i.e. on the date of completion of 24 years of service. But this benefit was denied to the applicant who was otherwise entitled for the benefit of ACP w.e.f. 9.8.1999 as the applicant had completed 24 years of service much prior to 9.8.1999. The resultant effect was that the persons junior to the applicant had started getting higher pay because of grant of ACP in the year 2000 as compared to the applicant to whom the ACP was granted in the year 2001.

6. In the written statement filed on behalf of the respondents, it has been stated that the applicant has appeared first time in the trade test for FGM HS-II conducted from 22nd August 1995 to 24th August 1995 and declared failed vide HQ CWE Ambala letter No. 1041/FGM/70/EIB dated 28.9.1995. Thereafter, the

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applicant again appeared in the Trade Test for FGM HS-II was declared as 'Passed' on 20.7.2001 vide HQ CWE Ambala letter No. 1041-A/1521/EIB dated 20.7.2001. Hence, the ACP was granted w.e.f. 20.7.2001 i.e. the date of passing of the trade test second time. In this regard, Dte. Gen. of Pers. E-in-C's Br. Letter No. 85610/47/ACP/IND(3)/Scheme/CSSS dated 28.4.2009 is annexed alongwith as Annexure R-1 according to which if an employee qualifies in the trade test on 20.7.2001 in the subsequent attempt and not in the first attempt, the financial upgradation will be w.e.f. 20.7.2001 only.

7. It has further been stated that the persons whose names have been mentioned in para 4(ix) of the OA, were granted upgradation under ACP w.e.f. 9.8.1999 as they passed the trade test in the first attempt while the applicant in the present OA has passed the trade test in the second attempt. Hence, the cases of the applicant and the persons listed in para 4(ix), were not on the same footing.

8. Rejoinder has been filed on behalf of the applicant reiterating the content of the OA.

9. Arguments advanced by learned counsel for the parties were heard when the counsel reiterated the content of the OA, rejoinder and the written statement respectively. Ne

10. We have carefully considered the matter and also perused the ACP Scheme circulated vide OM dated 9.8.1999 issued by DOPT, Government of India. In the Conditions for Grant of Benefits under the ACP Scheme (Annexure I) of the OM dated 9.8.1999, para 6 reads as follows:-

“6. Fulfilment of normal promotion norms (bench mark, departmental examination, seniority-cum-fitness in the case of Group ‘D’ employees etc.) for grant of financial upgradations, performance of such duties as are entrusted to the employees together with retention of old designations, financial upgradations as personal to the incumbent for the stated purposes and restriction of the ACP Scheme for financial and certain other benefits (House Building, Advance, Allotment of Government Accommodation, advances etc.), only without conferring any privileges related to higher status (e.g. invitation to ceremonial functions, deputation to higher posts, etc.) shall be ensured for grant of benefits under the ACP Scheme.”

From the same, it would be clear that an employee to be eligible for ACP has to fulfil the eligibility criteria as per the normal promotion norms. In the case of the applicant, this would appear to be the passing of the trade test. The applicant passed the trade test in the second attempt on 20.7.2001 and was granted the benefit of ACP from this date. However, the alleged juniors of the applicant whose names are referred to in para 4(ix) of the OA did not pass the trade test prior to the effective date of grant of ACP viz. 9.8.1999, but passed the same subsequently. However, they were granted the benefit of ACP from 9.8.1999. In this regard, in the written statement, reference has been made to letter dated 28.4.2009 (Annexure R-1) according to which if an employee qualifies in the trade

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test of 20.7.2001 in the subsequent attempt and not the first attempt, the financial upgradation would be allowed w.e.f. 20.7.2001. This appears to be an anomalous position. While the juniors of the applicant had never appeared in the trade test prior to 9th August, 1999, they were allowed the benefit of ACP from this date even though they passed the trade test in 2001 and just because the applicant failed to qualify in the trade test in the first attempt in 1995, but passed the trade test later on 20.7.2001, he has been given the benefit of ACP w.e.f. 20.7.2001. The provision cited by the respondents in this regard (Annexure R-1) appears to favour those who had not chosen to pass the trade test when the same is held, but passed the same much later and got the benefit from an earlier date than the applicant.

11. Hence, this matter is referred to respondents no. 2 & 3 for re-examination as to why the applicant has been discriminated against in this patently unfair manner. The issue of first attempt or second attempt of passing the trade test appears to be quite irrelevant to the matter since if both the applicant and the persons listed in para 4(ix) of the OA passed the trade test on the same date i.e. 20.7.2001, they should have got the benefit of ACP on the date when they had completed 12/24 years of service without reference to the aspect of the applicant having passed the trade test in the second attempt. Reconsideration of the case of the applicant may be completed within a period of three months of a date of a

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certified copy of this order being served upon the respondents and a resoned and speaking order passed in the matter. No costs.

(RAJWANT SANDHU)
MEMBER (A)

(DR. BRAHM A.AGRAWAL)
MEMBER (J)

Dated: 25.06.2015
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