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**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
ORIGINAL APPLICATION NO.060/00471/2013

**Order Reserved on 30.04.2015
Pronounced on 15.5.2015**

...

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

- ...
1. MES No.370836 Pawan Kumar, FGM.
 2. MES No.371978 Ashwani Kumar, FGM.
 3. MES No.373396 Satinder Kumar, FGM.
 4. MES No.432388 Joginder Singh, FGM

All working under GE (AF), Ambala Cantt.

... Applicants

Versus

1. Union of India through Engineer-in-Chief, Ministry of Defence, Army HQ, New Delhi.
2. Chief Engineer, Western Command, Chandimandir, Distt. Panchkula.
3. Chief Engineer, Chandigarh Zone, Airport Road, Chandigarh.
4. Commander Works Engineer (AF), Ambala Cantt.
5. Garrison Engineer (AF), Ambala Cantt.

... Respondents

Present: Sh. Shailendra Sharma, counsel for the applicants.
Sh. Ashwani Kumar Sharma, counsel for the respondents.

ORDER

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

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

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CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

DRAFT ORDER IN O.A NO.060/00471/2013, TITLED "PAWAN
KUMAR & ORS. VS. UOI", FOR CONSIDERATION PLEASE.


(MRS. RAJWANT SANDHU)
MEMBER (A)

HON'BLE DR. BRAHM A. AGRAWAL, JM

5/5/2015


14.5.15

"8 (i) That the order dated 25.06.2013 (Annexure A-4) whereby the claim of the applicants for grant of ACP w.e.f. 09.08.1999 has been rejected be quashed.

(ii) That the respondents be directed to grant benefit of 1st ACP from 9.8.1999 instead of 2001 when the applicants completed their 12 years of service and further refix the pay of the applicants and release the arrears of pay with interest @15% p.a."

2. Averment has been made in the O.A. that the applicants are working as FGM under the Garrison Engineer (AF), Ambala Cantt. since different dates ranging between 1973 to 1987 and since the date of appointment they have not received any promotion. Since the applicants had completed 12 years of service much before 09.08.1999 and they had not received any promotion, hence the applicants were entitled to grant of first ACP of Rs.4000-6000 w.e.f. 09.08.1999. Further, the respondents conducted the Trade Test for grant of ACP in 2001; the applicants passed the same and respondents granted benefit of first ACP to them w.e.f. 20.07.2001 rather than from 09.08.1999.

3. It has further been stated that Ministry of Defence had issued letter dated 15.12.2003 to the effect that those employees who had completed 12/24 years of service after 09.8.1999 but before the date of conducting first trade test may be granted financial upgradation under the ACP Scheme from the date of their completion of 12/24 years of service (Annexure A-2). After the introduction of ACP Scheme w.e.f. 09.8.1999, the Trade Test for the first time was conducted in the year

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2001 (Annexure A-3). Hence this Trade Test has to be considered as first attempt after introduction of ACP Scheme. Since the benefit of first ACP was granted to the applicants in 2001 and not from 1999, the applicants submitted representations to the respondents but to no avail. Thereafter, they filed O.A. No.541/HR/2012 which was disposed of on 30.04.2013 with directions to the respondents to consider the case of the applicants within four weeks. The applicants had been informed vide order dated 25.06.2013 that their claim for preponement of ACP had been rejected as they had earlier appeared in Trade Test on 22.08.1995 and failed in the same (Annexure A-4).

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

- i. Letter dated 15.12.2003 (Annexure A-2) is very clear wherein it was specifically mentioned that those employees who have completed their 12/24 years of service after 09.08.1999 but before the date of conducting of first Trade Test may be granted financial up gradation under ACP Scheme from the date of their completion of 12/24 years of service. All the applicants had completed their 12/24 years of service prior to 09.8.1999 i.e. the date of introduction of ACP Scheme and hence were entitled for grant of ACP w.e.f. 09.08.1999.
- ii. On the one hand, the respondents are denying the benefit of ACP w.e.f. 09.08.1999 to the applicants, but on the other hand, respondents have themselves granted the benefit of ACP to MES No.372200, Pawan Kumar FGM (SK) w.e.f. 09.08.1999 vide PTO No.37/12/2002 dated 16.09.2002. Pawan Kumar is junior to the applicants and had passed the Trade Test along with the applicants in the

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year 2001 yet the respondents have granted him first ACP w.e.f. 09.08.1999 (Annexure A-5).

5. In the written statement filed on behalf of the respondents it has been stated that the Trade Tests were conducted regularly and the applicants appeared in the Trade Test on 1995 but failed. They appeared again in 2001 and passed the same. As such, they were allowed first ACP w.e.f. the date they qualified the Trade Test. Regarding first ACP having been granted to MES No.372200, Pawan Kumar, it has been stated that he was granted financial up gradation w.e.f. 09.08.1999 which was a mistake and on this basis, others cannot claim benefit which is not admissible under the rules and law. It has further been stated that in an identical matter relating to qualifying an exam in 2004 and seeking ACP benefit from 09.08.1999 has already been rejected by the Ernakulam Bench of this Tribunal vide order dated 19.03.2012 in O.A. No.83 of 2010 titled K. Gopinathan Nair vs. Chief Engineer & Ors. Besides, the applicants are challenging the policy decision of the Government without any cogent reasons and hence instant OA is not maintainable. The Hon'ble Apex Court in the case of Union of India and Anr. vs. Manu Dev Arya reported in (2004) 5 SCC 232 has categorically held that policy decision of the Government cannot be questioned so as to suit the advantage of a particular person alone. The policy decision clearly provides for eligibility of passing of Trade Test

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for grant of ACP benefit and unless they possess such eligibility, the applicants cannot be granted benefit of ACP.

6. Arguments advanced by learned counsel for the parties were heard. Learned counsel for the applicants stated that the grant of ACP was subject to passing of the Trade Test but since Trade Test was conducted for the first time in 2001, keeping in view the instructions of the MoD in the matter, the applicant should have been allowed first ACP w.e.f. 09.08.1999 and not as late as in 2001. He stated that the test of 1995 was a test for promotion and was not a "Trade Test" and the factum of the applicants having failed in this test was of no relevance for the grant of first ACP as the applicants have been stagnating since their date of appointment and hence were entitled to financial upgradation under the ACP Scheme in 1999 itself.

7. Learned counsel for the respondents asserted that the test held in 1995 was a Trade Test. In this regard, he placed on record PTO No.40/95 dated 04.10.1995, which shows that the applicants had failed in the Trade Test held on 22.08.1995 to 24.08.1995 for promotion to FGM HS-II.

8. We have given our careful consideration to the matter with reference to the pleadings of the parties, material on record and

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arguments advanced by learned counsel. Para 4 of the impugned order dated 25.06.2013 reads as follows:

"4. It is observed while considering your case that:-

- (a). As per Govt. of India, Min. of Pers. Public Grievances and Pension (Deptt. Of Personnel & Trg.), New Delhi letter OM No.35034/1/97-Estt (D) dated 09.08.1999 vide para-6.1 & 6.2 that for grant of benefit under the ACP Scheme a Departmental Screening Committee will be constituted which will be same as that of the DPC prescribed under the relevant recruitment/service rule for regular promotion to the higher grade to which Financial upgradation is to be granted. In promotion, the passing of trade test for promotion prospects is mandatory. This has been accepted by you in para-3 of legal notice.
- (b). You had appeared in the trade test of FGM HS-II first time conducted during 22.08.1995 to 24.08.1995 and were declared FAIL vide HQ CWE Ambala letter No.1041/FGM/70/EIB dated 28.09.1995. You have neither mentioned this fact in legal notice nor in OA.
- (c). After that you had appeared in the trade test for FGM (HS-II) on 26.06.2001 and were declared PASS vide HQ CWE Ambala letter No.1041-A/1521/EIB dated 20 Jul 2001.
- (d). As per DoP&T ID No.3633/Estt.(D)/01.06.2001 an employee who qualify in the trade test in subsequent attempts will be allowed financial up gradation only from the date of passing of trade test. In no case the benefit should be given to an individual w.e.f. 09.08.1999 who had earlier appeared in the Trade Test before 09.08.1999 but failed or has not appeared in the trade test at all or has not otherwise passed the trade test.
- (e). The issue is further clarified in Para-2 of MOD CPRO-5/2002 (Copy enclosed for your ready reference).
- (f). The issue was again clarified by E-in-C's Br. IHQ of MoD vide letter No.85610/47/ACP/IND/(3)Scheme/CSCC dated 18 Apr. 2009 to member of JCM of Ambala.
- (g). Your case has been considered in view of the facts Govt. of India Policy letters mentioned in para-4 above and it is seen that you have passed the requisite trade test in second attempt on 20 Jul 2001 and therefore, you have been granted benefit of ACP from 20 Jul 2001."

He —

9. It is evident from the content of the impugned order reproduced above that the applicants have themselves admitted that passing of Trade Test was mandatory for promotion. In order to avail of the financial up gradation under ACP Scheme, a person has to fulfill eligibility criteria for promotion and upgradation is allowed regardless of availability of vacancies. ACP Scheme has been notified so as to address the stagnation of employees who are not promoted due to lack of vacancies even though they fulfill the eligibility criteria for such promotion. Hence the applicants could only be promoted or can avail benefit of upgradation under the ACP Scheme if they fulfilled the eligibility criteria, which in this case was passing of the Trade Test. Admittedly, the applicants failed in the Trade Test held in 1995 and only cleared the same in 2001. The contention of counsel for the applicants that the Trade Test held in 2001 was the first Trade Test is contrary to the facts. Hence the applicants have rightly been allowed financial up gradation after they have passed the Trade Test in 2001 and not from the date of 09.08.1999 as they were not entitled to benefit of circular dated 15.12.2003 (Annexure A-2). The O.A. is therefore rejected.

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

As ———
(RAJWANT SANDHU)
MEMBER (A)

Place: Chandigarh.

Dated: 15.5.2015.

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