

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

OA 3547/2014

Reserved on: 8.08.2016  
Pronounced on: 19.08.2016

**Hon'ble Mr. P.K. Basu, Member (A)**  
**Hon'ble Dr. Brahm Avtar Agrawal, Member (J)**

Jaibir Singh, aged 52 years  
S/o Late Shri Bijender Singh  
Working as Leading Fireman  
Ordnance Factory, Muradnagar,  
Distt. Ghaziabad (U.P.)  
R/o Vill & PO Dheda, Tesh. Modhi Nagar  
Distt. Ghaziabad (U.P.)

.... Applicant

(By Advocate : Shri Yogesh Sharma)

Versus

1. Union of India through the Secretary,  
Department of Defence Production,  
Ministry of Defence, Government of India,  
South Block, New Delhi
  2. The General Manager  
Ordnance Factory, Ministry of Defence,  
Govt. of India, Muradnagar  
Distt. Ghaziabad (U.P.)
- .... Respondents

(By Advocate : Shri Rajinder Nischal)

ORDER

Mr. P.K. Basu, Member (A)

The applicant, who was appointed as Labour 'B' on 6.04.1983, was selected and appointed as Fireman-II on 21.01.1988 in the pay scale of Rs.800-1150. He was further promoted to Fireman-I in the year 1997 in the pay scale of

Rs.825-1200. With effect from 1.01.1996, both the posts of Fireman-I and Fireman-II were merged into Fireman in the pay scale of Rs.3050-4590.

2. The applicant's grievance is that the respondents have treated his appointment to the post of Fireman-II as promotion and thus denied him financial upgradation under Assured Career Progression (ACP) Scheme. He, therefore, prays that respondents be directed to grant him first financial upgradation with effect from 21.01.2000 (12 years) from the date he became Foreman – II, with all consequential benefits including arrears of difference of pay and allowances with interest.

3. The second issue raised by learned counsel for the applicant is that appointment order dated 21.01.1988 (Annexure 3) reads "Having been selected for appointment to the post of Fireman Gr.II....." It is submitted that para 2 of the order also states that those promoted by that order will be on probation for a period of two years from the date of their appointment. Learned counsel thus states that the order itself mentions that it was an appointment and had it been a promotion, then there was no requirement of probation as it is only applicable in case of appointment.

4. Learned counsel for the applicant further refers to OM dated 10.02.2000 in which clarifications had been issued and clarification no.1 was that in case two scales are merged and the promotion was before the merger from the lower to the higher pay scale, such promotion shall be ignored for the purpose of

ACP Scheme benefit. Further reference is made to clarification no.5 in which *inter alia* the following has been clarified:

“However, if the appointment is made to higher pay scale either as on direct recruitment or on absorption (transfer) basis or first on deputation and later on absorbed (on transfer basis), such appointment shall be treated as direct recruitment and past service/ promotion shall not count for benefit under ACPs.”

It is, therefore, contended that even if the appointment is on absorption or deputation basis, past service/ promotion shall not count for benefit under ACP Scheme.

5. In short, the applicant claims that appointment as Fireman II was a fresh appointment and not promotion and due to the merger of Fireman I and II promotion from Fireman II to Fireman I also has to be ignored.

6. Learned counsel for the applicant also relies on order of this Tribunal in OA 2512/2012 dated 11.09.2015. This was a case filed by Fitter Grade – II in the pay scale of Rs.950-1400 in Delhi Development Authority, who had been appointed as Lower Division Clerk (LDC) in the pay scale of Rs.950-1500/ 3050-4590 as a departmental candidate. The issue was whether movement from Fitter Grade-II to LDC should be ignored for the purpose of ACP in view of clarification no.1 of OM dated 10.02.2000. The Tribunal held that merger has to be ignored for the purpose of ACP apart from other claims of the applicant.

7. The learned counsel for the applicant further relied on order dated 17.12.2012 in OA 468CH of 2011. Here also, the

controversy was whether movement from Group `D` to LDC was promotion or direct appointment and the OA was allowed holding that it was a case of direct recruitment and not promotion. Similarly, another OA 1399-CH-2013 was decided by Chandigarh Bench of the Tribunal based on decision in OA 468CH of 2011. Learned counsel states that in view of these orders as well as clarification, promotion from Fireman II to Fireman I has to be ignored for the purpose of ACP/MACP.

8. Learned counsel for the respondents states that mode of induction to the post of Fireman II was as follows:

- “(a) 50% by direct recruitment through Employment Exchange wherein departmental candidates fulfilling the eligibility criteria mentioned in (4) & (5) below will also be allowed.
- (b) 50% by appointment of department Group `D` employees (IEs & NIEs) fulfilling the eligibility criteria as mentioned in (4) & (5).”

9. It is further stated that there was a complete ban by the government on direct recruitment from 1984 onwards. Hence, no vacancy against direct recruitment could be filled during the year 1988. Therefore, the applicant's appointment as Fireman II has to be treated not as direct recruitment but as per provision (b) quoted above. It is thus argued that the applicant has already received two promotions, one as Fireman and the other as FED-II and hence he was not eligible for financial upgradations. Further, it is stated that the applicant has got third promotion as FED-I with effect from 2.06.2014 in PB-1

(pay scale Rs.5200-20200, Grade Pay Rs.2800/-) and, therefore, he cannot be considered for MACP also.

10. As regards not counting the promotion to Fireman – I due to merger of posts, the position is clear and evidently this has to be ignored. On the claim of the applicant that his placement as Fireman II on 21.01.1988 was a fresh appointment and not promotion, the respondents have clarified that there was a complete ban on direct recruitment from 1984 onwards and no vacancy against direct recruitment could be filled during the year 1988. The appointment of the applicant and others as Fireman II was opened only for internal candidates within the department and it was not open to others outside the department through direct recruitment or absorption or deputation. Therefore, clarification no.5, quoted above, is not applicable in this case. But this would mean that eligible service for ACP will be from 6.04.1983.

11. In conclusion, since movement from Fireman II to Fireman I has to be ignored, the applicant has got only one upgradation effectively on 21.01.1988, which means that he is eligible for second upgradation under ACP after 24 years of service i.e. 6.04.2007 (counting from 6.04.1983). He, therefore, deserves second financial upgradation under ACP with effect from 6.04.2007. The applicant, however, will not be eligible for third upgradation under MACP as he has been granted promotion to the post of FED with effect from 2.06.2014 in PB-1 (pay scale Rs.5200-20200, Grade Pay Rs.2800/-).

12. The OA is, therefore, disposed of with direction to the respondents to grant the applicant second upgradation under ACP with effect from 6.04.2007 with all consequential benefits and arrears of pay. We fix a time frame of 90 days for implementation of these directions. No costs.

(Dr. Brahm Avtar Agrawal)  
Member (J)

(P.K. Basu)  
Member (A)

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