

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-3799/2012

New Delhi this the 5th day of January, 2017.

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. Shekhar Agarwal, Member (A)

1. B P Gautam
S/o Shri Rajpal Gautam
R/o R-7, Sr. No.19,
Brahampuri Colony,
New Seelampur, Delhi-53.
2. Brij Bhushan,
S/o Shri Suraj Bhan
R/o SRB-38A, Shipra Riviera,
Gyan Khand-3 Indrapuram, Ghaziabad.
3. Kusum Dahiya,
W/o Shri J. S. Dahiya,
R/o C-301, Ambience Island
Lagoon Complex, NH-8,
Gurgaon-120002.
4. Veena Grover,
D/o Shri D. N. Arora,
R/o WP-183, Pitampura,
Delhi-34.
5. Alka Bhargava
W/o Shri P. K. Bhargava,
R/o C-90, Anand Vihar,
Delhi-92.
6. V K Kadam
S/o Late Shri Sushil Kumar
R/o FB-152, Lajpat Nagar,
Sahibabad, Ghaziabad.
7. M S Rana
S/o Late Shri K. S. Rana,
R/o 4-177, Shri Satya Shai Nagar,
PO Kishan Bag, Hyderabad.

8. Ratan Singh,
S/o late Shri Prasad,
R/o B-1102, Vasundhara
Ghaziabad, UP.
9. Birender Singh,
S/o Shri Jagannath
R/o Qtr. No.C-149, Hal Colony
Bala Nagar, Hyderabad-500042.
10. Vijay Kumar s/o Shri Baleshwar Ram
r/o C-34, Hal Township
Korwa, Amethi, CSM Nagar, UP.
11. Smt. K Gorey Margaret,
w/o K Yedukondalu
r/o Flat No.204, Jupally Arcade
Opp. ECIL Bus Terminal, Hyderabad 500062.
12. Smt. A Manjula d/o K. Apaswamy
r/oD-102, ISRO Housing Colony
Damlur, Bangalore.
13. G Neduncheralathan s/o G Gopal
r/o D-18/8, DRDO Township
CV Raman Nagar, Bangalore.
14. T Shiv Kumar s/o Shri D Thangabelu
R/o H.No.D/26/2, Phase II
DRDO Township CV Raman Nagar
Bangalore.
15. R M Dhobal s/o late T N Dhobal
r/o 198, Neb Sarai
IGNOU Road, New Delhi-68

...Applicants

(through Ms. Kiran Singh, Advocate)

Versus

1. Director General
Aeronautical Quality Assurance
Ministry of Defence
"H" Block, New Delhi.

2. Secretary
Defence Production
Ministry of Defence
South Block, New Delhi.

... Respondents

(through Sh. Ashok Kumar, Advocate)

ORDER(ORAL)

Mr. Shekhar Agarwal, Member (A)

The applicants joined service with the respondents as JSO/SSO-II on different dates between 1986 to 1992. According to them DRDO and DGQA implemented an arbitration award vide O.M. dated 11.11.1988, which became effective from 01.01.1988. Similar Award was implemented in DGAQA also and as per this award, certain number of posts of Senior Scientific Assistant (SSA) were upgraded to the pay scale of Rs. 2375-3500. The applicants were placed in the higher pay scale of Rs. 2375-3500. Their grievance is that the respondents have not granted to them the benefit of ACP on completion of 12 years of service or from the date of implementation of the Scheme after ignoring this up-gradation. They have alleged that similar benefits have been granted to the cadre of DQA(N)/DQA(WP), as such cadres obtained favourable decision of the Courts in their favour. On the other hand, the applicants, who were similarly placed, have been denied this benefit. They made several representations to the respondents but these were rejected by them vide order dated 08.04.2011. In the aforesaid order while the respondents have conceded that the

duties and responsibilities of the applicants were similar to that of STA-I in DGQA but have still denied the ACP benefit to the applicants. The applicants then approached this Tribunal by filing this O.A. This was first allowed by the Tribunal on 09.11.2012 whereby directions were given to the respondents at the admission stage of the OA itself to examine the case of each of the applicants and extend to them the same benefit if they are found to be covered by the judgment of this Tribunal in OA-1735/2005 decided on 14.02.2007 and as upheld by Hon'ble High Court of Delhi in Writ Petition (C) No. 5752/2007. The order of the Tribunal was challenged by the respondents before Hon'ble High Court of Delhi vide Writ Petition (C) No. 2228/2013. Noticing that this Tribunal had passed the order ex-parte without issuing notice to the respondents, Hon'ble High Court set aside the order and remanded the matter for fresh decision of this Tribunal. Accordingly, this O.A. has been re-heard after issuing notice to the respondents.

2. The respondents have filed their reply in which they have stated that the post of Senior Scientific Assistant (Higher Scale) (SSA (HS) in DGAQA came into existence due to arbitration award extended to DGAQA vide Ministry of Defence letter dated 14.08.1992 whereby 43% posts of SSA were placed in the pay scale of Rs. 2375-3500 (subsequently revised to Rs. 7450-11500 by 5th CPC and re-designated as SSA(HS)). The remaining 57% posts were retained in

the pay scale of Rs.1640-2900 (subsequently revised to Rs. 6500-10500 and re-designated as SSA (LS)). The post of SSA(HS) became promotional of SSA (LS) after amendment of the Recruitment Rules vide SRO(1) dated 05.01.2007. The applicants were placed in the higher pay scale of Rs. 2375-3500 from 01.01.1988 onwards. Representations were received from DGAQA employees for extending the benefit of ACP Scheme at par with applicants of OA-1735/2005 filed by the **Defence Marine Engineering, Technical Staff Association (DMETS) & Anr. Vs. Union of India & Ors.** The matter was submitted to DoP&T, who advised as follows:-

"It appears from the file that the benefits of ACPS were allowed to the employees of DGQA after dismissal of SLP in the Apex Court. Hence, this benefit cannot be construed as a policy of Government of India, as the same has been allowed to a specific court case after dismissal of SLP in the Apex Court. Though the duties and responsibilities of the post of SSA(HS) of DGAQA are similar to that of STA-I in DGQA, as stated by the Ministry of Defence, but the benefits of ACPS at this later stage cannot be agreed to by DoP&T, as the Scheme has been discontinued w.e.f. 01.09.2008. However, DoP&T has no objection for allowing the benefits of MACPS to the employees of DGAQA."

This decision was conveyed to the applicants on 08.04.2011. The applicants then filed this O.A., which was allowed at the admission stage itself. The order of the Tribunal was challenged before Hon'ble High Court of Delhi. Hon'ble High Court has set aside the order of this Tribunal and remanded the matter for fresh hearing.

2.1 The respondents have further stated that in the case of the applicants only 43% of the existing SSAs were placed in the higher pay scale and 57% were retained in the old pay scale. Thus, as per Clarification No. 35 of the ACP Scheme, the above up-gradation has to be regarded as promotion insofar as the applicants are concerned and has to be set off against financial up-gradation under the ACP Scheme. Thus, having earned one promotion already, the applicants would be entitled to second ACP benefit only after completion of 24 years of service.

2.2 Further, the respondents have stated that pursuant to recommendations of 6th CPC, posts of SSA(HS) and SSA(LS) were merged w.e.f. 01.01.2006 and have been placed in a common replacement scale of PB-2 with Grade Pay of Rs. 4600. The posts have also been re-designated as SSA(G). As per provisions of the ACP Scheme because of this merger, SSAs are to be considered for grant financial up-gradation w.e.f. 01.01.2006 under the ACP Scheme and w.e.f. September, 2008 under MACP Scheme by ignoring their promotion (up-gradation from SSA(LS) and SSA(HS)). As such, applicants are entitled to ACP up-gradation w.e.f. 01.01.2006 as has been granted to some similarly situated SSAs vide order dated 07.05.2012.

3. We have heard both sides and have perused the material placed on record. The applicants are praying for similar treatment as granted to DGQA employees in DQA (N)/DQA(WP), such as DMETS Association. On going through the record, we find that one Sh. Randhir Singh Kundu filed OA-1559/2000 before this Tribunal in which he claimed benefit of ACP Scheme after ignoring the up-gradation that had taken place in his cadre whereby 59% of the posts of Senior Technical Assistants-II were placed in the grade of Senior Technical Assistants in the pay scale of Rs. 2000-3500 and the remaining 41% of the posts were placed in the pay scale of Rs. 2375-3750. Holding that placement in the higher pay scale of Rs. 2375-3750 cannot be regarded as promotion, this Tribunal allowed the said OA on 18.09.2001 and directed the respondents to consider granting ACP benefit to the applicant therein after ignoring the up-gradation. The aforesaid order of the Tribunal was upheld by Hon'ble High Court of Delhi in Writ Petition (C) No. 747/2002 on 01.02.2002. SLP filed against the aforesaid order was dismissed by Hon'ble Supreme Court. Thus, the order of the Tribunal in the case of **Randhir Singh Kundu** (supra) attained finality. Thereafter, Association of DMETS approached this Tribunal by filing OA-1737/2005 seeking similar benefit. The respondents contested the OA stating that this was against the policy of the Government as well as against the Executive Instructions of DoP&T. The Tribunal vide order dated

14.02.2007, however, allowed the O.A. holding that Executive Instructions cannot take precedence over a judicial order. This order was challenged by the respondents vide WP(C) No. 5752/2007. However, Hon'ble High Court dismissed the aforesaid petition on 11.09.2007. The applicants herein are now claiming the same benefits.

4. We have given our thoughtful consideration to the prayer made by the applicants and the arguments advanced by the respondents. The main issue to be decided is whether the up-gradation granted to the applicants w.e.f. 01.01.1988 by which they were placed in the higher pay scale of SSA(HS) be ignored for the purpose of considering their eligibility for ACP or not. The respondents have stated that only part of the cadre was upgraded and as per Clarification No.35 of the ACP Scheme under such circumstances placement in the higher pay scale is promotion and has to be set off against ACP benefit. The applicants, on the other hand, are relying on judicial pronouncements mentioned above. It is not in dispute that insofar as up-gradation of posts in the cadre of applicants is concerned, it is similar to the case of **Randhir Singh Kundu** (supra) as well as **DMETS Association** (supra). In those cases by judicial pronouncements which have attained finality, the up-gradations have been ignored for the purpose of considering ACP benefit. The Tribunal in OA-1737/2005 has clearly stated that when

an arena is occupied by judicial verdict, it cannot be infiltrated. In this regard, reliance has been placed on the judgment of Apex Court in the case of **Anil Ratan Sarkar Vs. State of West Bengal**, 2001(5)SCC 327. Since the applicants indisputably are similarly placed as applicants of OA-1737/2005, they also deserve the same benefit. Hence, in the instant case also, applicants' up-gradation to the post of SSA(HS) has to be ignored and they have to be considered for grant of ACP benefit on completion of 12 years of service or from the date of implementation of ACP Scheme, whichever is later.

5. Accordingly, we allow this O.A. and quash the impugned order dated 08.04.2011. We further direct the respondents to consider granting ACP benefit to the applicants from the date on which they completed 12 years of service or the date of implementation of ACP Scheme, whichever is later. The applicants shall also be entitled to arrears arising out of such up-gradation. These benefits may be extended to them within a period of 08 weeks from the date of receipt of a certified copy of this order. No costs.

(Shekhar Agarwal)
Member (A)

(Permod Kohli)
Chairman

/Vinita/