

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

O.A. No.2010/2014

**Reserved On:26.04.2018
Pronounced on:07.05.2018**

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)**

Mohd. Farooq S/o L. Shri Abdul Gaffoor
Age 61, Ex. Lab Asstt.
R/o Village Dhaki, P.O. Sahaspur,
Dehradun,
Uttaranchal Pni-1. ... Applicant

(By Advocate: Shri Shrigopal Aggarwal)

Versus

1. Union of India
Through Secretary
Ministry of Earth Sciences (MOES),
CGO Complex,
Lodi Road,
New Delhi-3.
2. Secretary,
Ministry of Finance,
Department of Expenditure,
South Block,
New Delhi-03.
3. Director General of Meteorology,
Indian Meteorological Deptt.
Mausham Bhavan, Lodi Road,
New Delhi-03. ... Respondents

(By Advocate: Mrs. Priyanka Bhardwaj)

ORDER

By Mr. V. Ajay Kumar, Member (J)

The applicant joined in the office of the respondents on 01.07.1977 as Observative Attendant (Group 'D'). On the introduction of the Assured Career Progression Scheme (ACP

Scheme) and on completion of the required 12 years service by the applicant on 01.07.1989, he was granted with the first ACP in the pay scale of Rs.3050-4590 with effect from 09.08.1999. Again, on completion of 24 years of service by the applicant on 01.06.2001, he was granted the second financial up-gradation in the pay scale of Rs.4000-6000. On 01.08.2003, the applicant was promoted to the post of Lab Assistant but there was no change/up-gradation in the pay scale of the applicant even after his promotion as he was already accorded the financial up-gradations in the same scale under the ACP Scheme.

2. Certain identically placed persons, i.e., some of the Group 'D' employees, who were originally appointed as Observers and thereafter, promoted as Lab Assistants Grade-III and on promulgation of ACP Scheme, accorded the pay scale of Rs.3200-4900 on completion of 12 years and the pay scale of Rs.4000-6000 on completion of 24 years as first and second ACPs, filed **OA No.2425/2008 and batch** in **S.S.L. Bhat and Others Vs. Union of India and Others** seeking granting of second ACP in the pay scale of Rs.5000-8000. It was their case that as per the erstwhile rules, the post of Observer has a definite hierarchy as Senior Observer, where promotion was on seniority-cum-fitness basis with 5 years of service in the grade of Rs.4000-6000 and should have successfully completed four months basic training course in General

Meteorology and they were holding Group 'D' posts while inducted as Lab Assistants in Group 'C' and have been given two months' basic training in Modular Course in General Meteorology. In pursuance of Vth Central Pay Commission's recommendations, the cadres of Observer and Lab Assistant have been trifurcated as Lab Assistant Grade-III, Lab Assistant Grade-II and Lab Assistant Grade-I in the pay scale of Rs.3200-4900, Rs.4000-6000 and Rs.4500-7000 respectively vide Recruitment Rules notified on 30.8.2003 and 26.8.2006. When they have made request to grant them ACP in the hierarchy as per the ACP Scheme in the pay scale of Rs.5000-8000 as second ACP, the same was turned down on the ground that they have not completed 4 months' training in General Meteorology and due to restructuring as per clarification No.16, 53 and 55 of Department of Personnel & Training under ACP Scheme on coming into force of the Recruitment Rules, the ACP Scheme was granted from the date of completion of 24 years, but in the hierarchy as available. Questioning the said action, they filed the said batch of OAs, i.e., **S.S.L. Bhat Vs. Union of India and Others** in OA No.2425/208 and batch. This Tribunal, by its common order dated 14.05.2009, while allowing the same, observed as under:-

"3. Learned counsel of applicants would contend that as per the hierarchy of the pay scale, which is the basis of grant of ACP on 22.12.2002 the only recruitment rules which were in vogue were of Senior Observer in the pay scale of Rs.5000-8000. Insofar as training is concerned, it is stated that though they have already completed basic training of 2 months, yet there is no material to show that the respondents have called applicants for the training. As such, relying upon the decision of the High Court of Delhi in *Commissioner of Police & Ors. v. H.C. Durgesh Kumar*, 2008 (3) SLJ 78, it is stated that on the lapse of the employer

applicant should not be allowed to suffer to his prejudice. Fairness of the procedure is also raised as a ground by relying upon the decision of the Apex Court in Management of M/s M.S. Nally Bharat Engineering Co. Ltd. v. State of Bihar & Ors., 1990 (2) SCC 48.

4. On the other hand, learned counsel of respondents has vehemently opposed the contentions and stated that as per clarification to point of doubt Nos. 16, 53 and 55 vide Department of Personnel & Training OM dated 10.2.2000 and 18.7.2001 applicants on a new hierarchy having come into being for want of model recruitment rules the ACP was allowed after finalization of the recruitment rules. Learned counsel would also contend that Senior Observer has been separated from the hierarchy of Lab Assistant, which was earlier feeder cadre and as amended recruitment rules of Senior Observer notified on 2.8.2003, applicants having not fulfilled the criteria of four months' duration of basic training course were ineligible.

5. We have carefully considered the rival contentions of the parties and perused the material on record. In our considered view a point of doubt on clarification cannot supersede the original ACP scheme as per Department of Personnel & Training OM of 9.8.1999 and as per clause 7, financial upgradation shall be given to the next higher grade in accordance with the existing hierarchy in a cadre. In such an event, if the recruitment rules have come into being and were given effect to prospectively from 2003 and 2006, the same, for want of any stipulation, would not be applied retrospectively. Accordingly, at the time when second ACP was bestowed upon applicants the recruitment rules of 1995 to the post of Senior Observer were in vogue and according to the rules the pay scale in the next hierarchy to the observer was Rs.5000-8000.

6. Insofar as training is concerned, it is an admitted position by the respondents that the applicants who were holders of Group 'D' post only got promotion in October, 2006 as Lab Assistant Grade-III, a Group 'C' post. No training could have been imparted to them and they were deputed for modular course of two months in basic training of meteorology for the purpose of regular promotion in Group 'C'. In such view of the matter, when they have not been assigned prior to 2002, to undergo training, they cannot be found at fault.

7. However, the basic purpose of the training is to apprise on grant of financial upgradation, which does not amount to promotion and does not bestow shouldering of higher responsibilities attached to the post, yet the basic object was that they should be well versed in Meteorology. As modular course of two months' training had already been imparted to the applicants, which they have qualified, would have to be treated as equivalent to the training and in such an event, having fulfilled the requisite qualification of eligibility, grant of pay scale of Rs.4000-6000 instead of Rs.5000-8000, cannot be countenanced in law".

3. When the applicant made a representation for extension of the same benefit by placing reliance on the aforesaid decision of this Tribunal, the same was rejected by the respondents vide the impugned Annexure A-1 order dated 14/17.02.2014 by stating the same reasons and by also stating that the said judgment was applicable only to the applicants therein. Hence the OA.

4. Heard Shri Shrigopal Aggarwal, learned counsel for the applicant and Ms. Priyanka Bhardwaj, learned counsel for the respondents and perused the pleadings on record.

5. The learned counsel for the applicant while drawing our attention to the various facts mentioned in the OA as well as in the counter submits that the applicant is identically placed like the applicants in **S.S.L. Bhat** (supra) and hence he is entitled for granting of the same benefits.

6. On the other hand, Ms. Priyanka Bhardwaj, learned counsel appearing for the respondents submits that the OA is liable to be dismissed on the ground of delay and laches itself. She further submits that the judgment in **S.S.L. Bhat** (supra) is a judgment in rem and hence cannot be extended to the applicant's case. She further submits that even if this Tribunal comes to the conclusion that the judgment in **S.S.L. Bhat** (supra) is applicable to the applicant's case but the applicant has not undergone any training even for 2 months as in the case of the applicants in **S.S.L. Bhat** (supra) and hence, he is not entitled for the relief claimed.

7. We have carefully perused the facts of this case as well as the facts in **S.S.L. Bhat** (supra) and find that the facts are identical in both the cases. Even on the point of Modular Training, the respondents in their counter filed to the OA have categorically admitted that the applicant completed the Modular Training Course in Meteorology vide Batch No.3, however, in December, 2005.

8. It is true that the applicant filed the OA long after granting of second ACP in a lower scale, but as held by the Hon'ble Apex Court in ***M.R. Gupta Vs. Union of India (1995) 5 SCC 628***, wrong fixation of a pay scale is a continuous cause of action and hence we reject the contention of the learned counsel for the respondents on the point of limitation and laches. However, the Hon'ble Apex Court in ***Union of India and Others Vs. Tarsem Singh, 2008 (8) SCC 648*** held that if a petition is filed beyond a reasonable period, the Court would reject the claim or restrict the relief to a reasonable period.

9. In the aforesaid circumstances and for parity of reasons the impugned order Annexure A-1 dated 14/17.2.2014 is quashed and the OA is allowed in terms of the judgment of this Tribunal in **OA No.2425/2008 and batch** dated 14.05.2009 in **S.S.L. Bhat and Others Vs. Union of India and Others**, with all consequential benefits. However, the applicant is entitled for payment of arrears with effect from 19.05.2014, only i.e., the date of filing of the OA. The respondents shall complete the exercise within a period of three months from the date of receipt of a certified copy of this order. No costs.

(NITA CHOWDHURY)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

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