

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

Order reserved on: 28.08.2018

ORIGINAL APPLICATION NO. 060/001144/2016

Chandigarh, this the 10th day of September, 2018

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MRS. AJANTA DAYALAN, MEMBER (A)**

...

MES No. 360197 Baldev Singh, FGM (HS), Retd. from the office of GE (U), Ambala Cant. aged 65 years (Group-C), presently R/o 479 Gali NO. 2 Topkhana Bazar, Ambala Cantt.

....APPLICANT

(By Advocate: Shri Shailendra Sharma)

VERSUS

1. Union of India through Secretary, Ministry of Defence, New Delhi (South Block).
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: Shri Ram Lal Gupta)

ORDER

AJANTA DAYALAN, MEMBER (A)

The present Original Application (O.A.) has been filed by applicant Baldev Singh feeling aggrieved by impugned order dated 6.2.2016 (Annexure A-6) issued by the respondent department thereby rejecting his request to prepone the date of grant of 2nd financial upgradation under the Assured Career Progression (ACP) Scheme from 2001 to 9.8.1999 i.e. the date when the ACP Scheme

was introduced and he had already completed 24 years of service. Alternatively, he is seeking stepping up of his pay to the level of his juniors from the date they started getting higher pay on account of grant of 2nd ACP to them prior to him. He has also prayed for re-fixation of his pay w.e.f. 1.1.2006 after implementation of 6th Central Pay Commission report and release of his retiral benefits on the basis of last pay drawn as well as interest on arrears.

2. The facts of the case are largely not in dispute. The applicant was appointed as Pump House Operator on 1.4.1971 and was posted with Garrison Engineer (N), Ambala Cantt. He was designated as Fitter General Mechanic (FGM) in 1996. The Central Government introduced Assured Career Progression Scheme w.e.f. 9.8.1999. The Scheme was to be viewed as a safety net to deal with the problem of stagnation and hardship faced by the employees due to lack of adequate promotional avenues. As per this Scheme, two financial upgradations were allowed to the Central Government employees in his entire service - 1st after completion of 12 years of regular service and 2nd after 12 years of regular service from the date of grant of 1st financial upgradation.

3. The case of the applicant is that under this Scheme, he was entitled to be placed in next higher scales of pay of Rs. 4000-6000/Rs. 5000-8000, for which he had to pass the Trade Test. The first Trade Test after the introduction of the Scheme was held in July 2001 and he was declared pass. So he was entitled to 1st/2nd financial upgradation w.e.f. 9.8.1998 i.e. the date of introduction of the Scheme as he had already completed over 28 years of service by

then. However, he was granted financial upgradation only w.e.f. 20.7.2001 i.e. the date of passing of the Trade Test by him. But, many of his juniors who appeared in the Trade Test alongwith him and passed the same have been granted ACP w.e.f. 9.8.1999 i.e. the date of introduction of ACP Scheme. Consequently, they are getting higher pay than the applicant which is discriminatory and unjustified especially as the Trade Test was conducted for the first time in 2001 after introduction of ACP Scheme. He has quoted three specific instances of such juniors. The representation made by him to the department did not yield any fruitful result and then he approached this Tribunal in 2014 by filing O.A. No. 60/498/2014. This Tribunal vide order dated 25.6.2015 directed the respondents to re-examine as to why he has been discriminated against in this unfair manner. The matter was considered by the respondents and order dated 6.2.2016 (Annexure A-6) has been passed which is impugned in this O.A.

4. The respondents have argued that as per the ACP Scheme, a Departmental Screening Committee was to be constituted which had to be the same as that of the DPC prescribed under the relevant recruitment/service rules for regular promotion to higher grade to which the financial upgradation is to be granted and that passing of Trade Test as for regular promotion was mandatory. As the applicant did not qualify in the first Trade Test held in August 1995 and passed only in subsequent attempt in the Trade Test held in 2001, he has been granted ACP w.e.f. the date of his passing the Trade Test. In support of this, a clarification given by

the Directorate General of Personnel, MES dated 28.4.2009 (Annexure R-2) is enclosed whereby Government of India, Ministry of Defence has clarified that only those employees who qualified the Trade Test in first attempt after 9.8.1999 shall be granted financial upgradation from 9.8.1999. This order further states that if the employee qualifies the Trade Test on 20.7.2001 in subsequent attempt and not in first attempt, the financial upgradation will be w.e.f. July 2001 only. The respondents have argued that the financial upgradation has, therefore, been granted rightly to the applicant.

5. We have heard the opposing counsels for the parties, have gone through the pleadings, and also given our thoughtful consideration to the matter.

6. It is observed that as per the Scheme (Annexure-A1), financial upgradation under the ACP was subject to fulfillment of prescribed conditions (Para 4 of Annexure-II of the Scheme). Further fulfillment of normal promotion norms (bench-mark, departmental examination, seniority-cum- fitness in case of Group-D employees etc.) were to be ensured for grant of benefit under the ACP Scheme. Accordingly passing of Trade Test, which was mandatory for regular promotion, would be a pre-requisite for grant of ACP. There should not be much dispute on this issue as no employee has been granted ACP prior to passing of Trade Test, though some of them have been granted ACP with retrospective effect (from the date of introduction of the Scheme) but only after they have passed the Trade Test.

7. We have also carefully gone through the impugned order. It gives detailed reasons as well as various clarifications issued by DoPT in support of its decision. Inter-alia, the order states that no discrimination has been caused to the applicant who passed Trade Test in the second attempt while his juniors passed the Trade Test in the first attempt. It has quoted DoPT letter dated 4th January, 2002 wherein it is clarified as under:-

“ As a special case the employees who qualify the trade test in first attempt after 09.08.99 may be allowed benefit of ACP from 09.08.99 only and not from the date of passing of trade test. However, employees who qualify in the trade test in subsequent attempts will be allowed financial upgradation only the date of passing of trade test. In no case, the benefits should be given to an individual w.e.f. 09.08.99, who had earlier appeared in the Trade Test before 09.08.99 but failed or has not appeared in trade test at all or has not otherwise passed the trade test.”

Other clarifications from Ministry of Defence and Directorate General of Personnel, Engineer-in-Chief to the same effect are also quoted. However, we find that the DoPT clarification itself is quite clear and specific to this issue leaving no doubt in the matter. As this view has been held by the DoPT and any interference therein would have implications across various organizations of Government of India across India, we feel that any interference in this matter should be only if the order is not logical or is unfair. In our view, there seems to be logic to the decision of DoPT. This is that persons who failed earlier cannot be presumed to have the qualification of passing of Trade Test unless they prove themselves to be so qualified by actually passing the Trade Test. On the other hand, persons who had never appeared in the Trade Test before the

introduction of the Scheme were given benefit of doubt and were allowed to get the benefit of ACP w.e.f. the date of introduction of the Scheme even though they may have actually passed the Trade Test on a later date. In other words, employees who have already been given a Trade Test but have failed therein and thus have not been able to avail of that opportunity to their benefit, have not been considered for granting benefit of gap between the introduction of the Scheme and holding of any Trade Test after introduction of ACP Scheme. On the other hand, persons who availed no opportunity to appear in the Trade Test prior to introduction of the Scheme were considered fit for giving the benefit of any gap between the introduction of the Scheme and holding of the Trade Test. This was done as a special case not to deny those employees who passed the Trade Test in the first attempt the benefit of ACP for the period between the introduction of the Scheme and holding of Trade Test as they could not, in any way, be held responsible for this gap. The DoPT letter dated 4.1.2002 clearly mentions this measure as a special case. Thus the employees who were otherwise eligible and cleared the Trade Test in their first attempt were given benefit of ACP w.e.f. introduction of the Scheme itself and not w.e.f. the date of clearing of Trade Test. So there seems to be sound logic in this decision with no need of interference from our side.

8. The plea taken by the applicant that his juniors are getting more pay than him and hence his pay needs to be fixed at par with his junior is not justified. The ACP Scheme (Annexure R-1) itself is

very clear on this issue. Para 8 of Annexure-I of the Scheme clearly states as under:

“8. The financial upgradation under the Scheme shall be purely personal to the employees and shall have no relevance to his seniority position. As such, there shall be no additional financial upgradation for the senior employee on the ground that the junior employee in the grade has got higher pay-scale under the ACP Scheme.”

This is very clear and leaves no doubt that there is no scope for upgradation of pay of senior employee on the ground of anomaly with his juniors.

9. Further it is observed that all the three specific instances given by the applicant for getting their ACP w.e.f. 9.8.1999 namely Sh. Lajja Ram, Sh. Mehar Ram and Sh. Gopal Krishan are the same as given in his earlier O.A. No. 60/498/2014. These are explained in the impugned order which clearly indicates that the first two namely Sh. Lajja Ram and Sh. Mehar Ram passed the Trade Test of FGM HS-II in September 1995 and Trade Test of FGM HS-I on 20.12.2001 and hence they were both granted 2nd ACP w.e.f. 3.11.2000 when both of them completed 24 years of service as they had not earned any promotion since their initial appointment on 3.11.1976. In the third case of Sh. Gopal Krishan quoted by the applicant, he appeared in Trade Test for HS-II and failed in the year 1995. He passed this Test in subsequent attempt on 20.7.2001 like the applicant. As such, he was granted 2nd ACP only w.e.f. 20.7.2001. These financial upgradations were thus granted in terms of the policy and clarifications thereon. The applicant appeared in FGM HS-II for the second time and was declared passed on 20.7.2001 and hence has been given ACP w.e.f.

that date. The order further states that since he has fulfilled the promotional norms of passing the Trade Test HS-II only in second attempt on 20.7.2001 he has been granted 2nd ACP w.e.f. 20.7.2001 and not from the date of introduction of ACP Scheme. This is in accordance with DoPT O.M. dated 9.8.1999 and clarification issued vide DoPT letter dated 4.1.2002.

10. In view of all above, it is clear that the grant of ACP to the applicant is as per the Scheme and clarifications thereon and no discrimination has been caused to him.

11. Therefore, we find O.A. is devoid of any merit and the same is dismissed. No costs.

(AJANTA DAYALAN)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 10.09.2018

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