

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

CIRCUIT BENCH AT SHIMLA

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ORIGINAL APPLICATION NO.063/00087/2016

Reserved on 15.03.2018

Decided on 28.03.2018

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MRS. P. GOPINATH, MEMBER (A)**

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Romesh Chand son of Shri Jaishi Ram, aged 56 years, resident of Village Tikkari, Post Office Shamirpur, Tehsil Bhoranj, District Hamirpur (H.P.), presently J.T.O. (Civil), Bharat Sanchar Nigam Limited, Civil Sub Division, Hamirpur, District Hamirpur (H.P.).

....APPLICANT

(Present: Mr. R.L. Chaudhary, Advocate)

VERSUS

1. Bharat Sanchar Nigam Limited, Corporate Office, BSNL Bhawan, Harish Chander Mathur Lane, Janpath, Delhi-110001, through its Chairman-cum-Managing Director.
2. P.G.M. (BW), Corporation Office, BW Unit, Telegraph Office Building, Kashmiri Gate, Delhi-110006.
3. Chief General Manager (T), BSNL, H.P. BSNL Telecom Circle, Block No.11, SDA Complex, Kasumpti, Shimla-171009 (H.P.).
4. Chief Engineer (Civil), Bharat Sanchar Nigam Limited, H.P. Civil Zone, Shri Tirath Niwas, Sector -II, Phase-I, New Shimla-171 009 (H.P.).
5. Shri Bhag Chand son of not known to the applicant, presently working as Executive Engineer (Civil), B.S.N.L., Civil Division, Near Police Chowki, B.C.S., Shimla-171009.
6. Shri Om Prakash son of not known to the applicant, resident of Roop Nagar, Ward No.9 near Punjab National Bank, Hamirpur, H.P. [Retired Executive Engineer (Civil) from BSNL].

7. Shri Harish Kumar Vaidya son of not known to the applicant, resident of Near Malhotra Electrical, Post Office Road Mandi, H.P. [Retired Sub Divisional Engineer (Civil) from BSNL]. (Respondents no.5 to 7 are deleted vide order dated 05.08.16)

....RESPONDENTS

(Present: Mr. Rajiv Jiwan, Advocate)

ORDER

HON'BLE MRS. P. GOPINATH, MEMBER (A):-

Applicant started as a Draughtsman, Grade-II (Civil) in the respondent-department, he qualified in the Departmental Examination and was promoted to Junior Engineer (JE) (Civil). Pay scale of both the posts Draughtsman and Junior Engineer remain the same, despite the fact that the applicant stood promoted as a Junior Engineer. The Government of India introduced Assured Career Progression (ACP) Scheme offering a higher pay scale to those who completed 12 or 24 years of service, and stagnating in the same pay scale. Applicant's argument, is that, he is entitled to ACP Scheme on completion of 12 or 24 years of service, in view of the fact that despite being promoted from Draughtsman to JE, he remained in the same pay scale. Applicant cites the judgment of Hon'ble High Court of Kerala in Writ Appeal No.2489 of 2008, which was upheld by the Hon'ble Apex Court in SLP No.5603 of 2010.

2. Learned counsel for the respondents submits that before the ACP Scheme of the Government of India, the respondent-department a scheme called 5/15 years, in which a Junior Engineer (Civil) was granted the next higher pay scale of Rs.1640-2900 (pre-revised)/Rs.5500-9000 (pre-revised) after completion of 15 years of service. This scheme was withdrawn on introduction of

the ACP Scheme. The respondents also admit that the applicant was promoted as Junior Engineer on 23.08.1996, but not having the mandatory 5 years service did not get the higher pay scale in the 5/15 years scheme, which was withdrawn due to notification of ACP Scheme. The respondent also argues that the applicant was a Draughtsman and moved to the post of JE (Civil) on his own, because it offered better promotional prospects. However, both posts were in the same pay scale and the LDCE by which the applicant was promoted as a JE should be considered as a promotion.

3. In the light of order passed by the Hon'ble High Court of Himachal Pradesh in Civil Writ Petition No.5611 of 2013, applicant has already been granted 1st ACP Scheme on due date w.e.f. 09.08.1999. The grant of 2nd ACP Scheme to the Grade of Executive Engineer is covered by the condition of the ACP Scheme that the same shall be granted subject to normal promotion norms being fulfilled. Para 6 of the ACP Scheme circulated on 09.08.1999 by the Government of India, states as follows:-

“6. Fulfillment of normal promotion norms (bench-mark, departmental examination, seniority-cum-fitness in the case of Group 'D' employees, etc) for grant of financial upgradations, performance of such duties as are entrusted to the employees together with retention of old designations, financial upgradations as personal to the incumbent for the stated purposes and restriction of the ACP Scheme for financial and certain other benefits (House Building Advance, allotment of Government accommodation, advances, etc.) only without conferring any privileges related to higher status (e.g. invitation to ceremonial functions, deputation to higher posts, etc.) shall be ensured for grant of benefits under the ACP Scheme.”

4. This has been reiterated in the clarification issued by the Nodal Ministry on 18.07.2001, as follows:-

53.	If for promotion on regular basis, an employee has to possess a higher / additional qualification, will it be necessary to insist on possession of these qualifications even while considering grant of financial upgradation under the ACPS?	In terms of condition No.6 of Annexure-I to DoP&T O.M. dated 09.08.1999, only those employees who fulfill all promotional norms are eligible to be considered for benefit under ACPS. Therefore, various stipulations and conditions specified in the recruitment rules for promotion to the next higher grade, including the higher / additional educational qualification, if prescribed, would need to be met even for consideration under ACPS.
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As per the notified rules dated 06.08.1994 for the post of Executive Engineer produced by the respondents as Annexure R-4, the minimum educational qualification for the post of Executive Engineer is that they possess a degree in Civil Engineering from a recognized University.

5. The relief sought by the applicant is for grant of 2nd ACP from the due date i.e. 2003 in terms of judgment passed by the Hon'ble High Court of Kerala in Writ Appeal No.2489 of 2008 upheld by Hon'ble Apex Court in SLP No.5603 of 2010. The said judgment of the Hon'ble High Court of Kerala had allowed to the applicant Sh. Unnikrishnan Nair, who was similarly placed as the applicant, the first ACP Scheme on completion of 12 years and directed the 2nd upgradation of 24 years be considered by the Competent Authority. The respondents admits that the private respondents had been given 2nd ACP Scheme in 2002, but the same was withdrawn on 08.11.2006 as the Officer was not meeting the educational qualification as prescribed in the Recruitment Rules. Subsequently, on 30.03.2007 the respondents had decided not to

withdraw the 2nd financial upgradation already granted to the respondents and argue that this is being ordered as one time measure. We also note that the respondents have selectively allowed the private respondents, the benefit while denying the same to the applicant.

6. The Hon'ble Apex Court in ***M.N. Raghunatha Kurup & Others versus Union of India and others***, CA No.3562 of 2007 had held that for ACP the qualification of the promotion post was not necessary.

7. The present Original Application (OA) is allowed. The benefits will be restricted as per the Hon'ble Apex Court in the case of ***Union of India and another versus Tarsem Singh***, Civil Appeal No.5151-5152 of 2008 upto three years prior to the date of filing of the present OA.

(SANJEEV KAUSHIK)
MEMBER (J)

(P. GOPINATH)
MEMBER (A)

Dated: 28.03.2018

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