

CENTRAL ADMINISTRATIVE TRIBUNAL,

CHANDIGARH BENCH

ORDERS PRONOUNCED ON: 05.09.2018
 (ORDERS RESERVED ON: 24.08.2018)

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

(I) **O.A.NO.060/01511/2017**

Dharam Paul, aged 61 years, son of Shri Sita Ram Dhiman, EE (QS&C) Retd.
 Resident of H. No. 506-C, Sector-2, Panchkula-134112 (Haryana) Group A.

... APPLICANT

By: **MR. K. Y. SINGH, ADVOCATE.**

VERSUS

1. Union of India through its Secretary, Ministry of Defence, Government of India, South Block, New Delhi-110011.
2. The Engineer-in-Chief (MES), Army Headquarters, Kashmir House, New Delhi-110011.
3. The Central Record Office (O), Military Engineer Service, Engineer-in-Chief Branch/E1B, PIN-900106, C/o 56 APO.

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RESPONDENTS

By: **MR. K.K. THAKUR, ADVOCATE
 MS. PROMILA BHARDWAJ, PROXY FOR MR. A.K.SHARMA, ADV.**

(II) **O.A.NO.060/01512/2017**

Pawan Kumar, aged 62 years, son of Shri Tirath Ram, EE (QS&C) Retd.
 Resident of Flat No. 16, Block No.4, Jamuna Apartments, Kurali Road, Kharar, Distt. Mohali-140301 (Punjab) 1st Class-Group A.

... APPLICANT

By: **MR. K. Y. SINGH, ADVOCATE.**

VERSUS

1. Union of India through its Secretary, Ministry of Defence, Government of India, South Block, New Delhi-110011.

2. The Engineer-in-Chief (MES), Army Headquarters, Kashmir House, New Delhi-110011.
3. The Central Record Office (O), Military Engineer Service, Engineer-in-Chief Branch/E1B, PIN-900106, C/o 56 APO.

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RESPONDENTS

By: **MR. K.K. THAKUR, ADVOCATE**
MS. PROMILA BHARDWAJ,
PROXY FOR MR. A.K.SHARMA, ADV.

(II) **O.A.NO.060/00518/2017**

M.C. Agnihotri, aged 57 years,
 son of Shri K.B. Lal Agnihotri, DCWE (Contracts),
 O/o CWE (Air Force), Ambala Cantt.
 (Haryana) (Group A).

APPLICANT

By: **MR. K. Y. SINGH, ADVOCATE.**

VERSUS

1. Union of India through its Secretary,
 Ministry of Defence, Government of India,
 South Block,
 New Delhi-110011.
2. The Engineer-in-Chief (MES),
 Army Headquarters, Kashmir House,
 New Delhi-110011.
3. The Chief Engineer,
 Western Command,
 Chandimandir, Distt. Panchkula.

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RESPONDENTS

By: **MR. K.K. THAKUR, ADVOCATE**
MS. PROMILA BHARDWAJ,
PROXY FOR MR. A.K.SHARMA, ADV.

ORDER
HON'BLE MR. SANJEEV KAUSHIK , MEMBER (J)

1. The commonness of facts and law, allows us to have a joint hearing and dispose of all these three cases by a single order, as is also agreed to by the learned counsel for the parties. However, for the facility of reference, facts and grounds are being extracted from O.A. No.060/01511/2017 – titled **DHARAM PAUL VS. UNION OF INDIA ETC.**

2. In this O.A. filed under section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged the order dated 17.11.2017 (Annexure A-9), vide which his request to grant benefit of financial up-gradation under Assured Career Progression Scheme (ACP Scheme), has been declined and he also seeks issuance of direction to the respondents to grant him 2nd financial up gradation under ACP Scheme, in the scale of Rs.10,000-325-15,200 with grade pay of Rs.6600/- on completion of 24 years of service from entry into the grade or w.e.f. 9.8.1999, whichever is later, with all the consequential benefits. He seeks benefit of decision of the Bangalore Bench of this Tribunal in O.A.No. 469 of 2008 – **SHRI E. UNNIKSHNAN & OTHERS VS. UNION OF INDIA & OTHERS**, decided on 23.2.2011 (Annexure A-3), as upheld by Hon'ble Karnataka High Court on 6.12.2013 (Annexure A-4) in Writ Petition Nos. 37376-680/2011 (S-CAT) titled **THE UNION OF INDIA & OTHERS VS. SHRI E. UNNIKSHNAN** and then by Hon'ble Apex Court in **SLP NO.19798-18802 OF 2015 ON 6.11.2015** (Annexure A-6), which was dismissed on ground of delay only.

3. The facts are largely not in dispute. The applicant was initially appointed as Superintendents (Building & Roads) Grade II w.e.f. 26.5.1977 and has retired from service w.e.f. 31.1.2016. The Junior Engineers were earlier designated as Superintendents (Building & Roads) Grade I & II, Superintendents (Electrical & Mechanical) Grade I & II and Surveyor

Assistants Grade I & II and their qualification, pay-scales and other service conditions were comparable with the Junior Engineers of CPWD and are provided with identical pay scales throughout. The respondents re-designated the aforesaid three posts as Junior Engineers (B&R, (E&M) and (QS&C) respectively. So, in that process, applicant was also re-designated as Junior Engineer (QS&C). The Government of India famed ACP Scheme vide letter dated 9.8.1999, as per which the persons, who did not get any promotion during 24 years of service, became entitled to grant of two financial up-gradations, on completion of 12 and 24 years of service. This was adopted for cadre of applicants vide letter dated 23.1.2002. All the three categories of Junior Engineers i.e. B&R, E&M and QS&C were treated at par for the purpose of grant of all benefits including ACP Scheme. Even the recruitment rules were also amended. The respondents, vide letter dated 21.2.2006, granted 2nd financial up-gradation under ACP Scheme in pay scale of Rs.10,000-325-15,200 to the Diploma Holders Assistant Engineers (AEs), who were promoted after 9.7.1991, subject to fulfillment of eligibility criteria. The 2nd ACP in the pay scale of Rs.10,000-325-15200 was allowed to JEs of (B&R) and (E&M) on completion of 24 years of service or 9.8.1999, whichever was later. However, this was granted to JEs (QS&C) w.e.f. 17.2.2005 only, i.e. date of Notification of SRO 18 or on completion of 24 years of regular service or w.e.f. 9.8.1999, by issuing letter dated 23.2.2007. Thereby applicant, who was due to be granted this benefit between 21.7.1994 to 17.2.2005, was denied this benefit and his juniors became entitled for 2nd ACP after 17.2.2005 and were granted 2nd ACP in the grade pay of Rs.10,000-325-15,200, whereas applicant got this benefit in earlier pay scale of Rs.8000-225-13,500, and thereby he started drawing less pay than his juniors and resultantly less retiral dues. Thus, the case in short is that those who became due for grant of higher pay scales between 10.8.1999 to 16.2.2005, have been placed in lower pay scales, as

compared to their counter parts, who have been placed in higher pay scales. It is claimed that the issue has already been clinched by a court of law and his request to grant him benefit of that decision been declined on the ground that the said decision in personem in nature which is illegal. Hence the O.A.

4. The respondents oppose the Original Application by filing a detailed reply. They submit that provisions of promotion for SA-1 to Assistant Surveyor of Works were applicable till 1994. The Rules which were applicable for 21.7.1994 onwards, were as per SRO 39/1985, SRO-292/1989 and SRO 142/1994. These were superseded by SRO-18 dated 17.2.2005 thus, the hierarchy of promotion has undergone a change. The post of ASW/AEE (QS&C) for which the applicant was eligible, was in pay scale of Rs.8000-275-13,500 and now post of EE (QS&C) is in the pay scale of Rs.10,000-325-15,200). Thus, those who completed 24 years of service prior to 17.2.2005, got 2nd financial up-gradation, in pay scale of Rs.8000-275-13500 as per old hierarchical promotion Scheme and those who had completed 24 years of service after 17.2.2005 and are entitled to promotion as per new Rules, were granted 2nd financial up gradation to the scale of Rs.10,000-325-15,200. Even instructions were issued that such provision is not to be disturbed and there will not be any change in scheme of things. In so far as benefit of judicial pronouncement is concerned, it is stated that the same will be applicable qua the parties therein and same cannot be applied to all similarly situated persons.

5. We have heard learned counsel present for the parties and examined the pleadings on file minutely.

6. Learned counsel for the applicants vehemently argued that since the issue raised in this case stands clinched by a co-ordinate Bench of this Tribunal as upheld upto highest court of law, then the respondents cannot deny benefit of the same to applicants being similarly situated persons as it would be arbitrary and violative of Articles 14 and 16 of the Constitution

and as such impugned orders, are liable to be quashed and set aside. On the other hand, learned counsel for respondents would argue that the Hon'ble Apex Court has not dismissed the SLP on merit, as such question of law is open and, therefore, said decision cannot be treated as a precedent.

7. We have considered the submissions of both sides minutely. On a careful consideration of the matter, we find that the issue in hand is covered by the decision of this Tribunal in the case of **E. UNNIKSHNAN (SUPRA)**, which has been upheld by the Hon'ble High Court of Karnataka on merit and then by Hon'ble Apex Court also, as SLP was dismissed. We are not required to delve over the matter all over again, once it stands settled. The co-ordinate Bench placing reliance upon decision of **COMMISSIONER AND SECRETARY, GOVERNMENT OF HARYANA VS. RAM SWAROOP GANDA**, 2006 (12) Scale 440, has allowed the claim holding that the respondents shall revise the pay scales of the applicants therein and grant 2nd ACP benefit to them in pay scale of Rs.10,000-325-15200 as and when they completed 24 years of regular service or w.e.f. 1999 whichever is later, with all consequential benefits". Not only that, the Hon'ble High Court of Karnataka has considered all the objections, as raised in these cases, and has repelled the same in the following words :-

"2. The respondents herein, who were working in the Junior Engineer Cadre (Quantity, Survey and Contracts) were given 2nd financial up gradation under Assured Career Progression Scheme (for short 'the ACP') on 9.8.1999, since they had completed 24 years of service between the period 1999 to 2005. After getting the benefit of 2nd ACP the respondents received the salaries from the Department accordingly. Now they are retired from service.

However, a clarification was issued on 14.3.2007 with regard to 2nd ACP scheme. By virtue of such clarification for the Diploma Holders, who were working as Asst. Engineers/Junior Engineers (Building /Roads) and (Electricity / Maintenance) higher pay scale was fixed in 2nd ACP than the pay scale, which was provided to the respondents herein, who are Engineers (Quantity Survey and Contracts).

3. Though all the Engineers fall within the same cadre, the respondents, who are Engineers (Quantity Surveying and Contracts), are differentiated from that of Engineers (Building / Roads) and Engineers (Electrical / Mechanical). Since the Engineers (Building / Roads) and Engineers (Electrical and Mechanical), were paid higher pay scale under 2nd ACP than the respondents, by virtue of

clarification issued on 14.3.2007, the respondents approached the Central Administrative Tribunal by filing O.A.No.469/2008, which came to be allowed by the impugned order dated 23.2.2011.

4. Learned counsel appearing for the petitioners submits that the clarification dated 14.3.2007 issued by the Department clearly goes to show that the higher pay scale is admissible only in respect of Engineers (Building / Roads) and (Electrical / Mechanical), and therefore, the respondents, who are Engineers (Quality, Surveying and Contracts) cannot get the benefit of pay scale provided to other Engineers. It is further submitted by the learned counsel appearing for the petitioners that the respondents were given a promotion by way of amalgamation of two cadres of Junior Engineers i.e., SA1 and SA2, as such they were not entitled to the benefit 2nd ACP.

5. The aforementioned contentions cannot be accepted. The persons, who are admittedly juniors to the respondents, cannot be paid higher salary under the scheme of 2nd ACP. It is not in dispute that the respondents were provided the benefit of 2nd ACP on 9.8.1999. It is also not in dispute, the cadre of respondents is the same as that of Engineers (Building / Roads) and (Electrical / Mechanical). In view of the same, the pay scale provided to Engineers (Building / Roads) and (Electrical / Mechanical) under 2nd ACP scheme should be provided to the respondents, more particularly, when the respondents are seniors in service.

6. It is relevant to note that respondents were provided with pay scale of Rs.8,000/- to Rs.13,500/- whereas the Engineers ((Building / Roads) and (Electrical / Mechanical) were provided with pay scale of Rs.10,000/- to Rs.15,200/-.

7. In view of such anomaly, the Tribunal has taken just decision directing the petitioners herein to pay the pay scale as that of the Engineers (Building and Roads) and (Electrical and Mechanical) to the respondents herein also.

The contention of the petitioners that the respondents were already provided with a promotion also cannot be accepted. It is not disputed that erstwhile cadres of SA1 and SA2, in respect of Engineers (Quantity, Survey and Contracts) which were feeder cadres to the promotional posts, were amalgamated in the year 1999 to form a new cadre called the Junior Engineers. Merely because the amalgamation has taken place in the year 1999 the same cannot be treated as promotion.

In view of the above, we do not find any ground to interfere with the order of the Central Administrative Tribunal. The petitions fail and the same stands dismissed."

8. Thus, once the issue has been set at rest by a co-ordinate Bench of this Tribunal, as upheld upto apex dispensation, we see no earthly reason to deny benefit of the same to the identically placed persons like the applicants herein. In the case of **K.C. SHARMA VS. UOI ETC.**, 1997(3) SCT 341 the Hon'ble Supreme Court has held that benefit of a judgment cannot be denied to similarly situated employees. Similarly, in **UNION OF INDIA AND ANR.**

VS. LALITA S. RAO & ORS., AIR 2001 SC 1972, it was held that an order of a court should be implemented for similarly situated employees whether party or not instead of forcing each and every individual to approach the court of law for similar relief.

9. In view of the aforesaid discussion, these three Original Applications are allowed. The impugned orders are quashed and set aside. The respondents are directed to revise the pay scales of the applicants in these cases and grant 2nd ACP benefit to them in pay scale of Rs.10,000-325-15200 as and when they completed 24 years of regular service or w.e.f. 1999 whichever is later, with all consequential benefits, including retiral dues thereon. The needful be done within a period of three months from the date of receipt of a certified copy of this order.

10. The parties are, however, left to bear their own respective costs.

**(SANJEEV KAUSHIK)
MEMBER (J)**

**(MS. P. GOPINATH)
MEMBER (A)**

Place: Chandigarh
Dated: 05.09.2018

HC*