

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

ORIGINAL APPLICATION NO.060/00978/2016

Chandigarh, this the 12th day of January, 2018

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

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Tarsem Lal son of Late Sh. Khajan Chand, presently working as Fire Fitter (Vehicle Mechanic) (SK), Group-C, aged 49 years, presently working under Commanding Officer, 388 ASC Sup. Coy., C/o 56 APO and resident of V&PO Gurha Kalan, Tehsil Pathankot, Distt. Gurdaspur (Punjab).

....APPLICANT

(Present : Mr. Jagdeep Jaswal, Advocate)

VERSUS

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. Director General, Directorate General of Supplies and Transport, Quartermasters General's Branch, Integrated HQ of MoD, DHQ PO, New Delhi-110105.
3. Officer Commanding, ASC Records (South), Bangalore, PIN-560007.
4. Commanding Officer, 388 ASC Sup. Coy., C/o 56 APO.

....RESPONDENTS

(Present : Mr. B.B. Sharma, Advocate)

ORDER (Oral)

SANJEEV KAUSHIK, MEMBER (J)

By means of present O.A, the applicant has challenged the defensibility of impugned order dated 27.06.2016 (Annexure A-1) whereby the respondents rejected his case for grant of first ACP on not passing the trade test.

2. The facts are not in dispute.

3. The sole question that arose for our consideration is on the basis of clarification issued by DoPT, annexed as Annexure A-4 wherein it has been clarified by the Ministry of Defence that those who were not allowed to appear in trade test when ACP was enforced and cleared trade test when MACP was introduced at first instance then they are entitled for grant of ACP benefit on completion of 12 years from due date.

4. Mr. Jagdeep Jaswal, learned counsel for the applicant submitted that it is the positive case of the applicant that he was never called to appear in trade test, for the first time, trade test was conducted on 26.05.2009. Which the applicant cleared at first instance. In view of the clarification (Annexure A-4), the applicant became entitled for 1st ACP. He also draws our attention to communication dated 12.01.2012 (Annexure A-6) where the applicant has been held entitled for 1st financial up-gradation under ACP Scheme on completion of 12 years of regular service i.e. on 01.05.2008. He submitted that when it has already been conveyed by the higher authority to grant the benefit, then the respondents cannot reject applicant's claim from an early date on the plea that he did not appear in the trade test at earlier point of time. To this effect, he submitted that this correspondence was between two heads of the department which was never conveyed to him. His name was also not forwarded to appear in trade test, therefore, the respondents act contrary to their decision dated 12.01.2012 in favour of the applicant. He also submitted that clarification as relied upon by the applicant has already been considered by this Court in O.A No 602/PB/2007 titled **Suresh Kumar & Ors. Vs. U.O.I & Ors.** decided on 20.07.2009 (Annexure-A 8) wherein it has already been held that in view of the clarification

issued by DoPT, if person cleared the trade test at first instance after the enforcement of MACP, then he become entitled for the benefit under ACP on completion of 12 years of regular service. He, therefore, prayed that O.A be allowed.

5. The respondents have taken a sole ground in para 4.8 to 4.10(b) where they submitted that since the applicant has not cleared the trade test within time, therefore, they did not grant the benefit under ACP Scheme.

6. We have given our thoughtful consideration to the entire matter.

7. We are in agreement with the submissions made at the hands of the applicant that the present O.A deserves to be allowed as impugned order has been passed contrary to clarification issued by the respondents which reads as under:-

" A reference was sent to DoP&T for one time relaxation from passing of Trade Test for granting ACP from 09.08.1999 i.e. date of implementation of ACP Scheme if the employees are otherwise eligible.

2. DoP&T has clarified that as a special case the employees who qualify the trade test in first attempt after 9.6.99 may be allowed benefit of ACP from 9.8.99 only and not from this date of passing of trade test. However, employees who qualify in the trade test in subsequent attempts will be allowed financial up-gradation only from the date of passing of trade test. In no case the benefit should be given to an individual w.e.f. 09.08.99, who had earlier appeared in the Trade Test before 09.8.99 but failed or has not appeared in trade test at all or has not otherwise passed the trade test.

3. In further the required trade test should be held well in time as per planned calendar so that it is held before an employee completes 12/24 years of service for grant of financial up-gradation under ACPS."

8. It has also been interpreted by this Court in case of Suresh Kumar (supra) wherein after recording the observation in para 5, the O.A was allowed. Relevant para reads as under:-

" 5. The sole question involved in the present O.A is whether it is appropriate for the respondents and in the spirit of the ACP Scheme to grant the benefits under the ACP Scheme from the date of passing of the Trade Test and not from the due dates when they completed 12 or 24 years of service for the first or second financial up-gradation. It is an admitted fact that the respondents did not conduct the requisite Trade Test well in time, prior to completion of 24 years of service by the applicants, rather, held the same with a delay of more than 2 years. Applicants qualified the same in the first attempt and have been extended the benefit of financial up-gradation from the date of passing the Trade Test and not from the due dates when they become eligible for the said benefit on completion of requisite period of service. In these facts and circumstances, it does not appear to be appropriate that the applicants should be made to suffer financial loss for not holding of the Trade Test in time by the respondents. In the considered view of this Court, this is against the very spirit of the Scheme and such action on the part of the respondents cannot be sustained in the eyes of law. "

9. Though the respondents in impugned order submitted that the applicant did not appear in earlier trade test but to this effect they have not come with any positive averment or document showing that the applicant did not appear despite his name was forwarded in trade test. Accordingly, the present O.A is allowed and impugned order is quashed. The respondents are directed to grant 1st ACP on completion of 12 years of regular service. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 12.01.2018

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