

**CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI .**

**ORIGINAL APPLICATION No.517, 518 and 606 OF 2015**

**Dated this 04<sup>th</sup> day of January, 2018**

**CORAM: HON'BLE SHRI ARVIND J. ROHEE, MEMBER (J)  
HON'BLE SHRI R. VIJAYKUMAR, MEMBER (A)**

Shri Deorao Vithoba Kirmire,  
Rtd. DBW (Skilled),  
Ordnance Factory Chanda,  
Chandrapur – 442 501,  
Age : 65 years,  
R/o Village : Khapri,  
Taluka : Bhadrawati,  
Dist. : Chandrapur 442 501 (M.S.)

**... Applicant in OA No.517/2015**

Shri Vasantao Jangalaji Thengane,  
Rtd. D.B.W. (Skilled),  
Per No.272241, Ordnance Factory Chanda,  
District : Chandrapur 442 501.  
Age : 66 years, R/o : Village / P.O.: Shengaoon,  
Tahsil : Chandrapur,  
District : Chandrapur 442 501...**Applicant in OA No.518/2015**

1. Shri Mukunda Budharam Shiwarkar,  
Desig. : Highly Skilled Grade-II,  
Age : 59 yrs., R/o Qtr. No.69A/  
Type II/Sector-I, New DSC,  
Ordnance Factory, Chanda Estate,  
Bhadrawati, Dist. Chandarpur 442 501.
2. Shri Dadaji Shankar Bawane,  
Desig.: Highly Skilled Grade-II,  
Age 58 yrs., R/o Shrikrishna Nagar,  
Sumthana, Ward No.10, Bhadrawati,  
Dist. : Chandrapur 442 902.
3. Shri Nathhuji Baburao Dhengle,  
Desig. : Highly Skilled Gr.-II,  
Age 59 yrs., R/o Killaward,  
Near Bagdewadi, Bhadrawati,  
Dist. Chandrapur 442 902.
4. Shri Arun Mahadeorao Nagpure,  
Desig : Highly Skilled Grade-II,

Age: 57 yrs., R/o. Qtr. No.5D/Type-1,  
Sector-II. Ordnance Factory Chanda Estate,  
Bhadrawati, Dist.: Chandrapur 442 501.

5. Shri Pandurang Jairam Navghare,  
Design. : Highly Skilled Grade-II,  
Age : 57 yrs., R/o near All Petrol Pump,  
Kunbi Society, Chichordi, Bhadrawati,  
Dist.: Chandrapur 442 902.
6. Shri Motiram Ramchandra Navghare,  
Designation : Highly Skilled Grade-II,  
Age : 59 yrs., R/o Ahilyayadevi Nagar,  
Chichordi Taluka : Bhadrawati,  
Dist. : Chandrapur 442 902.
7. Shri M.B.Tathe, Age : 59 yrs.,  
Designation : Highly Skilled Grade II,  
R/o Bhoj Ward, Bhadrawati,  
Dist : Chandrapur 442 902.
8. Shri Deorao Maroti Datarkar,  
Designation : O.M.H.E./Semi Skilled (Retired)  
R/o Ujjawal Nagar, Chichordi, Near Z.P. School,  
Taluka : Bhadrawati, Dist : Chandarpur 442 902.
9. Shri Chandrayya Pochhayya Idnur,  
Desig. : Highly Skilled Grade-II, Age 55 yrs.,  
R/o New Piparbodi, Bhadrawati,  
Dist: Chandrapur 442 501.

**.. Applicants in OA No.606/2015**

**(By Advocate Shri M.G.Burde)**

**Versus**

1. The Union of India,  
represented through the Secretary,  
Department of Defence Production,  
Ministry of Defence,  
South Block, New Delhi 110 001.
2. The D.G.O.F. / Chairman,  
Ordnance Factory Board,  
10-A, S.K. Bose Road,  
Kolkata 700 001.
3. The General Manager,  
Ordnance Factory Chanda,

Bhadrawati, Distt.  
Chandrapur 442 501.

**... Respondents in all the three OAs**

**(By Advocate Shri R.R.Shetty)**

**Order reserved on 17.11.2017**

**Order delivered on 04.01.2018**

**COMMON ORDER**

**PER : SHRI R. VIJAYKUMAR, MEMBER (ADMINISTRATIVE)**

These are three applications filed on 14.09.2015 and 20.10.2015 that have been tagged together but differ in a small way arising from their date of commencement of employment with the respondents. The applicants in OA No.517 and 518 of 2015 and Shri Nagpure, applicant No.4 in OA No.606/2015 completed 24 years of service prior to 01.01.2006 whereas the others in OA No.606/2015 completed 24 years between 01.01.2006 to 01.09.2008 when the MACP Scheme came into force. The case of applicant No.4 in OA No.606/2015 appears to have involved some complication and has, therefore, been grouped with other applicants in OA No.606/2015, as

proposed by applicants for reasons best known to them, and will be considered accordingly.

**2.** The applicant in OA No.518/2015 joined as Labourer B Grade on 03.07.1972 and after one year was appointed as Danger Building Attendant Semi-Skilled on 26.11.1973, which post was later redesignated as Danger Building Work - Semi-Skilled (DBW-SS) without any change in pay or work. He passed the trade test for being promoted as Skilled DBW on 12.07.1989 but on account of various absences followed by penalties and further retest, he was promoted as DBW Skilled on 16.01.2001 and then as Highly Skilled Worker on 22.09.2008. He has asked for grant of ACP I and ACP II in October, 1999 after completion of his penalty period since he has completed 24 years by that date.

**3.** The applicant in OA No.517/2015 was appointed as Labourer B Grade on 01.07.1976, redesignated as

DBW on 20.02.1978 and upgraded as DBW 'A' on a higher pay scale of Rs.210-290/-. This pay scale is stated to have been revised with effect from 16.10.1981 as Rs.260-400/- attached with DBW Skilled Grade. He met with an accident on 09.05.1985 and lost both his hands and he was reverted to the lower grade of DB Attendant Semi Skilled on 02.06.1996 in the pay scale of Rs.210-290/- but this was restored based on order of this Tribunal to the pay drawn just prior to the accident. He received no further promotion in his service until retirement on 30.11.2011.

**4.** The applicants in OA No.606/2015 were appointed as Durwan while applicant No.9 was appointed as Sweeper on dates ranging from 1982-1984 excepting applicant No.4, who joined on 18.12.1979. They received the benefit of ACP Scheme on 09.08.1999 and were subsequently redesignated as Labourer Unskilled

from 19.04.2005 and granted ACP-I afresh. Aggrieved by this order, they approached this Tribunal directing the respondents to protect their pay because the redesignation and ACP had forfeited 5-6 of their annual increments. While granting relief on this aspect, they claim that this Tribunal also directed the respondents to grant them ACP II in the Highly Skilled Grade II instead of Skilled Grade and pay interest and cost. However, we note from the orders of the Tribunal enclosed with the application that only pay protection has been granted without any reference to upgradation, interest or costs.

**5.** The main issue raised by the applicants are not specific to each individuals but examine how many promotions have been received by each applicant up to 09.08.1999 and, therefore, the number of ACP upgradations that will become due to them. They also make reference to the

mergers made of various pay scales by the VI Pay Commission by which all the Unskilled Labour categories and the Semi Skilled Labour categories were merged into a single Pay Band of Rs.5,200-20,200/- with Grade Pay of Rs.1,800/-. They have also referred to the circular in reference No.11(5)/99-D(Civ.I) dated 30.10.2001 which communicated the clarifications obtained from the DOP&T as under :

*“Ministry of Defence  
D (Civ.I)*

*Subject :- ASSURED CAREER  
PROGRESSION SCHEME (ACPS)  
EMPLOYEES WHO HAVE PLACED IN SEMI  
SKILLED GRADE FOR 2/3 YEARS AS A  
TRAINEE.*

*A reference was sent to DoP&T for clarifying the position regarding grant of 1<sup>st</sup> ACP to skilled Grade employees who were placed in semi-skilled Grade for 2/3 years as a Train in MoD.*

2. *DoP&T have offered their comments as under :-*

*“If in respect of Skilled trade recruitment is made against posts sanctioned in the skilled grade (Rs.3050-4590) by the incumbents are allowed semi skilled grade for first two years for direct recruit with III/NCUT Certificate or for 3 years for persons who are promoted from a lower grade after passing the prescribed trade test before they are placed in the skilled grade, then the semi-skilled grade in such cases may need to be viewed only as a trainee scale and such placement in the skilled grade after putting in the specific length of service in the semi-skilled grades may not be treated as*

*promotion/upgradation and may not be offset against entitlements under ACP Scheme. However, in respect of trade where posts may be sanctioned only in semi-skilled grades, if any, then regular incumbents of such posts in semi-skilled grade on promotion to skilled grade, where such avenues exist will be treated as being appointed on promotion and will not be covered by the above clarification.”*

*The concerned organizations may take necessary action accordingly.*

3. *This issue with the concurrence of Defence (Fin/AG) vide their U.O. No.756/PB/01 dated 17.10.001.*

*(Based on DoP&T O.M. No.35034/1/2000-Estt. (D) dated 11/14 September, 2001).*

*sd/-  
(K. Ganesan)  
Deputy Secretary*

*AG/MP – (Civ)(a) DGNCC/Pers(c) DGDE/Admin  
Air Hqrs/PC-5DGAFMS/DG-2(B) DGAQA  
NHQ/CP/D OFB Calcutta DGQA/Admin.-7B  
R&D/Orgn./DOP DPR CAO  
MP.4/Civ(a) R&D/DOP/MPD*

*MoD I.D. No.11(5)/99-D(Civ.I) dated 30-10-2001.”*

**6.** As a result of mergers of Labourer-Unskilled and DBW Semi Skilled and the instructions of the Government following the mergers made by the Pay Commission, promotion between Labourer Unskilled and DBW Semi Skilled, which fell into the same Pay Band and Grade Pay were to be ignored and ACP had to be granted



afresh. While, on this aspect, there is no dispute, the issue arises with reference to the interpretation of the clarifications obtained from the DOPT by respondent No.1.

7. On this clarification, the learned counsel for the applicant urges reference to the first sentence of the clarification which states that promotee from lower grade who has served for three years in Semi-Skilled Grade and after passing the prescribed trade test have been placed in the Skilled Grade, then the Semi Skilled Grade in such cases may need to be viewed only as a trainee scale and such placement in the Skilled Grade may not be treated as promotion or upgradation for the purpose of the ACP Scheme. To this interpretation, the respondents have argued that the employment from Semi-Skilled to Skilled can be ignored in the cases where individuals were holding the post of Skilled on the date of

granting ACP. Since that is not the case for the applicant, the MOD clarification obtained from the DOPT is not applicable in the present case. The applicant in their rejoinder have treated this interpretation as erroneous and misleading.

**8.** Apart from this, the applicants have also invited specific attention to the clarifications issued by DOPT under "Frequently Asked Question (FAQ)" on the scheme.

**9.** We have gone through the OA along with Annexures filed on behalf of the applicant. We have also gone through the reply along with Annexures filed on behalf of the respondents and have examined the files and cognized all relevant facts of the case.

**10.** We have heard the learned counsel for the applicant and the learned counsel for the respondents and carefully considered the facts and circumstance, law points and rival contentions in the case with regard to

the interpretation of the circular issued by the respondent No.1 after getting it clarified from the DOPT and are wholly in agreement with the interpretation made by the respondents. A plain reading of the circular at its second run-on sentence shows that in respect of trades where posts are sanctioned only in semi-skilled grades, if any, then regular incumbents of such posts in semi-skilled grade on promotion to skilled grade, where such avenues exist will be treated as being appointed on promotion and will not be covered by the above clarification. The applicants in the present case were not appointed against posts sanctioned in the Skilled Grade but only against posts sanctioned as Semi-Skilled. Even in the case of the applicant in OA No.517/2015, the applicant had been reverted from Skilled to Semi-Skilled but pay protection had been given to him in the Skilled Grade. Any

movement from Semi Skilled to Skilled would, therefore, count as a promotion for each and everyone of the applicants.

11. The clarifications by way of FAQs issued by the DOPT are very clear on how the ACP Scheme has to be applied after the introduction of VI Pay Commission and prior to the introduction of the MACP Scheme. Since posts (scales) have been merged, the promotion between various categories of labourers are to be ignored including the promotion to the level of Semi-Skilled Industrial Employee. Therefore, for a person such as the applicant in OA No.518/2015, who had been recruited on 03.07.1972 and received a penalty which expired on 14.07.2000 and who was granted ACP II from 15.07.2000, this ACP would have to be restored as on 01.01.2006. The applicant was then promoted as DBW Skilled on 16.01.2001 and as discussed above, this will

count as a promotion. Therefore, as on 01.01.2006, he had received only one promotion and was eligible for an ACP II subject to the computation of his period of service. He had also completed 30 years of service on 03.07.2002 but this period has been elongated by period of penalty which needs to be completed/computed and from that date or from 01.09.2008 when the MACP Scheme was introduced, whichever is later, he should get MACP III. Therefore, this applicant would be entitled to ACP II with effect from 01.01.2006 subject to exclusion of days not worked and penalty period. The eligibility in such cases of ACP would be in accordance with the clarification set out in the FAQs by the DOPT to the next hierarchy of posts of Highly Skilled Labourer with Grade Pay of Rs.2,400/- and then under the MACP III, as eligible, an increase of Grade Pay in the hierarchy of Grade

Pays to Rs.2,800/-.

**12.** With regard to the applicant in OA No.517/2015, who joined on 01.07.1976 and who was downgraded with pay protection to the level of Semi-Skilled Worker, all these categories up to Semi-Skilled have been placed in Pay Band I with Grade Pay of Rs.1,800/- by the VI Pay Commission. If it is considered that he had completed 24 years of service before 01.01.2006 without any promotion, then he is entitled to two ACPs as on 01.01.2006 raising his Grade Pay to the next in the hierarchy of posts of Skilled Labourer with Grade Pay of Rs.1,900/- and then of Highly Skilled Labourers with Grade Pay of Rs.2,400/-. If it is considered that he received promotion as Skilled Labourer prior to 01.01.2006, which is actually the case since his reversion did not affect his pay, he would be entitled to one ACP II on 01.01.2006. This conclusion is also drawn based on

the consideration that the promotion from Semi-Skilled to Skilled was an actual promotion and would count for computing ACP benefits. By virtue of this, the applicant would get the Grade Pay of Rs.2,400/- from 01.01.2006 for Highly Skilled Worker since he would have been fitted into the category of Skilled Worker as on 01.01.2006.

**13.** In respect of all the nine applicants in OA No.606/2015 who are languishing in the categories of labour Unskilled and Semi Skilled, they were fitted into the pay scale PB-I with Grade Pay of Rs.1,800/- as on 01.01.2006. Since promotion within these categories were to be ignored, they will receive ACP I afresh and be placed in PB-I with Grade Pay of Rs.1,900/-. Further, since they completed 24 years between 01.01.2006 and 01.09.2008, they will have to be awarded ACP-II in the hierarchy order of posts (not Grade

Pay). This would then place them with reference to their date of completion of service of 24 years after eliminating the days not worked and penalty periods in PB-I with Grade Pay of Rs.2,400/- in the Highly Skilled category.

**14.** From 01.09.2008, the MACP Scheme will come into play. All these nine applicants will then be eligible for third MACP with effect from 01.09.2008 for those who have completed 30 years of regular service previously and from the date of completion of 30 years of regular service for the others. In case they have received any further promotion subsequent to 01.01.2006 and prior to 01.09.2008 for the ACP Scheme and prior to 30 years in relation to the MACP Scheme, their eligibility for upgradation under the ACP Scheme that would have accrued to them on completion of 24 years and under the MACP Scheme on completion of 30 years



would have to be suitably regulated and may not then be available.

**15.** The respondents are directed to review the cases of the applicants on the above basis and to grant relief accordingly within a period of eight weeks from the date of this order.

**16.** The OA is accordingly disposed of and there shall be no order as to costs.

***(R. Vijaykumar)***  
***Member (Administrative)***

***(Arvind J. Rohee)***  
***Member (Judicial)***

*kmg\**