

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

O.A. No.63/156/2018

Date of decision: 02.5.2019

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

...

MES No.366374, Sh. Khem Chand Sharma, aged 67 years (Retired on 31.10.2010), now resident of Gian Chand Building, near Laxmi Narain Mandir, Totu, Shimla-11, Himachal Pradesh. (Group C).

... APPLICANT

VERSUS

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Engineer in Chief, E-in-C's Branch, Army Headquarters, Integrated HQ of MoD, Kashmir House, New Delhi.
3. Garrison Engineer, Jatogh Cantt., Shimla Hills.

... RESPONDENTS

PRESENT: Sh. Jagdeep Jaswal, counsel for the applicant
Sh. Vinod K. Arya, counsel for the respondents.

ORDER (Oral)

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SANJEEV KAUSHIK, MEMBER (J):-

1. Present O.A. has been filed wherein applicant has impugned order dated 19.9.2017 (Annexure A-1) whereby he has been denied benefit of second ACP in the pay scale of Rs.5000-8000 and third financial upgradation in the grade pay of Rs.4600/-. He has also sought direction to grant him second ACP in the pay scale of Rs.5000-8000 w.e.f. 9.8.1999 with all consequential benefit and third MACP from due date.
2. Facts are not in dispute.
3. Applicant was initially appointed on regular basis on the post of Valveman on 26.6.1974. The post of Valveman was reclassified as

Switch Board Attendant w.e.f. 19.11.1983 vide PTO dated 2.6.1997 (Annexure A-3). The post of Valveman as well as reclassified post of Switch Board Attendant was in the same pay scale, therefore, there was no financial upgradation while applicant was reclassified. The applicant was granted first financial upgradation on 9.8.1999 in the pay scale of Rs.4000-6000 vide order dated 17.9.2013. Applicant became due for second ACP in the pay scale of Rs.5000-8000 but the same was denied. When applicant was not granted second and third financial upgradation, he submitted representation for grant of the same which was rejected by passing impugned order. Hence this O.A.

4. Heard learned counsel for the parties.
5. Learned counsel for the applicant argued that since post of the applicant on which he was appointed i.e. Valveman was reclassified as Switch Board Attendant, therefore, respondents cannot say that service rendered by him as Valveman cannot be counted for grant of financial upgradation. Therefore, he prayed that the impugned order rejected claim of the applicant be quashed and set aside and respondents may be directed to grant him second and third financial upgradation from due date. He also relied upon judgment in the case of **P.K. Vivekanandan vs. U.O.I.** (OA No.207/JK/2012) decided on 18.7.2014 and **Fayaz Ahmed Mir & Anr. vs. UOI & Ors.** (O.A. No.1338/JK/2013 decided on 1.8.2014, where view taken by the respondents that if post has been reclassified then earlier service cannot be counted for financial upgradation was set aside.
6. Respondents have filed written statement wherein they have submitted that post of Switch Board Attendant is a promotional post from Motor Pump Attendant, therefore, service rendered by the

applicant as Valveman cannot be counted towards financial upgradation under ACP/MACP. In this regard, learned counsel for the respondents placed reliance on DoPT clarification dated 10.02.2000, particularly question no.8.

7. We have given our thoughtful consideration to the entire matter and are of the opinion that view taken by the respondents vide impugned order cannot sustain. Reliance placed upon DoPT clarification dated 10.02.2000 cannot be accepted because admittedly applicant entered into service as Valveman which was later on reclassified as Switch Board Attendant w.e.f. 19.11.1983 vide PTO dated 2.6.1997, therefore, respondents ought to have counted the earlier service rendered by the applicant for purpose of grant of ACP/MACP. Our view is also fortified by judgments in the case of P.K. Vivekanandan (supra), and Fayaz Ahmed Mir & Anr.(supra), which are based upon the judgment passed by the Hon'ble Supreme Court. Accordingly, the impugned order is hereby quashed and consequently, respondents are directed to grant benefit of second ACP and third MACP to the applicant. Arrears are, however, restricted to 18 month prior to date of filing of the O.A.
8. The O.A. stands allowed accordingly. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Date: 02.05.2019.
Place: Chandigarh.

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