

**Reserved****CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**  
**CIRCUIT SITTING : INDORE****Original Application No.201/00828/2016**

Jabalpur, this Monday, the 08<sup>th</sup> day of April, 2019

**HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER**  
**HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER**

Jagat Narayan Shukla, S/o Shri Brij Vallabh Ji Shukla, Age – 60 years, Occupation : Retd. Assistant Engineer, R/o 179 Kalidas Marg, Mandsaur - 458001  
-Applicant

**(By Advocate – Shri Prakhar Karpe)**

**V e r s u s**

1. Union of India through Secretary, Ministry of Finance, Government of India, New Delhi – 110001.
2. The Chief Controller, Govt. Opium and Alkaloid Factories, Jawahar Vyapar Bhawan, 19<sup>th</sup> Floor, Tolstoy Marg, New Delhi – 110001.
3. The General Manager, Govt. Opium and Alkaloid Factories, Neemuch (M.P.) - 458441  
-Respondents

**(By Advocate – Shri Kshitij Vyas)**

*(Date of reserving order : 14.03.2019)*

**O R D E R**

**By Navin Tandon, AM.**

The applicant is aggrieved that benefits of ACP/MACP have not been granted to him at the proper time.

2. The applicant has made the following submissions in this O.A:

2.1 He was appointed as Foreman (Electrical) with respondents on 01.10.1978.

2.2 The applicant was promoted as Assistant Engineer (Electrical) w.e.f. 20.09.2000. He superannuated from the post of Assistant Engineer (Electrical) on 30.06.2015.

2.3 The applicant submits that he was not granted the benefit of Assured Career Progression (ACP) scheme on 09.08.1999 circulated vide Office Memorandum dated 09.08.1999 (Annexure A-5).

2.4 He submitted his representation, which was rejected vide letter dated 01.02.2016 (Annexure A-4) enclosing the letter dated 16.05.2007 of Ministry of Finance.

3. The applicant has, therefore, sought for the following reliefs:

**“8. Relief Sought:**

In view of the aforesaid facts, it is, therefore most humbly and respectfully prayed that this Hon'ble tribunal may very graciously be pleased to call for the entire records of the case and after perusing the same:

- (i) Allow this application with costs,
- (ii) Set aside rejection order dated 28/01/2016-01/02/2016 (Annexure A/)
- (iii) Direct the respondent no.2 to grant due benefit on completion of 12 years of service under the ACP scheme 1999 from the entitled date i.e. 09/08/1999 (first financial up gradation).

- (iv) Direct the respondent no.2 to grant due benefit on completion of 24 years of service under the ACP scheme 1999 from the entitled date i.e. 01/12/2002 (second financial up gradation)
- (v) The respondents be further directed to give all consequential benefit to the applicant.
- (vi) Any other appropriate order or direction, which this Hon'ble court deem just and proper in the facts and circumstances of the present case, may kindly be passed in favour of the Petitioner.
- (vii) The applicant request to hear this matter at the circuit camp at Indore.”

4. The respondents have filed their reply in which the following submissions have been made:

4.1 The applicant was promoted as Assistant Engineer (Electrical) Group A Gazetted officer from pay scale 5500-9000 to 8000-13500 vide Ministry's order dated 28.09.2000 and his pay was fixed vide order dated 02.11.2000 (Annexure R-6).

4.2 He was granted second financial upgradation w.e.f. 01.09.2008 (PB-3 Grade Pay 6600/-) and third financial upgradation w.e.f. 01.10.2008 (PB-3 Grade Pay 7600/-) under MACP.

4.3 The ACP scheme of 09.08.1999 (Annexure A-5) clearly indicates that in respect of Group 'A' Central services (Technical/Non-Technical), no financial

upgradation under the Scheme is being proposed for the reason that promotion in their case must be earned. Since the applicant has already been promoted to Group 'A' post, which is not an isolated post, therefore, he is not entitled for any upgradation under ACP scheme. His channel of promotion from Assistant Engineer is Works Engineer. Since the applicant was Diploma holder, whereas essential qualification for Works Engineer is Bachelor in Engineering, hence, he was not eligible to the further promotion for the post of Works Engineer.

**5.** Heard learned counsel for the parties and perused the pleadings and documents available on record. The arguments were on the same lines as per O.A and counter reply.

**6.** We find that vide letter dated 03.02.2011 (Annexure A-1), the case of the applicant alongwith four other officials was considered and he was granted financial upgradation under the MACP scheme from the dates mentioned against him, which is as under:

Sl. No	Name and Designation	Date of Direct Recruitment post and pay scale	Date of completing service for promotion/upgradation		Effective Grade Pay under financial upgradation from the date	
			1 <sup>st</sup>	2 <sup>nd</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>
1	2	3	4	5	6	7
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5.	J.N.Shukla, Assistant Engineer (Elect) PB- 3, GP 5400/-	01.12.1978 Foreman (Elect)	20.09.2000 1 <sup>st</sup> promotion	--	01.09.2008 PB-3 Rs.6600/-	01.12.2008 PB-3 Rs.7600/-

7. The case of the respondents is that since he has already been promoted into Group 'A' service on 20.09.2000, he cannot be given any financial upgradation. The letter from Respondent No.2 to the Ministry dated 02.06.2005 (part of Annexure A-4) states that, "in this context, it is to mention that Shri Shukla is holding a Group 'A' post which is not an isolated post because the post of Assistant Engineer is the feeder cadre for the post of Works Engineer. But for promotions to the grade of Works Engineer, the educational qualification prescribed for direct recruitment i.e. B.E. is essential. As Shri Shukla is not fulfilling the eligibility criteria for the promotion to the next grade, he is not eligible for 2<sup>nd</sup> ACP as per existing Rules."

**7.1** The Finance Ministry in its letter dated 16.05.2007 (Annexure A-4) has stated as under:-

“I am directed to refer to your letter F.No. IV(8)2/EC/Confl./2003-2019 to 2110 dated 1/2.6.2005 on the subject cited above and to state that the matter was examined in detail and it was observed that Shri J.N. Shukla Asstt. Engineer (Electrical) of GOAW, Neemuch does not fulfill the eligibility criteria for promotion to the grade of Works Engineer, he cannot be given financial up-gradation (2<sup>nd</sup> stage). Further, since the ACP Scheme for grant of financial up-gradation was introduced w.e.f. 9.8.1999 and Shri J.N. Shukla was promoted to the next grade from 29.9.2000 as per guidelines issued by DOP&T ‘In respect of Group ‘A’ Central Services (Technical/Non-Technical), no financial up-gradation under the Scheme is being proposed for the reasons that promotion in their case must be earned. As such, since Shri J.N. Shukla has already earned one promotion w.e.f. 29.9.2000 his case for ante-dating of the date for grant of financial up-gradation from August, 1999 cannot be considered.”

**7.2** The ACP scheme came into force from 09.08.1999, the date on which the applicant was Foreman and not a Group ‘A’ officer. He had also completed 12 years of qualifying service till that date. Ministry’s letter dated 16.05.2007 does not specify why 1<sup>st</sup> financial upgradation cannot be ante-dated. Therefore, it is clear to us that he should have been awarded the first financial upgradation w.e.f. 09.08.1999.

**7.3** Regarding the second financial upgradation in regard to the ACP scheme, the applicant’s case is that he should have

been given the upgradation on 01.12.2002 on completion of 24 years of service.

**7.4** The DoP&T instructions dated 09.08.1999 (Annexure A-5) regarding the ACP scheme states that Group ‘A’ Central services promotion has to be earned and no financial upgradation was proposed. However, financial upgradation under ACP scheme was allowed in a modified form to isolated posts in Group ‘A’ categories to mitigate hardship in case of acute stagnation.

**8.** The scheme does not specify what is an isolated Group ‘A’ category except stating “which have no promotional avenues”. However, it is commonly understood that Group ‘A’ officers in Central services have an avenue of promotion, which is available to every member of the cadre, without acquiring any new qualification.

**9.** In the instant case, the applicant was promoted as Assistant Engineer in the year 2000 on his existing qualification i.e. Diploma in Engineering. The said post has been designated as Group ‘A’ by the respondent department. He was not eligible

for promotion to Works Engineer, as the eligibility criteria for Works Engineer was Bachelor in Engineering.

**9.1** It is obvious from the above that, even though the applicant has been designated as occupying a Group 'A' post, he does not have the avenue of promotion as Works Engineer unless he acquires extra qualification, namely; Degree in B.E.

**9.2** Since the applicant does not have any avenue of promotion available to him with his existing qualification, therefore, to apply the condition of earning his promotion for Group 'A' cadre does not appear logical. Hence, we consider that he was eligible to be considered for second financial upgradation under the ACP scheme on completion of 24 years of service, as was available to isolated categories.

**10.** Subsequently, the MACP scheme was introduced w.e.f. 01.09.2008. Vide letter dated 03.12.2011 (Annexure A/1), the applicant has been granted 3<sup>rd</sup> MACP w.e.f. 01.12.2008, when he completed 30 years of the qualifying service.

**11.** From the above, it is clear that the applicant should have been granted the first financial upgradation under ACP on 09.08.1999 and second financial upgradation on 01.12.2002.

The third financial upgradation, as per MACP, has already been granted to him on completion of 30 years of service.

**11.1** However, since the applicant has approached this Tribunal in the year 2016 regarding the issue of pay fixation for the year 1999/2000, we are unable to grant any consequential financial benefits at this belated stage. This is in line with Hon'ble Apex Court's judgment in **Union of India vs. Tarsem Singh** (2008) 8 SCC 648, wherein financial benefits were restricted to three years before the date of filing Writ Petition.

**11.2** No financial benefits are available to him after 3<sup>rd</sup> financial upgradation under MACP, as it has been correctly given to the applicant. Consequently, the pension has been fixed correctly.

**12.** The O.A is accordingly disposed of. No costs.

**(Ramesh Singh Thakur)**  
**Judicial Member**

am/-

**(Navin Tandon)**  
**Administrative Member**