

**Central Administrative Tribunal
Principal Bench**

OA No. 3125/2018

Orders Reserved on 29.01.2019

Pronounced on:13.02.2019

Hon'ble Mr. Pradeep Kumar, Member (A)

D.K. Shami, aged-56 years,
S/o Shri Karan Singh,
Working as Fire Adviser Group 'A',
R/o H.No.A-7, 3rd Floor,
Shanti Kunj,
Church/Mall Road,
Vasant Kunj,
New Delhi-110070.

-Applicant

(By Advocate Shri Yogesh Sharma)

-Versus-

1. Union of India through
The Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.
2. The Under Secretary to the Govt. of India,
Disaster Management Division,
Ministry of Home Affairs,
NDCC-II Building,
B Wing, 3rd Floor,
Jai Singh Road,
New Delhi-1.
3. The Director General,
(FS HG & CD),
East Block, VII, Level-7,
R.K. Puram,
New Delhi-110066.

-Respondents

(By Advocate Shri Gyanendra Singh)

ORDER

The applicant had joined as Deputy Fire Adviser (DFA) under Director General of Fire Safety, Civil Defence and Home Guards, an attached office of Ministry of Home Affairs (MHA), on 02.02.1994 as a direct recruit in the pay scale of Rs.10000-15200. One Assured Career Progression (ACP) Scheme was introduced by the Government vide Department of Personnel and Training (DoP&T) OM dated 09.08.1999. This Scheme envisaged two financial upgradations in the departmental hierarchy of pay scales, if one is stagnating in his post, first ACP being after 12 years of service and second ACP being after 24 years of service.

Accordingly, the respondents had processed the case for first ACP in respect of the applicant on completion of 12 years of service, i.e., w.e.f. 01.02.2006. It is seen that the post of DFA was treated as an isolated post and first ACP was accordingly processed in the next standard/common higher scale of Rs.12000-16500.

However, the MHA vide their letter dated 26.09.2006 advised the Director General of NERF & Civil Defence that as per the composite method of promotion for the post of Fire Adviser (FA), the Recruitment Rules (RRs) of 1990

provided that a DFA can also apply for the post of FA along with other officers as well as other direct applicants and in case the DFA is eventually selected, he will be posted as FA and in that case it will be treated as a promotion for DFA. Keeping this in view, the MHA proposed that promotional scale for DFA should be treated to be Rs.14300-18300. This was thereafter considered by the MHA and granted as first ACP to the applicant w.e.f. 01.02.2006.

2. Subsequently, the Government introduced another Scheme, viz. Modified Assured Career Progression (MACP) in lieu of ACP vide OM dated 19.05.2009 and this was to take effect from 01.09.2008. MACP provided for three financial upgradations on completion of 10 years, 20 years and 30 years of service, if one is stagnating in his post for this period. The applicant completed 20 years of service on 02.02.2014 and a Screening Committee comprising of DG, Fire Service, Inspector General of Fire Service and Joint Secretary considered the case of the applicant and recommended for grant of second financial upgradation under MACP on 02.05.2014.

However, the MHA did not approve these recommendations, who vide their letter dated 03.07.2014, instead advised the following:

“4. Accordingly, the grant of financial up-gradation under ACP scheme in 2007 in respect of Shri D.K. Shami w.e.f. 1.2.2006 is declared void-ab-initio. Necessary action may be initiated to recover the excess payment made on account of pay and allowances to Shri D.K. Shami w.e.f. 1.2.2016 till date as he is actually eligible for grant of 1st financial up-gradations under the MACP Scheme which came into force w.e.f. 1.9.2008. Responsibility should also be fixed upon the officer who has granted 1st financial up-gradation w.e.f. 1.2.2006 on 15.2.2007 when Shri Shami was not eligible for financial up-gradation under the ACP Scheme.”

3. With this, the MHA held that even the first ACP was *void ab initio*. The applicant made a representation dated 11.07.2014. However, this was not agreed to and vide MHA letter dated 21.10.2014 the salary of the applicant was re-fixed in the scale of PB-3 Rs.15600-39100 plus Grade pay Rs.6600/-. (The corresponding scale for pre-revised Rs.10000-15200). It was also ordered that excess already paid needs to be recovered.

4. Aggrieved by this rejection of grant of ACP benefit and the order for recovery, the applicant approached the Tribunal in OA-3901/2014. The judgment in the said case was pronounced on 07.10.2016 with the following directions:

“8. In view of the discussions in the foregoing paras, we dispose of this OA with the following directions to the respondents:

- a) The respondent no.2 shall consider the Annexure A-4 representation of the applicant dated 11.07.2014 and pass a reasoned and speaking order within a period of 03 months from the date of receipt of a certified copy of this order.
- b) While considering the Annexure A-4 representation of the applicant, the respondent no.2 shall also bear in mind the RRs of 1971 under which the applicant was appointed to the post of Deputy Fire Adviser as to the said post being an isolated post or otherwise.
- c) Till such a decision is taken by the respondent no.2 on the Annexure A-4 representation of the applicant, no recovery shall be effected from him by respondent no.2.

5. In compliance thereof, the respondents considered the representation dated 11.07.2014 and passed a reasoned and speaking order vide order dated 01.11.2017. The operative part of this order reads as under:

“4. ACP scheme notified vide DoPT OM No.35034/1/97-Estt.(D) dated 9th August 1999 states 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. Hence, it has been decided that there shall be no benefits under the ACP Scheme for Group ‘A’ Central Services (Technical/Non-Technical). However, isolated posts in Group ‘A’ categories which have no promotional avenues shall also qualify for benefits under ACP Scheme.

5. In this regard, it is mentioned that DoPT has not issued any instructions, which provide definition of an isolated post. However, generally isolated post is one which does not have any feeder/promotional grade. In this case, the hierarchy of the post Deputy Fire Adviser is having a post of Fire Advisor and thus having a

promotional avenue. Therefore, it cannot be said that the post is an isolated post.

6. Therefore, Sh. Shami, who was holding the post of Deputy Fire Advisor (which is a Group 'A' post) cannot be allowed the benefit of financial upgradation w.e.f. 1.2.2006 under ACP Scheme.”

6. Various representations made by the applicant for waiving off the recovery were considered by the respondents and rejected vide their letter dated 06.06.2018. Thereafter, the respondents worked out that an amount of Rs.37,04,630/- was paid in excess and needs to be recovered. An office order to this effect was issued on 21.06.2018. The applicant made another representation dated 22.06.2018 and referred to a judgment of the Hon'ble Apex Court in **State of Punjab & Ors. v. Rafiq Masih (White Washer)**, [Special Leave Petition (C) No.11684 of 2012, decided on 08.07.2014], wherein recoveries from staff were prohibited under certain conditions. This was considered by the respondents and was rejected vide their letter dated 26.07.2018.

Thereafter, vide another office order dated 01.08.2018 it was advised that recovery will be started from the salary for the month of August, 2018 as per the schedule advised earlier in the office order of 21.06.2018.

7. Feeling aggrieved, the instant OA has been filed by the applicant.

8. Meanwhile, one post of FA was advertised. The applicant also applied for this post and he was selected by the UPSC and he had since joined as FA on 08.12.2014. This post carried the pay scale of Rs.14300-18300, which was revised to PB-4 Rs.37400-67000 plus Grade Pay of Rs.8700/- on implementation of VI CPC.

9. The applicant brought out the RRs for the post of DFA as well as FA, which were notified on 22.12.1990.

The relevant extracts are as under:

(1) Name of post	(2) Number of posts	(11) Method of recruitment whether by direct recruitment or promotion or by deputation/transfer and percentage of the vacancies to be filled by various methods	(14) Circumstances in which Union Public Service Commission is to be consulted in making recruitment.
Deputy Fire Adviser	1* (1990)	By transfer on deputation (including short-term contract) failing which by direct recruitment	Selection on each occasion shall be made in consultation with the Union Public Service Commission.
Fire Adviser	1* (1990) Subject to variation dependent on work-load	By promotion/transfer on deputation (including short-term contract) failing which by direct recruitment	Selection on each occasion shall be made in consultation with the Union Public Service Commission.

It was brought out that neither is there any feeder cadre for the post of DFA nor is there any channel of promotion to a higher post from DFA. In respect of FA also the method of recruitment includes promotion/transfer on deputation, contractual engagement as well as direct recruitment and all the candidates have to apply to UPSC. It is under this RR that DFA can also apply and in case he is selected he will be posted as FA and in that event it will be treated to be a promotion from DFA.

The applicant pleads that under such conditions the post of DFA has to be treated as an isolated post and it was rightly treated to be an isolated post when first ACP was granted to him by MHA way back on 01.02.2006.

10. The applicant also brought out the relevant provisions of ACP Scheme notified vide OM dated 09.08.1999. The same are extracted below:

“2. Group ‘A’ Central Services

2.1 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. Hence, it has been decided that there shall be no benefits under the ACP Scheme for Group ‘A’ Central services (Technical/Non-Technical). Cadre Controlling Authorities in their case would, however, continue to improve the promotion prospects in organisations/cadres on functional grounds by way of

organisational study, cadre review, etc. as per prescribed norms.

3. Group 'B', 'C' and 'D' Services/posts and isolated posts in Group 'A', 'B', 'C' and 'D' Categories

3.1 While in respect of these categories also promotion shall continue to be duly earned, it is proposed to adopt the ACP Scheme in a modified form to mitigate hardship in cases of acute stagnation either in a cadre or in an isolated post. Keeping in view all relevant factors, it has, therefore, been decided to grant two financial upgradations [as recommended by the Fifth Central Pay Commission and also in accordance with the Agreed Settlement dated September 11, 1997 (in relation to Group 'C' and 'D' employees) entered into with the Staff Side of the National Council (JCM)] under the ACP Scheme to Group 'B', 'C' and 'D' employees on completion of 12 years and 24 years (subject to condition no.4 in Annexure-I) of regular service respectively. Isolated posts in Group 'A', 'B', 'C' and 'D' categories which have no promotional avenues shall also qualify for similar benefits on the pattern indicated above. Certain categories of employees such as casual employees (including those with temporary status), ad-hoc and contract employees shall not qualify for benefits under the aforesaid Scheme. Grant of financial upgradations under the ACP Scheme shall, however, be subject to the conditions mentioned in *Annexure-I*."

11. The applicant also drew attention to certain clarifications issued by DoP&T on ACP Scheme vide their OM dated 10.02.2000 as under:

S.No.	Point of Doubt	Clarification
10.	For isolated posts, the scale of pay for ACPS as recommended by the Pay Commission may be implemented and not the standard/ common pay-scales indicated vide Annexure-II of the Office Memorandum dated August 9, 1999.	For isolated posts, the scales of pay for ACPS shall be the same as those applicable for similar posts in the same Ministry/ Department/Cadre except where the Pay Commission has recommended specific pay-scales for mobility under ACPS. Such specific cases may be examined by respective Ministries/ Departments in consultation with the Department of

		Personnel and Training. In the case of remaining isolated posts, the pay-scales contained in Annexure-II of the Office Memorandum dated August 9, 1999 (ACPS) shall apply.
xx	xxx	xxx
31.	What is an isolated post for the purpose of the ACP Scheme.	Isolated post is a <i>stand alone</i> post, having neither feeder grade nor promotional grade. As such, a post having no promotional grade but having a feeder grade and vice-versa shall not be treated as isolated post for the purpose of ACPS.

12. The applicant pleads that it is admitted by the respondents vide their speaking order dated 01.11.2017 (para 5 supra, sub para 5 thereof), that there is no criteria specified for identification of isolated posts. Further, in view of the provisions of ACP Scheme in para 3.1 (para 10 supra), the isolated Group 'A' posts are eligible for upgradation and the clarifications given under OM dated 10.02.2000 also indicate that the post of DFA qualifies to be an isolated post (para 11 supra). Accordingly, grant of 1st ACP by the respondents on 01.02.2006 was done and its withdrawal after 07 years cannot be accepted.

In respect of the attributes of an isolated post, the applicant relied upon the judgment by the Tribunal in **B.K. Tiwary v. Union of India**, which was decided on

15.03.2007 [<http://indiankanoon.org/doc/967907/>]. The applicant therein was working as Deputy Adviser (Fertilizer) under the Planning Commission and it appears that he also could apply to some higher post to the UPSC under similar circumstances as that of FA in instant case and if selected, he was to be treated as on promotion. However, this view was not accepted by the Tribunal. The relevant parts of this judgment are reproduced below:

“2. Applicant, who joined as a Deputy Adviser (Fertilizer) with a background of B. Tech in Chemical Engineering and M. Tech as well, had applied from time to time to other disciplines under the Planning Commission (Joint Adviser Recruitment (Amendment) Rules, yet against the discipline of applicant in his cadre as there is no promotional avenue, being an isolated post, as per paragraph 3.1 of the ACP Scheme of 9.8.1999 it is contended that applicant is entitled to the benefit of upgradation under the ACP Scheme. The decision of the DoP&T to deny as composite method of promotion is available, is not in accordance with law. It is also stated that an isolated post is neither feeder category nor a promotional post. Applicant represented with detailed contentions that his post as a Deputy Adviser (Fertilizer) is a general cadre service. The composite method not being a regular avenue of promotion in the same cadre, denial of the ACP, which has been accorded to others in Planning Commission and elsewhere, is an invidious discrimination, violative of Articles 14 and 16 of the Constitution of India.”

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“8. As regards decision of DoP&T on promotional avenue of composite method disentitling Group 'A' officers in Planning Commission to be accorded the benefit of ACP, DoP&T clarification dated 12.9.2003 as to ACP Scheme for Central Government civilian employees clarified that the pay scale of Rs. 12000-18000 has been deleted from the array of pay scales indicated in Annexure-2 of the DoP&T OM dated 9.8.1999, but holder of an isolated Group 'A' post has been made entitled, on completion of 12 years' service, to the grade of Rs. 14300-18300. Moreover,

clarification No. 42, promulgated vide DoP&T OM dated 18.7.2000, pertaining to employees in Group 'A' eligible for promotions to various grades on multiple channel of promotion, it has been decided as a clarification that the existing hierarchy of the grade to which one is promoted has to be adhered to for grant of ACP. The decision of the DoP&T applying composite method of promotion as an avenue for promotion is at variance, which cannot be countenanced.

9. In the result, for the foregoing reasons, we rule that applicant has succeeded to establish that he was holder of an isolated post. Accordingly, OA is partly allowed. Impugned order is set aside. Matter is remitted back to respondents for reconsideration for grant of ACP to applicant in the pay scale prayed for in paragraph-8, by passing a detailed and speaking order within a period of two months from the date of receipt of a copy of this order.”

13. In view of the foregoing, the applicant sought the following reliefs:

“(i) That the Hon’ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 3.7.2014 and order dated 1.11.2017, declaring to the effect that the same are illegal, arbitrary and against the rules and consequently pass an order directing the respondents to restore the first financial upgradation w.e.f. 1.2.2006 with all the consequential benefits including arrears of pay and allowances.

(ii) That the Hon’ble Tribunal may further graciously be pleased to pass an order of quashing the impugned order dated 21.10.2014, orders dated 1.8.2018, order dt. 21.6.2018, order 6.6.2018 and order dt. 26.7.2018, declaring to the effect that the whole action of the respondents recovering the alleged over payment of Rs.37,04,630/- from the applicant is illegal, arbitrary and against the law and consequently the applicant is entitled for all the consequential benefits including refund of recovered amount if any with interest.

(iii) Any other relief which the Hon’ble Tribunal deem fit and proper may also be granted to the applicants along with the costs of litigation.”

Interim relief was also sought in the form of staying the operation of the orders dated 01.08.2018 and

21.06.2018 by restraining the respondents to recover any amount from the applicant. Interim stay against such recoveries was ordered by the Tribunal vide order dated 23.08.2018, which is still in force.

14. The respondents opposed the OA. They brought out that the post of DFA cannot be treated to be an isolated post as there is channel of promotion to the post of FA. The respondents pleaded that though the RR for the post of FA permits candidates to be brought on deputation or on contract or on direct recruitment but the DFA can also apply for the same and if selected he will be treated to be on promotion. Accordingly, the post of DFA cannot be treated to be an isolated post.

The respondents also drew attention to para-2.1 of the ACP Scheme dated 09.08.1999 which prohibits any ACP benefit to a Group 'A' Central Service (para 10 supra). Accordingly, the ACP was not admissible to start with and it was granted wrongly and since it leads to certain over expenditure, recovery of excess payment needs to be made to avoid loss to Public Exchequer.

15. The respondents also brought out that the applicant was eligible for grant of MACP benefits only, a Scheme which came into effect on 19.05.2009 and with this the

first MACP benefit was to be given w.e.f. 01.09.2008 and 2nd MACP w.e.f. 01.02.2014 on completion of 20 years of service. The specific averments made in the counter-affidavit are as under:

“(k) Shri Shami should have been granted first financial up-gradation only after 19.05.2009 w.e.f. 01.09.2008 in the immediate next higher Grade of Pay of Rs.7600 in the Pay Band – 3 of Rs.15,600-39,100.

(l) And the 2nd financial up-gradation should be granted w.e.f. 01.02.2014 i.e., after completion of 20 years of regular service in the Grade pay of Rs.8700 in the Pay Band – 4 of Rs.37,400-67,000.”

The respondents also brought out that the judgment of the Hon'ble Apex Court in **Rafiq Masih (Whiter Washer)** (para 6 supra) is in the context of Group 'C' & 'D' employees whereas the applicant is a Group 'A' employee and as such the same is not applicable.

16. The matter has been heard at length. Shri Yogesh Sharma, learned counsel represented the applicant and Shri Gyanendra Singh, learned counsel represented the respondents.

17. The facts of this case are not in doubt. The applicant was granted first ACP benefit w.e.f. 01.02.2006. As per the processing done by the respondents, initially the case was being processed to grant Rs.12000-16500 and it was based on the letter by MHA dated 26.09.2006

that the first ACP was granted in the pay scale of Rs.14300-18300. It is after 07 years when the case for second MACP was recommended by the Committee at the level of DG, Fire Service that the respondents realised that first ACP was given wrongly and accordingly it was proposed to recover the excess payment amounting to Rs.37,04,630/-.

There had been no misrepresentation or suppression of fact by the applicant while claiming first ACP benefits.

Recovery of such a huge amount from the applicant at this late stage is sure to cause severe financial stress to the family and cannot be agreed to.

18. Keeping in view that the respondents have admitted that there is no guidelines to identify an isolated post and keeping in view the RRs for the post of DFA and FA, it is the Tribunal's view that the post has same attributes as were there for the post of Deputy Adviser (Fertilizer) under Planning Commission, which was adjudicated by the Tribunal in their decision dated 15.03.2007 (para 12 supra). Reliance on this judgment was not opposed by respondents.

Notwithstanding the proviso that DFA who applies for the post of FA and gets eventually selected by the UPSC, shall be treated to be on promotion, it is Tribunal's view that the post of DFA is to be treated as an isolated post. In keeping with this and the provisions of ACP Scheme under para 3.1 and the subsequent clarifications dated 10.02.2000, are attracted to the post of DFA.

19. In view of the foregoing, the respondents' office orders dated 03.07.2014 and 01.11.2017 are hereby quashed with all consequential benefits. The OA is allowed.

There shall be no order as to costs.

(Pradeep Kumar)
Member (A)

'San.'