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Central Administrative Tribunal  
Principal Bench

O.A.No.278/2003

Hon'ble Shri Shanker Raju, Member (J)  
Hon'ble Shri R.K.Upadhyaya, Member (A)

New Delhi, this the 2nd day of September, 2003

Sh. V.K. Yadav  
Asstt. Engineer (C)  
Constn. Divn. No.1  
CPWD, Curzon Road  
(Barracks), Kasturba Gandhi Marg  
New Delhi. ... Applicant

(By Advocate: Sh. Sohan Lal)

Vs.

1. Union of India through  
its Secretary  
Ministry of Urban Affairs &  
Poverty Alleviation, GOI  
Nirman Bhawan  
New Delhi.
2. Director General of Works  
CPWD, Nirman Bhawan  
New Delhi.
3. The Chief Engineer (P&P)  
CPWD, Curzon Road Barracks  
Kasturba Gandhi Marg  
New Delhi. ... Respondents

(By Advocate: Sh. Mohar Singh)

O R D E R (Oral)

By Shri Shanker Raju, Judicial Member:

Respondents' order dated 18.12.2002, whereby denying the applicant second financial upgradation under Assured Career Progression Scheme (hereinafter called as "ACP Scheme"), has been assailed. Quashment of the above order has been sought with directions to consider the applicant for grant of upgradation w.e.f. 6.8.2000 along with arrears.

2. Applicant was appointed as Junior Engineer in CPWD on 6.8.1976 and was promoted as Assistant Engineer on 23.11.1993.

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3. The ACP Scheme was promulgated on 9.8.1999 with an object to mitigate hardship in case of acute stagnation. It is irrespective of the promotion earned, and to improve the promotional <sup>h</sup>prospects. Clarifications have been issued in pursuance of ACP Scheme on the issue.

4. Applicant was entitled on completion of 24 years of regular service on 13.9.2000 for grant of second upgradation. His case was to be considered in the first half of the financial year, i.e., January, 2000. The charge-sheet was served upon under Rule 14 of the CCS (CCA) Rules, 1965 on 9.2.2001.

5. The name of applicant was considered by the Screening Committee for grant of upgradation in the pay scale of Rs.10000-15200 on 10.10.2001 and was placed under sealed cover.

6. Juniors of the applicant, who had completed 24 years had been given upgradation on 21.11.2001. Applicant made a representation to the respondents for grant of upgradation and objecting to sealed cover procedure adopted. Finding no response, OA 2720/2002 filed by the applicant was disposed of on 22.10.2002 to dispose of the representation of the applicant.

7. By an order dated 18.12.2002 request of the applicant was rejected on the ground that as he had been facing disciplinary proceedings, his case has been placed under sealed cover and moreover, grant of second upgradation under the ACP Scheme to the Junior

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Engineers after completion of 24 years of service is under examination of the Government, giving rise to the present OA.

8. Sh. Sohan Lal, learned counsel for applicant, contends that as per Clause 6.3 of the ACP Scheme, contained in OM 9.8.1999 Screening Committee should follow the time Schedule and to meet twice in a financial year. Accordingly, the Screening Committee have to process the case which would attain maturity during the period 1st April to 30th September and in the first week of January of that year. The first Screening Committee as per Clause 6.4 after promulgation of the Scheme is to be held on 31.3.2000 for grant of benefits. However, acknowledging the facts that in ACP Scheme as per the Annexure, one of the conditions for grant of benefit is that the same shall be subjected to norms governing normal promotion and for pending proceedings, consideration would have to be placed under sealed cover. However, it is stated that the relevant date as it is analogous to the normal promotion rules, is to relate back to the date of meeting of the Screening Committee which was to schedule in case of the applicant in the first week of January, 2000. As the charge-sheet has been issued to the applicant in February, 2001, a subsequent event, would not effect the promotion and sealed cover resorted to is not in accordance with rules.

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9. Applicant's counsel heavily relies upon the case of the Apex Court in Union of India v. K.V. Janakiraman, AIR 1991 SC 1010 as well as Union of India & Others vs. Dr. (Smt.) Sudha Salhan, 1998(2) AD (SC) 306.

10. In this view of the matter, it is stated that non-consideration of the case of the applicant in January, 2000 has resulted in denial of the benefits which cannot be countenanced and is violative of Articles 14 and 16 of the Constitution of India.

11. On the other hand, Shri Mohar Singh, learned counsel for respondents stated that in view of the guidelines/conditions as the applicant was facing disciplinary proceedings, his case was placed under sealed cover. It is further stated that by referring to Annexure-I and Clause 4 of the ACP Scheme, the first financial upgradation shall be allowed after 12 years of regular service and second upgradation after 12 years from the date of first financial upgradation. As the applicant was promoted in 1993 would give right only after 12 years from this date.

12. It is stated that ACP Scheme shall be available if no regular promotion during the prescribed period of 12 and 24 years was allowed. As on the date of meeting of the Screening Committee, the applicant was involved in vigilance case, the same is placed under sealed cover and as financial upgradation is purely personal, question of juniors being accorded the same and discrimination would not arise.

13. It is stated that matter regarding further grant of second financial upgradation to Junior Engineers under the ACP Scheme has been kept in abeyance and has been referred to the Ministry for approval. It is further denied that applicant was not considered for grant of ACP on becoming eligible. As the applicant has become due on 12.9.2000, he could be considered for the first time on 10.10.2001 and on that date due to vigilance case, the decision taken by the respondents cannot be found fault with.

14. In the rejoinder, applicant reiterates his pleas taken in the OA.

15. We have carefully considered the rival contentions of the parties and perused the material on record.

16. The ACP Scheme, introduced by the Government, is basically for improving the promotional prospectus. It is a modified form to mitigate hardship in case of acute stagnation. The ACP Scheme in no manner effects the normal or regular promotion. A Screening Committee is to be constituted to examine the case of the Government servant for grant of benefits under the Scheme. As per Clause 6.3 of this Scheme, contained in OM 9.8.1999 it is mandated upon the Screening Committee to consider the case in the first week of January and to consider the cases which are matured during the second half i.e. October to March. Accordingly, had the Committee being constituted in the present case in January 2000, the same would have considered the cases of persons

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attaining maturity from April 2000 to September, 2000. Whereas in the present case, Screening Committee has been constituted and had considered the cases only on 10.10.2001 which is contrary to the guide-lines.

17. Though there cannot be a denial that while considering the case all the norms, which are laid down for normal promotion, are to be followed in consideration for upgradation in ACP Scheme, the sealed cover procedure provided for normal promotion in case of person facing disciplinary proceedings and criminal case on the date of DPC would also apply for consideration under ACP Scheme.

18. However, in the present case, as the Screening Committee has not considered the case in the first week of January, 2000, when the applicant's case was matured as he has completed 24 years of regular service on 13.9.2000, subsequent Screening Committee taking note of the disciplinary proceedings initiated on 9.2.2001 placed the case of the applicant under sealed cover. A sealed cover procedure is applicable in ACP on the date of Screening Committee. As per the time schedule if the Screening Committee had been constituted and considered the case of the applicant in January, 2000, in absence of any proceedings against him, his case would have been cleared for second financial upgradation. The delay in constituting the Screening Committee is not at all attributed to the applicant and has also not been explained with cogent reasons by the respondents.

19. As the aforesaid time limit is to be adhered to avoid undue strain in constituting the Screening Committee cannot be countenanced.

20. In so far as the sealed cover procedure<sup>h</sup> is concerned, as on the assumption that the Screening Committee was to held in the first week of January, 2000, the applicant, against whom charge-sheet has been issued in February, 2001, on a subsequent event, his case cannot be placed under sealed cover as on the date of DPC he was not facing any disciplinary proceedings.

21. In this view of the above, we are of the considered view that consideration of the applicant for second financial upgradation requires review.

22. In so far as the contentions put-forth that the applicant was promoted in 1993, he is not entitled for promotion till 2005 is concerned, as per the clarification on ACP issued by the DoPT dated 10.2.2000, and in view of the serial No.25 on a point of doubt as to whether an employee may be given second upgradation under ACP Scheme as soon as he completes 12 years of regular service from the date of his earlier promotion or as soon as he completes 24 years of regular service whichever is earlier, it has been clarified that grant of the first regular promotion prior to completion of 12 years of regular service from the direct entry grade shall have no bearing on the periodicity of the second upgradation under ACP

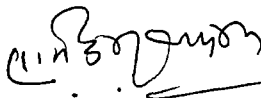
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Scheme which shall be granted only after completion of 24 years of regular service and only if second regular promotion has not been earned in between.

23. In view of the above clarification, as the applicant was promoted in 1993 and was not accorded second regular promotion, on completion of 24 years of regular service, i.e., in September, 2000 has entitled him to be accorded second upgradation under ACP Scheme.

24. In the result, for the foregoing reasons, OA is partly allowed. Impugned order is quashed and set-aside. Respondents are directed to review the case of the applicant through a Screening Committee and consider the case for second financial upgradation ignoring the disciplinary proceedings. In the event, applicant is found fit otherwise, he shall be accorded the benefit on the date of completion of 24 years of service with all consequential benefits within a period of three months from the date of receipt of a copy of this order. No costs.

  
(R.K. Upadhyaya)  
Member (A)

  
(Shanker Raju)  
Member (J)

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