

Central Administrative Tribunal  
Principal Bench

OA No. 2228 of 2003

New Delhi, this 17<sup>th</sup> day of September, 2004

**Hon'ble Shri Kuldip Singh, Vice Chairman (J)**  
**Hon'ble Shri S.A. Singh, Member (A)**

Shri Mohd. Yaqub s/o Sh. Abdul Rehman,  
R/o R-293/21, Gali No. 8,  
Madanpuri, West Sagarpuri,  
New Delhi – 110 046.

...Applicant

(By advocate: Shri Shakeel Ahmed)

-versus-

1. Commandant,  
Central/Ordnance Depot,  
Delhi Cantt – 110 010.
2. Director General of Ordnance Services,  
D.H.R., P.O. New Delhi – 110 011. ....Respondents

(By Advocate: Shri R.N. Singh)

**O R D E R (ORAL)**

**By Mr. Kuldip Singh, Vice Chairman (J)**

Applicant in this O.A. is aggrieved by non-grant of benefit of pay scale of Rs. 4000-6000/- as first financial upgradation after completion of 12 years of regular service as Electric Crane Driver under Assured Career Progression Scheme (for short 'ACP') w.e.f. 30.4.1999.

2. The facts, as alleged by the applicant, are that he was recruited as Labourer in Remount Depot on 17.11.1964 at Saharanpur. Thereafter he was transferred to the Central Ordnance Depot (for short COD) Delhi Cantt on 22.10.1965 where he worked upto 30.4.1987 as Labourer.

*[Signature]*

3. After having been declared successful in the departmental examination held for the post of Electric Crane Driver in the COD, Delhi Cantt, his pay was fixed at Rs. 1150/- in the grade of Rs. 950-1500/-, which was revised after coming into force of the Vth Central Pay Commission and he was put in the pay scale of Rs. 3050-4590/- w.e.f. 1.1.1996. The applicant also retired from the service on attaining the age of superannuation w.e.f 30.11.2000.

4. It is further alleged that vide OM dated 9.8.1999 the Central Government has introduced the ACP Scheme under which two financial upgradations are to be granted to Group 'B', 'C' and 'D' employees on completion of 12 years and 24 years of regular service respectively. It is further stated that the applicant, who was promoted as Electric Crane Driver w.e.f. 1.5.1987, had completed 12 years regular service as Electric Crane Driver on 30.4.1999 and had thus become eligible for award of first financial upgradation to be put in the grade of Rs. 4000-6000/- w.e.f. 1.5.1999. However, the authorities declared the applicant to be entitled to the scale of Rs. 3200-4900/- on upgradation under ACP Scheme instead of the scale of Rs. 4000-6000/- which is wrong and prejudicial to the applicant.

5. It is further stated that as per the hierarchy of service, the next promotion of the applicant has to go to the scale of Rs. 4000-6000/- and, in fact, similarly situated person, namely, Sh. Pyarelal (Ticket No. 523) has already been granted the pay scale of Rs. 4000-6000/- on upgradation from the grade of Rs. 950-1500/-.

6. It is further stated that the department had denied him the benefit of financial upgradation in the scale of Rs. 4000-6000/- on the plea that various individuals who had refused the promotion as Civil Motor Driver



(for short CMD) were declared to be entitled to upgradation in the scale of Rs. 3200-4900/- under the ACP Scheme. The applicant, however, contends that he had never refused for promotion as CMD but the department did not care to send the applicant for requisite training for CMD licence, whereas Shri Pyarelal (Ticket No. 523), who was also a Crane Driver, on completion of 12 years as Crane Driver, has been given first financial upgradation under the ACP Scheme and has been placed in the grade of Rs. 4000-6000/-. Thus, the applicant submits that he is entitled to the financial upgradation as per the hierarchy in the pay scale of Rs. 4000-6000/- w.e.f. 1.5.1999.

7. Respondents, who were contesting the OA, submitted that the applicant had, in fact, refused the promotion vide his willingness certificate dated 19.8.1996 and as per para 10 of 'conditions for grant of benefit under the ACP Scheme', it has been clarified that grant of higher pay-scale under the ACP Scheme shall be conditional and in case the individual refuses to accept the higher post on regular promotion 'subsequently,' he shall be subject to normal debarment for regular promotion.

8. We have heard the learned counsel for the respondents and also gone through the records. The learned counsel for the applicant had appeared later on and had also argued his case.

9. The main contention of the learned counsel for the applicant was that so far as refusal to the post of CMD is concerned, the applicant had never been told that he will not be given higher pay under the ACP Scheme and that he will be subject to double jeopardy of debarment for regular promotion and for non-grant of higher pay under the ACP Scheme. Whereas the learned counsel for the respondents had contended that



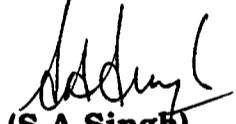
since applicant has refused to be posted as CMD so the department, vide Memo dated 28.11.2001, has rightly held that since all Crane Drivers have never accepted the promotion of CMD (DG), they are Crane Drivers since years together. Therefore, a Crane Driver, who has completed 12 years service, has got one promotion from Labourer to Crane Driver and who has completed 24 years of service from Labourer to Crane Driver is entitled to get second upgradation in the pay scale of Rs. 3250-4900/- as per S6 as shown in Annexure II of the ACP Scheme. But, in our view, this contention of the respondents has no merit because the perusal of paragraph 10 of the ACP Scheme, which has been placed on record by the department, goes to show that grant of higher pay scale under the ACP Scheme shall be conditional to the fact that an employee while accepting the said benefit shall be deemed to have given his unqualified acceptance for regular promotion on occurrence of vacancy **subsequently**. In case, he refuses to accept the higher post on regular promotion subsequently, he shall be subject to normal debarment for regular promotion as prescribed in the general instructions in this regard. The word '**subsequently**' used in this paragraph is of quite significance because the refusal of promotion to a higher rank is to be seen in the context of the ACP Scheme whether the refusal is subsequent or preceding. In the present case since refusal of the applicant for accepting the post of CMD is of 17.8.1996, which he had given even before coming into force the ACP Scheme, then the said ground raised by the respondents is of no help to them. Therefore, the applicant is entitled to get the financial upgradation under the ACP Scheme.

10. Even otherwise the department, vide their Memo dated 28.11.2001 (A/8), by granting scale of S6 i.e. of Rs. 3200-4900/- has evolved a Scheme of their own when they allowed the financial upgradation of S6



scale i.e. Rs. 3200-4900/-, which is contrary to the ACP Scheme issued by Government of India itself because the ACP Scheme envisages the grant of financial upgradation to the next higher post in the hierarchy as mentioned in letter (A/8) itself. Past refusal of promotion cannot be a ground to restrict the ACP benefit to a lower scale than the next higher pay scale in the hierarchy.

11. In view of our discussion, this OA deserves to be allowed with the direction to the respondents to grant the first financial upgradation under the ACP Scheme from Electric Crane Driver to C.M.D. in the pay scale of Rs. 4000-6000/- w.e.f. 9.8.1999, as claimed by him, and pay him all the consequential benefits, in accordance with the rules and law, within a period of three months from the date of receipt of a copy of this order. However, in the circumstances of the case, the applicant will not be entitled to get any interest. No costs.



(S.A. Singh)  
Member (A)



Kuldip Singh

(Kuldip Singh)  
Vice Chairman (J)

/na/