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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.2326/2003

This the 8 day of July, 2004

HON'BLE SHRI V.K.MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

1. Anand Prakash S/O Subey Singh,
R/O M-79C, Uttam Nagar,
New Delhi-110059.
Employed as
Assistant Field Officer in
All India Soil & Land Use Survey,
Department of Agriculture and Cooperation,
C-4, Sector-I, NOIDA.
2. Daniel,
R/O 190-D, Mayur Vihar, Phase-II,
Pocket 'A', Delhi.
Employed as
Assistant Field Officer in
All India Soil & Land Use Survey,
Department of Agriculture and Cooperation,
C-4, Sector-I, NOIDA. Applicants

(By Shri B.B.Raval, Advocate)

-versus-

1. Union of India through Secretary,
Ministry of Agriculture, Govt. of India,
Krishi Bhawan, New Delhi-110001.
2. Chief Soil Survey Officer,
All India Soil & Land Use Survey,
I.A.R.I. Buildings,
New Delhi-110012.
3. The Soil Survey Officer,
All India Soil & Land Use Survey,
C-4, Sector-I, NOIDA,
G.B.Nagar (UP). Respondents

(By Shri B. S. Jain, Advocate)

O R D E R

Hon'ble Shri V.K.Majotra, V.C.(A) :

Applicants have challenged Annexure-A dated 8.8.2003 issued by respondents disposing of applicants' representations for grant of second financial upgradation under Assured Career Progression (ACP) Scheme stating

that such proposal would be dealt with once recruitment rules for the post of Assistant Field Officer and Field Officer are finalised and approved by the competent authority.

2. According to applicants, on implementation of the recommendations of the Fifth Central Pay Commission vide Department of Agriculture and Cooperation letter dated 15.3.2000 the cadre of Senior Soil Surveyor and Junior Soil Surveyor in All India Soil and Land Use Survey were placed in the upgraded scale with revised designations. These were redesignated as Field Officer and Assistant Field Officer. Both the applicants were appointed as Assistant Field Officer. It was stated therein, "The Recruitment Rules for the 14 posts of Field Officer (Rs.6500-10500) would be framed afresh and those for the 71 posts of Assistant Field Officer (Rs.5500-9000) would be revised accordingly. The future recruitments to both these grades would be made only thereafter on the basis of new/revised Recruitment Rules." Applicants have claimed second . financial upgradation on completion of 24 years of service w.e.f. 9.8.1999. Applicants have relied upon DOP&T OM dated 10.2.2000 (Annexure A-9) whereby the following clarification has been issued :

"Since the benefits of upgradation under ACP Scheme (ACPS) are to be allowed in the existing hierarchy, the mobility under ACPS shall be in the hierarchy existing after merger of pay-scales by ignoring the promotion. An employee who got promoted from lower pay-scale to higher pay-scale as a result of promotion before merger of pay-scales shall be entitled for upgradation under ACPS ignoring the said promotion as



otherwise he would be placed in a disadvantageous position vis-a-vis the fresh entrant in the merged grade."

3. The learned counsel of applicants supplemented that neither there are any model rules for the aforesaid posts nor any draft rules have been formulated by the respondents. As such, condition No.6 of Annexure-I to DOP&T OM of 9.8.1999 (Annexure A-8) for grant of benefits under ACP Scheme would not be applicable to the case of applicants. This condition stipulates that fulfilment of normal promotion norms (benchmark, departmental examination, seniority-cum-fitness, etc.) would be applicable for grant of financial upgradations. The learned counsel also relied upon order dated 22.4.2004 in OA No.539/2003 : **K.Padmanabha v. Secretary, Ministry of Agriculture & Ors.**, contending that in an identical case, respondents were directed to consider and grant the applicant benefit of second financial upgradation under ACP Scheme with consequential benefits.

4. On the other hand, the learned counsel of the respondents stated that applicants are only matriculates and they have already been accorded two promotions from the post of Field Assistant (Rs.1200-2040) to Junior Soil Surveyor (Rs.1400-2300) and Senior Soil Surveyor (Rs.1640-2900). Now they have been given the merged scale of Rs.5500-9000 as Assistant Field Officer. The qualification for the post of Assistant Field Officer and Field Officer as proposed in the draft recruitment rules is M.Sc. (Agriculture) for direct recruitment and B.Sc. (Agriculture) for promotion. Applicants do not have the

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qualification of B.Sc. (Agriculture) and as such they cannot be granted second financial upgradation. The learned counsel drew support from DOP&T OM dated 18.7.2001 wherein clarification against point of doubt No.55 is as follows :

"Doubt 55 : A cadre has been restructured with proper sanction but the Recruitment Rules for the restructured grades are still to be framed. Whether the individuals be granted financial upgradation in the existing hierarchical order or in the revised hierarchical order introduced subsequently.

Financial up-gradation under ACP Scheme is to be allowed under the hierarchy existing as on 9-08-1999 or at the time one becomes eligible, whichever is later. Since a new hierarchy has come into being, financial up-gradations may be allowed only in the restructured hierarchy. If model Recruitment Rules exist for such restructured grades, then Screening Committee may review cases on the basis of such model Rules. Otherwise, ACPS may be allowed after finalization of Recruitment Rules but the benefit may be allowed from the due date."

5. The learned counsel stated that while there are no model recruitment rules for restructured grades, ACP can be allowed only after finalization of recruitment rules with benefit from due date.

6. We have considered the rival contentions.

7. Admittedly, applicants are matriculates only. As per clarification dated 10.2.2000 (Annexure A-9), as the benefit of upgradation under ACP Scheme is to be allowed in the existing hierarchy, the mobility under ACP Scheme shall be in the hierarchy after merger of pay scales by ignoring the promotion. Applicants have been

granted promotion from lower pay scale to higher pay scale before merger of pay scales. As per this clarification, their promotion accorded prior to merger of pay scales has to be ignored for granting further upgradation under ACP Scheme. It means that ACP Scheme has now to be given in the hierarchy which has come into existence after merger of pay scales. However, this clarification has to be read in combination with respondents' clarificatory instructions issued vide OM dated 18.7.2001 which state that new hierarchy having come into existence, financial upgradations have to be allowed in the restructured hierarchy and when model recruitment rules for restructured grades are not there, ACP Scheme has to be allowed after finalization of recruitment rules but the benefit has to be allowed from the due date. Admittedly, OM dated 18.7.2001 has not been challenged on behalf of the applicants.

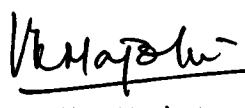
8. No doubt the facts of the instant case are identical with those of K.Padmanabha (supra). The applicant in that case was also a matriculate like the applicants herein. Respondents were directed to consider grant of the benefit of second financial upgradation under ACP Scheme with consequential benefits. Perusal of these orders does not indicate consideration of clarification against point of doubt No.55 in terms of clarificatory instructions issued vide OM dated 18.7.2001. As such, the case of K.Padmanabha (supra) in our view, does not cover the facts of the present case. The present case has to be considered in terms of clarification against point of doubt No.55 vide



instructions dated 18.7.2001. It is observed that although ACP Scheme came into existence on 9.8.1999 and the related clarification was issued on 18.7.2001, recruitment rules for the posts of Assistant Field Officer and Field Officer have yet not been finalised by the respondents. As a result applicants are being deprived of the benefit of second financial upgradation under the ACP Scheme for want of finalization of recruitment rules. Such inordinate delay causing denial of promised benefits to the concerned renders the government policy of assured career progression to remove stagnation and hardship of the employees to mere hollow words which cannot be the intention behind the scheme at all. The facts of this case warrant a ^{strong pushing} ~~of~~ of the authorities for expeditious action towards finalization of recruitment rules.

9. For reasons described above, this OA is disposed of with a direction to the respondents to finalise the related recruitment rules expeditiously and preferably within a period of three months from the date of communication of these orders. They are further directed to consider according benefit of second financial upgradation to the applicants within two months after the finalization of the recruitment rules as above. No costs.


(Shanker Raju)
Member (J)


(V. K. Majotra)
Vice-Chairman (A)

8.7.04

/as/