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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. NO. 2340/2003

NEW DELHI THIS.....*6*th.....DAY OF JULY 2004

HON'BLE SHRI KULDIP SINGH , MEMBER (J)
HON'BLE SHRI S. A. SINGH, MEMBER (A)

Surendar Kumar Mehta
S/o Late Sh. P N Mehta
Was working as Draftsman Group 'C'
R/o WZ-918, Rani Bagh, Delhi 110034

.....Applicant

(By Shri Yogesh Sharma, Advocate)

VERSUS

1. Union of India through the Secretary, Ministry of Defence, Govt of India, New Delhi
2. The Director General, Ministry of Defence, Deptt. of Def. Prod & Supplies/DGQA, Defence Headquarters PO New Delhi -110011
3. The Senior Quality Assurance Officer, SOAE(GS), Anand Parbat, New Delhi -11005

.....Respondents

(By Shri B.K. Barera, Advocate)

O R D E R

BY HON'BLE SHRI S.A. SINGH, MEMBER (A)

The applicant was appointed as Tracer on 30.1.1964 in DGQA of the Ministry of Defence and promoted to the post of Draftsman Grade-III in the year 1969. Later in 1983 the posts of Draftsman Grade III were upgraded to the post of Draftsman Grade-II by way of extending the benefits of arbitration award applicable to the CPWD to the Draftsmen of DGQA. The applicant was also beneficiary of one financial upgradation under the ACP Scheme in the year 2001. He

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retired from service on 29.8.2003 and was paid pensionary benefits except release of leave encashment. On approaching the respondents for releasing of this amount he was informed that the ACP benefit granted to the applicant and other similarly situated persons in the year 2001 had been withdrawn vide impugned order dated 09.5.2003 and as such his pensionary benefits has to be refixed. Aggrieved by this order the applicant filed this OA praying that the impugned order may be quashed and the respondents be directed to release leave encashment of the applicant along with interest.

2. The applicant pleads that he had only been granted one promotion during his entire career i.e. from Tracer to Draftsman Grade-III and that the upgradation to Draftsman Grade -II was not a promotion but a general upgradation of all Draftsman Grade-III as consequence of the extension of the arbitration award benefits given to the CPWD. Therefore, he had been rightly granted the benefit of the ACP Scheme. Withdrawing this benefit was arbitrary, illegal and against the principle of natural justice. Moreover the settled principle of the law that the upgradation is not promotion as laid down in the case of Dr. (Smt.) **Susila Misra Vs Union of India & Ors, 1986 ATJ 338** decided by the Calcutta Bench of the CAT on 16.4.1979 OJS 975 OF 1986 wherein it has been held that whole group of officers moved simultaneously from lower scale to higher scale does not sign of promotion. In view of



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this judgement and facts of the case the withdrawal of the ACP benefits by the respondents is illegal and ^{un-L} just and arbitrary.

3. Needless to mention the respondents have strongly contested the averments of the applicant. Initially the arbitration award was only applicable to Draftsmen of CPWD, however it was extended to other departments of the Govt. vide OM dated 13.3.84 provided their recruitment qualifications are similar to those prescribed in case of Draftsmen in CPWD. However, the provisions of Ministry of Finance OM dated 13.3.84 was not implemented in DGQA as the Organisations of draughtsmen were different from that of CPWD. This was challenged in the Jabalpur Bench of CAT in OA No. 203/87 and it was held that the arbitration award of CPWD does not cover the case of DGQA. The matter was agitated by the Staff and issue was examined by the Committee of JCM-I and it was decided to grant the benefit of upgradation even to those Draftsmen who did not have the qualifications prescribed for the CPWD on completion of certain years of qualifying service. Government issued a notification vide letter dated 19.10.94 extending these revised scales to other departments and the Ministry of Defence issued separate orders passed by their notification vide letter dated 15.9.95.

4. Though initially the higher scale granted under orders dated 15.9.95 to the draftsmen was an

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extension of the CPWD Award and thus not treated as promotion in assessing the eligibility for upgradation under the ACP scheme. Therefore the benefit of ACP was granted. However, DoPT clarified that the higher pay scale granted to the draftsmen of the CPWD as per arbitration award were in the context of appropriate pay scales keeping in view the recruitment qualification prescribed for them. On the other hand in the case of applicant and the similarly placed persons the higher pay scale were extended to Draftsmen irrespective of qualifications but they were subject to completion of certain prescribed eligibility service. Since the extension was subject to completion of qualifying service this is to be considered a promotion and to be adjusted against one of the two ACPs entitlement of the employee. Accordingly upgradation granted vide order dated 15.9.95 was cancelled vide order dated 9.5.2003.

5. We have heard the parties and gone through the records brought on record and find that the short question before the Tribunal is whether the extension of the Arbitration Award to Draftsmen of DGQA who did not have the equivalent qualifications is to be considered promotion for purpose of grant of benefits under ACP Scheme or a upgradation to higher scale.

6. The relevant portion of the order dated 13.3.84 (Annexure-2) is reproduced below:

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"The President is now pleased to decide that the scales of pay of Draughtsmen Grade III, II and I in offices/Departments of the Government of India, other than the Central Public Works Department, may be revised as above provided their recruitment qualifications are similar to those prescribed in the case of draughtsmen in Central Public Works Department. Those who do not fulfil the above recruitment qualification will continue in the pre-revised scales."

7. The Ministry of Defence vide its letter dated 15.9.95 extended the benefits of the arbitration award in the case of CPWD irrespective of fulfilment of recruitment qualification subject to completion of certain length of service to the Defence Establishments. The incumbents were to be granted revised scale of pay from the date they complete the required length of service. The relevant portion of said letter is reproduced below:

2. Once the D'men are placed in the regular scales further promotions would be made against available vacancies in higher grade and in accordance with the normal eligibility criteria laid down in the recruitment rules.

3. The benefit of this revision of scales of pay would be given with effect from 13.5.82 notionally and actually from 1.11.83 in respect of D'men who fulfilled the requirement relating to the period of service mentioned in Clause (I) above before 13.5.82 in respect of the D'Men who were in position as on 13.5.82 but did not fulfil the required length of service on this date they will be entitled to the revised scale as and when they complete requisite length of service.

4. The individuals pay scales had not been revised earlier on the basis of Ministry of Finance

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O.M.No.5(59)/E, III/82 dated 13.3.84, referred to in para 1 of this letter or through only court orders.

4. D'Men appointed on or after 13.5.82 may be placed in the revised scales of pay in the following manners:-

(a) D'Men/Draughtsmen appointed in the scale of pay of Rs.975-1540 (Pre-revised Rs.260-430) may be placed in the scale of Rs.1200-2040 as and when they complete requisite length of service prescribed in para 3 (a) (i).

(b) In case of Draughtsmen appointed in scale of Rs.1200-2040 (Pre-revised Rs.330-560), they may be placed in the revised scale of Rs.1400-2300 if they have been appointed with a qualification of certificate or Diploma in Draughtsmanship from recognized institution of not less than 2 years (including 6 months practical training) with 1 year's experience as D'Men. If they have been recruited with a qualification of Certificate or Diploma in D'Menship of not less than 2 years (including 6 months practical training) without 1 year experience, they will continue in the scale of Rs.1200-2040. Those appointed to this post by promotion may be placed in the revised scale of pay of Rs.1400-2300 as and when they complete requisite length of service prescribed under para 3(1)(b).

(c) The D'Men appointed by promotion to the scale of Rs.1400-2300 may be placed in the revised scale of Rs.1600-2660 as and when they complete the requisite service mentioned in para 3(1)(c).

5. Wherever the Cadre has already an existing scale of Rs.1600-2660, the cadre authorities will merge that scale with the posts which may stand upgraded from Rs.1400-2300 to Rs.1600-2660 in terms of these orders. The seniority of the existing D'Men in the scale of Rs.1600-2660 will be protected vis-a-vis D'Men who would be placed in the revised scale of Rs.1600-2660 to whom they are already enblock seniors."

8. From the reading of the above orders it is apparent that the placement in the higher pay scale is

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on the basis of the extension of award of the board of Arbitration and no other requirements apart from fulfilment of the completion of certain length of service have been laid down. Once the draughtsmen have been placed in the regular scale further promotions are to be made against available vacancies in the higher grade and with the normal eligibility criteria laid down in the Recruitment Rules. From this it is clear that this was not promotion as per Recruitment Rules but an upgradation as part of the extension of arbitration award. Para 5.1 of the conditions for grant of benefits under the ACP Scheme is reproduced below:

"5.1 Two financial upgradation under the ACP Scheme in the entire Government service career of an employee shall be counted against regular promotions (including in situ promotion and fast track promotion availed through limited departmental competitive examination) availed from the grade in which an employee was appointed as a direct recruit. This shall mean that two financial upgradations under the ACP Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee. If an employee has already got one regular promotion, he shall qualify for the second financial upgradation only on completion of 24 years of regular service under the ACP Scheme. In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him;"

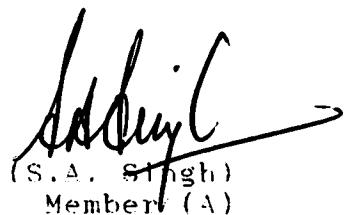
9. It is not contested that the applicant received one regular promotion from tracer to Draftsman Grade III. From the reading of the relevant extracts of the order extending the benefits of the board of



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arbitration award given to draughtsmen of CPWD to Draughtsmen of DGQA, it is apparent that the applicant has been placed in the higher scale as a upgradation ~~on~~ on fulfilling the conditions of required length of service for this upgradation. It is not a regular promotion as it is not made as per Recruitment Rules. Para 2 of the Ministry of Defence order dated 15.9.95 makes this amply clear. The ratio of the CAT Calcutta Bench decision in the case of Dr. (Smt) Susila Mishra (supra) wherein upgradations have been taken not to be a promotion would also hold. The extension of the award to draughtsmen in DGQA would be covered by the ratio of this decision. The distinction being made between those who were given benefits of this Arbitration award on the basis of qualification and the extension to those who did not have prescribed qualifications but were subsequently made beneficiary after they fulfilled required length of service is artificial because both are beneficiary of the extension of the same arbitration award.

10. In view of the above the respondents erred in withdrawing the benefit of ACP granted earlier to the applicant. The impugned order dated 09.5.2003 is accordingly quashed and respondents are directed to release the leave encashment of the applicant within two months of the receipt of the certified copy of this order. No order as to costs.



(S.A. Singh)
Member (A)



(Kuldip Singh)
Member (J)

Patwal/