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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 2380/2003

New Delhi, this the 20th day of April, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI R.K. UPADHYAYA, MEMBER (A)

1. Shri Bhagwati Prasad
s/o Shri Shashi Prasad
r/o AG-1/47-A, Vikas Puri
New Delhi.
2. Shri Ashok Kumar Mehta
s/o Shri M.R. Mehta
r/o 31-B/8, New Colony
Palwal, Faridabad.
3. Deleted.
4. Smt. Gurdip Kaur
w/o Shri Avtar Singh
r/o WZ-180, Shiv Nagar
Gali No. II, New Delhi.
5. Shri M.I. Khan
s/o Shri R.U. Khan
r/o 9/14-B, Azad Nagar
Karamat Chowki, Kareli
Allahabad.
6. Smt. Madhu Bala
w/o Shri J.K. Khanna
r/o 1613, Gulabi Bagh
Delhi 110 007.
7. Smt. Surinder Kumari
w/o Shri Bhimal Kumar
r/o R-74/C, Dilshad Garden
Delhi.
8. Shri R.P. Yadav
s/o Shri Dalip Singh Yadav
r/o H.No. 3124, Sec. 23, HUDA
Gurdaon.
9. Shri Bhagwan Dass
s/o Late Shri Devi Dayal
r/o Pkt. A-4/249, Sector-4, Rohini
Delhi - 110 085.
10. Shri Kailash Chand
s/o Late Sh. Jugal Kishore
r/o H.No. 7, Village Muzessar
Sec. 22, Faridabad.
11. Shri Anil Varshney
s/o Shri Radhubir Sahai
r/o Q. No. 1918, Laxmi Bai Nagar
New Delhi - 110 023.

12. Smt. Prem Lata
w/o Shri Pardeep Kumar
r/o AB-28, Shalimar Bagh
Delhi - 110 088.

13. Shri Pankaj Dewan
s/o Shri R.K. Dewan
r/o 3/10, West Patel Nagar
New Delhi - 110 008.

14. Shri Thana Ram Arora
s/o Shri Duli Chand
r/o A-117, Dabua Colony
Faridabad.

15. Shri K.K. Sharma
s/o Late Sh. R.L. Sharma
r/o C-180, Alwert Square
Gole Market, New Delhi.

16. Shri P.R. Sharma,
s/o Late Shri N.C. Sharma
r/o Q.No.1717, Laxmi Bai Nagar
New Delhi - 110 023.

17. Shri B.L. Arora
s/o Shri H.L. Arora
r/o Q.No. J/211, Sarojini Nagar
New Delhi - 110 023.

18. Shri Surjit Singh
s/o Shri Hara Singh
r/o C-1/100, Lajpat Nagar-I
New Delhi - 110 024.

(By Advocate: Sh. S.K. Gupta proxy for Shri B.S. Gupta) ... Applicants
Versus

1. Union of India through
Secretary
Department of Personnel & Training
North Block
New Delhi.

2. Secretary
Ministry of Urban Development
and Poverty Alleviation
Nirman Bhawan
New Delhi.

3. Director General
Central Public Works Department
Nirman Bhawan
New Delhi.

(By Advocate: Sh. N.K. Aggarwal) ... Respondents

• O R D E R (Oral)

Justice V.S. Aggarwal:-

Applicants are working as Junior Hindi
Translators in the scale of Rs. 5000-8000. By virtue
of the present application, they seek setting aside of

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the Office Order of 30.10.2002 to the extent of granting the first financial upgradation in the scale of Rs. 5500-9000. They claim that they are entitled to first financial upgradation in the scale of Rs.6500-10500. The impugned order so passed reads:

"Consequent upon completion of 12 years from initial appointment in the grade of Junior Hindi Translator, the President is pleased to grant Assured Career Progression in the pay scale of Rs.5500-9000/- to the persons in the Annexure from the date mentioned against each.

2. In case any of the officers in the list has retired voluntarily, resigned, promoted to the grade of Senior Hindi Translator or expired on or before 9.8.99, the financial upgradation may not be given to him by the Controlling Officer.

3. The benefit of ACP may be allowed only after verifying that no charge sheet is pending or contemplated against any of them. In case a penalty has been imposed, the ACP may be allowed only after the expiry of such penalty period.

4. On upgradation under ACP Scheme, pay of an employee shall be fixed under the provisions of FR-22 (1)a(1). The financial benefit allowed under ACP Scheme shall be final and no pay fixation benefit shall accrue at the time of regular promotion. In other words, upgradation under ACP Scheme shall be treated on par with regular promotion in so far as pay fixation is concerned. Therefore, the option of pay fixation in the next higher grade based on the date of increment in the lower grade of pay may also be allowed. This fact may please be brought to the notice of all the officials concerned who may like to exercise such an option."

2. Applicants contend that the post of Junior Hindi Translator is a feeder post of Assistant Director (OL) which is the next promotion post in the hierarchy. Therefore, in accordance with the Assured

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Career Progression Scheme (for short 'ACP Scheme'), they should have been given the said scale rather than the scale of Rs.5500-9000.

3. The application has been contested. Respondents contend that Department of Personnel & Training has clarified that the financial upgradation in a particular cadre would not be based on hierarchy in local office. This has been clarified in point No.56 of the Department of Personnel and Training's OM dated 18.7.2001. Respondents plead that if such financial upgradation is allowed keeping purely such local hierarchy in view, it will result in vast disparities in entitlements under the ACP Scheme for identical category of posts which can not be justified. It has the potential of generating huge disquiet and unrest.

4. At this stage, it is relevant to mention that the recruitment rules for the post of Assistant Director (Official Language) have been notified on 16.6.1999. In the feeder cadre, the following persons are eligible.:

"Promotion:

Junior Hindi Translators of the Subordinate Cadre of Region 'A' of Central Public Works Department with six years' regular service in the grade.

Note: Where juniors who have completed their qualifying/eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying/eligibility service by more than half of such qualifying/eligibility service or two years, whichever is less, and have successfully completed their probation

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period for promotion to the next higher grade with their juniors, who have already completed such qualifying/eligibility service."

Therefore, it is clear that the post held by the applicants are in the feeder cadre or in other words, in the hierarchy, the next promotional avenue available to the applicants is of Assistant Director (OL) in the pay scale of Rs.6500-10500.

5. The ACP Scheme has been made effective from 9.8.1999. In paragraph 7 of the conditions for grant of the benefits under ACP Scheme, the financial upgradation is given in the next higher grade in accordance with the existing hierarchy in a cadre/category of posts. The said paragraph reads:

"Financial upgradation under the Scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts without creating new posts for the purpose. However, in case of isolated posts, in the absence of defined hierarchical grades, financial upgradation shall be given by the Ministry/Departments concerned in the immediately next higher (standard/common) pay scales as indicated in Annexure-II which is in keeping with Part-A of the First Schedule annexed to the Notification dated September 30, 1997 of the Ministry of Finance (Department of Expenditure). For instance, incumbents of isolated posts in the pay scale S-4, as indicated in Annexure-II, will be eligible for the proposed two financial upgradations only to the pay scales S-5 and S-6. Financial upgradation on a dynamic basis (i.e. without having to create posts in the relevant scales of pay) has been recommended by the Fifth Central Pay Commission only for the incumbents of isolated posts which have no avenues of promotion at all. Since financial upgradations under the Scheme shall be personal to the incumbent of the isolated post, the same shall be filled at its original level (pay-scale) when vacated. Posts which are part of a well-defined cadre shall not qualify for

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the ACP Scheme on 'dynamic' basis. The ACP benefits in their case shall be granted conforming to the existing hierarchical structure only;"

It reveals, without any pale of controversy that the financial upgradation is to be given to the next higher grade in the hierarchy.

6. On behalf of the respondents reliance is being placed on the clarification given at Sl. No.56 regarding point of doubt that was raised. Relying on the same, it is urged on behalf of the respondents that it cannot be in the next hierarchical post but should be in the next pay scale. The same reads:

S.No.	Point of doubt	Clarification
56.	The Fifth Central Pay Commission has identified a number of common category posts spread across various Ministries/Departments as well as in Offices outside the Secretariat as discussed in chapter 55 of its report and also in other Chapters and has made recommendations for adoption of uniform grade/cadre structure subject to functional needs of an individual organisation. In a large organisation, all the hierarchical levels as per uniform cadre/grade structure may be created while in a smaller office, a few levels of the uniform hierarchical structure may not be introduced keeping in view the functional needs of the organization. Consequently, while in a larger organization/cadre, promotions are allowed in consecutive hierarchical grades, in a smaller cadre, promotions involve substantial jumps though in such cases, the requirement of period of regular service in the feeder grade as specified in the Recruitment Rules may be longer. Since under ACPS, the requirement of longer regular service in the feeder grade for promotion to such higher levels is not reckoned while considering financial up-	Financial upgradations under ACPS are to be allowed in the 'existing hierarchy'. However, in reply to point of doubt No.2. it has already been clarified that existing hierarchy in relation to a cadre would mean the restructured grades recommended by the Fifth Central Pay Commission. Further, as an example, in reply to point of doubt no.19, it has been stated that in order to secure upward mobility of library staff under the ACPS, it has been decided to adopt the pay structure as notified by the Ministry of Finance vide O.M. dated July 24, 1990 subject to the terms and conditions specified by them. Therefore, the ACPS already envisages that in respect of common category posts, if the Government has accepted a uniform standard hierarchical structure, then 'existing hierarchy' in relation to such common categories shall be the standard hierarchy as approved by the Government and not the hierarchy in a particular office, which, for functional considerations may not have all the grades. If such financial upgradations are allowed keeping purely such local hierarchy in view, it will result in vast disparities in entitlements under ACPS for identical category of

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gradation, it results in a situation where persons belonging to common category and recruited at same time in same entry grades are entitled to financial upgradations in vastly different grades under ACPS. Is it not anomalous?

posts which cannot be justified. It has the potential of generating huge disquiet and unrest, which will not be in public interest.

If, however, the Fifth Central Pay Commission has recommended a specific pay structure/ACP grades for a particular category in an organisation which may seemingly belong to a common category, then the mobility under ACPS in respect of such specific posts in that organisation shall be through the grade structure/ACPS grades recommended for that organization, if the same has been approved by the Government, and not the standard grade/hierarchical structure recommended for such common category.

7. It is a settled principle in law that it is ACP Scheme which would be applicable. Points of clarification can only clarify the doubts. If the language in the ACP Scheme is clear and unambiguous, that clarification will not supplant the same. If the respondents deem it proper, they should amend the ACP Scheme in accordance with law. But clarification cannot override the said Scheme.

8. We have already reproduced above the said Scheme in accordance with which the financial upgradation has to be in accordance with the existing hierarchy in the cadre/category of posts. In the present case, the hierarchy which we have mentioned above would indicate that the applicants are entitled to the promotion to the post of Assistant Director (OL) in the scale of Rs.6500-10500. Therefore, clarification cannot override the said Scheme.

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9. There were certain administrative difficulties pointed by the respondents but the said contention has to be stated to be rejected. The reason being that the administrative difficulties can only be sorted out in accordance with law. Having framed the Scheme, they have to give the benefit in accordance with it.

10. For these reasons, we allow the present application and quash the impugned order. It is directed that the applicants, if they are found suitable, would be entitled to the financial upgradation in accordance with rules in the scale of Rs. 6500-10500. The consequential benefits would accrue to them.


(R.K. Upadhyaya)

Member (A)


(V.S. Aggarwal)
Chairman

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