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**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.2814/2003

Monday, this the 3rd day of April 2006

**Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Smt. Chitra Chopra, Member (A)**

Shri Amin Chand T No.2842
Instrument Mech (Elect) HS Grade I (Now retired)
From 510 Army Base Workshop
Meerut Cantt. R/o H.N.1006, EME Colony
Sardhana Road, Kanker Khera, Meerut

..Applicant

(By Advocate: Shri VPS Tyagi)

Versus

1. Union of India (through Secretary
Ministry of Defence, South Block
New Delhi)
2. The Director General Electrical and
Mechanical Engineers, MGOS Branch
Army Hqrs. DHQ PO, New Delhi
3. The Comdt.
510 Army Base Workshop
Meerut Cantt.

..Respondents

(By Advocate: Shri KR Sachdeva)

O R D E R (ORAL)

Shri Shanker Raju, Member (J):

Heard the learned counsel for the parties.

2. The Apex Court in **Pramod Kumar Srivastava v. Chairman, Bihar Service Commission, Patna & another**, 2004 (2) SC SLJ 270 has ruled that unless the rules prescribe permissibility of the revaluation, the same is not sustainable and cannot be enforced by way of a judicial review by the Courts/Tribunals.

3. In the wake of a prayer of the applicant, who stood retired on superannuation in April 2003, that a direction be issued to the respondents to grant the ACP as per provisions of OM dated 9.8.1999 and to re-fix his pay, he appeared in the trade test, which is a pre-qualification for grant of second financial upgradation. However, his result was not declared and in similar cases of two Mates, their answer-sheets were reevaluated and had been accorded the benefit of financial upgradation. ^{He} alleges discrimination and stated that the action of the respondents is violative of Articles 14 & 16 of the Constitution.

4. Learned counsel would contend that his appeal preferred in June 2001 had not been responded to by the respondents.

5. On the other hand, learned counsel for respondents stated that no revaluation provision exists in the Department. Moreover, the examples cited by the applicant are those persons, who qualified the trade test and their examination sheets have never been reevaluated.

6. In our considered view, once there exists no provision under the rules for revaluation, the same is not permissible.

7. However, to prevent the miscarriage of justice and to see that the constitutional mandate under Article 14 ^{of} the Constitution is respected and ^{to} equals be treated equally, it is for the applicant to establish by way of his pleading that those two Mates, who have been accorded the benefit of second financial upgradation on revaluation and such a pleading would be laid as a strong foundation.

8. For want of any fact pleaded to establish this issue, the respondents were not in position to rebut the same. However, this plea having not been taken in a right perspective in paragraph 4.16 of the OA, a complete rebuttal for want of any revaluation, assuming that in case of two persons revaluation had taken place, a wrong order would not give any indefeasible right to the applicant, as concept of negative equality is not prescribed under Article 14

of the Constitution. However, it is noted that in 2002, when the applicant was afforded an opportunity to qualify the trade test, he chose not to appear.

9. In the result, finding no merit in the OA, the same is accordingly dismissed without any order as to costs.

Chitra Chopra
(Smt. Chitra Chopra)
Member (A)

S. Raju
(Shanker Raju)
Member (J)

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