IN THE HIGH COURT
OF JUDICATURE AT PATNA

CWJC No.**6451 of 2010**

1. THE UNION OF INDIA, THROUGH THE SECRETARY, MINISTRY OF INFORMATION AND BROADCASTING, SHASTRI BHAWAN, NEW DELHI
2. THE SECRETARY, DEPARTMENT OF PERSONNEL & TRAINING, NEW DELHI
3. THE CHAIRMAN, PRASAR BHARTI, MANDI HOUSE, COPERNICUS MARG, NEW DELHI
4. THE CHIEF EXECUTIVE OFFICER, PRASAR BHARTI, MANDI HOUSE, COPERNICOUS MARG, NEW DELHI
5. THE DIRECTOR GENERAL, A.I.R. AKASHWANI BHAWAN, SANSAD MARG, NEW DELHI
6. THE DIRECTOR GENERAL, DOORDARSHAN, MANDI HOUSE, COPERNICOUS MARG, NEW DELHI
7. THE CHIEF ENGINEER, TV & AIR EAST ZONE, AKASHWANI BHAWAN, 4TH FLOOR, EDAN GARDEN, CALCUTTA-1
8. THE DIRECTOR, DOORDARSHAN KENDRA, PATNA
9. THE STATION DIRECTOR, ALL INDIA RADIO, PATNA

…… Respondents - Petitioners

VERSUS

1. AKASHWANI & DOORDARSHAN DIPLOMA ENGINEERS ASSOCIATION THROUGH ITS PRESIDENT NAMELY BRIJ KISHORE ROY, S/O SRI LANGTU ROY R/O QR. NO. D/5, PHASE-I, RADIO COLONY, CHAZUBAGH, PATNA-1
2. HARENDRA KUMAR MISHRA S/O ADYE SARAN MISHRA WORKING AS ER. E.A. AT DDK, PATNA
3. MANORANJAN KUMAR S/O SHRI RANCHU LAL WORKING AS ASSISTANT ENGINEER DDK, PATNA
4. NAGINA SINGH S/O RAMJESH SINGH WORKING AS ASSISTANT ENGINEER, H.P.T.
5. MANJU KUMARI SAHAY D/O LATE H.N.SAHAY WORKING AS ASSISTANT ENGINEER, AIR, PATNA
6. SUDHANSU KUMAR S/O LATE KAULESHWAR PRASAD WORKING AS SR. E.A., DDK, PATNA

7. BINOD KUMAR S/O LAXMI PRASAD SAH WORKING AS EA AIR PATNA
8. RADHIKA RAMAN PRASAD SINGH S/O SARJU PRASAD SINGH WORKING AS SR. E.A., DDK, PATNA
9. PRABHAT SINHA W/O RAM NARAYAN SINHA R/O LANGARTOLI, P.O.+P.S.- PIRBAHORE, DISTT.- PATNA
10. SHAYAMAI NASKAR S/O H.P.NASKER WORKING AS ASSISTANT ENGINEER, DDK PATNA
11. OM PRAKASH RAM S/O TUNTUN RAM WORKING AS SR. E.A. DDK, PATNA
12. CHUNI LAL SHARMA S/O LATE GYAN CHANDRA SHARMA ASST. ENGINEER, DDK, PATNA

Applicant – Respondent

For the Petitioners :M/s Manan Kumar Mishra, Senior Advocate & Sudhir Kr Tiwary, CGC
For the Respondents : M/s Pushkar Narayan Shahi & Sanjiv Krishna Bariar, Advocates

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25.8.2010

Heard the parties.

On merits, there is no dispute that the Tribunal has correctly appreciated the clarification contained in DOPT dated 10.2.2000 which is fully discussed in paragraph 4 of the impugned order of the learned Central Administrativ e Tribunal, Patna Bench, Patna dated 7.9.2010 passed in OA No.514 of 2002. In paragraph 5 of that order, the learned Tribunal has recorded that on perusal of clarification given by the DOPT, the

counsel for the respondent conceded that the up-gradation granted to the Engineering Assistants and the Sr. Engineering Assistants earlier have to be ig nored while considering grant of ACP promotions to the applicants. We were taken through the scheme of ACP available on record which contains OM No.35034/1/97, dated 9.8.1999 of Department of Personnel and Training. We find that Annexure-1 to the said notification contains conditions for grant of benefits under ACP scheme and as per condition no.5.1 the two financial up-gradations under the ACP scheme are to be made available to an employee o nly if he has not receiv ed regular promotion/ promotions during the relevant period.

We have also been taken through the DOPT dated 10.2.2000 which is Annexure-4 to the supplementary affidavit filed on behalf of the petitioners. The clarification is clear and not in dispute. It provides that an employee who got promotion from lower pay scale to higher pay scale as a result of promotion before merger of pay scales, shall be entitled for up- gradation 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.

The clarification is clearly for answering a doubt and the views of the authorities by way of clarification cannot be questioned by the petitioners. The learned Tribunal has rightly accepted the clarification.

We find some substance in the submissions advanced on behalf of the petitioners that the learned Tribunal in paragraph 9 of the impugned order should have directed the authorities only to consider the case of the applicants for grant of benefits under the ACP on completing 12 years of service in accordance with scheme of ACP and the clarification contained in DOPT dated 10.2.2010. In our view also, the learned Tribunal should not have issued a general direction to cover cases of all the individuals because under the ACP scheme cases of individuals require consideration. Now, once the doubts relating to cases of the employees have been cleared, they are directed to consider the grant of benefit of ACPS to the applicants before the Tribunal within a period of three months from today in accordance with law and the

observations made in this order and the order of the learned Tribunal.

(**Shiva Kirti Singh, J.**) **(Hemant Kumar Srivastava, J.)**