

Central Administrative Tribunal
Principal Bench
New Delhi

C.P.No.443/2015
in
O.A.No.4191/2013

Order Reserved on: 06.04.2016
Order pronounced on 19.04.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri Shekhar Agarwal, Member (A)

1. Anil Kumar Sharma, aged 49
S/o Late Shri Atmaram Sharma,
B-164, Pocket-2, Kendriya Vihar-2, Sector-82,
NOIDA-201304.
2. Girish Kumar, age 49,
S/o Shri Hriday Narain Lal,
H.No.928, Type-IV Sector-12,
S.K. Puram, New Delhi-110022.
3. Dilip Kumar, age 45
S/o Sh. Mathura Prasad Srivastava,
M-3/13, Shiksha Appt. Sector-6,
Vasundhra, Ghaziabad-201012.
4. Rakesh Kumar Sharma, age 55
S/o Late Shri Janak Raj Sharma,
Flat No.92 Raj Vihar CGHS Ltd. Plot No.13,
Sector No.13, Sector No.18, Dwarka.
5. Rajiv Kumar Mittal, age 52
S/o Sh. Bhupinder Kumar Mittal,
H.No.29 Raj Nagar, PO, Shakur Besti,
Pitampura, Delhi-110034.

6. Ajay Kumar Jaiswal, age 55
S/o Shri Shyam Lal Jaiswal,
HC 4/12, Lajpat Appt. Nagar Sahibabad. ,
7. Praveen Kumar, age 53
S/o Late Sh. J.P. Maheshwari,
D 185 Govind Puram, Ghaziabad.
8. Ms. Raj Sharma, age 58
S/o Sh. N.C. Sharma,
A-30, Pandara Road, New Delhi.
9. Ira Upreti, age 56
S/o Laqte Sh. G.B. Tewari,
E-510, M.S. Appt. KG Marg,
New Delhi.
10. D.K. Saini, age 46
S/o Shri S.C., Saini,
D-201, Niho Seottish Garden,
Ahinsakhand-2, Indrapuram,
Ghaziabad.
11. Prabhu Dutt Sharma, age 53
S/o Shri N.D.S. Acharya,
913, Sector 37 Arun Vihar,
NOIDA-201303.
12. Kamlesh Sharma, age 60
S/o Shri V.V. Sharma,
106, Akashdarshan Apartments,
Mayur Vihar PH-I,
Delhi-110091.
13. Hans Kumar Singh, age 44
S/o Sh. Bechai Singh,
17-D/622, Vasundhara,
Ghaziabad-U.P.-201012.

14. Brahm Singh, age 56
S/o Shri Budh Singh,
D-630, Gali No.03, Diwan Complex,
Harsh Vihar Delhi-110093.
15. Sushil Kumar, age 47
S/o Sh. Laxman Singh,
B-166, MIG DDA Flat East of Loni Road,
Shahdara, Delhi-93.
16. Anil Khandewal, age 51
S/o Sh. Mohan Lal Khandelwal,
569, Sector-IV, R.K. Puram, New Delhi.22
17. B.C. Kandpal, age 53
s/o Late Sh. M.R. Kandpal
House No. 333, Sector-12 R.K.
New Delhi-22.
18. Harvinder Kaur Arora, age 49
s/o Shri Survinder Singh Saluja
B-22/2 1st Floor Double Story
Ramesh Nagar, Delhi.
19. Rajendra Kumar Ruhela, age 44
s/o Sh. Rajbal Singh
783, Sector-3, Vasundhra,
Ghaziabad, UP-201012.
20. Sanjeev Datta, age 47
s/o Late Sh. A.K. Datta
D-8/11, Radio Colony,
Kingsway, Delhi-9.
21. Arvind Kumar, age 47
s/o Late Sh. J.B. Sharma
B-14 Greenview Apartment,
Plot No.33, Sector-9,
Rohini-Delhi.

22. Balagovindan Nair, age 45
s/o Late Sh. P.G.R. Nair
42, Shubham Apartment, 37, I.P.
Extn. Patparganj, Delhi.
23. Sunil Kumar Sharma, age 51
s/o Sh. NS Sharma
A 336 Palam Vihar Gurgaon HR.
24. A.S. Dhiman, age 54
s/o Sh. P.S. Dhiman
P-73 B, Pandav Nagar,
Mayur Vihar, Phase-1, Delhi
25. Alok Saxena, age 48
s/o Late Sh. Naresh Kumar
JD-18-E/C, 3rd Floor, Khirki Extn.
Malviya Nagar, New Delhi-110017.
26. Anil Kumar, age 47
s/o Sh. Ved Prakash Sharma
B-72 A North Chhajjupur,
Shahadra, Delhi-110034.
27. Ajay Sharma, age 50
s/o Sh. Shyam Sunder Sharma
D-8/10, Radio Colony, Kingsway Camp,
Delhi-110009.
28. Anil Kumar Pathak, age 49
s/o Sh. Ramprakash Pathak
K2-3rd, Floor, Malviya Nagar,
New Delhi-110017.
29. S.K. Verma, age 53
s/o Sh. R.G. Verma
117, Akashdarshan Apartment,
Mayur Vihar Phase-1,
Delhi-110091.

30. Ram Vir Sharma, age 52
s/o Late Shri Kanhaaiyalal Sharma
B-11, Pocket-1, KV-2, Sector-82, Noida.
31. K.M. Chaurasia, age 56
s/o Late Sh. M.R. Chaurasia
490, Type-4, Sector-3,
R.K. Puram, New Delhi-110022.
32. K.K. Taneja, age 61
s/o Shri S.P. Taneja
D-213, Vivek Vihar,
Sector-82, Noida
33. Katar Singh, age 61
s/o Sh. Singh,
B-360, Patel Nagar-II,
Ghaziabad-201001.
34. Jeetender Kumar, age 44
s/o Sh. Ram Kumar
432/15, Krishna Colony,
Chouri Gali, Jind (Haryana)-126102
35. Navratan Singh, age 50
s/o Late Shri Birbal Singh
1/225, Rakshapuram,
Mawana Road, Meerut.
36. Dayanand Mishra, age 47
s/o Shri Moti Mishra
175-C, Regent, Shipra Sun City
Indrapuram, Ghaziabad-201014.
37. Gopal Kumar Gupta, age 51
s/o Shri K.M. Gupta
27/36, Gali No.9,
Vishwas Nagar,
Shahadra-Delhi-110032.

38. Vigyan Chandra Gupta, age 51
s/o Shri S.P. Gupta
C-951, Shushant Lok-1,
Gurgaon-122009.
39. Mohindeep Singh Rana, age 47
s/o Late Shri Jagmohan Singh
H-2/20 Shiksha Apartment,
Sector 6, Vasundhra, Ghaziabad.
40. Ram Shankar, age 62
s/o Late Shri Ram Lochan
B-11/204, Shalimar Garden
Ext-2 Sahibabad (UP).

-Applicants

(By Advocate: Dr. Ashwani Bhardwaj)

Versus

1. Sh. Bimal Julka
Secretary,
Ministry of Information and Broadcasting,
Shastri Bhawan, Dr. R.P. Marg,
New Delhi.
2. Sh. F.Sheheryar
The Director General,
All India Radio,
Akashvani Bhawan,
Sansad Marg,
New Delhi-110 001.

-Respondents

(By Advocate: Sh. S.M.Arif and Shri Sameer Aggarwal for R-1)

ORDER

By V. Ajay Kumar, Member (J):

The applicants in OA No.4191/2013 filed the present CP alleging non-implementation of the orders of this Tribunal dated 28.01.2015, in the said OA.

2. The applicants filed OA No.4191/2013 for issuance of directions to the respondents to grant financial up-gradation under ACP Scheme. This Tribunal, after hearing both sides, by order dated 28.01.2015 disposed of the OA as under:

"2. The learned counsels for the parties are ad idem that the issue involved in the present OA is in all fours of the order dated 07.09.2009 passed by the Patna Bench of this Tribunal in OA No.514/2002 - **Akashwani & Doordarshan Diploma Engineers Association through its President Vs. UOI & Ors.** The operative part of the said order reads thus:-

"9. This O.A. is, therefore, allowed. The respondents are directed to grant the applicants the pay scale of Rs.8000-13500 as and when they have completed 12 years service in the pay scale of Rs.6500-10500. The arrears should also be paid to the applicants. The respondents are directed to issue orders regarding ACP promotion to the applicants within a period of two months from the date of receipt of a copy of this judgment. The arrears may be calculated and paid to them within one month thereafter.

10. With these directions, this O.A. stands disposed. No costs."

3. In view of the stand taken by the learned counsel for respondents, the OA is disposed of with a direction to the respondents to extend the aforementioned benefits to the applicants herein as expeditiously as possible preferably within a period of eight weeks from the date of receipt of a copy of this order. No costs."

3. The respondents in pursuance of the aforesaid orders, constituted a Screening Committee for consideration of the cases of the applicants and others for granting of ACP benefits, and vide Annexure CA-2 - Speaking Order dated 13.10.2015 denied the claim of

the applicants by stating that the applicants are not similarly situated like the applicants in OA No.514/2002 in **Akashwani & Doordarshan Diploma Engineers Association through its President vs. Union of India & Others**, dated 07.09.2009 of the Patna Bench.

4. It is seen that the respondents vide the said speaking order dated 13.10.2015, considered the claims of various others who are the applicants in various OAs before different benches of this Tribunal and in respect of the same number of CPs were filed. It is also seen that considering the said speaking orders, this Tribunal closed various identical CPs by granting liberty to the petitioners therein to question the speaking order dated 13.10.2015, in accordance with law.

5. Shri Ashwani Bhardwaj, the learned counsel appearing for the petitioners strenuously submitted that once this Tribunal directed the respondents to extend the benefits granted to the applicants in OA No.514/2002 dated 07.09.2009 of the Patna Bench, the respondents cannot deny the benefits granted to them to the petitioners herein by distinguishing the cases of the petitioners from that of the applicants in the said OA, at this belated stage.

6. Per contra, Shri S.M.Arif, the learned counsel appearing for the respondents would submit that this Tribunal while disposing of the OA No.4191/2013 not adjudicated the entitlement of the applicants for granting of ACP benefits independently and on the other hand summarily disposed of the OA of the applicants by directing the respondents to extend the benefits of OA No.514/2002 of the Patna

Bench to the petitioners herein also. Since number of OAs were disposed of by various Benches of this Tribunal in the same manner, basing on the said orders of the Patna Bench, and the Honble High Court of Patna in a Writ Petition filed in OA No.514/2002 of the Patna Bench of this Tribunal, modified the Order of the CAT, Patna Bench and directed to consider the granting of benefit of ACP Scheme to the applicants in OA No.514/2002. Accordingly, the Screening Committee constituted by the respondents, considered the cases of each applicant in each OA, including the petitioners herein, as per rules for granting of ACP Scheme benefits and passed the said speaking order dated 13.10.2015. The relevant paragraphs of the same read as under:

"7. Whereas the order of the Hon'ble Tribunal was challenged before the Hon'ble High Court, Patna, observing that *"on merits, there is no dispute that the tribunal has correctly appreciated the clarification contained in DOPT OM dated 10.2.2000 which is fully discussed in para 4 of the impugned order of the learned CAT, Patna Bench dated 7.9.2010 in OA No.514/2002"*. The operative para of the Hon'ble High Court verdict dated 25.8.2010 was as under:

"We find some substance in the submissions advanced on behalf of 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 (sic)(2000). 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 3 months from today in accordance with law and the observations made in this order and the order of the learned Tribunal."

8. Whereas the Hon'ble High Court had modified the order of CAT, Patna and directed to consider the grant of benefit of ACPS to the applicants of OA No.514/2002 before the Tribunal within a period of 3 months in accordance with

law and the observations made in its order and the order of the learned Tribunal, the Screening Committee examined the cases keeping view the order of the Hon'ble Patna High Court which had attained finality. The Committee, after examination of the service details of the applicants of the OAs/CPs as mentioned in para 1 & 2 above and the service details of other EAs, SEAs & AEs from North Zone whose details were placed before it for consideration, observed that subsequent to the grant of upgraded pay scales by the Ministry of I&B vide its order dated 25.2.1999, two categories of EAs, SESs and AEs exist in Prasad Bharati. These are:

- i. **Category-I.** Those who had not accepted the upgraded payscales granted by the Ministry of I&B but were granted the pay scale of Rs.6500-10500 through court verdict in OA No.85/1997 linked with OA No.662/2004 before the Patna Bench of CAT as replacement scale for IV CPC pay scales for EAs, SESs and AEs w.e.f. 1.1.1996. and,
- ii. **Category-II.** Those who had accepted the upgraded payscales of Rs.6500-10500, Rs.7450-11500 and Rs.7500-12000 respectively in the psots of EA, SEA and AE w.e.f. 1.1.1996 vide Ministry of I&B order dated 25.2.1999.

9. Whereas, after deliberations, the Screening Committee also noted that:

- a. Since all the employees except EAs mentioned in category II above are enjoying higher payscales than their counterparts (category I) who had not accepted these scales, so they are not similarly situated with applicants of OA No.514/2002 as far as their payscales are concerned.
- b. Once a higher payscale has been granted to an employee on his promotion in the hierarchy and he has accepted it, no additional benefit in the form of financial upgradation under the ACP Scheme can be granted to him as per the ACP Rules.
- c. All the 1832 employees whose data has been placed for consideration have been granted upgraded pay scales as per Ministry of I&B order dated 25.2.1999 so they are not similarly situated as in the case of the applicants of OA No.514/2002 (Category-I). Shri B.K.Roy, SEA who was an applicant of OA No.514/2002 and had initially opted for upgraded pay scales granted by the Ministry of I&B as per its order dated 25.2.1999, subsequently opted for the scales as per category-I, only then he was granted the benefits under the ACP Scheme.
- d. None of the applicants of the above mentioned OAs & CPs filed before various Tribunals have apparently disclosed before the Hon'ble Tribunals that they are beneficiaries of upgraded payscales as per Ministry of I&B order dated 25.2.1999 and,

therefore, are not similarly placed with the applicants of OA No.514/2002 on this count.

- e. The applicants of CP No.68/2015 filed by Shri Joginder Singh and 15 others and CP No.197/2015 filed by Shri Pradeep Galhotra and 60 others are also beneficiaries of upgraded paycales granted by the Ministry of I&B vide order dated 25.2.1999 and as such they belong to category-II described in para 8 above and therefore they are not entitled for upgradation under the ACP Scheme.

10. Whereas the Committee after careful examination of the service details and detailed deliberations found that the cases of all the candidates placed before it including the applicants of OAs & CPs listed in para 1 & 2 above falls under Category II mentioned in para 6 above and therefore they are not similarly placed as compared to the applicants of OA No.514/2002. Therefore, the Committee did not find them fit for further financial upgradation in the pay scale of Rs.8000-13500 under the ACP Scheme as they have already been granted the benefits existing in the promotional hierarchy.

11. Whereas the recommendations of the Screening Committee has been accepted by the competent authority."

7. We find merit in the contentions of the learned counsel for the respondents. This Tribunal having found no contumacious act on the part of the respondents had already closed number of identical CPs by granting liberty to the petitioners therein to question the speaking order dated 13.10.2015, if so advised, in accordance with law.

8. In the aforesaid circumstances and in view of the substantial compliance of the orders of this Tribunal, the CP is dismissed and the notices are discharged. However, the petitioners are at liberty to question the orders now passed by the respondents, if so advised, in accordance with law. No costs.

(Shekhar Agarwal)
Member (A)

(V. Ajay Kumar)
Member (J)