

Central Administrative Tribunal
Principal Bench

OA 757/2013
MA 594/2013

New Delhi, this the 4th day of March, 2013

Hon'ble Sh. G. George Paracken, Member (J)
Hon'ble Sh. Shekhar Agarwal, Member (A)

1. Umesh Chanda s/o Sh. Abhay Ram Sharma
R/o G-119, Sanjay Nagar, Sec. 23,
Ghaziabad – 201 002.
2. Sh. Yogesh Kumar s/o Sh. Jgdish Prasad
R/o 12/7-A, Gali No.2, Saket Block,
Mandavli, Delhi -110 092.
3. M.P. Chaudhari s/o Sh. Seshraj Chaudhari,
R/o C-105, M.S., M.S. Apartment, K.G. Marg,
New Delhi – 110 001.
4. Rajesh Kumar Gatam s/o Sh. Mahvir Singh,
R/o D-15/2, Shayam Enclave,
P.O. Chikamberpur, Ghaziabad – 201 006.
5. Shiv Prasad Dubey s/o Sh. B.M. Dubey
R/o SR.E.A., Room No. 140, Phase-II,
DD Bhawan, New Delhi – 110 001.
6. Lakhpat Rai Gupta s/o Sh. B.P. Gupta,
R/o C-1/129-B, Lawrence Road,
New Delhi – 110 035.
7. R.N. Rai s/o Sh. Ramjog Rai,
R/o M-1/14, Shiksha Apptt.,
Sec. 6, Vasundhara, Ghaziabad-201012.
8. U.N. Gupta s/o Sh. P.L. Gupta,
R/ 33, Shahpurjat, New Delhi – 10 049.
9. Purusham T. s/o Late Sh. Thakappan,
R/o RGB-148, DDA Flats,
Raghuveer Nagar, Delhi.
10. Man Singh s/o Sh. Parana Singh,
R/o 223, Highland Aptt. (Bharat Jagareti CGHS)
Pwt-22, Sector-12, Dwarka,
New Delhi – 10 078.
11. Mahipal Singh Yadav
so late Sh. Janjhu Singh Yadav,
R/o 33, Shahpurjat,
New Delhi-110 049.



...Applicants

(By Advocate: Sh. Yogesh Sharma)

Versus

1. Union of India through
Secretary,
Ministry of Information and Broadcasting,
Govt. of India, Shastri Bhawan,
New Delhi - 110 001.
 2. Prasar Bharati through
Chief Executive Officer,
Prasar Bharti, PTI Building,
New Delhi - 110 001.
 3. Director General,
Dloodarshan,
Mandi House, Copernicus Marg,
New Delhi.
 4. Director General
(Cadre Control Authority-DD and AIR)
All India Radio,
Akashwani Bhawan, Sansad Marg,
New Delhi.
- ...Respondents

ORDER (ORAL)

By Sh. G. George Paracken, Member (J)

MA 594/2013

This MA has been filed by the applicants seeking to join in one Original Application. For the reasons mentioned in this MA, the same is allowed.

OA 757/2013

2. This Original Application has been filed by the applicants against the in-action on the part of the respondents in not granting the benefit of 1st Financial Upgradation under Assured Career Progression Scheme (ACP for short) on completion of 12 years of service in the pay scale of Rs. 8000-13500/- by way of extending the benefit of judgment dated 07.09.2009 passed by the Patna Bench of this Tribunal in OA no.514/2002, upheld by the Hon'ble



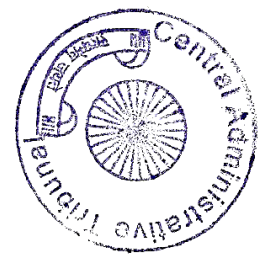
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High Court of Patna vide judgment dated 25.08.2010 in CWJC no. 6451/2010 and further upheld by the Hon'ble Apex Court in SLP No. CC-20212/2010 decided on 10.01.2011. The applicants have, therefore, filed this Original Application seeking the following relief(s):-

"(i) That the Hon'ble Tribunal may graciously be pleased to pass an order directing the respondents to consider the case of the applicants for granting first financial upgradation under ACP Scheme on completion of 12 years of service in the grade of Rs.8000-13,500/- from due date and granting 2nd financial upgradation on completion of 24 years of service in the pay scale of Rs.10000-15200/- from due date with all consequential benefits including the fixation of pay and arrears of difference of pay and allowances with interest, by way of extending the benefit of judgment dated 07.09.2009 passed by Hon'ble Patna Bench in OA No. 514/2002.

(ii) That the Hon'ble Tribunal may graciously be pleased to pass an order declaring to the effect that the while action of the respondents not extending the benefit of judgment of Patna Bench to the applicants only for the reason that the applicants were not the party before the Patna Bench is illegal, arbitrary and discriminatory in the eyes of law.

(iii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicants.



3. We are of the considered view that this OA can be decided at the admission stage itself by directing the respondents to consider the case of the applicants in the light of the aforesaid judgment of the Patna Bench of this Tribunal in OA 514/2002 decided on 07.09.2009 as upheld by the Hon'ble High Court of Patna and the Apex Court. The relevant part of the said order of the Patna Bench of this Tribunal reads as under:-

"5. On perusal of this clarification given by the DOPT, Shri S.K. Tiwari, learned counsel for the respondents concedes that the up-gradation granted to the Engineering Assistants and the Sr. Engineering Assistants earlier have to be ignored while considering grant of ACP promotions to the applicants."

6. The next point which was argued by both the counsels was that if the applicants have to be granted ACP then what should be the scale in which they should be granted ACP. Both the sides agreed that since 6500-10500 is the pay scale of Assistant Engineer, the ACP promotion should be in the pay scale of the next post in the hierarchy i.e. the post of Assistant Executive Engineer i.e. Rs.8000-13500.

7. The learned counsel for the applicant also quotes from the DOPT circular dated 10.2.2000 mentioned earlier clarifying the points under ACP Scheme. In this order it has been clarified that the mobility under ACP is to be allowed under existing hierarchy.

8. After hearing both the counsels and after perusing the records, we have come to the conclusion that the applicants are entitled for grant of ACP promotion and this promotion should be granted in the pay scale of Assistant Executive Engineer i.e. Rs.8000-13500.

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 OA stands disposed of. No costs."

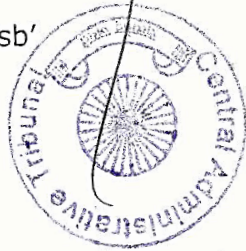


4. In view of the above position, the respondents are directed to examine the case of the applicants and if it is found that they are covered by the decision of the Patna Bench (supra), they shall also be extended the same benefits as have been given to the

applicants therein within a period of two months from the date of receipt of a copy of this order. However, if the respondents come to the conclusion that the applicants are not covered by the aforesaid order, they shall pass a speaking and reasoned order within the aforesaid period. In that case, the applicants will have the liberty to challenge the order so passed by appropriate proceedings. There shall be no order as to costs.

(Shekhar Agarwal)
Member (A)

'sb'



(G.George Paracken)
Member (J)

100 Copy U/R 22 of CAT
(Procedure Rules)
11.3.13
Principal Officer (J)
Central Administrative Tribunal
Principal Branch, New Delhi