

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment Reserved on: August 27, 2013
Judgment Pronounced on: September 12, 2013

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W.P.(C) 3143/2002

VASUDEV & ANR.

.....Petitioners

Represented by: Mr.Arun Bhardwaj, Advocate

versus

UOI & ORS.

..... Respondents

Represented by: Mr.Ankur Chhibber, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR.JUSTICE V.KAMESWAR RAO

PRADEEP NANDRAJOG, J.

1. The petitioners are directly recruited Engineers in the Central Public Works Department (hereinafter referred to as the 'CPWD'). They were appointed as direct recruits to the post of Assistant Engineer and earned promotion to the post of Executive Engineer in due course of time. The next promotional post as per the notified Recruitment Rules was that of Superintending Engineer.

2. Prior to the implementation of the recommendation of the 5th Central Pay Commission Executive Engineers were placed in the pay-scale ₹3000-4500 and Superintending Engineers were placed in the pay-scale ₹3700-5000.

3. In its report the 5th Central Pay Commission recommended introduction of Assured Career Progression (hereinafter referred to as the

‘ACP’) Scheme for the Central Government employees to overcome the problem of stagnation due to non-availability of adequate posts in the cadre for officers to earn promotion. Some of the basic features of the ACP Scheme recommended by the 5th Central Pay Commission are as under:-

*“(i) Every employee, recruited in a particular grade/scale of pay shall be allowed to move to his respective and **specified higher scales** on completion of specified period of residency in the lower pay scale, subject to fulfillment of usual norms of promotion. If this involves passing of a trade or departmental test or acquisition of a higher qualifications, that pre-requisite would have to be followed before the benefit of ACP is given.*

(ii) On placement in the next higher grade, the incumbent shall continue to perform duties of his original post and will continue to hold the old designation, till such time as he is actually promoted to the higher grade on the occurrence of a vacancy. In case of isolated posts, the post held by an individual shall get upgraded to the next higher grade but shall be filled at its original level, when vacated.

(viii) Financial upgradation to be given under the proposed Assured Career Progression Scheme will be in the next higher grade in accordance with the existing hierarchy in a cadre/category of posts.

(x) On promotion to the next higher grade under the Assured Career Progression Scheme, the full benefit of pay fixation in the higher scale as in case of a promotion in a higher grade shall be given. Thus, on actual promotion in the higher scale on occurrence of vacancy, on further financial benefit shall accrue. **(Emphasis Supplied)**

4. The recommendations of the 5th Central Pay Commission being accepted and implemented with respect to the replacement pay-scales of various posts under the Central Government, on September 30, 1997, the

Department of Expenditure, Ministry of Finance, notified the Central Civil Services (Revised Pay) Rules, 1997 to implement the pay-scales recommended by the 5th Central Pay Commission, the relevant portion whereof reads as under:-

*“1. **Short title and commencement** – (1) These rules may be called the Central Civil Services (Revised Pay) Rules, 1997.*

(2) They shall be deemed to have come into force on the 1st day of January, 1996.

....

PART-B

REVISED PAY SCALES FOR CERTAIN COMMON CATEGORIES OF STAFF

The revised scales of pay mentioned in Column 4 of this part of the Notification for the posts mentioned in column 2 have been approved by the Government. However, it may be noted that in certain cases of the scales of pay mentioned in column 4, the recommendations of the Pay Commission are subject to fulfillment of specific conditions. These conditions relate inter-alia to changes in recruitment rules, restructuring of cadres, redistribution of posts into higher grades etc. Therefore, in those cases where conditions such as changes in recruitment rules etc. which are brought out by the Pay Commission as the rationale for the grant of these upgraded scales, it will be necessary for the Ministries to decided upon such issues and agree to the changes suggested by the Pay Commission before applying these scales to these posts w.e.f. 1.1.96. In certain other cases where there are conditions prescribed by the Pay Commission as pre-requisite for grant of these scales to certain posts such as cadre restructuring, redistribution of posts etc. It will be necessary for the Ministries/Departments concerned to not only adopt these preconditions but also to implement them before scales are applied to these posts. It would, therefore, be seen that it is implicit in the recommendations of the Pay Commission that such scales necessarily have to take prospective effect and

the concerned posts will be governed by the normal replacement scales until then.

Sl.No.	Posts	Present Scale (₹)	Revised Scale (₹)	Para No. of Report
a.	Supdt.Er.	3700-5000	14300-18300	50.54
b.	Ex.Er.	3000-4500	10000-15200 12000-16500 (Non- functional)	50.45

5. Vide Office Memorandum dated August 09, 1999, the Central Government notified the ACP Scheme recommended by the 5th Central Pay Commission with certain modifications. The said Memorandum prescribed certain conditions for grant of benefits, relevant conditions for purposes of the present decision being as under:-

“1. The ACP Scheme envisages merely placement in the higher pay-scale/grant of financial benefits (through financial upgradation) only to the Government servant concerned on personal basis and shall, therefore, neither amount to financial/regular promotion nor would require creation of new posts for the purpose;

2. The highest pay-scale upto which the financial upgradation under the Scheme shall be available will be ₹14,300-18,300. Beyond this level, there shall be no financial upgradation and higher posts shall be filled on strictly vacancy based promotions;

3. The financial benefits under the ACP Scheme shall be granted from the date of completion of the eligibility period prescribed under the ACP Scheme or from the date of issue of these instructions whichever is later;

4. The first financial upgradation under the ACP Scheme shall be allowed after 12 years of regular service and the second upgradation after 12 years of regular service from the date of

the first financial upgradation subject to fulfillment of prescribed conditions....

x x x x x

5.1 Two financial upgradations under the ACP Scheme in the entire Government service career of an employee shall be counted against regular promotions (including in-situ promotion and fast-track promotion availed through limited departmental competitive examination) availed from the grade in which an employee was appointed as a direct recruit. This shall mean that two financial upgradations under the ACP Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee. If an employee has already got one regular promotion, he shall qualify for the second financial upgradation only on completion of 24 years regular service under the ACP Scheme. In case two prior promotion on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him;

x x x x x

7. 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.

x x x x x

*10. Grant of **higher pay-scale** under the ACP Scheme shall be conditional to the fact that an employee, while accepting the said benefit, shall be deemed to have given his unqualified acceptance for regular promotion on occurrence of vacancy subsequently.*

x x x x x

12. The proposed ACP Scheme contemplates merely placement on personal basis in the higher pay-scale/grant of financial benefits only and shall amount to actual/functional promotion of the employee concerned

13. Existing time-bound promotion schemes, including in-situ promotion scheme, in various Ministries/Departments may, as per choice, continue to be operational for the concerned categories of employees. However, these schemes, shall not run concurrently with the ACP Scheme. The Administrative Ministry/Department – not the employees – shall have the option in the matter to choose between the two schemes, i.e. existing time bound promotion scheme or the ACP Scheme, for various categories of employees.” **(Emphasis Supplied)**

6. On June 06, 2000, the Ministry of Personnel, Public Grievances and Pensions, Government of India issued an Office Memorandum clarifying on the subject of implementing the recommendations of the 5th Central Pay Commission as implemented by the office Memorandum dated August 09, 1999 with respect to the scale of pay to the post of Superintending Engineer and the post of Executive Engineer and equivalent in the Organized Group ‘A’ Engineering Services; the relevant portion whereof reads as under:-

“In paragraph 50.45 of their Report, the Fifth Central Pay Commission (FCPC) had recommended the following:-

(ii) the ‘functional’ pre-revised pay-scale of ₹3700-5000 (revised: ₹12000-16500) applicable to the Superintending Engineers as the first grade on their promotion from the posts of Executive Engineers should instead be ‘non-functional’ grade for Executive Engineers in the pre-revised pay-scale of ₹3000-4500 (revised: ₹10000-15200).

3. Issues of relevance to the implementation of the FCPC recommendations and their operationalisation, the criteria to be adopted for the distribution of posts in the scales of pay recommended by the FCPC, etc have been under Government’s consideration for quite some time now. After careful consideration of all relevant aspects, the President is now pleased to decide as follows:-

(c) The 'non-functional' grade of ₹12000-16500 now to be introduced for the Executive Engineers and equivalent will be admissible on completion of:-

(i) minimum regular service of nine years in Group 'A' (four years in the pay-scale of ₹8000-13500 and five years in the pay-scale of ₹10000-15200) in respect of those officers who are directly recruited or promoted in the pay-scale of ₹8000-13500).

(ii) minimum regular service of five years in the pay-scale of ₹10000-15200 in respect of those officers who are directly promoted from Group 'B' posts in this pay scale.

(d) The number of posts of Executive Engineers and equivalent to be operated in the 'non-functional' pay-scale of ₹12000-16500 shall be restricted to 30% of the Senior Duty posts (i.e. posts in the pay-scale of ₹10000-15200 and above) in the respective cadres, ensuring at the same time that (i) there is no increase in the overall strength of the cadre; (ii) the number of posts to be operated in the 'non-functional' grade (₹12000-16500) does not exceed the number of posts available in the pay-scale of ₹10000-15200)

(e) ...On the other hand, placement of officers in the 'non-functional' pay-scale of ₹12000-16500 shall be done subject to suitability in terms of guidelines contained in the Department of Personnel and Training O.M. No.28038/1/88-Estt(D) dated October 9, 1989 (copy enclosed). These should be scrupulously adhered to.

(f) Similarly, the composition of the Departmental Promotion Committee for appointment of officers to the posts of Executive Engineers and equivalent in the 'non-functional' pay-scale of ₹12000-16500 shall be same as already prescribed in the relevant Service/Recruitment Rules for appointment to the erstwhile 'non-functional' grade in the pay-scale of ₹14300-18300 (pre-revised: ₹4500-5700).

5. In view, however, of the fact that the implementations of the FCPC recommendation in respect of the posts of Executive Engineers and equivalent would involve the restructuring of the cadre by re-distributing the existing posts. In the 'functional'

*and 'non-functional' scales of ₹10000-15200 and ₹12000-16500 respectively in the ratio 70:30, the 'non-functional' pay-scale of ₹12000-16500 will be applicable prospectively based on the recommendations of the Departmental Promotion Committees to be constituted for the purpose. Till such time as the existing regular incumbents of the posts of Executive Engineers and equivalent are appointed to the 'non-functional' pay-scale of ₹12000-16500 after due observance of the prescribed procedure, they shall be entitled only to the functional scale of ₹10000-15200...." **(Emphasis Supplied)***

7. Vide Office Memorandum dated December 20, 2000, the Ministry of Personnel, Public Grievances and Pensions, Government of India modified paragraph 3(c) of aforesaid Office Memorandum dated June 06, 2000 in the following terms:-

"Executive Engineer and equivalent (in the pay-scale of ₹10000-15200) may be eligible to be considered for placement in a non-functional grade of ₹12000-16500 only on completion of five years of regular service in the pay-scale of ₹10000-15200."

8. Vide Office Orders dated March 16, 2000 and May 12, 2000, the Directorate General of Works, CPWD granted ACP to the Executive Engineers working in CPWD who had completed 24 years' service from the date of their initial appointment as Assistant Engineer including the petitioners and placed them in the pay-scale of ₹14300-400-18300 with effect from August 9, 1999.

9. Vide Office Memorandum dated July 18, 2001, the Government of India issued certain clarifications regarding ACP Scheme for the Central Government Civilian employees, the relevant portion whereof reads as under:-

<i>S. No.</i>	<i>Point of doubt</i>	<i>Clarification</i>
2.	<i>Some employees have been allowed selection grade/in situ promotions though these grades are not a part of the defined hierarchy. Whether this is to be considered as promotion for the purpose of ACPS? Also, what would will be the situation if selection grade has been allowed in lieu of higher pay scale?</i>	<i>Mobility under ACP is to be allowed in the existing hierarchy. <u>As such, if any selection grade/in situ promotion has been allowed which is not a part of the hierarchy, it shall not be counted as promotion for the purpose of ACPS.</u> For illustration sake, junior engineers of CPWD appointed in the grade of ₹5000-8000/- are allowed the scale of ₹5500-9000 on completion of five years of regular service and the scale of ₹6500-10,500/- on completion of fifteen years of regular service. The scale of ₹5500-9000/- is not a part of defined hierarchy for them. In such cases, the pay-scale which is not a part of the hierarchy may be treated to have been withdrawn....</i>
33.	<i>An employee was promoted from Grade 'A' to Grade 'C'. Grade 'B' was introduced in the hierarchy in between Grade 'A' and Grade 'C' subsequent to such promotion. Will he be entitled to any more financial upgradation under the ACP Scheme (ACPS) considering that he is already placed in the third level of hierarchy?</i>	<i>The reply is in affirmative. The employee has got only one promotion in his career as per the <u>hierarchy existing at the time of his promotion.</u> The subsequent creation of the post in Grade 'B' will not, therefore, make any material difference in the situation in relation to the case of this employee for the purpose of grant of second financial upgradation under ACPS. <u>The newly created Grade 'B'</u></i>

		<i>would, as such, need to be ignored in his case. However, persons in Grade 'A', who become entitled to financial upgradation only after introduction of Grade 'B' in the hierarchy, will be entitled for grant of financial upgradation only in Grade 'B' subject to fulfillment of the other stipulations and conditions specified in the ACP Scheme introduced on 9.8.1999.</i>
41.	<i>A cadre consists of 4 Grades – 'A', 'B', 'C' and 'D' (in ascending order). Upon restructuring of a cadre, Grade 'B' is abolished from a date subsequent to 9.8.1999. Employees recruited in Grade 'A', who are eligible for financial upgradation on or after 9.8.99 but before the date of effect of restructuring, get first/second financial upgradation in Grade 'B' and Grade 'C' respectively but those who became eligible for financial upgradation after the restructuring has been effect are entitled to first financial upgradation in Grade 'C' and second financial upgradation in Grade 'D'. This is anomalous. The cases of earlier set of employees should be reviewed and they may be allowed financial upgradations as</i>	<i>The benefit of ACP Scheme is to be allowed as per the hierarchy existing, as on the date the employees become eligible for financial upgradation under ACPS. Cadres/hierarchical structures are never static and are always subject to review based on recommendations of Pay Commissions/Expert Committees or otherwise and it is not possible to review the entitlements under ACPS already earned every time a cadre is reviewed. ACPS is only a temporary solution to provide relief to stagnating employees and the lasting solution for stagnation lies in review of cadre structures, as regular promotions will be earned in such restructured grades. All the employees will benefit from such cadre</i>

	<i>applicable to the latter category of employees.</i>	<i>restructuring.</i>
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10. On November 12, 2001, the Directorate General of Works, CPWD issued an Office Memorandum withdrawing the afore-noted Office Order dated March 16, 2000 granting ACP to the Executive Engineers working in CPWD in the pay-scale of ₹14300-18300, the relevant portion whereof reads as under:-

“The undersigned is directed to refer to this Directorate’s Office Order No..... where in the following EEs (Civil & Elect.) were granted Assured Career Progression in the pay-scale of ₹14300-400-18300 with effect from 9/8/99 consequent on completion of 24 years service from the date of initial appointment as AEs:

...

2. *On a reference from DOPT, the ACP scheme granted to AEs (DRs) in CPWD has been reviewed by the Ministry of UD&PA in consultation with DOPT. It has been decided by the Ministry of UD&PA that grant of pay-scale of ₹14300-18300 to AEs(DR) is not in order under the ACP Scheme since the pay-scale of ₹12000-16500 is the correct scale under 2nd financial upgradation of AEs (DR), as per part A of the first schedule Annexed to the Ministry of Finance (Deptt. of Expenditure) Gazette Notification dated September 30, 1997.*

3. *Therefore, the O/o. No.39/2000 dated 16/3/2000 and 77/2000 dated 12/5/2000 mentioned above are hereby withdrawn and the competent authority is pleased to grant ACP to the above AEs (Civil & Elect.) on completion of 24 years of service in the pay-scale of ₹12000-375-16500 with effect from 9/8/99.* **(Emphasis Supplied)**

11. The effect of the Office Memorandum dated November 12, 2001 was the replacement of the ACP benefit granted pay-scale ₹14300-18300 being withdrawn and replaced by the pay-scale ₹12000-16500 i.e the Non-functional grade for the post of Executive Engineers as recommended by the 5th Central Pay Commission and not the pay-scale ₹14300-18300 recommended by the 5th Central Pay Commission for the post of Superintending Engineer. Aggrieved by the Office Memorandum dated November 12, 2001, the petitioners filed an application under Section 19 of the Administrative Tribunals Act, 1985 before the Central Administrative Tribunal, Principal Bench, New Delhi contending therein that the department had arbitrarily withdrawn ACP benefit to the Executive Engineers in the pay-scale of ₹14300-18300 and wrongly replaced the ACP benefit by placing them in the pay-scale of ₹12000-16500, for the reason the ACP Scheme prescribed that the next financial upgradation under the Scheme will be granted in the next higher grade in the existing hierarchy in a cadre/category of posts and thus the department had rightly granted ACP in the pay-scale of ₹14300-18300 in view of the fact that the pay-scale of ₹14300-18300 was the next higher grade at the time of grant of ACP to the Executive Engineers and the pay-scale of ₹12000-16500 had not been introduced at that time.

12. During the pendency of the aforesaid application before the Tribunal, on March 09, 2002, the Directorate General of Works, CPWD issued an Office Order granting Non-Functional Junior Administrative Grade in the pay-scale of ₹12000-16500 to the (eligible) Executive Engineers working in CPWD with effect from March 18, 2002.

13. Vide impugned judgment and order dated April 02, 2002 the Tribunal dismissed the application filed by the petitioners. The reasoning of the Tribunal is contained paragraph 12 of the judgment and the same reads as under:-

“We have considered the rival contentions raised by the respective parties. The main contention raised by the counsel for the applicant is that the scale of ₹12000-16500 have been introduced subsequent to the order issued in favor of the applicant for granting benefit under ACP Scheme and fixing their pay in the scale of ₹14300-18300 and since the pay-scale of ₹12000-16500 has been introduced subsequently so the earlier order should not have been withdrawn. But to our view, this contention of the learned counsel for the applicant has no merits. Since the notification dated 30.9.97 vide which the Central Civil Service (Revised Pay) Rules, 1997 have been notified would go to show that the pay scales of the Engineering Department have been restructured in accordance with the schedule attached to the rules which came into force w.e.f. 1.1.96 whereas applicants became entitled to grant of second upgradation subsequent to that. Applicants were entitled only to a pay-scale which is in next financial hierarchy in their cadre, i.e., of the scale of ₹12000-16500 they cannot be allowed to have two jumps from ₹10000-15200 to ₹14300-18300 ignoring the scale of ₹12000-16500. The reliance of the applicants on the point of clarification at Sl. No.33 and 41 given in Annexure A-5 are misplaced and the case of the applicant is distinguishable from that.”

14. Aggrieved by the aforesaid, the petitioners have filed the present petition under Article 226 of Constitution of India.

15. In support of the present petition, following 2 submissions were advanced by the learned counsel for the petitioner:-

(I). That condition No.7 of ACP Scheme which prescribes that '*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*' when read in the light of recommendations of the 5th Central Pay Commission regarding introduction of ACP Scheme, which lay down that '*on promotion to the next higher grade under the Assured Career Progression Scheme, the full benefit of pay fixation in the higher scale as in case of a promotion in a higher grade shall be given*', leaves no manner of doubt that ACP Scheme envisages promotion of an employee to the next higher grade. Counsel argued that the 5th Central Pay Commission recommended grant of Non-Functional Grade in the pay-scale of ₹12000-16500 to the Executive Engineers who had completed 5 years' service in the grade of Executive Engineer to mitigate the hardships caused to the officers due to stagnation. He argued that grant of Non-Functional Grade does not involve higher level of responsibility or any change of command. Such being the position, grant of Non-Functional Grade cannot be construed as promotion of an employee to a higher grade but only his placement in higher pay-scale. Thus, grant of Non-Functional Grade in the pay-scale of ₹12000-16500 to the Executive Engineers cannot be termed as promotion in next higher grade under ACP Scheme and the department committed an illegality in granting financial upgradation to the Executive Engineers under the ACP in the pay-scale of ₹12000-16500.

(II). That pay-scale of ₹12000-16500 having been introduced subsequent to the grant of ACP benefits to the Executive Engineers, including the petitioners, can have no bearing on such benefits in view of categorical prescription contained in the ACP Scheme that '*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*. In said regards, counsel placed strong reliance upon the clarifications Nos.1, 33 and 41 contained in the Office Memorandum dated July 18, 2001, which prescribe that *'the benefit of ACP Scheme is to be allowed as per the **hierarchy existing, as on the date the employees become eligible for financial upgradation under ACPS**' and that creation/restructuring etc. of posts would have no bearing on the ACP benefits granted to the employees prior to creation/restructuring etc. of the posts. Furthermore, the counsel placed reliance upon the prescription contained in the Office Memorandum dated December 6, 2000 that *'non-functional' pay-scale of ₹12000-16500 will be applicable **prospectively** based on the recommendations of the Departmental Promotion Committees to be constituted for the purpose.*'*

16. The two submissions can be dealt with together because the two are inter-twined.

17. The 5th Central Pay Commission recommended introduction of ACP Scheme for Central Government employees. The ACP Scheme was a safety net to deal with the problem of stagnation and hardships faced due to lack of adequate promotional avenues. The ACP Scheme was implemented by the Central Government and it was decided to grant financial upgradation to the Government servant on completion of 12 and 24 years of regular service if, due to no promotional posts available the Government servant could not earn even one promotion after serving for 12 years and a second financial upgradation if after serving for 24 years the employee did not earn a second promotion.

18. The 5th Central Pay Commission recommended grant of Non-Functional Grade in the pay-scale of ₹12000-16500 to the Executive Engineers on completion of 5 years' service in the grade of Executive Engineer in order to mitigate the hardships of stagnation suffered by said Engineers. The 5th Central Pay Commission further recommended that 30% posts of Executive Engineers be upgraded in the '*Non-Functional*' pay-scale of ₹12000-16500. The said recommendations of the 5th Central Pay Commission were accepted by the Central Government. On September 30, 1997 the Central Government notified the Central Civil Services (Revised Pay) Rules, 1997 and introduced non-functional grade in the pay-scale of ₹12000-16500 for Executive Engineers. Pertinently, Central Civil Services (Revised Pay) Rules, 1997 were deemed to have come into force with effect from January 01, 1996. Meaning thereby, that the non-functional grade in the pay-scale of ₹12000-16500 came into '*existence*' in the Group 'A' Engineering Services including CPWD with effect from January 01, 1996. However, the same i.e. non-functional grade could not be granted immediately to the concerned employees for the grant of same involved restructuring of existing posts of Executive Engineer in Engineering Cadre by re-distributing said posts in Functional and Non-Functional Grades in the pay-scales of ₹10000-15200 and ₹12000-16500 respectively in the ratio of 70:30. The restructuring of the posts took some time and finally the Non-Functional Grade in the pay-scale of ₹12000-16500 was granted to the (eligible) Executive Engineers on March 09, 2002. But the fact remains that the non-functional grade in the pay-scale of ₹12000-16500 came into '*existence*' in the Group 'A' Engineering Services including CPWD with effect from January 01, 1996.

19. Undisputably, ACP Scheme envisages that the *‘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’*. We emphasize the use of word “existing” in the ACP Scheme.

20. On August 09, 1999 the Central Government introduced the ACP Scheme for its employees, by which date the non-functional grade in the pay-scale of ₹12000-16500 had come into ‘*existence*’ in the Group ‘A’ Engineering Services including CPWD.

21. In that view of the matter, the department rightly granted financial upgradation to the Executive Engineers in CPWD including the petitioners in the pay-scale of ₹12000-16500 for the said scale had come into existence on January 01, 1996 before the date of August 09, 1999 when the Central Government introduced ACP Scheme for its employees.

22. To put it simply, accepting the recommendations of the 5th Central Pay Commission with some modifications with respect to the pay-scale, on September 30, 1997, but with retrospective effect from January 01, 1996 the Central Government notified the revised pay-scales and for the post of Executive Engineer notified the pay-scale ₹10000-15200 as the basic pay-scale as also a Non-function pay-scale of ₹12000-16500. The Pay Commission had recommended 30% posts of Executive Engineers to be upgraded and placed in the Non-functional pay-scale of ₹12000-16500. Thus, the Non-functional pay-scale of ₹12000-16500 had come into force. That information had to be gathered from the various offices and departments as to the number of sanctioned posts of Executive Engineers to enable the Executive to notify the exact number of posts to be upgraded

in the Non-functional scale obviously consumed some time. The hiatus between the date when the revised pay-scales were notified and the date when the Non-functional pay-scales were actually implemented would thus be irrelevant. The reason being that the ACP Scheme was intended to remove the hardship caused due to stagnation requiring those who could not earn promotion to be placed in the next above pay-scale and this was also the purpose, intend and object of upgrading 30% posts of Executive Engineers in the Non-functional pay-scale.

23. In view of the above discussion, we find no merit in the present petition. The same is hereby dismissed.

24. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

SEPTEMBER 12, 2013

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