

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

+ **Date of Decision: 21st July, 2017**

% **W.P.(C.) No.5958/2017 & CM No.24748/2017**

UNION OF INDIA & ORS.

..... Petitioners

Through: Mr.Sanjeev Narula and Mr.Adrija
Thakur, Advocates.

versus

R.C. GUPTA

..... Respondent

Through: Mr.Krishna Kr. Mishra for Mr.Padma
Kumar, S., Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J. (ORAL)

1. By the present petition, the Petitioner-Union of India, has assailed the order dated 19.01.2017 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No.3754/2011 whereby the OA filed by the Respondent has been allowed with a direction to the Petitioners, to grant second ACP financial upgradation to the Respondent in the pay scale of Rs.10000-15200/- w.e.f. 05.11.2003 - the date when he completed 24 years of service along with all consequential benefits.

2. Briefly, the facts as stated by the Respondent before the Tribunal are that the Respondent had joined the Department of Armed Forces Head Quarters (AFHQ) on 05.11.1979 as a General Storekeeper. The Joint Secretary Training and Chief Administrative Officer (CAO), Ministry of Defence i.e. Petitioner No.2 is the Cadre Controlling Authority of AFHQ. The Store Cadre of AFHQ has only two posts in the hierarchy of the Store viz. Stores Keeper and Stores Officer in the pay scale of Rs.5000-8000 and Rs.6500-10500 respectively.

3. The Respondent who had joined service as a Storekeeper in 1979 was promoted to the post of Stores Officer on 24.11.1995 in the pay scale of Rs.6500-10,500/-. As there was no further promotional avenue in the Stores Cadre in AFHQ, the Respondent after his promotion as Stores Officer became entitled for the 2nd financial upgradation under the ACP Scheme on 05.11.2003. Vide order dated 22.07.2005, the Respondent was granted 2nd ACP in the scale of Rs.7,450-11,500, though he had claimed that he was entitled to the pay scale of Rs.10,000-15,200/-, by way of 2nd ACP.

4. Aggrieved by the grant of lower pay scale to him by the second ACP, the Respondent submitted a representation to the Petitioners seeking 2nd ACP in the pay scale of Rs.10,000-325-15,200/- w.e.f. 05.11.2003 i.e., the date when he completed 24 years of service. Vide order dated 04.07.2007, the Respondent's pay scale was increased to Rs.8,000-13,500/-, but the Respondent still remained dissatisfied and he, therefore, approached the Tribunal seeking a direction to the Petitioner, to grant him pay scale of Rs.10,000-325-15,200/- by way of 2nd ACP. The Respondent's OA was initially dismissed by the Tribunal vide its order dated 17.08.2012

whereafter, the Respondent moved a Review Application being RA No.61/2012 which was allowed by the Tribunal and the matter was re-heard on merits.

5. The case of the Respondent before the Tribunal was that, since there was no further promotional post from the post of Stores Officer, he was entitled to get 2nd upgradation as per the pay scale of analogous cadre in the same Ministry/Department. The Respondent, by relying on Clarification No.32 and Clarification No.27(ii) issued by DOPT, had contended before the Tribunal that he was entitled to get the same pay scale as that of a Civilian Staff Officer, since the said post was the promotional post for the post of Assistant Civilian Staff Officer, which post was an analogous post in the same department and was in the same grade as that of a Stores Officer. Clarification Nos.27(ii) and 32 issued by the DOPT on which reliance was placed by the Respondent reads as under:-

Sl.No.	Doubts	Clarification
27(ii)	what would be 2 nd financial upgradation for employee recruited in 5000-8000, who has completed 24 years of regular service on 12.4.2007 (between 1.1.2006 and 31.8.2009)	Since the pre-revised scales Rs.6500-10500 & 7450-11500 have been merged and placed in PB-2 with grade pay of Rs.4600, 2 nd financial upgradation would be allowed in the grade pay of Rs.6600, subject to fulfillment of promotional norms (after framing or RRs post merger) as stipulated in condition no.6 of Annexure-1 ACPs dated 9.8.1999, in terms of clarification given on point of doubt no.1 of ACPs dated 10.02.2000.

Sl.no.	Point of doubt	Clarification
32.	Where the cadres/hierarchy is limited to two grades only, what should be the pay scale for grant of second upgradation under ACPs?	Such a cadre/hierarchy shall not fall in the isolated category as defined at S.No.31 above. Hence, the standard/common pay scales mentioned in Annexure-II of the Office memorandum, dated 9-8-1999 shall not be applicable in such cases. Action in such cases may, therefore, be taken as per following clarifications:- (i) If such cadre/hierarchy exists in the Ministry/Department concerned, the second upgradation may be allowed in keeping with the pay scale of an analogous grade of a cadre/post in the same Ministry/Department. However, if no such grade exists in the Ministry/Department concerned, comparison may be made with an analogous grade available in other Ministries/Departments. (ii) In the case of attached/subordinate offices, the second upgradation under ACPs may be given in keeping with the pay scale of an analogous grade of a cadre/post of the concerned office. However, if no such cadre/post exists in the concerned office, comparison may be made with an analogous grade available in other attached/subordinate offices of the Ministry/Department concerned."

6. The plea of the Respondent, thus was that in accordance with DOPT clarification, he was entitled to receive 2nd ACP in the pay scale of Rs.10000-15200, as both the Stores Cadre in AFHQ and AFHQ Civil

Service (AFHQCS) were part of the same Department/Ministry and were both administered by CAO, and it was an admitted fact that the pay scale for the promotional post of Assistant Civilian Staff Officer was Rs.10,000-15,200/.

7. The Respondent also contended that, even as per the clarification No.27(ii), he was entitled to be placed in the pay scale of Rs.10,000-15,200/- (equivalent to PB-3) since he had been recruited in the scale of Rs.5000-8000/- and had admittedly completed 24 years, and merely because he had completed 24 years prior to 01.01.2006, he could not be deprived of the said benefit.

8. On the other hand, the plea of the Petitioner before the Tribunal was that though it was correct that the office of AFHQCS was administering DRDO, Air Headquarter, Coast Guard and NHQ, but upon making a comparison with Stores Officer in DRDO, the Petitioner had found that the Respondent was entitled to 2nd ACP in the scale of Rs.8,000-13500/-. The Petitioner had further contended that the Clarification No.27(ii) was not applicable to the Respondent, as he had completed 24 years of regular service on 05.11.2003, whereas the Clarification No.27(ii) dated 31.07.2012 was applicable only to those cases whether the individual completes 24 years of service between 01.01.2006 and 31.08.2008.

9. The Tribunal, after considering the submissions of both parties and examining the record, including both the clarifications issued by DOPT held that in AFHQCS, there was a post of Assistant Civilian Staff Officer in the pay scale of Rs.6500-10500/- for which the next post in the promotional hierarchy was that of Civilian Officer in the pay scale of Rs.10,000-15,200/-.

The Tribunal, therefore, held that since it was an admitted fact that the CAO administers both Stores Cadre and AFHQCS in the same department, the Respondent-who as a Stores Officer, and was drawing the same pay scale as that of Assistant Civilian Staff Officer (pay scale of Rs.6,500-10,500), was entitled to get the pay scale of Civilian Staff Officer (pay scale of Rs.10,000-15,200/-), which was the next grade in the promotional hierarchy of AFHQCS Cadre. The Tribunal, accordingly, allowed the OA and held that the Respondent was entitled to get the 2nd ACP in the pay scale of Rs.10,000-15,200/- w.e.f. 05.11.2003, that is the date-when he completed 24 years of service.

10. Aggrieved by the order passed by the Tribunal, the Petitioner-Union of India has filed the present petition challenging the said order dated 19.01.2017. When the writ petition came up for hearing on 18.07.2017, counsel for the Petitioner was asked to take instructions, as to whether the CAO administers various cadres including AFHQCS, Coast Guard and the Stores Cadre. It was also directed that the petitioner shall also clarify whether the pay scale desired by the Respondent i.e. 10,000-15,200/- had been given to the juniors of the Respondent who have completed 24 years after 01.01.2006. Today, when the matter was taken up for hearing, counsel for the Petitioner fairly concedes that the position as noted by the Tribunal was correct, and the CAO administers not only the Stores cadre in which the Respondent is employed, but also both-the AFHQ Civil Service Cadre and the Coast Guard. There is no denial of the fact, that the pay scale for the next promotional post in the hierarchy, for the posts in the pay scale of Rs.6500-10500/- - both in the AHFQCS as well as in the Coast Guard cadre

is Rs.10,000-15,200/-. Having given our thoughtful consideration to the admitted position, we are of the considered opinion that the finding of the Tribunal is just and proper. We see no error in the order passed by the Tribunal.

11. The writ petition is accordingly dismissed being devoid of merits with no order as to costs.

REKHA PALLI, J

VIPIN SANGHI, J.

JULY 21, 2017/gm

