

\$~11

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 8333/2016**

SURENDER KUMAR Petitioner

Through: Mr.D.S.Mehandru, Advocate.

versus

THE SECRETARY, MINISTRY OF DEFENCE & ORS

..... Respondents

Through: Mr.Rakesh Kumar, CGSC with
Mr.Raghav Nagar, Advocate for UOI.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

% **21.10.2019**

1. The Petitioner is aggrieved by the order dated 23rd December, 2015 as well as a subsequent order dated 2nd February, 2016 passed by the Central Administrative Tribunal ('CAT') dismissing OA No.2901 of 2011 and Review Application No. 25 of 2016 filed by the present Petitioner.

2. The Petitioner was appointed initially as Bootmaker (Temporary) on 18th February, 1980 in the JAT Regiment Centre, Bareilly in the pay scale of Rs.200-250. Subsequently, the scale was revised to Rs.260-400 by the third Central Pay Commission ('CPC'), to Rs.950-1500 by the 4th CPC and Rs.3050 – 4590 by the 5th CPC.

3. After the Assured Career Progression ('ACP') Schemes were announced, the Petitioner claimed to be entitled to the first and second ACP benefits, as well as the third financial upgradation under the Modified ACP (MACP) Scheme when he completed 30 years of service. He sent a representation on

15th October, 2010 for the above benefits.

4. When the Respondents did not decide the above representation, the Petitioner filed OA No.1491 of 2011 in the CAT, which came to be disposed of on 25th April, 2011 with directions to the Respondents to decide his representation.

5. On 7th July, 2011 the Respondents passed an order treating the higher pay scale drawn by him as Bootmaker as the grant of first ACP and to grant him the second and third MACPs on that basis. In other words, the Respondents took note of the fact that although the Petitioner was initially appointed as Bootmaker on a temporary basis, he was confirmed as Equipment and Boot Repairer ('EBR') Type-B on 18th August 1986. It was noticed that the correct pay-scale in the EBR category was Rs.210 – 290, whereas the Petitioner, even as EBR, was being granted the higher pay-scale applicable to a Bootmaker. It is for this reason that the first ACP was not granted to the Petitioner.

6. By the impugned order dated 23rd December, 2015, the CAT agreed with the Respondents that since the Petitioner had agreed to work in the lower pay-scale of EBR, the Respondents had rightly given him the first ACP in the pay-scale of Rs. 2750-4200, the second ACP in the pay-scale of Rs.3050-4590 and the third MACP should have been in the Grade Pay of Rs.2400/-, which had been granted to the Petitioner.

7. As already noticed, the Petitioner filed Review Application No. 25 of

2016 before CAT. The CAT has in the second impugned order observed that the Petitioner in the Review Application had not pointed out any error apparent on the face of the record and that, therefore, the Review Application was not maintainable.

8. Counsel for the Petitioner has drawn attention to a communication dated 27th January 1996 regarding 'fitment of non-industrial workers in AB's branch in pay-scale recommended by third ACP.' There is a reference in the said letter to 4 posts, one of which is that of the 'Bootmaker.' Counsel for the Petitioner on the basis of this document submits that there is no mention of any post of EBR and that the Petitioner also did not accept his regularization on that post.

9. The fact remains that the Petitioner did not address any communication to the Respondents or protest in any form his regularisation in the post of EBR Type-D, even though he was appointed initially to the post of Bootmaker. It is too late in the day for the Petitioner to contend that he never accepted his regularisation on the post of EBR.

10. The Court is unable to find any error committed by the CAT in rejecting the Petitioner's OA as well as RA by the impugned orders.

11. The petition is accordingly dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

OCTOBER 21, 2019 / tr