

**(2019) 01 CAT CK 0089**

**In the Central Administrative Tribunal**

**Case No :** Civil Petition No. 384, 386, 388, 390 Of 2017 In Original Application  
No. 3394, 3411, 4017, 4019 Of 2016

Hoobraj Singh Thakur And Ors

APPELLANT

Vs

Ajay Mittal And Ors

RESPONDENT

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**Date of Decision :** 18-01-2019

**Acts Referred:**

**Citation :** (2019) 01 CAT CK 0089

**Hon'ble Judges :** V. Ajay Kumar, J; Aradhana Johri, Member (A)

**Bench :** Division Bench

**Advocate :** Ashwani Bhardwaj, Saket Chandan, Rajeev Sharma

**Final Decision :** Dismissed

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**Judgement**

V. Ajay Kumar, J

1. Since the facts and law involved in these CPs are identical, the same are disposed of by way of this common order. However, the facts in C.P. No. 390/2017 in OA No.3394/2016 are considered.

2. OA No. 3394/2016 filed by the applicants was disposed of by this Tribunal on 04.10.2016 as under:-

"2. Learned counsel for the applicant argued that this case was similar to OA No. 1949/2012 which was decided by a Co-ordinate Bench of this Tribunal on 03.04.2014. The aforesaid judgment was also followed in OA No. 3607/2014 decided on 10.10.2014. Learned counsel stated that the applicants would be satisfied in case directions were given to the respondents to examine the case of the applicants and extend to them the same benefits.

3. In view of the limited prayer made by the applicants, we dispose of this OA at admission stage itself without issuing notice to the respondents and without going into the merits of the case with a direction to them to examine the case of the applicants herein in the light of the judgment in and OA No. 3607/2014. In

case it is found that the case of the applicants is similar to these aforementioned judgments, then they be extended the same benefits as were granted to the applicants therein. The respondents shall decide the case of the applicants within a period of sixty days from the date of receipt of a certified copy of this order and they shall communicate their decision to the applicants by means of a reasoned and speaking order. No costs."

3. In compliance of the aforesaid orders, the respondents issued the Speaking Order dated 20.12.2016 and the relevant part of the same reads as under:-

"WHEREAS, Shri Hoobraj Singh Thakur & 62 ors. filed OA No.3394/2016 Vs. UOI & 2 ors. before the Hon'ble CAT, New Delhi seeking financial upgradation under ACP in the pay scale of Rs. 4500-7000 for the applicants as 1st ACP and 2nd ACP in the next pay scale as per their hierarchy. The Hon'ble CAT, Principal Bench, New Delhi passed an order on 04.10.2016 with the direction to the respondents to examine the case of the applicants in the light of the judgment in OA No. 1949/2012 and OA No. 3607/2014. In case, it is found that the case of the applicants is similar to these aforementioned judgments, then they be extended the same benefits as were granted to the applicants therein.

AND WHEREAS, some similarly situated persons had filed OA No. 1949/2012 and 3607/2014 for similar relief, which was disposed of by the Hon'ble CAT vide their order dated 03.04.2014 and 10.10.2014 respectively, inter-alia, directing the respondents to grant the scale of Technician, i.e. 4500-7000 to the applicants therein from the due date as ACP benefits.

AND WHEREAS, as per Recruitment rules Promotional avenue for the post of Helper, erstwhile Group `D' post to Lower Division Clerk (LDC) & Technical is as under:

(A) 5% of the post of LDC are being filled by promotion on the basis of seniority subject to the rejection of the unfit (i) from amongst Group `D' employees of All India Radio/ Doordarshan having nine years regular service in Group `D' posts and (ii) possessing the educational qualifications for the post.

(B) 5% of the post of LDC are being filled up by promotion on the basis of Limited Departmental Competitive Examinations (LDCE) amongst Group `D' employee of AIR & DDn.

(C) 5% of the post of Technician are being filled by promotion on the basis of Limited Departmental Competitive Examination from Helper.

Further, DG:AIR, being Cadre Controlling Authority of Engineering Staffs vide its letter dated 06.08.2014 informed that Helpers being erstwhile Gr. D employee are eligible for promotion as LDC and Technician. For promotion on the basis of seniority subject to the rejection of the unfit is only in the post of LDC. Therefore their next promotional post is LDC and not Technician since they can be promoted to the post of Technician only if they possess desired educational qualification required for the post of Technician and qualify the Limited

Departmental Competitive Examination (LDCE) and not on seniority basis. In addition, Helpers including other certain posts who were granted upgraded pay scale by M/o I & B No.310/173/97-B (D) dated 25.02.1999 have not been granted/ approved for extending the benefit of ACP by the Ministry of I & B so far. Therefore, extending the benefit as per verdict of Hon'ble CAT, PB, New Delhi to the applicants of OA No. 1949/2012 appears contrary to the relevant provision of DOP&T on ACP instructions issued from time to time. Further, DG: DD was advised to challenge the Hon'ble CAT's order.

AND WHEREAS, DG: Doordarshan had filed Writ Petition no.5597/2015 before the Hon'ble High Court, New Delhi challenging order dated 03.04.2014 passed by the Hon'ble CAT, New Delhi. The Hon'ble High Court vide its order dated 27.05.2015 gave following interim relief, "In the meanwhile, save and except to the extent that partial implementation of the order has already taken place, without disturbing the same, rest of the implementation of the order shall remain stayed till further order."

NOW THEREFORE, in view of the above, the Writ Petition is still pending for adjudication before the Hon'ble High Court and sub-judice, the competent authority has come to the conclusion that further necessary action in the matter i.e. financial upgradation under ACP in the pay scale of Rs.4500-7000 to the applicants working as Helpers would be taken up after final verdict in the case, which is hereby communicated to all applicants.

This issues with the approval of DG: DD."

4. In W.P. (C) No.5597/2015 in Union of India and Others Vs. Rishi Raj and Others (filed against the order of this Tribunal in OA No.1949/2012 dated 03.04.2014, following which, the OA of the applicants in the instant CP was disposed of), by order dated 27.05.2015, the Hon'ble High Court of Delhi passed the following order:-

"List the matter for final hearing on 29.10.2015. In the meanwhile, save and except to the extent that partial implementation of the order has already taken place, without disturbing the same, rest of the implementation of the order shall remain stayed till further orders".

5. The applicants in OA No.3394/2016 filed the instant CP alleging that the respondents have violated the orders of this Tribunal in the said OA dated 04.10.2016.

6. Heard Dr. Ashwani Bhardwaj, the learned counsel for the petitioners in all the CPs and Mr. Saket Chandan for Mr. Rajeev Sharma, the learned counsel for the respondents in all the CPs and perused the pleadings on record.

7. Dr. Ashwani Bhardwaj, the learned counsel appearing for the petitioners submits that since the respondents have complied with the orders of this Tribunal in Rishi Raj's case (supra) to some extent, and since the Hon'ble High Court by its order dated 27.05.2015 in Rishi Raj's case, not stayed the partial

implementation to the extent that the orders were already implemented, the action of the respondents in not granting the said benefit to the petitioners is in violation of the orders of this Tribunal.

8. We cannot agree with the submission of the learned counsel for the petitioners. Admittedly, the petitioners sought extension of benefit of the judgment in Rishi Raj and Others case. The Hon'ble High Court in W.P. (C) No.5597/2015 filed against the judgment in Rishi Raj and Other, after noticing that the orders in the said OA were complied with to some extent, saved that part and stayed the implementation of the remaining order. That means, once the order on which the petitioners are placing reliance is stayed by the Hon'ble High Court, the action of the respondents cannot be said to be a willful disobedience. It is not in dispute that the said stay is still in operation and the said W.P. is still pending.

9. In the circumstances, we do not find any merit in the CP and accordingly the same is dismissed.

10. The other CPs are also dismissed under the identical circumstances. No costs.

Let a copy of this order be placed in all the files.