

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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O.A No. 2411/2000
T.A No. with
OA 699/2001 ✓

Date of Decision 30.10.2001

Sh. P. P. Gupta (OA 2411/2000) ..Petitioner
and Ors.

Sh. B. K. Dass (OA 699/2001)
and ors

..Advocate for the petitioner(s)

Sh. K. B. S. Rajan

Versus

UII & Ors

..Respondent

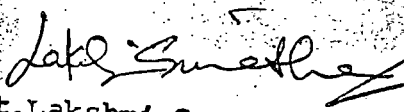
Sh. R. N. Singh

..Advocate for the Respondents

Coram:-

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

1. To be referred to the Reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

R/o F-179, Nauroji Nagar, New Delhi

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. 2411/2000
with

O.A. 699/2001

New Delhi this the 30th day of October, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).
Hon'ble Shri Govindan S. Tampi, Member(A)

O.A. 2411/2000

1. P.P. Gupta
S/o late Shri M.L. Gupta
Aged 57 years
R/o B-46 Prashant Vihar Delhi-110085
2. Ram Singh
S/o late Shri J.R. Thakur
Aged 57 years
R/o H-2/161, Mahavir Enclave,
Palam Road, New Delhi
3. Satnam Singh-I
S/o S. Pritam Singh
Aged 55 years
R/o 13-X, XYZ Govt. Flat,
Chitra Gupta Road,
Pahar Ganj, New Delhi
4. Smt G.K. Sharma
W/o Shri Y.P. Sharma
Aged 56 years
R/o Flat No. 4, Sector 15,
Rohini, Manav Vihar Society, Delhi
5. Devi Dayal-I
S/o late Shri Tej Bhan
Aged 58 years
R/o H-84 Sarojini Nagar,
New Delhi
6. A.S. Bahl
S/o late Shri Hari Chand Bahl
Aged 58 years
R/o I-B/38, Lajpat Nagar I, New Delhi
7. K.L. Mandia
S/o late Shri Bihari Lal
Aged 57 years
R/o 6-65 Shivgali Basti Nanak Chand
Kotla Mobarik Pur, New Delhi
8. Kitab Singh
S/o Gordhan
Aged 52 years
R/o F-179, Nauroji Nagar, New Delhi

9. Smt Sudesh Sodhi
W/o R.K. Sodhi
Aged 59 years
R/o 84/AC-II, Shalimar Bagh,
New Delhi
10. A.K. Jain
S/o late Shri Jhandumal Jain
Aged 60 years
R/o G-19, Nauroji Nagar,
New Delhi-110029
11. Smt Kailash Pandita
S/o Shri V.K. Pandita
Aged 57 years
R/o 4/51 Rajinder Nagar,
New Delhi
12. Rattan Kishore
S/o late Shri Amar Singh
Aged 58 years
R/o Sector IX/576, R.K. Puram
New Delhi
13. Harbans Lal
S/o Shri Motan Dass
Aged 59 years
R/o 149/13 Dharampure
Near Shiv Mandir Bahadurgarh-124507
14. Smt. R.K. Bhayana
W/o Shri Jagdish Chand
Aged 57 years
R/o E-155 Sarojini Nagar,
New Delhi
15. B.D.S. Bhandari
S/o late Shri G.S. Bhandari
Aged 57 years
R/o S/492, School Block-II,
Shakarpur, Delhi-110092
16. Ombir Singh
S/o late Shri Harbans Singh
Aged 59 years
R/o Village Chhalera P.O.
Noida, Sector-37
Gautam Budh Nagar-201303
17. R.C. Jasra
S/o late Shri F.C. Jasra
Aged 58 years
R/o H-1/7 Hauz Khas, New Delhi-110016

V.S.

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18. D.N. Arora
S/o late Shri Thria Lal Arora,
Aged 56 years
GI-735 Sarojini Nagar, New Delhi-110023
19. S.C. Chadha
S/o late Shri Mulk Raj Chadha
Aged 57 years
R/o C-100 Hari Nagar (Clock Tower)
New Delhi-110064
20. K. Ram Singh
S/o late Shri K. Mithu Singh
Aged 54 years
E-10 Milap Nagar,
New Delhi-110059
21. B.K. Rao
S/o late Shri Balwant Rao
Aged 60 years
C/o Smt Bhandna Rao,
98, Vasant Apartments,
Vasant Vihar, New Delhi
22. Satnam Singh-II
S/o late S. Avtar Singh
Aged 56 years
R/o H-7, MIG Flats,
Prasad Nagar-II,
New Delhi-110 005
23. Ashok Kumar
S/o late Shri Ratti Ram
Aged 48 years
R/o 178-D/14 Sector 7, Rohini
Delhi-110085
24. S.C. Datta
Shri B.B. Dutta
Aged 54 years
R/o D-215 Sarojini Nagar
New Delhi-110023
25. D.K. Mokashi
S/o Shri Kishan Rao Mokashi
Aged 52 years
R/o 2254 Lodhi Road Complex,
New Delhi-110 003
26. A.B. Singh
S/o Shri Hari Ram
Aged 50 years
R/o A-707 Sarojini Nagar, New Delhi

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27. Prem Singh
S/o late Shri K.S. Rawat
Aged 52 years
Sector 5/697, R.K. Puram
New Delhi
28. N.C. Mathur
S/o late Shri L.N. Mathur
Aged 54 years
R/o 8/478, R.K. Puram
New Delhi
29. Ramesh Chander
S/o late Shri S.P. Kohli
Aged 53 years
R/o Vivekanand Puri,
Delhi-110 007 (back side)
30. Khem Singh
S/o Shri Gulab Singh
Age 53 yrs
6309, Block 6, (Main) Padam Singh Road,
Dev Nagar, Karol Bagh, New Delhi 5

(By Advocate Shri K.B.S. Rajan)

Applicants

Versus

1. Union of India
Through Secretary
Ministry of Personnel, Public Administration
And Grievances
North Block,
New Delhi - 110001
2. The Secretary,
Ministry of Power,
Shram Shakti Bhawan, Rafi Marg
New Delhi-110001
3. Chairman
Central Electricity Authority,
Ministry of Power,
Seva Bhawan
R.K. Puram
New Delhi-110066

Respondents

(By Advocate Shri R.N. Singh)

O.A. 699/2001

1. B.K. Dass
S/o Late Shri B.K. Dass
G 1233, Chittaranjan Park,
New Delhi - 110 019
2. M.S. Rawat
S/o Late Sh. K.S. Rawat
Type III/9, Sector II
Sadiq Nagar, New Delhi 49
3. Balraj Singh
S/b Shri Naranjan Singh
Sector 7/389, M.B. Road,
Pushp Vihar, New Delhi.
4. Y.K. Aggarwal
S/o Shri Daya Shankar
423/3, Mehrauli, New Delhi.
5. A.K. Mehta
S/o Late Shri Inderjit Mehta
B -140, Amar Colony,
Lajpat Nagar, New Delhi.
6. S.B. Lohmor
S/o Late Shri Kesho Ram
Village Nangal Dewat
P.O. Gurgaon Road,
New Delhi -37
7. Navraj Passi
S/o Shri M.M. Lal
J -170, Sarita Vihar,
New Delhi -44

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8. Smt. Renu Varshney
W/o Shri R.C. Varshney
Sector - III/235,
R.K. Puram, New Delhi.
9. R.K. Verma
S/o Shri Moti Lal
1439/98, Tri Nagar,
Delhi - 110 035.
10. Smt. Veena Sharma
W/O Shri Ramesh Sharma
Sector - V/662,
R.K. Puram, New Delhi.
11. Smt. Veena Goswami -I
W/o Shri P.K. Goswami
F-2, Hans Apartment East,
Arjun Nagar, Delhi -32.
12. Sarabjit Singh -II
S/o Late Shri Karam Singh
H -41, Naniakpura,
New Delhi -110 021.

(By Advocate Shri K.B.S. Rajan)

VERSUS

1. UNION OF INDIA
Through Secretary
Ministry of Personnel,
Public Admn. and Grievances,
North Block, New Delhi -1.
2. The Secretary,
Ministry of Power,
Shram Shakti Bhawan,
Rafi Marg, New Delhi -1.
3. CHAIRMAN
Central Electricity Authority,
Ministry of Power,
Seva Bhawan, R.K. Puram,
NEW DELHI -110 066.

(By Advocate Shri R.N. Singh)

APPLICANTS

RESPONDENTS

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).

Learned counsel for the parties in the aforesaid two applications have not disputed the fact that the relevant facts and issues raised in these applications are similar. For the sake of convenience, the detail facts as given in O.A.2411/2000 have been referred to by both the learned counsel, although Shri R.N. Singh, learned counsel has also made specific submissions with regard to the averments made by the applicants in O.A.699/2001 which will be dealt with in subsequent paragraphs.

2. The applicants in O.A.2411/2000 and O.A.699/2001 are aggrieved by the action of the respondents in issuing the O.M. dated 9.8.1999 and, in particular paragraph 8 of the conditions for grant of benefits under the Assured Career Progression Scheme (hereinafter referred to as 'the ACP Scheme'). According to the applicants, as a result of the implementation of the financial upgradation under the ACP Scheme which, in fact, actually amounts to promotion being given to individuals who have been stagnating and who fulfil the other conditions laid down in the Scheme, the net result is that the persons like them who are admittedly senior in a particular grade, for example, Draftsmen Grade-II are being paid pay in the junior scale, that is, less pay as compared to persons who have got benefit of the upgradation under the ACP Scheme due to their stagnation for 12 or 24 years, as the case may be.

3. We have heard Shri K.B.S. Rajan, learned counsel and Shri R.N. Singh, learned counsel on the issues raised in these applications. Learned counsel for the applicants has submitted that the representations made by the applicants who are Draftsmen Grades-I and II, for stepping up of their pay at par with their juniors, had been forwarded by Respondent 3 to Respondent 2, that is the Ministry of Power. They have not agreed to their claims as according to them, the DOP&T's clarifications in this regard are very clear and there is no need to forward their representations to that Department, in the impugned letter dated 16.8.2000.

4. The main contention of the learned counsel for respondents is that the respondents have faithfully and correctly implemented both the ACP Scheme as well as considered the claims of the applicants for stepping up of their pay as per the Rules applicable to the later category. According to the learned counsel, as the applicants do not fulfil the conditions laid down for stepping up of their pay, which has been formulated under the relevant Rules, that is the Office Memorandum dated 4.11.1993, the question of stepping up of their pay at par with the pay received by their juniors does not arise. He has also stressed on the fact that the application of the ACP Scheme is not at all dependent on a person being senior or junior. Therefore, he has very categorically submitted that the applicants' claims cannot be agreed to based on their seniority. He has submitted that the doubts raised by various quarters have been duly examined and point-wise

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clarifications have been given by Respondent 1 - Government of India, DOP&T by O.M. dated 2.11.2000 which has laid down a uniform policy with regard to the application of the ACP Scheme to all concerned employees of various Ministries/Departments. With regard to this O.M. against the point of doubt raised at Serial No.27, that Department has clarified that the ACP Scheme is to provide relief in cases of acute stagnation. The concept of "senior-junior" is quite alien to the idea behind the ACP Scheme as recommended by the 5th Central Pay Commission which had also quite specifically recommended against it. The benefits granted under the ACP Scheme are "personal" in nature and in recognition of long hardships faced by stagnating employees. Learned counsel for respondents has, therefore, submitted that the applicants cannot mix-up the two concepts of stepping up of pay with the correct implementation of the ACP Scheme as done by them. In the present cases, the claim of benefits of pay parity by the applicants with those whom they call are juniors is a concept which is not relevant to the issues in question. Shri R.N. Singh, learned counsel, has also stressed on the fact that the ACP Scheme is a policy matter which has been formulated by the Government of India on the basis of the recommendations of an expert body like the 5th Central Pay Commission and as such, these matters are normally not to be interfered with by the Courts or the Tribunal unless there are patent errors. According to him, there are no such infirmities in the present ACP Scheme or its implementation to allow the applications. He has relied on a number of judgements, list of which is placed on record.

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In particular, he has relied on the judgement of the Supreme Court in Union of India and Anr. Vs. R. Swaminathan, etc. (JT 1997(8) SC 61) to show that the pay does not depend on seniority alone. The other judgements relied upon by the respondents' counsel are State of Punjab and Ors. Vs. Ram Lubhaya Bagga & Ors. (1998(4) SCC 117); S.R. Bommai and Ors. Vs. Union of India and Ors. (AIR 1994 SC 1918); and Union of India & Ors. Vs. Makhan Chandra Roy (AIR 1997 SC 2391). According to him, following these judgements, the Tribunal ought not to give any relief to the applicants in the present cases as the ACP Scheme is a policy matter and the implementation thereof is within the domain of the executive. He has, therefore, submitted that nothing done by them should be questioned in the manner the applicants have done.

5. With regard to O.A. 699/2001, Shri R.N. Singh, learned counsel has brought out certain factual discrepancies and errors with regard to the designations of the applicants, namely, whether they are Draftsmen Grade-II or Grade-I. The reply of the respondents has been filed on 22.8.2001 and no rejoinder has been filed. However, during the hearing when this issue was taken up, with particular reference to paragraphs 4.1, 4.2 and 4.8, Shri K.B.S. Rajan, learned counsel, has submitted his unconditional apology for the negligence in correcting the factual mistakes. He has also submitted that, for example, Paragraph 4.8 is a verbatim reproduction of paragraph 4.8 in OA 2411/2000 and instead of correcting the applicants' designation as Draftsman Grade-II, for example, in the last

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line of paragraph 4.2, it has been left as Grade-I. Similarly, he has pointed out that as regards the averments in paragraph 4.8 of the O.A. while he admits the inadvertent mistake, he has also submitted with great humility that there was absolutely no intention to mislead the court nor the errors would in any case benefit the applicants. On the other hand, Shri R.N. Singh, learned counsel, has very vehemently submitted that the applicants could have very well filed a rejoinder as they had ample time to do so and in the circumstances, he has prayed that O.A.699/2001 may be dismissed with costs on this ground alone.

6. With regard to the other points raised at length in the aforesaid two cases, Shri K.B.S. Rajan, learned counsel has submitted that the implementation of the ACP Scheme by the respondents should not result in such an anomalous situation like in the cases of the applicants in the present two O.As. He has also submitted that the ACP Scheme itself provides that the upgradation of the posts in the higher pay scale to those who are stagnating has to be done on fulfilment of normal promotion norms, that is bench mark, Departmental examination, seniority-cum-fitness in the case of Group 'D' employees, etc. as provided in paragraph 6 of the conditions for grant of benefits under the Scheme. The financial upgradation of the concerned persons which is to be treated as personal pay to the incumbents, even on retention of old designations still counts for the purpose of House Building Advance, allotment of Government accommodation, advances, etc. and it is only a disqualification for claiming

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privileges related to higher status (e.g. invitation to ceremonial functions, and deputation to higher posts). He has, therefore, emphasised that in practical terms, the financial upgradation of the person who is junior who has been stagnating in terms of the ACP Scheme results in a number of financial benefits to the incumbent, which is denied to the person who has in his career in the Government service in any of the lower posts, obtained one promotion under the relevant Recruitment Rules. He has relied on the judgement of the Supreme Court in **Kamalakar & Ors. Vs. Union of India and Ors.** (JT 1999(4) SC 486). His contention is that once two persons come from different sources and are recruited to a particular cadre, the earlier /designation as direct recruit or promotee disappears. Therefore, the direct recruit Draftsmen Grade-II, for example, who is placed junior to the person who is already in that grade earlier, should not be given financial upgradation under the ACP Scheme merely because the promotee had earned a promotion in the feeder category. The comparative statements of Grade-I and Grade-II Draftsmen, showing basic pay and pay scales have been annexed to the affidavits filed by the applicants on 12.10.2001 and 16.10.2001, which have been referred to in extenso during the hearing. Learned counsel for respondents does not dispute the facts mentioned in the statements, for example, in the comparative statement of Draftsmen Grade-I where applicant No. 2 Shri Ram Singh has been compared with one Shri Gurusharan, Draftsman Grade-II,

who was placed junior to him at the relevant time in 1970-71. Admittedly, Shri Gurusharan Singh who is a direct recruit was given the pay scale of Draftsman Grade-I, that is Rs.6500-10500 under the ACP Scheme after he had remained for 12 years in that grade in 1997, although he was promoted as Head Draftsman w.e.f. 12.2.2001 in that pay scale. With regard to applicant No. 2, he was promoted as Head Draftsman w.e.f. 12.5.2000 in the pay scale of Rs.6500-10500. It would, therefore, mean that the applicant who was senior as Draftsman Grade-II at the relevant time in 1971 is given the higher scale of pay of Rs.6500-10500 from a later date, i.e. nearly two years later. Similarly, learned counsel for applicants has shown a number of other instances in which the persons in the grade but coming from different sources and junior to them have received the financial benefits of the ACP Scheme much earlier than seniors for lack of promotional avenues to the latter or the fact that he has already got one or two promotions earlier. This is the sum and substance of the whole issues raised in the above two applications on the practical implications of the implementation of the ACP Scheme.

7. Before dealing with the merits of the claims of the applicants, the objection of the learned counsel for respondents, referred to in paragraph 5 above, has to be dealt with. No doubt, on a perusal of the pleadings in O.A.699/2001, we find merit in the submissions made by Shri R.N. Singh. Learned counsel that the applicants through their counsel ought to have been more vigilant but at the

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same time we also find force in the submissions made by the learned counsel for applicants that the relevant paragraphs have been reproduced from one O.A. (O.A.2411/2000) to the other without total application of mind. The crux of the issues raised by the applicants is no doubt the same and a perusal of the averments made by the applicants in the preliminary paragraphs of the O.A., including paragraph 4.2 shows that they were Draftsman Grade-II and not Grade-I. In this view of the matter, we are unable to go along with the submissions made by Shri R.N. Singh, learned counsel that there has been any deliberate or wilful attempt on the part of the applicants to mislead or misrepresent to the Court so as to disentitle them from the reliefs prayed for. We, therefore, do not propose to dismiss O.A 699/2001 on this ground but we leave it with the observation that such careless mistakes should not be repeated in future. This we do also taking into account the fact that the same learned counsel Shri K.B.S.Rajan has also filed a similar O.A. on 16.11.2000 of applicants who were similarly situated who are Draftsmen Grade-I who are also claiming similar benefits in O.A.2411/2000. For these reasons, the plea of the learned counsel for respondents that O.A.699/2001 should be dismissed on the preliminary issue is rejected.

8. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties in the aforesaid two Original Applications.

9. The ACP Scheme has been formulated by Respondent-1/DOP&T following the recommendations of the 5th Central Pay Commission as a "safety net" to deal with the problems and genuine stagnations due to lack of adequate promotional avenues. While we are aware that such special Schemes, particularly having financial outlays formulated by the Government of India, taking into account various parameters and factors are not to be easily modified or interfered with by the judicial forums, at the same time we see no reason why the Government of India should not also reconsider the Scheme from time to time looking into the various difficulties or problems which the Ministries/Departments applying the Scheme face. One such difficulty for which a clarification had been sought from Respondent 1 and referred to by the learned counsel for respondents is the point of doubt raised in Question No. 27 in O.M. dated 10.2.2000. The issues raised in the present applications also raise similar doubts. It is, therefore, relevant to reproduce the relevant Serial No. 27 which reads as follows:

S.No.	Point of Doubt	Clarification
27.	The condition 8 of the Annexure-I of the DoP&T dated 9th August, 1999 operates very harshly against senior employees. It will give rise to serious anomalies in a situation where junior employee in a grade being direct recruit are given ACP upgradation on completing period of residency, claims of senior employees in the same grade and in the same department are ignored merely on the ground that	The ACPs is to act a 'safety net' to provide relief in cases of acute stagnation. The concept of "senior-junior" is quite alien to the idea behind the ACPs recommended by the Fifth Central Pay Commission which had also quite specifically recommended against it. Benefits granted under the Scheme are "personal" in nature and in recognition of long hardships faced by stagnating employees.

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they have already been promoted twice earlier. It would, as such, be very unfair to ignore the claim of seniors as that would lead to heart-burning and demoralisation.

Moreover, it does not grant any status related benefits - nor does it change the seniority position. Senior will continue to be senior even if his junior has earned upgradations under ACPs. Relief granted to Government servants facing stagnation/hardships, as visualised by ACPs, cannot provide a ground by claiming identical relief by others who are not similarly circumstanced".

10. We note that in the clarifications given by Respondent 1 much emphasis has been laid on the fact that the benefits granted under the Scheme are "personal" in nature and in recognition of long hardships faced by stagnating employees and does not grant any status related benefits nor does it change the seniority. The senior will continue to be the senior even if his juniors have earned upgradations under the ACP Scheme. Further, another paragraph which is relevant which should be read along with the above clarifications is paragraph 6 of the conditions for grant of benefits under the ACP Scheme (Annexure-I to the DOP&T O.M. dated 9.8.1999). This paragraph reads as follows:

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"6. Fulfilment of normal promotion norms (bench-mark, departmental examination, seniority-cum-fitness in the case of Group 'D' employees, etc.) for grant of financial upgradations, performance of such duties as are entrusted to the employees together with retention of old designations, financial upgradations as personal to the incumbent for the stated purpose and restriction of the ACP Scheme for financial and certain other benefits (House Building Advance, allotment of Government accommodation, advances, etc.) only without conferring any privileges related to higher status (e.g. invitation to ceremonial functions, deputation to higher posts, etc.) shall be ensured for grant of benefits under the ACP Scheme".

The above paragraph of the conditions for financial upgradation in the ACP Scheme shows that the normal promotion norms have to be adopted while considering the employee who is stagnating in order to remove his hardship. The financial upgradation though personal to the incumbent is also taken for financial and other benefits like House Building Advance, allotment of Government accommodation, advances, etc., which, therefore, has to be considered as accruing to the employee benefit under the ACP Scheme. Taking into account the facts and circumstances read with the implementation of the ACP Scheme formulated by the respondents, it cannot, therefore, be stated that the grievance of the applicants is either illusory or imaginary. The repeated contentions of the learned counsel for respondents that nothing turns on seniority under the ACP Scheme, are not tenable, as the grievance of the applicants stems from seniority. It is that they should not be penalised because they are senior in a particular grade and have received some promotion much earlier in their career with the Government, in accordance with the relevant Recruitment Rules. It is settled law that promotion to a higher post involves both status as well as financial benefits. The mere deprivation of only status while upgrading the incumbents under the ACP Scheme giving all other monetary benefits, as enumerated in the ACP Scheme itself shows that the grievance of the applicants who are admittedly senior on a particular date, cannot be brushed aside. In the particular facts and circumstances of the case, we are, therefore, unable to agree with the submissions made by

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the learned counsel for respondents that as this is a policy matter formulated by the Government of India based on the recommendations of the 5th Central Pay Commission, nothing further needs to be done at this stage. It is needless to emphasise that such Schemes need to be monitored and, if necessary, modified or amended taking into account the actual ground realities on a periodical basis. In the judgement of the Supreme Court in Ram Lubhaya Bagga's case (supra), it has been held:

"The right of the State to change its policy from time to time, under the changing circumstances is neither challenged nor could it be."

It is not normally within the domain of any court to weigh the pros and cons of the policy or to scrutinise it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good reasoning, except where it is arbitrary or violative of any constitutional, statutory or any other provision of law. When Government forms its policy, it is based on a number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The court would dissuade itself from entering into this realm which belong to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 when it restricts reimbursement on account of its financial constraints".

(Emphasis added)

The above shows that the Government cannot only make policy but change it from time to time to suit changing circumstances and it is an on-going process. The other judgements relied upon by learned counsel for respondents are not totally applicable to the present facts and circumstances of the case.

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11. From the discussion above, we are not satisfied with the submissions made on behalf of the respondents that nothing further need be done with regard to the implementation of the ACP Scheme which has been formulated by the Government of India on 9.8.1999, in which certain clarifications have also been given on 10.2.2000 or that the matter should rest with the clarification given in the O.M. dated 10.2.2000. There is no doubt that taking into account the doubts raised to which the clarifications have been given in February, 2000 which is also the issue raised in the present two applications, there is need for the Government to review the ACP Scheme in its entirety and, in particular, with regard to financial upgradation of eligible persons, which leaves the seniors in a lower pay scale leading to frustration and heart-burning. In the facts and circumstances of the case, we find that the implementation of the ACP Scheme has led to certain amount of arbitrariness vis-a-vis the seniors with regard to their pay fixation which should be reconsidered by the respondents. To this extent, the second sentence of paragraph 8 of the conditions for grant of benefits under the ACP Scheme of Annexure-I of O.M. dated 9.8.1999 is quashed and set aside.

12. However, having regard to the nature of the claims and the issues and the settled law on the subject, we do not propose to lay down the criteria how and what, for example, should be the additional benefits which would become payable to the seniors or require to be taken away

from the others because that would be entirely within the domain of the executive to decide after taking into account the relevant factors to ensure that their employees are dealt with in a fair, judicious and equitable manner. It is also relevant to note that the ACP Scheme is only two years old and any discrepancies or anomalies in implementation of the Scheme should be looked into by the concerned Department i.e. Respondent No.1. The contention of the learned counsel for respondents that the applicants do not fulfil the conditions laid down in the O.M. dated 4.11.1993 for stepping up of pay is also not relevant. Even that Scheme can be looked into by the Government of India to take into account such anomalies, as have been presented in the aforesaid two applications for carrying out suitable modifications by the concerned Department -Respondent-I. No doubt, to deal with employees who are stagnating and to remove their hardships, is a laudable objective but at the same time we see no reason why the Government of India/DOP&T should also not look into the attendant issues raised by the seniors as in the present cases.

13. In view of the above discussion, the aforesaid two applications (O.A.2411/2000 and O.A.699/2001) partly succeed and are allowed with the following directions:

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- (i) Respondents, in particular Respondent 1, are directed to constitute a Committee of senior officers to look into the grievances of the

applicants and other similarly situated persons who are aggrieved by the implementation of the ACP Scheme with a view to modify/amend the Scheme so as to remove the glaring anomalies or discrepancies referred to above with regard to pay fixation of the seniors vis-a-vis the juniors who have been given the benefit of the Scheme on account of stagnation;

(ii) The above action shall be taken within six months from the date of receipt of a copy of this order.

(iii) In case any benefits are decided to be given to persons like the applicants by the respondents, it is made clear that the applicants in the present cases shall be entitled to the same from two months from the date of filing the O.As, namely, 16.1.2001 and 16.5.2001, respectively during the relevant periods when their juniors have received the higher pay. No order as to costs.

(Govindan S. Tampi)
Member(A)

SRD

(Smt. Lakshmi Swaminathan)
Vice Chairman(J)