

**Central Administrative Tribunal
Ernakulam Bench**

OA 180/00145/2016

Thursday, this the 3rd day of December, 2020

CORAM

Hon'ble Mr.P.Madhavan, Judicial Member

Hon'ble Mr.K.V.Eapen,, Administrative Member

1. Postal Accounts and Audit, Pensioners Association,
Thiruvananthapuram, Reg.No. TVM/TC/294/2013
represented by its General Secretary, K.Jayachandran.
2. K. Jayachandran,
S/o Kunjukrishnan,
Retired Assistant Accounts Officer,
Office of the Director of Accounts (Postal), Kerala Circle,
Thiruvananthapuram. Residing at EF/162, Chaithram,
P.T.Chacko Nagar, Medical College P.O.,
Thiruvananthapuram-695 011.
3. Mary D'Cruz,
W/o Leon D.Cruz,
Retired Assistant Accounts Officer,
Office of the Director of Accounts (Postal),
Kerala Circle, Thiruvananthapuram.
Residing at Leslie House, B-5, Tennis Club Enclave,
Kaudiar P.O, Thiruvananthapuram-695 003.
4. Kuttappan Nair,
S/o Vesudevan Pillai.S,
Retired Senior Accountant,
Office of the Director of Accounts (Postal), Kerala Circle,
Thiruvananthapuram. Now residing at Gitanjali,
T.C.No.48/91, Ambalathara, Poonthura P.O.,
Thiruvananthapuram-695 026.

5. P.J.Aleykutty,
W/o C.K.Varghese,
Retired Senior Accountant,
Office of the Director of Accounts (Postal),
Kerala Circle, Thiruvananthapuram.
Now residing at Mavilathu House No.26,
Bethany Nagar, Nalanchira P.O.,
Thiruvananthapuram-695 015.
6. S.Parameswaran,
S/o S.M.Soodamony,
Retired Junior Accountant,
Office of the Director of Accounts (Postal),
Kerala Circle, Thiruvananthapuram.
Now residing at Indira Bhavan, Irakkom Road,
Thycaud P.O., Thiruvananthapuram-695 014.
7. Elizabeth Kunjumon,
W/o Kunjumon,
Retired Senior Accountant,
Office of the Director of Accounts (Postal), Kerala Circle,
Thiruvananthapuram. Now residing at AN 125, Madathil House,
Adarsh Nagar, Pattom Palace P.O.,
Thiruvananthapuram-695 004.
8. N.Padmanabhan,
S/o N.Nambi Iyer,
Retired Assistant Accounts Officer,
Office of the Director of Accounts (Postal), Kerala Circle,
Thiruvananthapuram. Now residing at T.C.No.42/137,
CLRA-54, Padmasaras, Sreevaraham, Manacaud.P.O.
9. K.Vilasini,
D/o Krishnankutty Nair,
Retired Senior Accountant,
Office of the Director of Accounts (Postal), Kerala Circle,
Thiruvananthapuram. Residing at Aswathy,
TC.No. 10/546,Varuthiyil House, Mukattukara,
Nettissery P.O., Thrissur-687 033.
10. P. Saraswathy,
W/o Padmanabhan,

Retired Senior Accountant,
Office of the Director of Accounts (Postal), Kerala Circle,
Thiruvananthapuram.
Now residing at 'Lakshmi', TC.24/127/2 Devi Nagar,
DNRA-30, Poonkunnam P.O.,
Thrissur-687 002.

11. S.Jayasree,
W/o V.R.S.Unnithan,
Retired Assistant Accounts Officer,
Office of the Director of Accounts (Postal),
Kerala Circle, Thiruvananthapuram.
Now residing at V.P-6/115, SRA 144,
Sreenagar, Manikanteswaram P.O.,
Thiruvananthapuram-695 013.
12. K.Thulaseedaran,
S/o Kochusankaran,
Retired Senior Accountant,
Office of the Director of Accounts (Postal),
Kerala Circle, Thiruvananthapuram.
Now residing at T.C.5/1547,
Padmam, Peroorkada P.O.,
Thiruvananthapuram-695 005.
13. T.K.Mary Philomena.
W/o Joseph Sebastian,
Retired Senior Accountant,
Office of the Director of Accounts (Postal),
Kerala Circle, Thiruvananthapuram.
Now residing at Karikkampally, SNRA-107,
Soorya Nagara, Nettayam,
Thiruvananthapuram-695 013.
14. Valsamma Samuel,
W/o Samuel,
Retired Senior Accountant,
Office of the Director of Accounts (Postal),
Kerala Circle, Thiruvananthapuram.
Now residing at TC.No.5/1844,
Mary Cottage, Nadakavu Lane,
Peroorkada P.O., Thiruvananthapuram-695 005.

15. R.Santhakumari Amma,
W/o Divakaran Nair,
Retired Assistant Accounts Officer,
Office of the Director of Accounts (Postal),
Kerala Circle, Thiruvananthapuram.
Now residing at VLRA-9, 'Punartham',
Valiyaveedu Lane, Vattiyoorkavu P.O.,
Thiruvananthapuram-695 013.
16. D.Rajendran,
S/o Damodaran.T.N.,
Retired Assistant Accounts Officer,
Office of the Director of Accounts (Postal),
Kerala Circle , Thiruvananthapuram.
Now residing at T.C.76/436, Anayara Nagar,
Anayara P.O., Thiruvananthapuram-695 029.
17. K.Ramakrishnan,
S/o Krishna Iyer,
Retired Assistant Accounts Officer,
Office of the Director of Accounts (Postal)
Kerala Circle, Thiruvananthapuram.
Now residing at TC 3070, Krishnan Koil Street,
Karamana P.O., Thiruvananthapuram-695 002.
18. C.Rajamma.
W/o K.Velappan,
Retired Assistant Accounts Officer,
Office of the Director of Accounts (Postal),
Kerala Circle, Thiruvananthapuram.
Now residing at C-8 982(b), Krishnakripa,
Thirumala P.O., Thiruvananthapuram-695 006.
19. Valsala Viswanathan,
W/o Viswanatha Pillai.K.R.,
Retired Senior Accountant,
Office of the Director of Accounts (Postal),
Kerala Circle, Thiruvananthapuram.
Now residing at PMRA-B 104,
Divyadeepam, West Pattom, Pattom Palace P.O.,
Thiruvananthapuram-695 004.

20. K.Syamala Kumari,
W/o Manoharan Nair,
Retired Senior Accountant,
Office of the Director of Accounts (Postal),
Kerala Circle, Thiruvananthapuram.
Now residing at K.M.S.Nilayam, Keezhevilakam,
Keraladityapuram, Thiruvananthapuram-695 587.
21. K.K.Rajamma,
W/o K.G.Sasidharan Nair,
Retired Senior Accountant,
Office of the Director of Accounts (Postal),
Kerala Circle, Thiruvananthapuram.
Now residing at T.C.38/1284,
Aswathi, VARA-638, Arappura Nagara,
Thiruvananthapuram-695 013.

Applicants

(Advocate: Ms.Daya K.Panicker)

versus

1. The Director of Accounts (Postal),
Office of the Director of Accounts (Postal)
Thiruvananthapuram-695 001.
2. The Director (Budget & Administration)
Postal Accounts Wing,
Department of Posts India,
Dak Bhavan. New Delhi-110 001.
3. Union of India represented by the Secretary,
Ministry of Communications & IT, Department of Posts,
(Postal & Accounts Wing), Dak Bhavan,
Sansad Marg, New Delhi-110 001.

Respondents

(Advocate: Ms. P.K.Latha, ACGSC)

The OA having been heard on 25th November, 2020, this Tribunal delivered the following order on 3rd December, 2020:

ORDER

By P.Madhavan, Judicial Member

This is an OA filed seeking the following reliefs:

- (i) *Direct the respondents to grant stepping up of the pay and other consequential benefits including revision of pension of applicants 2 to 21 on par with Senior Accountants who are junior to the former in the cadre of Senior Accountants and disburse the refixed pay, revised pension and arrears with compound interest w.e.f the date on which the pay of their junior had been fixed higher to them on account of grant of MACP Scheme.*
- (ii) *Declare that exclusion of the names of the applicants from Annexure A6 and A8 office orders is discriminatory and hence Annexure A6 and A8 office orders are unconstitutional.*
- (iii) *Direct the respondents to extend the benefit of the orders of the CAT, Principal Bench, New Delhi in OA.No.2124/2011 and CAT, Patna Bench in OA.440/2014 to the applicants as they are similarly situated.*
- (iv) *Declare that the applicants are entitled to the benefits extended to the 37 officials whose names are mentioned in Annexure A6 and Annexure A8 and direct the respondents to extend the benefit to the applicants.*
- (v) *Declare the Clause 8 of the condition for grant of benefit under the ACP Scheme being ultra vires since it has no relevance to seniority position.*

2. The first applicant is Postal Accounts and Audit, Pensioners Association and applicants No.2 to 21 are retired Assistant Accounts Officers/Senior Accountants. According to them, they were appointed as Lower Division Clerks in the Department and subsequently they were promoted as Junior Accounts Officers. There is direct recruitment of Junior Accounts Officers and both the direct recruits and the promotees are coming under a common seniority list. Subsequently, the cadre was restructured and 80% of the Junior Accountants were re-designated as Senior Accountants and placed in the revised scale of Rs.5500-9000 w.e.f. 1.4.1987. Thereafter, during the 5th Pay Commission, the Government introduced Assured Career Progression Scheme (ACP) to all the civilian employees

as per order dated 9.8.1999 which provided two financial up-gradations to employees who completed 12 years and 24 years in service without having regular promotion. The grievance of the applicants is that the Junior Accounts Officers who came into the service directly were given financial up-gradations under the ACP Scheme but, at the same time, the Junior Accounts Officers who came by promotion were not given financial up-gradations as they got two promotions in the meanwhile. According to them, ACP was denied since they came as LDCs and, thereafter, promoted as JAOs and then as Senior Accountants.

3. The applicants' case is that the All India Postal Accounts Employees Association had filed OA No.2124/2011 before the Central Administrative Tribunal, Principal Bench, New Delhi and the Principal Bench declared that the seniors are entitled to get a step-up of their pay, as a general rule, as and when any junior gets fixed in a pay scale higher than them on account of the grant of ACP or MACP, as the case may be. The Tribunal allowed the OA and directed the respondents to step up the pay of the applicants in the above OA and to grant arrears of pay. A copy of the above order is produced as Annexure A2. Even though the applicants in the aforementioned case filed representations before the respondents, they were not granted the benefits given to other applicants. The Union Government preferred an appeal before Hon'ble High Court of Delhi WP(C) No.7421/2013) and the High Court confirmed the order of the Tribunal and dismissed the Writ Petition. Thereafter, the Department filed an SLP before the Apex Court and the Apex Court had also dismissed the above petition on 26.3.2014. Thereafter the respondents implemented the orders of the Principal Bench and of the Patna Bench as per Annexure A3, A4, A6 & A8 produced in this case. According to the present applicants, they are also similarly placed and are entitled to get the same benefit. The respondents are denying the benefit stating

that the benefit is available only to the applicants who are party to the OA and others are not entitled to get the benefit. The applicants mainly rely upon the decision of the Principal Bench of CAT in OA 2124/2011 and OA 440/2014 of Patna Bench granting the above relief. Some of the representations given by the applicants are produced as A4, A5, etc.,

4. The respondents entered appearance and filed a detailed reply admitting the details of service rendered by the applicants and the granting of ACP to the Junior Accountants who are directly recruited by the Department. They have also admitted that some of the persons who were appointed as direct recruitees had been granted higher pay than the juniors who were promoted and posted as Senior Accountants. Their main argument is that as per the ACP Scheme, financial up-gradations are granted only to those who have not received any promotions and it is specifically mentioned that the ACP benefit is purely personal and there is no provision for junior-senior fixation in the Scheme. According to them, the nodal Ministry, DoPT had requested them to treat the above orders of PB and Patna Bench as judgment in persona and the relief cannot be granted to all similarly placed.

5. On going through the pleadings in the case, it can be seen that the applicants who are senior in service are being granted a lesser pay than that of the Junior Accountants who were recruited directly. The applicants are denied the benefit of ACP Scheme on the ground that they have received promotions from the cadre of LDC to the cadre of Junior Accounts Officer etc.

6. We have carefully gone through the decision of the Principal Bench in OA No.2124/2011 dated 1.2.2013 between All India Postal Accounts Employees Association, represented by its President and another vs. Union of India and another and we could see that the Tribunal had considered a similar case and found that the applicants-Senior Accountants who were drawing lesser pay than of their

juniors are entitled to get a stepping up of pay to the pay of juniors who were drawing higher pay. The above decision mainly relies upon the decision of the Hon'ble Supreme Court in *Harcharan Singh Sudan* wherein it was held that the seniors are entitled to get a stepping up of pay when a junior is getting higher pay on account of the grant of ACP Scheme. We are in full agreement with the above decision of the Principal Bench in OA 2124/2011 dated 1.2.2013. The Patna Bench of the Tribunal had also decided in favour of the similarly placed persons in OA No. 440 of 2014. All the above orders were implemented by the respondents also. Now it can be seen that a lot of people were benefited by the judgment and the respondents have implemented the above decision to the parties as they have become final. The Hon'ble Supreme Court in **State of U.P. & Others vs. Arvind Kumar Srivastava & Others**, reported in 2015 (1) SCC 347, in Para 13 laid down the main principle thus:

“(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently”.

7. We could not find any delay or laches on the part of the applicants here. The 2nd applicant had given his representation on 26.5.2008 (vide Annexure A1). Applicant No.11 - S.Jayasree had given her representation on the basis of the order of Principal Bench, on 10.3.2014 itself (Annexure A5). The case of All India Postal Accounts Employees Association & Another vs. Union of India & Others OA No.2124/2011 was decided only on 1.2.2013. So, we find that the benefit of the decision in All India Postal Employees Association case has to be implemented to

all similarly placed employees without any discrimination. In such circumstances, it is not proper to contend that the decisions in OA No.2124/2011 and OA No.414/14 are rendered in persona.

8. In the result, we find that the applicants are also entitled to get the benefit of stepping up of pay as ordered in OA No.2124/2011 and OA No.440/14 which were implemented by the respondent department. Hence, we allow the present OA and the respondents are directed to grant the relief to the applicants with all consequential benefits within a period of three months from the date of receipt of a copy of this order. No order as to costs.

(K.V.Eapen)
Administrative Member

(P.Madhavan)
Judicial Member

aa.

Annexures filed by the applicants:

- Annexure A1: True copy of the representation dated 26.5.2008 submitted by the 2nd applicant.
- Annexure A2: True copy of the order of the Central Administrative Tribunal, Principal Bench, New Delhi pronounced on 1.2.2013.
- Annexure A3: True copy of the Office Memorandum dated 24.7.2015 Issued by the 3rd respondent.
- Annexure A4: True copy of the representation dated 15.6.2014 submitted by the 1st applicant.
- Annexure A5: True copy of the representation dated 10.3.2014 submitted by the 11th applicant.
- Annexure A6: True copy of the Office order No. 126/Admn.II/ 3. Step up/CAT Case/2013-14 dated 7.7.2014.
- Annexure A7: True copy of the representation dated 15.8.2015 submitted by the 1st applicant.
- Annexure A8: True copy of the Office Order No. Admn.II/ step up/15-16/CAT Case/BPAOEA dated 28.10.2015.
- Annexure A9: True copy of the clarification letter dated 18.3.2014.
- Annexure A10: True copy of the gradation list of the year 2004.