

Reserved on 04.10.2021  
Pronounced on 06.10.2021

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**ALLAHABAD BENCH**  
**ALLAHABAD.**

**Original Application No. 330/00252/2014**

**Hon'ble Mr. Tarun Shridhar, Member (Administrative)**  
**Hon'ble Ms. Pratima K Gupta, Member (Judicial)**

1. Anil Shankar Srivastava aged about 54 years son of Late Jata Shankar Lal Srivastava, posted as Accounts Assistant in the office of Financial Advisor and Chief Accounts Officer, North Eastern Railway Gorakhpur.
2. Anil Kumar Tewari aged about 51 years son of Late Bhairo Prasad Tewari, posted as Accounts Assistant in the office of Financial Advisor and Chief Accounts Officer, North Eastern Railway Gorakhpur.
3. Mohd. Shahabuddin Siddiqui aged about 56 years son of Late Mohd. Razi, posted as Accounts Assistant in the office of Financial Advisor and Chief Accounts Officer, North Eastern Railway Gorakhpur.
4. Sudhanshu Kumar aged about 55 years son of Late Ram Bahadur Prasad, posted as Accounts Assistant in the office of Financial Advisor and Chief Accounts Officer, North Eastern Railway Gorakhpur.
5. Arun Kumar Mishra aged about 56 years son of Late Ramakant Mishra, posted as Accounts Assistant in the office of Financial Advisor and Chief Accounts Officer, North Eastern Railway Gorakhpur.
6. Praveen Kumar aged about 52 years son of Late Tarkeshwar Nath, posted as Accounts Assistant in the office of Financial Advisor and Chief Accounts Officer, North Eastern Railway Gorakhpur.
7. Yugul Kishore Pandey aged about 54 years son of Late Raghuvansh Mani Pandey, posted as Accounts Assistant in the office of Financial Advisor and Chief Accounts Officer, North Eastern Railway Gorakhpur.
8. Kamlesh Kumar Sinha aged about 56 years son of Late Ram Kishore Prasad, posted as Accounts Assistant in the office of Financial Advisor and Chief Accounts Officer, North Eastern Railway Gorakhpur.
9. Santosh Kumar Shukla aged about 54 years son of Sri Rajdhari Shukla, posted as Accounts Assistant in the office of Financial Advisor and Chief Accounts Officer, North Eastern Railway Gorakhpur.
10. Malti Ghosh aged about 56 years wife of Sri Ashok Kumar Ghosh, posted as Accounts Assistant in the office of Financial Advisor and Chief Accounts Officer, North Eastern Railway Gorakhpur.

.... Applicants.

By Advcoate : Shri A.K. Srivastava  
Shri S.K. Srivastava

Versus

1. The Union of India, through the General Manager, North Eastern Railway, Gorakhpur.

2. The Financial Advisor and Chief Accounts Officer, North Eastern Railway Gorakhpur.
3. The Chief Personnel Officer, North Eastern Railway Gorakhpur.

..... Respondents.

By Advocate : R.K. Rai

**ORDER**

**By Hon'ble Ms. Pratima K Gupta, Member (Judicial)**

The present OA has been filed by the applicants challenging the Memorandum dated 06.09.2013 of the Finance Advisor and Chief Accounts Officer, North Eastern Railway, Gorakhpur whereby the claim of the applicants seeking 2<sup>nd</sup> and 3<sup>rd</sup> financial up-gradation under the ACP has been rejected.

2. The brief facts, according to the applicants are that the applicants were selected and appointed as Clerk Grade-I in the pay scale of Rs.330-560/-. Consequent upon the recommendations of 4<sup>th</sup> Pay Commission, the aforesaid scale of Rs.330-560/- was replaced by the replacement scale of Rs.1200=-2040/-. Thereafter, in the year 1987, there was restructuring of the posts taken place and the pay of the applicants was fixed in the pay scale of Rs.1400-2600/-. The applicants grievance is that they have been continuously serving under the respondents but they have not been given any promotion or benefit of ACP Scheme as such they are entitled to the benefit of 5<sup>th</sup> Pay Commission. The applicants further state that the similar issue came up for consideration before the Central Administrative Tribunal, Madras Bench in OA No.335 of 2007 (V. Venkataraman Vs. Union of India and others) as affirmed by the Hon'ble High Court of Madras vide order dated 19.10.2010 passed in Writ Petition No.21112 of 2009 (Union of India and others Vs. Registrar Central Administrative tribunal Madras Bench and another) and further confirmed by the Hon'ble Supreme Court in SLP No.9422 of 2011 on 04.01.2012 and the same has been implemented by the respondents.

3. The applicants claimed that since they are similarly placed with the applicant in OA No.335 of 2007, they had approached the respondents vide communication dated 12.08.2013 seeking extension of benefit of the judgment. The claim of the applicants has been rejected vide impugned order dated 06.09.2013 without any application of mind stating that the relief could not be granted as it was only confine to the applicant in OA No.335 of 2007.

4. Counter affidavit has been filed by the respondents wherein it is stated that the MACP Scheme is a policy decision of the Govt. which provides for three financial up-gradation to the employees who are genuinely stagnating. The Hon'ble Supreme Court in the matter of Narmada Bachaoo Andoolan V/s Union of India and others (SCC 2000 Vol. 10 Page 664) have ruled that "Courts in the exercise of their jurisdiction will not transgress into the field of policy decision". Further, in the case of Sumangalam Nagrath V/s Union of India and other (SCC 1999 (L&S) 1318) the Supreme Court have held that "it is not for the Tribunal to examine the wisdom of rules..... policy decision is not debatable in a judicial forum.

5. Heard Shri H.S. Chaurasiya holding brief of A.K. Srivastava, learned counsel for the applicant and Shri Dharmendra Tiwari holding brief of Shri R.K. Rai, learned counsel for the respondents and perused the record.

6. It is not in dispute that the present case of the applicants is similar and identical with the facts in OA No.335 of 2007. The said OA is confirmed by the Hon'ble Supreme Court and this stands implemented.

7. The Hon'ble Supreme Court in the case of State of UP & ors. Vs. Arvind Kumar Srivastava & ors. in SLP No.18639 of 2012 on 17.10.2014.

The operative part of the order which reads as under :

“ 11. xxx.....

(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.

(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim. (3) However, this exception may not apply in those cases where the judgment pronounced by the Court *was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person.* Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see [K.C. Sharma & Ors. v. Union of India](#) (supra)). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.

xxxx.....”

8. On perusal of the available pleadings and the law laid down by the Hon'ble Supreme Court, the impugned order dated 06.09.2013 cannot be sustained and the same is quashed. Accordingly, the O.A. is allowed directing the respondents to grant the first financial up-gradation under the ACP Scheme to the applicant. The Respondents are directed to accord the 2<sup>nd</sup> up gradation under ACP as per decision of the Hon'ble Central Administrative Tribunal Madras Bench dated 26.08.2008 in OA No.335 of 2007 (V. Venkataraman Vs. Union of India and others) as affirmed by the

Hon'ble High Court of Madras vide order dated 19.10.2010 passed in Writ Petition No.21112 of 2009 (Union of India and others Vs. Registrar Central Administrative Tribunal Madras Bench and another) and confirmed by the Hon'ble Supreme Court vide order dated 04.01.2012 in SLP No.9422 of 2011 and to accord 3<sup>rd</sup> Upgradation under ACP as highlighted in the next higher grade pay i.e. S-18-PB-3 - Rs.15,600-39,100 Revised Pay Structure (Grade Pay of Rs. 6600 with consequential benefits. No order as costs.

(Pratima K Gupta)  
Member(Judicial)

(Tarun Shridhar)  
Member(Administrative)

RKM/