

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

O.A. No. 507 OF 2015

CORAM:

THE HON'BLE MR. SWARUP KUMAR MISHRA, MEMBER(J)
THE HON'BLE MR.T. JACOB, MEMBER (ADMN.)

1. Lingaraj Sahoo, aged about 52 years, S/o Late Hajari Sahoo, At: Mohanty Para, Cuttack – 2.
2. Pramod Kumar Singh, aged about 49 years, S/o Late Prafulla Charan Singh, At: Sijharpur, Cuttack – 4.
3. Gyanananda Hota, aged about 50 years, S/o Late Jayananda Hota, At – Chahata, Bidanasi, Cuttack – 14.
4. Bijaya Kumar Patra aged about 52 years, S/o Late Natabar Patra, At: Bharatpur, PO – Chandol, Cuttack.

All are working as regular Sr. Accountants in the Office of the Director of Accounts (Postal) Odisha Circle, Mahanadi Vihar, Cuttack.

..... Applicant

Through Legal practitioner :Mr. S. K. Ojha, Counsel

-Versus-

1. Union of India represented through the Secretary, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, North Block, New Delhi.
2. The Director General of Posts, Sansad Marg, New Delhi – 110001.
3. Director of Accounts (Postal) Odisha Circle, Mahanadi Vihar, Cuttack – 753004.
4. Shri Gangadhar Purty, aged about 59 years, S/o Late Subana Purty, Vill: Phulaguntha, PO – Singda, PS: Raruan, Dist: Mayurbhanj.

.....Respondents

Through Legal practitioner :Mr. A. Pradhan, Counsel

Reserved on: 12/03/2021

Pronounced on: 21.04.2021

O R D E R

MR.SWARUP KUMAR MISHRA, MEMJBER (JUDL.)

The applicant's have filed this Original Application seeking a direction for stepping up of their pay at par with the Jr. Accountant, Respondent No. 4 who

has been granted higher pay scale on account of ACP scheme, with the relief as under:

- (i) The original application may be allowed.
- (ii) The order at Annexure – A/11 may be quashed.
- (iii) The respondents may be directed to grant stepping up of pay benefit to the applicants at par with Respondent No. 4 to maintain pay parity in the cadre of Jr. Accountant w.e.f. 12.11.2004, whose pay scale has been upgraded to a higher scale due to ACP scheme.
- (iv) Direct the respondents, to recover the cost of litigation from the officers responsible for submitting false and fabricated information, for which the applicants have been dragged to this Tribunal
- (v) And such other order(s)/direction(s) may be issued in giving complete relief to the applicants.

2. The respondents have filed their counter inter alia stating that the applicants are not entitled to the relief as Respondent No. 4 had initially joined as Sorting Assistant on 12.11.1980 in the establishment of RMS 'N' Division. After rendering about 6 years of service, he joined the office of the respondent No. 3 on 24.03.1986 on deputation basis as LDC where he was absorbed on 22.07.1987. Whereas the applicants in the present OA joined as LDCs during the period between 20.10.1986 and 16.12.1988. After passing department exam, applicants were promoted to the cadre of JA on 26.07.1990 and Respondent No. 4 was promoted to JA on 12.07.1995. On completion of required years of service, Respondent No. 4 was granted financial upgradation under ACP which was not entitled to the applicants. It has been submitted that the representation of the applicants were examined with reference to the ACP scheme and the decision relied on by the applicant and it was found that the facts of the decision relied on by the applicants, being different and distinct on the face of the specific provision that "there shall be no financial upgradation for the senior employee on the ground that junior employee has got higher pay scale under ACP scheme" the

prayer of the applicants was rejected. Accordingly the respondents have prayed for disposal of the OA.

3. The applicants have filed rejoinder in the OA which will be dealt into infra.

4. We have heard learned counsels for both the sides, gone through their pleadings, materials on record. 4. Learned counsel for the applicant have relied on some citations including the following:

- a) Hon'ble Apex Court in the case of S.I Rooplal & anr vrs Lt. Governor reported in (2001) 1 SCC (L&S) 644.
- b) Hon'ble Apex Court in the case of Pinaki Chatterji & ors Vrs Union of India & ors reported in (2009) 2 SCC (L&S) 259.
- c) Hon'ble Supreme Court in the case of Commissioner and Secretary to Government of Haryana vrs Ram Swarup Ganda & ors and in the case of Harcharan Singh Sudan vrs UOI & ors.
- d) Hon'ble CAT Principal Bench in OA No. 2124/2011.
- e) Hon'ble CAT, Chandigarh Bench in OA No. 156-JK-2009 (Ashok Kumar vs UOI & ors.)

5. The applicants have prayed that their pay should be stepped up along with the pay of junior i.e. Pvt. Respondent No. 4. . He had relied upon one decision of Principal Bench, CAT, New Delhi passed in OA No.2124/2011 dated 01.02.2013. It is submitted by learned counsel for the applicants that in para 17 of the said order, the Principal Bench, CAT, New Delhi had referred to and relied upon decision of Hon'ble Supreme court in the case of Harcharan Singh Sudan. According to the applicants the cases of applicants being same and similar, the applicants are entitled to the same relief.

6. It was submitted by learned counsel for the respondents that in view of clause 8 of the ACP scheme wherein it is mentioned that "*The financial upgradation under the ACP Scheme shall be purely personal to the employee and shall have no relevance to his seniority position. As such, there shall be no additional financial upgradation for the senior employee on the ground that the junior employee in the grade has got higher pay-scale under the ACP Scheme*", the applicants are not entitled to relief in this case. The respondents counsel further submitted that the Respondent No. 4 i.e. Shri Gangadhar Purty had initially joined as Sorting Assistant on 12.11.1980 in the Establishment of RMS 'N' Division and after rendering about 6 years of service joined in the office of the Respondent No. 3 on 24.03.1986 on deputation basis as LDC. Finally he was absorbed under the establishment of Respondent No. 3 on 22.07.1987 in LDC cadre under Rule 38. At the time of joining under the establishment of the Respondent No. 3 the respondent No. 4 had carried forward his pay rendered for the previous service which was much higher than that of the applicants of the present OA. It was further submitted that the facts of the cases relied on by the applicants are totally different to the present case. The pay of the Respondent No. 4 was always on the higher side than that of the applicants from the date of their joining as shown vide comparative chart below:

Sri Lingaraj Sahoo, Applicant No. 1 (senior)			Sri Gangadhar Purty, Respondent No. 4 (junior)		
Date	Post	Scale of Pay	Date	Post	Scale of Pay
20.10.1986 23.01.1989	LDC Rule 38 transfer to PAO, Cuttack	950-1500	12.11.1980 10.10.1986	Stg. Asst. LDC	260-480 950-1500
26.07.1990	Jr. Accountant	1200-2040	13.07.1995 12.11.2004	Jr. Accountant ACP 11	1200-2040 5500-9000
13.05.2005	Sr. Accountant	5500-9000	03.07.2006	Sr. Accountant	5500-9000

Sri Pramod Ku Singh, Applicant No. 2 (senior)			Sri Gangadhar Purty, Respondent No. 4 (junior)		
Date	Post	Scale of Pay	Date	Post	Scale of Pay
05.02.1988	LDC	950-1500	12.11.1980 10.10.1986	Stg. Asst. LDC	260-480 950-1500

26.07.1990	Jr. Accountant	1200-2040	13.07.1995 12.11.2004	Jr. Accountant ACP 11	1200-2040 5500-9000
03.12.2004	Sr. Accountant	5500-9000	03.07.2006	Sr. Accountant	5500-9000

Sri Gyanananda Hota, Applicant No. 3 (senior)			Sri Gangadhar Purty, Respondent No. 4 (junior)		
Date	Post	Scale of Pay	Date	Post	Scale of Pay
14.12.1988	LDC	950-1500	12.11.1980 10.10.1986	Stg. Asst. LDC	260-480 950-1500
26.07.1990	Jr. Accountant	1200-2040	13.07.1995 12.11.2004	Jr. Accountant ACP 11	1200-2040 5500-9000
11.02.2005	Sr. Accountant	5500-9000	03.07.2006	Sr. Accountant	5500-9000

Sri Bijay Ku Patra, Applicant No. 4 (senior)			Sri Gangadhar Purty, Respondent No. 4 (junior)		
Date	Post	Scale of Pay	Date	Post	Scale of Pay
16.12.1988	LDC	950-1500	12.11.1980 10.10.1986	Stg. Asst. LDC	260-480 950-1500
26.07.1990	Jr. Accountant	1200-2040	13.07.1995 12.11.2004	Jr. Accountant ACP 11	1200-2040 5500-9000
31.05.2005	Sr. Accountant	5500-9000	03.07.2006	Sr. Accountant	5500-9000

It is submitted by learned counsel for the respondents that the applicants having not completed the requisite period of service in order to enable them to get the ACP benefit, financial benefit under ACP scheme was not granted in their favour. On the other hand private respondent no. 4 having completed the said requisite period of service of 24 years, he was given financial benefit under ACP scheme.

7. Learned counsel for the applicants by relying on decision of Hon'ble Supreme Court in Pinaki Chatterji & ors Vrs Union of India & ors reported in (2009) 2 SCC (L&S) 259 has submitted that the case relied upon by him was also relied by Principal Bench passed in OA No. 2124/2011 and that of Hon'ble Supreme Court in the case of Harcharan Singh Sudan and in view of the observation of Hon'ble Supreme Court in para 16 of the decision in Pinaki Chaterjee versus Union of India, this Tribunal should follow the binding principle of said cases. Learned counsel for the applicants submitted that the decision of Principal Bench in question being judgment in rem the respondent

department is bound to follow the same and should extend the same benefit in favour of the applicants. It was submitted by learned counsel for the applicants that order passed in OA 2124/2011 by the Principal Bench, New Delhi has already been implemented by the department and the said fact has been mentioned in the speaking and reasoned order vide annexe A/11.

8. The applicants have prayed for relief w.e.f. 12.11.2004. But they first made representation on 05.05.2014 more than after 10 years. In this regard, it may be stated that law is well settled that rights cannot be enforced after an unreasonable lapse of time. Consideration of unexplained delays and inordinate laches would always be relevant in individual actions, and Court/Tribunal naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester. Fence sitters cannot be allowed to barge into courts and cry for their rights at their convenience, and vigilant citizens ought not to be treated alike with mere opportunists. On multiple occasions, it has been restated that there are implicit limitations of time within which legal remedies can be enforced. Thus, in the present case it is thought wise to deal with the point of limitation before proceeding to decide on the merit of the matter as per the decision of the Hon'ble Apex Court in the case of **D.C.S.Negi v Union of India & Ors**, Special Leave to Appeal (Civil) No. 7956/2011 wherein it has categorically held by the Hon'ble Apex Court that provisions of Section 20 and 21 of the A.T. Act regarding limitation cannot be overlooked and it is the duty of the Tribunal to consider the point of limitation even if the plea of limitation has not been raised by the Respondents in their reply.

9. The Hon'ble Apex Court in the case of **Union of India and Others Vs. M.K. Sarkar**, (2010) 2 SCC 59 have been pleased to hold as under:-

“15. When a belated representation in regard to a “stale” or “dead” issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the “dead” issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court’s direction. Neither a court’s direction to consider a representation

issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.” (**emphasis supplied**)

10. Again, the Hon’ble Apex Court in the case of **State of Uttarakhand and Another Vs. Shiv Charan Singh Bhandari and Others**, (2013) 12 SCC 179 had occasion to consider question of delay and laches. The Hon’ble Apex Court has been pleased to hold that representations relating to a stale claim or dead grievance do not give rise to a fresh cause of action. In Paragraph Nos. 19 and 23 following was laid down:-

“19. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time.

23. In State of T.N. v. Seshachalam, (2007) 10 SCC 137, this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus: (SCC p. 145, para 16) “16. ... filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant.”

11. We have also gone through those cases relied on by the Applicants and it may be stated that law is well settled in the case of **SSBalu v. State of Kerala** dated 13 January, 2009 in CIVIL APPEAL NO. 104 OF 2009 (Arising out of SLP (C) No. 8586 of 2006) as under:

17. It is also well-settled principle of law that delay defeats equity. It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment.

12. Further in the case of **Jagdish Lal &Ors v State of Haryana&Ors** reported in (1997) 6 SCC 538, the Hon’ble Supreme Court reaffirmed the rule if a person chose to sit over the matter and then woke up after the decision of the

Court then such person cannot stand to benefit. The above view has also been reiterated by the Hon'ble Apex Court in the case of **M/s. Rup Diamonds & Ors v Union of India and others** reported in (1989) 2 SCC 356.

13. The fundamental conditions of stepping up as per DoPT guidelines with effect from the date of promotion of the junior employee is subject to the fulfillment of the following conditions, namely:-

"(a) Both the junior and the senior Government servants should belong to the same cadre and the posts to which they have been promoted or appointed should be identical and in the same cadre.

(b) The pre-revised scale of pay and the revised grade pay of the lower and higher posts in which they are entitled to draw pay should be identical.

(c) The senior government servants at the time of promotion should have been drawing equal or more pay than the junior.

(d) The anomaly should be directed as a result of the application of the provisions of Fundamental rule 22 or any other rule or order regulating pay fixation on such promotion in the revised pay structure. If even in the lower post, the junior officer was drawing more pay in the pre-revised scale than the senior by virtue of any advance increments granted to him, provision of this Note need not be invoked to step up the pay of the senior officer."

14. We also find that stepping up of pay of seniors in the event of placement of junior in higher scale on account of financial upgradation under ACP and MACP scheme has received due consideration of the DoPT, after judgment of various Courts. In term of DoPT OM dated 09.07.1999, the financial upgradation under ACP scheme shall be purely personal for the employee and shall have no relevance to his seniority position as such there shall be no additional financial upgradation for the senior employee in the ground that junior employee in the grade has got higher pay scale under the ACP scheme. This

view has been reiterated by the DoPT from time to time on 04.10.2012, 22.10.2019 and again by taking into consideration the decision of Hon'ble Apex Court in the case of Union of India versus M. V. Mohanan Nair and others vide OM No. 5th April 2021. Further it is revealed that the facts of the decision on which emphasis was laid by the applicants are of no help to them because in that case it was held by the Court that pay of all those Sr. Accountants was to be stepped up who were the applicant to the said OA and who had entered the department as LDCs and subsequently promoted as Jr. Accountant and Sr. Accountant at par with Sr. Accountant who are junior to former in the cadre of Sr. Accountant and were recruited as direct recruit Jr. Accountant which are not the present case.

15. In view of the discussion made above, we do not find any illegality or irregularity in the decision making process of not granting the benefit of stepping up of pay to the applicants. Accordingly the OA is dismissed being devoid of merit but in the circumstances without any order as to cost.

(T. Jacob)
Member (Admn.)

(Swarup Kumar Mishra)
Member (Judicial)

CS/CM