

Open Court**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**
JABALPUR**Original Application Nos.200/327/2018, 200/328/2018 &**
200/550/2018Jabalpur, this Friday, the 26th day of March, 2021**HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER**
HON'BLE MS. NAINI JAYASEELAN, ADMINISTRATIVE MEMBER**1. ORIGINAL APPLICATION NO.200/327/2018**Bhaskar Chatterjee, S/o Subimal Chaterjee, Age 55 years, Superintendent, CGST,
Paryavas Bhawan, Bhopal (M.P.) **-Applicant****(By Advocate – Shri Awadhesh Kumar Pandey)****V e r s u s**

1. UOI through Secretary, Ministry of Finance, North Block, New Delhi.

2. The Principal Commissioner, CGST, CGST Bhawan, Administrative Area,
Arera Hills, Bhopal (MP). **-Respondents****(By Advocate – Shri Himanshu Shrivastava)****2. ORIGINAL APPLICATION NO.200/328/2018**B. Jayanti Aiyer, W/o Balasubramaniam Aiyer, Age 56 years, Superintendent of
Service Tax, Service Tax Division, Paryavas Bhawan, Arera Hills, Bhopal
462011 **-Applicant****(By Advocate – Shri Awadhesh Kumar Pandey)****V e r s u s**1. The Principal Commissioner, CGST, CGST Bhawan, Administrative Area,
Arera Hills, Bhopal (MP) Pin Code 462011.

2. Smt' Arunita Phukan Yadav, Deputy Commissioner, Service Tax Division, Paryavas Bhavan, Arera Hills, Bhopal 462011.

3. UOI through Secretary, Ministry of Finance, New Delhi **-Respondents**

(By Advocate – Shri Himanshu Shrivastava)

3. ORIGINAL APPLICATION NO.200/550/2018

Manojumon T.J. Age 53 years, Superintendent, CGST, Office of Commissioner (Audit), CGST, 48, Administrative Area, Arera Hills, Bhopal (M.P.) Pin Code – 462011 **-Applicant**

(By Advocate – Shri Awadhesh Kumar Pandey)

V e r s u s

1. Union of India through the Secretary, Ministry of Finance, Department of Revenue, New Delhi.

2. The Commissioner/Principal Commissioner, CGST, CGST Bhawan, 35 C, Administrative Area, Arera Hills, Bhopal (MP) Pin Code – 462011.

3. The Additional Commissioner (P&V), CGST Bhawan, 35 C Administrative Area, Arera Hills, Bhopal (MP) Pin Code - 462011 **-Respondents**

(By Advocate – Shri Himanshu Shrivastava)

C O M M O N O R D E R

By Ramesh Singh Thakur, JM.

The applicants are aggrieved that they have been paid less salary than their juniors. The applicants are, therefore, seeking steeping up of pay to them at par with their juniors. Since the issue involved in all these Original Applications is similar in nature, therefore, they are being adjudicated



through a common order. For the purpose of this order, the facts are being taken from OA 200/327/2018 unless specifically mentioned otherwise.

2. The applicant has sought for the following reliefs:

“8. Relief sought:

In view of the facts mentioned in para 4 and on support of grounds mentioned in para 5 above the applicant prays for the following relief(s):-”

- (i) The Hon’ble Tribunal may be pleased to issue a Mandamus directing the Respondent to re-fix the pay of the applicant in accordance with principles enunciated in the Judgment of Hon’ble this Bench in O.A. No.416/2008 (V.N. Mishra & Ors Vs. UOI & Ors.).
- (ii) As this is a case of with holding lawful dues of the applicant arbitrarily, and ignoring the Judgement of Hon’ble this Bench, the Respondent may please be directed to pay to the applicant interest at prevailing Bank rates of 14%.
- (iii) As this is a case of with holding lawful dues of the applicant arbitrarily, the Hon’ble Tribunal may be pleased to direct the Respondent to re-imburse to applicant the cost of this litigation.
- (iv) The Hon’ble Tribunal may be pleased to pass any other order as deemed fit and justified in the facts and circumstances of this case.”

3. Brief facts of the case are that the applicant joined the respondent department in clerical post and was subsequently promoted as Inspector and presently working as Superintendent. The Assured Career Progression (ACP) Scheme was introduced by the 5th Central Pay Commission granting



two financial upgradations at the interval of 12 and 24 years of service to those employees who had not earned two promotions during the period. Subsequently, the ACP scheme was replaced by the Modified Assured Carrier Progression (MACP) scheme in the 6th CPC under which three financial upgradations are allowed after 10, 20 and 30 years of service. Such financial upgradations were not granted to the applicants on the ground that they were initially inducted in lower posts like LDC, UDC and Stenographers and since they have already been promoted once or twice, financial upgradations under the said scheme cannot be granted to them. However, direct recruits appointed on the same post were granted the financial upgradations despite the fact being junior to the applicant and hence they started getting higher pay than the senior promotee officers like the applicant.

3.1 The applicant submits that a similar issue was agitated by some of the promotee officers before this Tribunal in Original Application No.416 of 2008 (**V.N. Mishra & Ors. vs. Union of India & ors.**), wherein this Tribunal vide order dated 06.12.2012 (Annexure A-1) directed the respondents therein to step up the pay of the applicants at par with their juniors. However, the order of this Tribunal in **V.N. Mishra** (supra) was



implemented only in respect of the applicants therein and since the applicant is also similarly placed to that of **V.N. Mishra** (supra), they are also seeking identical relief. The applicant has also submitted his representation dated 25.11.2016 but to no avail.

4. In their reply, the respondents have submitted that the order of this Tribunal in **V.N. Mishra** (supra) was implemented only in respect of the applicants therein in view of the specific provisions of the ACP/MACP scheme that a senior employee cannot claim pay parity with the junior if the junior employee receives higher pay on account of upgradation under the said schemes.

5. We have heard the learned counsel for the parties and perused the pleadings and the documents annexed therewith.

6. The issue involved in all these Original Applications is no more *res integra* as the same has already been decided by this Tribunal in the case of **V.N. Mishra** (supra). Placing reliance on the orders passed by the Chandigarh Bench of the Tribunal in OA No.156-KL-2009 and OA No.1063-JK-2011, this Tribunal has held as under:

“9. We find that the judgments of Chandigarh Bench of the Tribunal in O.A. No.156-JK-2009 as well as in O.A. No.1063-JK-2011 are squarely



applicable to the facts of the case in the instant O.A., as these judgments are in regard to promotee officers of the Central Excise Department, seeking stepping up of their pay on the ground of grant of financial upgradation under the ACP Scheme to their juniors. In O.A. No.156-JK-2009, the Chandigarh Bench of the Tribunal has held that the respondents are directed to step up the pay of the applicant at par with his junior aforesaid and in terms of the directions contained in the case of Harcharan Singh Sudan Vs. Union of India & others {O.A.No.96-CH-2007}. It is made clear that the applicant shall be given stepping up of pay only and not the pay scale, as explained above.



10. In O.A. No.1063-JK-2011 too, vide order dated 2.3.2012, the Tribunal ordered that "This O.A. is thus allowed and disposed of with direction to the respondents to extend the applicants benefit of decision in the case of Ashok Kumar (supra) and step up their pay at par with their junior. It is however, clarified that the applicants shall be granted stepping-up of pay only and not the pay scale."

11. The decision of Chandigarh Bench of the Tribunal in O.A. No.156-JK-2009 was challenged by the Union of India before Hon'ble High Court of Punjab and Haryana vide CWP No.12894/2010. The Hon'ble High Court, while dismissing the writ petition, held thus:-

"Having heard the learned counsel we are of the considered view that the order passed by the Tribunal for stepping up the pay of the petitioner and bringing it equivalent with the pay of his junior Shri Ramesh Chand Sharma does not suffer from any legal infirmity. There is no provision in the ACP Schemes that the petitioner is entitled to the same pay scale as is given to his counter part who is a direct recruit. Moreover, the petitioner had already earned three promotions and therefore would not be entitled to any other benefit in the shape of higher pay scale."

12. The above decision of Hon'ble High Court was challenged before Hon'ble Apex Court by way of SLP No.7278/2011 and the same was dismissed vide order dated 2.5.2011 on the ground of delay as well as on merits. Thus, the order passed by Chandigarh Bench of the Tribunal in O.A. No.156-JK-2009 has attained finality. The principle that senior cannot get lesser pay than the junior has been also held by Hon'ble Apex Court in the matter of Gurcharan Singh Grewal (Supra), wherein in paragraph-17, it has been held as under:-

“17. Something may be said with regard to Mr. Chhabra’s submission about the difference in increment in the scales in which Applicant 1 and Shri Shori was placed, but the same is still contrary to the settled principle of law that a senior cannot be paid a lesser salary than his junior. In such circumstances, even if there was a difference in the incremental benefits in the scale given to Appellant 1 and the scale given to Shri Shori, such anomaly should not have been allowed to continue and ought to have been rectified so that the pay of Appellant 1 was also stepped up to that of Shri Shori, as appears to have been done in the case of Appellant 2.”



13. In view of the aforesaid, the respondents are directed to step up the pay of the applicants at par with their juniors. However, they will not be allowed benefit of higher grade pay as it is only stepping up of pay to bring it at par with the pay of their juniors. The pay of the applicants shall be fixed accordingly from the date from which their juniors started getting higher pay, and arrears in this regard be also paid to them, within a period of 3 months from the date of receipt of a copy of this order.”

7. In the instant case also, the applicant is getting lesser pay than Shri Raj Kumar Jain, who is junior to the applicant in the rank of Inspector as well as Superintendent. It is settled principle of law that a senior cannot be paid lesser salary than his junior. Since the applicant is also similarly situated to that of **V.N. Mishra** (supra), he is also entitled for the similar benefit as has been extended to V.N. Mishra (supra).

8. Accordingly, we direct the respondents to step up the pay of the applicant at par with his junior. However, the applicant will not be allowed benefit of higher grade pay as it is only stepping up of pay to bring it at par

with the pay of his junior. The pay of the applicant shall be fixed accordingly from the date from which his junior started getting higher pay and arrears in this regard be also paid to him, within a period of three months from the date of receipt of a copy of this order.

9. In the result, the Original Application is disposed of in the above terms.

No order as to costs.

10. A copy of this order shall also be placed in other connected Original Applications.



(Naini Jayaseelan)
Administrative Member
am/-

(Ramesh Singh Thakur)
Judicial Member