

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No.830/2012

Reserved on:12.08.2021
Pronounced on: 18.08.2021

**Hon'ble Mr. Dinesh Sharma, Member (A)
Hon'ble Mrs. Hina P. Shah, Member (J)**

Madan Singh Rathore S/o Shri Bhanwar Singh Rathore, aged 61 years, Resident of III/74 A.G.Colony, Bajaj Nagar, Jaipur retired from post of Sr. Auditor from the office of P.A.G. (Civil Audit) Rajasthan, Jaipur. ...Applicant.

(By Advocate: Shri Vinod Goyal)

Versus

1. Union of India through the Comptroller & Auditor General of India, 10, Bahadur Shah Zafar Marg, New Delhi-110002.
2. The Principal Accountant General (G&SS Audit) Rajasthan, A.G. Office Janpath, Near Statue Circle, Jaipur.
...Respondents.

(By Advocate: Shri Anand Sharma)

ORDER

Per: Dinesh Sharma, Member (A):

In this OA, the applicant has prayed for quashing the impugned orders dated 17.10.2012 and 19.02.2010 (at Annexures A/1 and A/2 respectively); to direct the respondents to step up the pay of the applicant to bring it at par with his junior, Shri Kashi Ram Jat, Senior Auditor, with all consequential benefits, including arrears of salary with 9%

(2)

interest; and, to revise the retiral benefits and pay arrears thereof with 9% interest.

2. The applicant had approached this Tribunal earlier, with OA No.164/2010, with request for stepping up of his pay. The Tribunal, in its decision dated 02.07.2012 decided that in view of the ratio laid down by the Supreme Court in **Commissioner and Secretary to the Government of Haryana & Others vs. Ram Swaroop Ganda & Others** [Civil Appeal No.3250 of 2006 arising out of SLP (Civil)20264 of 2004 decided on 02.08.2006] and **Gurcharan Singh Grewal & Another vs. Punjab State Electricity Board & Others**, 2009 (3) SCC 94, the respondents should re-examine the case of the applicant for stepping up of his pay and pass a speaking and reasoned order within a specified time. Following this direction, the Respondent No.2 has passed the impugned order at Annexure A/1. The applicant states that the order at Annexure A/1 is not legally sustainable since in it the department has distinguished the Hon'ble Supreme Court's judgments on their own terms. The case of the applicant has not been re-examined in the true spirit. The Para 10 of the MACP has no relevance against the judicial pronouncement of the Hon'ble Supreme Court. Any anomaly, which has the effect of a senior Government servant receiving lesser pay than their junior does, entitles such senior person stepping up of pay.

(3)

3. The respondents have denied this claim. It is stated that Shri Kashi Ram Jat had got only one promotion, from Auditor to Senior Auditor, therefore, he was granted financial up-gradation under ACP scheme w.e.f. 19.08.2005. The applicant was not eligible for financial upgradation under this scheme since he had already got two promotions (from Audit Clerk to Auditor and from Auditor to Senior Auditor). The provisions of ACP Scheme (and now MACP scheme) specifically make any claim for stepping up inadmissible when a difference in pay of senior and junior arises due to grant of a financial benefits under these schemes. The reply states that the judgments of the Hon'ble Supreme Court are not applicable to such cases and thus the order at AnnexureA/1, which is a well reasoned and speaking order, passed in compliance of this Tribunal's earlier order in this matter, effectively closes this case.

4. A rejoinder has been filed by the applicant reiterating the claims made in the OA and stating that references to ACP Schemes are misleading and have no relevance to the controversy involved in the present matter.

5. The matter was heard through video conferencing on 12.08.2021. Both the learned counsels re-stressed the arguments mentioned in their pleadings.

(4)

6. After going through the pleadings and hearing the arguments, we find that the facts, the rules and the judicial pronouncements on the basis of which we had decided the OA No.164/2010 are no different from those averred in the present case (except that order at Annexure A/1 has been issued in compliance of our orders in the earlier case). The principles of res judicata prevents us from examining the same facts, rules and judicial pronouncements again, and come to a different judgment. Hence, we are limiting ourselves to examining Annexure A/1 to see if it complies with our judgment in true letter and spirit. We are also examining whether the respondents are correct in distinguishing this case from the Apex Court's judgments, in view of which we had directed them to re-examine and pass reasoned and speaking orders.

7. A plain reading of Annexure A/1 leaves us in no doubt about it being in compliance with our earlier orders (In OA No.164/2010). It is a sufficiently reasoned and speaking order. It also discusses the judgments cited by us in detail and thus complies with that part of our order (passing order in view of the ratio of the Hon'ble Supreme Court's Judgments), too.

8. This leaves us with the issue regarding whether the impugned order is correct in distinguishing the facts from the

(5)

facts of this case. It can be argued that logically, if the facts were not similar, this Tribunal would not have ordered the respondents to apply the ratio of the cited Supreme Court's Judgments in this case. The contrary argument, that, if the Tribunal had already found the facts to be similar, there was no need to remit the case back to the respondents for re-examination, would be equally logical. We find that though we have mentioned the judgments cited by the learned counsel of the applicant in that case (in Para 10 of that order, at Page 33 of the Paper Book), we have not specifically come to any conclusion. By leaving it to the respondents to re-examine the matter "in view of the ratio laid down by the Supreme Court in these cases", this issue, about whether the ratio of that judgment applies to the facts of this case, can be still said to be open and not hit by res-judicata. We are reproducing below the portion of the impugned order distinguishing this case from the cited apex court judgments.

"...As regards the pronouncement of the Hon'ble Apex Court in the case of Commissioner and Secretary to the Govt. of Haryana & others Vs. Ram Swaroop Ganda and others and Gurcharan Singh Grewal and another Vs. Punjab Electricity Board & others are concerned, it is stated that circumstances indicated in the judgments are not identical. In Gurcharan Singh Grewal case disparity was due to senior had been granted the promotional scale w.e.f. 1.1.96 where the benefits of increment in the scale were lower. On the other hand junior was granted the promotion scale on 17.5.06 w.e.f. 1.9.2001 when the increment and the pay scales were higher. But Madan Singh Rathore's case is not identical

(6)

to this case as his junior got higher pay due to financial upgradation under ACP Scheme. The ACP Scheme clearly states that financial upgradation under ACP Scheme shall have no relevance to employee's seniority position. As such, there shall be no additional financial upgradation for senior employee on the ground that junior employee in the grade has got higher pay scale under ACP Scheme.

In case of Haryana Govt. Vs. Ram Swaroop Ganda, the Haryana Govt. introduced ACP Scheme w.e.f. 1.1.96 allowed two financial upgradation on completion of 10 and 20 years of regular service from initial entry into the service, but under ACP Scheme for Central Govt. Employees two financial upgradations on completion of 12 and 24 years of regular service were allowed. Further Rule 9 of Haryana Govt. ACP Scheme says that the senior Govt. servants, who are direct recruits, are not entitled to get any stepping up in case any anomaly arises regarding the receipt of lesser pay by them. This provision is not applicable under the ACP Scheme for Central Govt. Employees. Para 8 of Annexure I of the ACP Scheme for Central Govt. Employees clearly says that there shall be no additional financial upgradation for senior employees on the ground that junior employee in the grade has got higher pay scale under ACP Scheme. Moreover rules of State Govts. and State Autonomous Bodies are separate..."

9. We agree with the distinction made in the impugned order. The Gurcharan Singh Grewal case (supra). was clearly not in the context of the ACP scheme. The Ram Swaroop Ganda case was in the context of the ACP scheme of the Haryana Government which had provisions different from the Central ACP Scheme. We do not find anything in the pleading of the applicant in the present case to show what is wrong in the above reasoning and distinction made by the Respondent No.2 apart from saying that Rule 10 of the Circular relating to ACP

(7)

has no relevance. This argument is no different from what they raised in their earlier OA. The Tribunal still sent the matter for decision in the light of the Supreme Court's Judgment. The applicant did not file any appeal against the direction of the Tribunal and are, therefore, barred from raising the matter again. Further arguments in the OA relate to legitimate expectations, harassment and victimization, vast resentment, etc. Raising of such arguments is barred by the principle of res-judicata (if already raised in the earlier OA) or constructive res-judicata (if being raised only now).

10. All rules relating to payment of emoluments and financial benefits to the employees have to be interpreted, by employees who are entrusted with the implementation of those rules, strictly as per the letter of these rules. If the rules specifically prohibit giving a benefit, it cannot be given taking a wider interpretation taking into account whatever the interpreter might think to be the true spirit behind those rules. The rules of stepping up clearly prohibit grant of stepping up to correct any situation arising out another rule for providing benefit to an employee as a personal benefit. The impugned order clearly shows that the facts and circumstances involved in the Honble Supreme Court's judgments were materially different from the facts and circumstances of the present case and we agree with the distinction made in the impugned order.

(8)

11. For the aforementioned reasons, we are unable to grant the reliefs claimed by the applicant. The OA is, therefore, dismissed. No costs.

(Hina P. Shah)
Member (J)

(Dinesh Sharma)
Member (A)

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