CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

O.A. No.350/00403/2020 & Ors.

Date of order : This the 3rd Day of December, 2020.

Hon'ble Mrs.Bidisha Banerjee, Judicial Member

Hon'ble Dr (Ms) Nandita Chatterjee, Administrative Member

O.A. 403/2020	Amoy Kr. Majumdar
O.A. 470/2020	Surajit Poddar
O.A. 471/2020	Ratna Banerjee
O.A. 474/2020	Snoali Samaddar
O.A. 475/2020	Anupam Bhattacharyya
O.A. 476/2020	Debashis Roy
O.A. 477/2020	Aloke Kumar Patra
O.A. 499/2020	Amalendu Roy
O.A. 500/2020	Dilip Kumar Chandra
O.A. 501/2020	Tirtha Das
O.A. 502/2020	Bhaskar Bandopadhyay
O.A. 504/2020	Debdulal Mondal
O.A. 505/2020	Tapati Seth
O.A. 506/2020	Siddhartha Basak
O.A. 507/2020	Kshamamay Biswas
O.A. 508/2020	Aloke Kumar Bagh
O.A. 525/2020	Samiran Bala
O.A. 526/2020	Palasree Ghosh
O.A. 527/2020	Samoresh Kumar Nath
O.A. 535/2020	Santanu Chowdhuri
O.A. 536/2020	Utsab Bhattacharya
O.A. 550/2020	Bablu Ray
O.A. 551/2020	Barun Das Biswas
O.A. 561/2020	Swetadri Saha
O.A. 630/2020	Sankar Ghatak
O.A.836/2020	Debabrata Ganguly
O.A. 837/2020	Rudra Parsad Chatterjee
O.A. 838/2020	Ashim Neogi
O.A. 839/2020	Rathindra Nath Jati
O.A. 844/2020	Gouri Ghosh
O.A. 845/2020	Tapati Pal
O.A. 846/2020	Madan Mohan Bhaddra
O.A. 847/2020	Tushar Kanti Mondal
O.A. 848/2020	Mina Dutta
O.A. 874/2020	Biswajit Dhar
O.A. 875/2020	Kamal Das
O.A. 876/2020	Animesh Acharya
O.A. 877/2020	Nirmal Byabarta

O.A. 878/2020 Shyamsundar De
O.A. 879/2020 Sandip Chatterjee
O.A. 888/2020 Debasish Guha Thakurta
O.A. 890/2020 Tapan Kumar Das

..... Applicants.

By Advocate Mr A.Chakraborty & Ms P. Mondal

-Versus-

1. Union of India,
Through the Secretary,
Ministry of Communication,
Department of Post,
Dak Bhawan,
New Delhi -110001.

2. The Chief Post Master General,
Yogayog Bhawan,
C.R. Avenue,
Kolkata – 700012.

3. The General Manager
(Postal Accounts & Finance),
West Bengal Postal Circle,
P-36 C R Avenue,
Yogayog Bhawan,
Kolkata – 700 012.

4. The Assistant Accounts Officer,
Admn-III Section, Office of the General Manager,
(Postal Accounts & Finance),
West Bengal Postal Circle,
P-36 C R Avenue,
Yogayog Bhawan,
Kolkata – 700 012.

5. Sri Kripasindhu Mondal,
Working as Senior Accountant,
O/o the General Manager
(Postal Accounts & Finance),
West Bengal Postal Circle),
P-36 C R Avenue,
Yogayog Bhawan,
Kolkata – 700 012.

6. Sri Biswajit Biswas,
Working as Senior Accountant,
O/o the General Manager
(Postal Accounts & Finance),
West Bengal Postal Circle),
P-36 C R Avenue,
Yogayog Bhawan,

Kolkata – 700 012.

7. Sri Swapan Bandyopadhyay,
Working as Senior Accountant,
O/o the General Manager
(Postal Accounts & Finance),
West Bengal Postal Circle),
P-36 C R Avenue,
Yogayog Bhawan,
Kolkata – 700 012.

.....Respondents.

By Advocate Mr B.B.Chatterjee.

ORDER (ORAL)

Ms Bidisha Banerjee, Member(J)

Since identical issues have been raised, identical pleas have been taken and identical reliefs have been sought for, all the O.As are taken up analogously to be disposed of by this common order. For the sake of brevity facts of O.A.No.403/2020 is delineated and discussed hereunder.

2. Aggrieved and dissatisfied with the order dated 30.04.2019 issued by the Assistant Accounts Officer, Admn.III Section rejecting the applicants prayer for stepping up of pay on par with the juniors, this O.A has been preferred to seek the following reliefs :

> *"8.I. Office Order no. 9/Pay Fixation/Stepping up/ MACP/Admn. III-64-133 dated 30.04.2019 issued by the Assistant Accounts Office, Admn. III section cannot be sustained in the eye of law and the same may be quashed.*
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> *II. An order do issued directing the respondents to grant pay parity by equalizing the basic pay of the applicant from the date of private respondent was given the higher pay in the same rank and also grant arrears."*

3. Brief facts that have lead to this O.A are that the applicant preferred representation dated 07.02.2019 to the General Manager(PA&F)

to get his pay stepped up to that of his junior Shri Kripasindhu Mandal, Sr. Accountant, who by virtue of being accorded with 3rd MACP with effect from 01.09.2018 started getting higher pay of Rs.74300/- in Level-8 while the applicant was at Rs.72100/- in Level-7 on that date. Drawing attention of the respondent authorities to the decision of the Principal Bench in O.A.2124/2011 applicant would seek pay parity/stepping up of pay with his junior Kripasindhu Mandal with effect from 01.09.2018. The said prayer was turned down vide order dated 30.04.2019, which is extracted herein for clarity :

"No.9/Pay Fixation/Stepping Up/MACP/Admn.III-64-133 Dated: 30/04/2019

To
Sri Ujjal Kumar Ghosh, SA
Book II Section.

Subject: Prayer for Stepping up of Pay i.r.t./MACP of junior

In response to your representation submitted on 04/03/2019, it is intimated that as per item No. 10 of DOPT OM under MACIP Scheme along with Para 20 of Annexure I vide no. 35034/3/2008-Estt.(P) dated 19/05/2009 explained, "Financial up-gradation under MACPS shall be purely personal to the employee and shall have no relevance to his seniority position. As such, there shall be no additional financial up-gradation for the senior employees on the ground that the junior employee in the grade has got higher pay/grade pay under MACPS."

In this connection, there is no scope for stepping up of pay of the senior employees in respect of financial up-gradation under MACP of the junior officials.

This issues with the approval of the GM(PAF), Kolkata.

Sd/-
Assistant Accounts Officer
Admn. III Section"

4. Ld. Counsel for the applicant would cite several decisions of co-ordinate Benches of the Tribunal as well as of Hon'ble High Courts where stepping up of pay have been allowed to a senior where his junior, by

virtue of MACP has marched ahead of him in terms of pay scale. Ld. Counsel would cite the following decisions in support of his claim.

(i) O.A.2124 of 2011 rendered on 01.02.2013,

(ii) WPCT 7840/2012 Tejbir Singh Dagar & Ors. vs. Union of India rendered by Hon'ble High Court of Delhi on 03.01.2014,

(iii) O.A. 4210 of 2013 pronounced by Principal Bench, CAT on 11.01.2017.

Citing the aforesaid decisions, ld. Counsel would submit that the issue has been set at rest that even as the junior is drawing higher pay by virtue of MACP, the senior ought to be allowed a stepping up. Ld. Counsel would therefore, submit that the impugned order, whereby and where under his prayer has been rejected, ought to be quashed and the respondents ought to be directed to follow the decisions in the present case.

5. Ld. Counsel for the respondents Mr B.B.Chatterjee would submit that although he has been advised to appear on behalf of the respondents, however, he does not hold power, but however, has received instructions from the respondent authorities to appear in the matter and make his submission, Ld. Counsel would submit that he has been advised to seek time to file reply in the matter.

6. We heard Ld. Counsel for the parties and perused the records.

(i) O.A.2124/2011, was a matter decided by the Principal Bench where a senior employee was drawing lesser pay than the junior, who by virtue of grant of benefit under ACP Scheme started drawing higher pay than the senior. Respondents had placed reliance on the decisions of Hon'ble Apex Court in ***Union of India and Another vs. V.R.Swaminathan, JT 1997(8) SC 61*** and ***State of U.P and State of U.P. & Ors. vs. J.P.Chaurasia and Ors., JT 1998(4) SC 53***. But in view of the decision rendered by Chandigarh

Bench of the Tribunal dated 19.01.2010 in ***O.A. 156-JK-2009 (Ashok Kumar vs. Union of India & Ors.)*** it was held that the applicant would be entitled to the identical benefits and the authorities would step up their pay in terms of para 9 of the decision in O.A.156-JK-2009 within 3 months from the date of receipt of a copy of that order. The relevant extract of the decision in O.A 156-JK-2009 is extracted hereunder with emphasis for clarity.

> *"9. The issue raised in this case as to whether of senior person, though having received two promotions, is entitled to stepping up of his pay of ...(sic)... his senior who has been granted benefit under ACP Scheme and by virtue of this, is receiving higher pay than his senior stands clinched by various decisions of this Tribunal including in O.A. No. 842-JK-2007 decided on 17.11.2009 filled* ***Madan Gopal Sharma & Others Vs. Union of India & Others.*** *In that case reliance was placed on decisions of Apex Court in the case of Ram Sarup Gondo (supra) and (Gurmit Singh) Reliance was also placed on decision in the case of Harcharan Singh Sudan (supra). It was held that seniors are entitled to step up their pay as a general rule as and when only junior gets fixed in a pay scale higher to them on account of grant of ACP Scale. Para 14 of the decision in the case of Harcharan Singh Sudan (supra) in Para 14 is reproduced as under:-*
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> *"14. However, one aspect is to be seen. In the case decided by the Apex Court, the State Government was the appellant and the challenge was against the High Court judgment, which held that the higher pay scale be given to the respondents of par with their juniors whose pay scale become higher on account of the benefit of ACP afforded to them. The appeal was not dismissed but partly allowed and it was declared that the respondents were entitled to stepping up of pay. In other words, there shall only be the stepping up of pay and not the pay scale. The pay scale in respect of the applicants would remain the same as of date but the pay would be fixed in appropriate stage, and if there is no stage to match the pay drawn by the junior, the difference shall be treated as one of personal pay. The pay parity would be compared annually and parity would be maintained in future."*

(ii) In W.P.(C) 7840/2012 ***Tejbir Singh Dagar and Ors. Vs. UOI & Ors.*** constables of RPF had prayed for stepping up. Hon'ble Court noted the following decisions ~~noted the following decisions~~ :

> *"25. In Civil Appeal Nos. 65-67(Arising out of S.L.P.(C) Nos 12522- 12514 of 2007 decided on 09.01.2009 titled as* ***Er. Gurcharan Singh Grewal and Anr. V. Punjab State Electricity Board and Ors.*** *2009 (2) SLJ 271 (SC), the Apex court in para 13 has observed:-*

" 13 Something may be said with regard to Mr. Chhabra's submissions about the difference in increment in the scales which the appellant No. 1 and Shri Shori are placed, but the same is still contrary to the settled principle of law that a senior cannot be paid lesser salary than his junior. In such circumstances, even if, there was a difference in the incremental benefits in the scale given to the appellant No. 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 the appellant No. 1 was also stepped to that of Shri Shori, as appears to have been done in the case of the appellant No. 2."

26. *In another case titled as Commissioner and Secretary to Government of Haryana and Ors. v. Ram Sarup Ganda and Ors. 2006 (12) SCALE 440, the Apex Court has observed in its para No. 15:-*

"15 In the result, all the appeals are partly allowed. The appellants shall revise the pay scales of the respondents. In case of any anomaly, if the employees who, on fixation of ACP scales, are in receipt of lesser salary than their juniors in the same cadre/posts, then their salary shall be stepped up accordingly....."

27. *In another decision dated 25th October, 2010 rendered in* ***W.P.(C) No. 2884/2010 titled as UOI and Anr. v. Chandra Veer Jeriya,*** *the Delhi High Court while dealing with the same issue has observed in para 8 as follows :-*

"8 We agree with the findings arrived at by the Tribunal in view of the law laid down by the Supreme court in the decision reported as ***1997 (3) SCC 176 UOI and Ors vs. P. Jagdish and Ors. It*** *may be highlighted that the respondents did not claim any pay parity with officers junior to them but in the combatized cadre till as long the officers remained in their respective streams. They claimed parity when the two streams merged in the same reservoir i.e. when they reached the post of Administrative Officer/Section Officer and that too from the date persons junior to them, but from the combatized cadre, became Administrative Officer/Section Officer. The anomaly which then arose was that persons junior in the combined seniority list of Administrative Officer/Section Officer started receiving a higher wage. With reference to FR-22, in P. Jagdish's case (supra) the Supreme Court held that Article 39(d) of the Constitution was the guiding factor in interpreting FR-22. The principle of stepping up contained in the fundamental rules comes into play when a junior person in the same posts starts receiving salary more than his senior on the same post....."*

Referring to ***1997 (3) SCC 176 UOI and Others v. P. Jagdish and other,*** where Hon'ble Apex Court observed :

"...that the principle of Stepping up prevents violation of the principle of ***"equal pay for equal work"****. Applying the same principle of law here, a junior in the same posts cannot be allowed to draw salary higher than the seniors because that would be against the ethos of Article 39 (d) of the Constitution which envisages the principle of "****equal pay for equal work****". Hence granting of stepping up is the only way out to remove the said*

anomaly, which permits juniors to draw higher salary in the same rank then their seniors. The only way to remove is the stepping up of salary of seniors."

The respondents were directed as under :

"... to upgrade the pay of the petitioners from the date their juniors were given the higher pay in the same rank. The directions be complied with within 12 weeks from today and arrears shall also be paid within 4 weeks, failing which petitioners be entitled to simple interest @ 9% per annum after 16 weeks from today. The respondents are also directed to pay a sum of Rs.20,000/- towards costs to each of the petitioners."

(emphasis added)

(iii) In O.A.4210/2013, the applicant who was senior to one Smt Papri Sen Gupta was drawing lesser pay than her. In view of the decision in O.A.2124/2011 and W.P.(C) 7840/2012 extracted (supra) it was held as under :

"3. In their reply, the respondents have submitted that Smt. Papri Sen Gupta was granted MACP benefit after completing 10 years of service as she had not earned any regular promotion during the period of 10 years. The applicant, on the other hand, had already earned three regular promotions, hence, he was not entitled to the benefit of the MACP Scheme. Thus, the case of the applicant was completely different from the case of Smt. Papri Sen Gupta. Further, the respondents have relied on the MACP Scheme itself in which it is laid down that no stepping up of pay in the pay band or grade pay would be admissible with regard to junior getting more pay than the senior on account of pay fixation under the MACP Scheme. Learned counsel for the respondents during the course of arguments also mentioned that while Smt. Papri Sen Gupta was still working as Assistant (C), the applicant was working as Assistant (D). Thus, the two were working in different grades and, therefore, there cannot be any comparison between them.

4. We have heard both sides and perused the material placed on record. We have gone through the judgments relied upon by the applicant and find that in both of them the ratio laid down is that whenever a junior gets pay higher than the senior, the senior is/was entitled to stepping up of his pay to bring it at par with the junior. Further in the judgment of ***Tejbir Singh Dagar and Ors. Vs. UOI & Ors. [WP(C) No. 7840/2012]*** *dated 03.01.2014 the Hon'ble High Court of Delhi had discussed both the ACP Scheme as well as*

the MACP Scheme. They have also discussed Condition No 8 of the ACP Scheme and Condition No. 20 of MACP Scheme, both of which lay down that no stepping up of pay of the senior would be allowed on the ground that a junior employee was getting higher grade pay as a result of grant of ACP/MACP benefit. After discussing both these conditions, Hon'ble High Court of Delhi has allowed the Writ Petition and directed the respondents therein to upgrade the pay of the petitioners. In our opinion, instant case is squarely covered by the aforesaid two judgments and, therefore, deserves to be allowed.

4.1 Learned counsel for respondents had submitted that this case was distinguishable from the cases in the judgments as the applicant and Smt. Papri Sen Gupta were working in different grades. In our opinion, this would not make any difference. In fact, it would further strengthen the case of the applicant, as even after getting promotion to a higher grade, his pay remains less than his junior's pay.

5. Accordingly, we allow this O.A. and quash the impugned order dated 18.07.2013. We further direct that the applicant shall be granted grade pay of Rs. 4600/- w.e.f. the date Smt. Papri Sen Gupta was granted the same grade pay. He shall also be entitled to arrears arising out of increase in grade pay. The above benefit shall be given to the applicant within a period of 08 weeks from the date of receipt of a certified copy of this order. No costs."

(emphasis added)

7. It is discernible from the impugned order that the authorities have formed an opinion that "there shall be no additional financial up-gradation for the senior employees on the ground that the junior employee in the grade has got higher pay/grade pay under MACPS." While the applicant has prayed for a stepping up of pay.

8. We find that the applicant has not referred to the decisions supra in their representation which stood rejected and therefore the respondents had no occasion to deal with the decisions supra, while considering his prayer. Therefore, no fruitful purpose would be served by calling for a reply in the matter.

9. However, appreciating his legitimate grievance, we permit the applicant to prefer a comprehensive representation to the respondent

authorities citing the decisions supra, within a period of four weeks from the date of receipt of a copy of this order to seek benefit of the decisions, which, if preferred shall be considered in the light of the decisions and disposed of by the respondent authorities with a reasoned and speaking order in terms of the said decisions within a further period of 2 months. In the event that nothing else stands in the way, the applicant shall be extended the benefit of the said decisions within the time frame.

10. All the O.As accordingly stand disposed of without any order as to costs.

(DR NANDITA CHATTERJEE)
MEMBER (A)

(BIDISHA BANERJEE)
MEMBER (J)

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