

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

19

ORDER SHEET

ORDERS OF THE TRIBUNAL

04.05.2012

OA No. 164/2010

Mr. Amit Mathur, Proxy counsel for  
Mr. Vinod Goyal, Counsel for applicant.  
Mr. Mukesh Agarwal, Counsel for respondents.

On the request of the proxy counsel appearing on  
behalf of the applicant, list it on 02.07.2012.

Anil Kumar  
(Anil Kumar)  
Member (A)

K.S. Rathore  
(Justice K.S.Rathore)  
Member (J)

ahq

02/07/2012 [OA No. 164/2010]

Mr. Vinod Goyal, Counsel for applicant.  
Mr. Mukesh Agarwal, Counsel for respondents.

Heard.

O.A. is disposed of by a  
separate order on the separate  
sheets for the reasons recorded  
therein.

Anil Kumar  
[Anil Kumar]  
Member (A)

K.S. Rathore  
[Justice K.S.Rathore]  
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH, JAIPUR.

Jaipur, the 02<sup>nd</sup> day of July, 2012

**ORIGINAL APPLICATION No. 164/2010**

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER  
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Madan Singh Rathore son of Shri Bhanwar Singh Rathore, aged 59 years, resident of III/74, A.G. Colony, Bajaj Nagar, Jaipur. Presently posted as Sr. Auditor in the office of P.A.G. (Civil Audit) Rajasthan, Jaipur.

... Applicant

(By Advocate : Mr. Vinod Goyal)

Versus

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

... Respondents

(By Advocate : Mr. Mukesh Agarwal)

**ORDER (ORAL)**

The applicant has filed this OA thereby claiming for the following reliefs:-

- "(i) By an appropriate order or direction, the impugned order dated 19.02.2010 (Annexure A/1) be declared as null and void and be quashed and set aside.
- (ii) By an appropriate order or direction, the respondents be directed to step up the pay of the applicant to bring at par with Shri Kashi Ram Jat, Sr. Auditor, as shown in the table with all consequential benefits including arrears of salary with 9% interest.
- (iii) By an appropriate order or direction, the para 10 of the Office Memorandum dated 19.05.2009 be declared to be unconstitutional and invalid.
- (iv) Any other order which appears to be just and correct in the interest of justice may also be passed."

*Anil Kumar*

2. Learned counsel for the applicant argued that the applicant's grievance in this OA is that the junior employee to the applicant, namely Shri Kashi Ram Jat, is being paid higher salary than the applicant. He referred to a table showing the salary drawn by the applicant and by Shri Kashi Ram Jat, which is reproduced below:-

| S.No. | Particulars                                     | Madan Singh Rathore,<br>Sr. Auditor | Shri Kashi Ram Jat,<br>Sr. Auditor    |
|-------|---|-------------------------------------|---------------------------------------|
| 1.    | Gradation list (2008-09)                        | Sr. No. 50                          | Sr. No. 63                            |
| 2.    | Initial Appointment                             | 09.06.1972 as LDC                   | 18.08.1981 as Auditor                 |
| 3.    | Promotion on the post of Auditor                | 09.12.1980                          | Appointee of Auditor as on 18.08.1981 |
| 4.    | Promotion on the post of Sr. Auditor            | 25.07.1986                          | 31.03.1987                            |
| 5.    | Pay as on 01.01.2006                            | Rs.18,990/-                         | Rs.19,870/-                           |
| 6.    | Pay as on 01.07.2006                            | Rs.19,560/-                         | Rs.20,470/-                           |
| 7.    | Pay as on 01.07.2007                            | Rs.20,150/-                         | Rs.21,090/-                           |
| 8.    | Pay as on 01.07.2008                            | Rs.20,760/-                         | Rs.21,730/-                           |
| 9.    | Pay as on 01.07.2009<br>(Basic Pay + Grade Pay) | Rs.21,790/-<br>(17190+4600)         | Rs.22,390/-<br>(17590 +4800)          |

He further argued that a bare perusal of the aforesaid table makes it clear that the junior employee to the applicant in the same cadre is drawing more pay than the applicant. That the applicant being aggrieved by the action of the respondents submitted a representation to the respondents on 18.01.2010 stating, interalia, that his pay deserves to be stepped up in the light of decision of the Hon'ble Supreme Court in which it is held that if there is any anomaly to the effect that senior Government servants are receiving lesser pay than their juniors, who entered the service from a different source of

*Anil Kumar*

recruitment, certainly such senior Government servants are entitled to stepping up of their pay in order to bring them at par with the salary, which is being received by the juniors. The applicant requested that his pay be stepped up to bring at par with Shri Kashi Ram Jat, Sr. Auditor, from the date of granting higher pay to him with all consequential benefits.

3. Learned counsel for the applicant further argued that respondents have not considered the matter in the right perspective and rejected the claim of the applicant relying on Para No. 10 of the Office Memorandum dated 19.05.2009, which has no legal sanctity against the judicial pronouncement of the Hon'ble Supreme Court in the case of **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.

4. During the arguments as well as in the OA, the applicant has quoted Para No. 10 of the Office Memorandum dated 09.05.2009, which read as follows:-

"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 MACP Scheme."

5. He drew our attention to the judgment of the Hon'ble Supreme Court in the case of **Commissioner and Secretary to the**

*Anil Kumar*

**Government of Haryana & Others vs. Ram Swaroop Ganda & Others**, which read as under:-

"Learned counsel for the State pointed out that under the scheme itself Rule 9 provides that there shall not be "stepping up" of the pay to rectify this mistake, and, therefore, the High Court was not justified in giving stepping up to those employees who were seniors but received lesser pay scale. For this argument reliance was placed on Rule 9.

Rule 9 reads thus:-

"9. Non-admissibility of stepping up in certain cases:- If the service rules provides or circumstances warrant direct recruitment at the level of promotional post, in addition to the filling up of such posts through promotion, no benefit of pay upgradation to the senior Government servant who happens to be a direct recruit to a post other than the post on which the junior government servant is a direct recruit, on the plea that the junior promotee is drawing more salary based on the benefit of ACP upgradation shall be admissible."

(emphasis supplied)

Rule 9 quoted above only says that the senior Government 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. However, the same is not applicable to the respondents herein who joined the service as Group "D" employees and later got promotion to Group "C" post by selection. If there is any anomaly to the effect that the senior Government servants are receiving lesser pay than their juniors, who entered the service from a different source of recruitment, certainly such senior Government servants are entitled to stepping up of their pay in order to bring them on par with the salary which is being received by their juniors. There is no clause in the scheme which prohibits such stepping up of salary which is a common practice applicable to all Government employees in case there is anomaly in the pay structure of the employees.

By the impugned judgment, the High Court has held that the respondents are entitled to get the ACP scales that are applicable to Group "C" post, but the Rules, as such, do not provide for that. The Rules say that if there are already two upgradations, then the concerned employees are not entitled to the benefit of ACP scales. Nevertheless, if ACP scales are higher, they are certainly entitled to the ACP scales at the starting point. The date of giving such ACP scales is the date of entry into the service and though these respondents are entitled to get ACP scales and get fixation of the ACP scales as applicable to Group "D" employees and in case there are anomalies to the effect that

*Anil Kumar*,

they receive lesser pay than their juniors working in the same cadre/post, such senior Government servants are entitled to step up of their salary to get it on par with the salary which is being received by their juniors.

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/post, then their salary shall be stepped up accordingly.

6. Learned counsel for the applicant also drew our attention to Para Nos. 17, 18 and 19 of the judgment of the Hon'ble Supreme Court in the case of **Gurcharan Singh Grewal & Another vs. Punjab State Electricity Board & Others** (supra), which read as under:-

"17. Something may be said with regard to Mr. Chhabra's submissions about the difference in increment in the scales in which Appellant 1 and Shri Shori are 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.

18. We are unable to accept the reasoning of the High Court in this regard or the submissions made in support thereof by Mr. Chhabra, since the very object to be achieved is to bring the pay scale of Appellant 1 on a par with that of his junior. We are clearly of the opinion that the reasoning of the High Court was erroneous and Appellant 1 was also entitled to the same benefits of pay parity with Shri Shori as has been granted to Appellant 2.

19. We, accordingly, allow the appeals and set aside the judgment of the High Court. Consequently, the writ petition is also allowed and the respondents are directed to extend the benefits of pay parity with Shri Shori to Appellant 1, as was done in the case of Appellant 2.

Therefore, he prayed that in view of the ratio laid down by the Hon'ble Supreme Court, the applicant is also entitled to stepping up of his pay.

*Anil Kumar.*

7. On the contrary, learned counsel for the respondents argued that applicant was appointed as Audit Clerk on 09.06.1972. He was promoted as Auditor on 09.12.1980 and Sr. Auditor on 25.07.1986. He was drawing pay of Rs.7,950/- in the pay scale of Rs.5500-175-9000/- w.e.f. 01.12.2005 in the pre-revised scale, so his pay under 6<sup>th</sup> Central Pay Commission recommendations was fixed at Rs.14,790 in PB-2 Rs.9300-34800 and allowed grade pay Rs.4200/-.

8. Shri Kashi Ram Jat was appointed as Auditor on 18.08.1981 and promoted as Sr. Auditor on 31.03.1987. Shri Kashi Ram Jat was granted 2<sup>nd</sup> financial upgradation under ACP Scheme w.e.f. 19.08.2005 after completing 24 years of service (Annexure R/1) and his pay was fixed at Rs.8100/- in the pay scale of Rs.6500-200-10500 w.e.f. 19.08.2005 and since then he began to draw more pay than applicant, Shri Rathore. Para 8 of Annexure-R/1 of the Assured Career Progression Scheme (ACP) does not allow stepping up with juniors (Annexure R/1). His pay was fixed at Rs.15,070/- in PB-2 (Rs.9300-34800) and allowed Grade pay Rs.4800/- in terms of clarification (iii) of Hqrs letter No. 1069-6pc/GE-II/97-2009 dated August 2009 (Annexure R/2).

9. Learned counsel for the respondents referred to Para No. 8 of Annexure R/1, which is quoted as under:-

"8. 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

*Anil Kumar*

the junior employee in the grade has got higher pay scale under the ACP Scheme."

10. He further argued that the representation of the applicant dated 18.01.2010 was considered by the competent authority and the decision on the representation was communicated to the applicant vide letter dated 19.02.2010 (Annexure A/1). Therefore, he argued that in view of the Government of India's OM dated 09.08.1999 (Annexure R/1) and OM dated 19.05.2009 of the MACP (Annexure R/3), the applicant is not entitled for stepping up. Therefore, this OA has no merit and it should be dismissed with cost.

10. Heard the rival submissions of the parties and perused the relevant documents on record and have also gone through the case law, referred to by the applicant. The short controversy in this case is that the applicant is senior to Shri Kashi Ram Jat but is drawing less pay than Shri Jat. This fact has not been disputed by the respondents. The respondents, however, submitted that Shri Kashi Ram Jat was granted second financial upgradation under ACP Scheme on completion of 24 years of service and his pay was fixed at Rs.8100 in the pay scale of Rs.6500-200-10500 w.e.f. 19.08.2005 and since then he began to draw more pay than the applicant, Shri Madan Singh Rathore. According to the respondents, pay of the applicant cannot be not stepped up to his junior, Shri Kashi Ram Jat in terms of Para 8 of OM dated 09.08.1999 (Annexure R/1) and in terms of Para 10 of OM No.35034/3/2008-Estt. (D) dated 19.05.2009 (Annexure R/3). On the contrary, learned counsel for the applicant referred to the judgment of the Hon'ble Supreme Court in the cases of **Commissioner and**

*Anil Kumar*

**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 in which Hon'ble Supreme Court has held that Senior person is entitled to stepping up of his pay to his junior.

11. In view of the ratio laid down by the Hon'ble Supreme Court in these cases, we are of the view that 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 period of three months from the date of receipt of a copy of this order.

12. With these observations, the OA is disposed of with no order as to costs.

*Anil Kumar*  
(Anil Kumar)  
Member (A)

*K.S. Rathore*  
(Justice K.S.Rathore)  
Member (J)

*AHQ*