

(16)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION No. 182/2012
With
MISC. APPLICATION NO. 312/2013

Jaipur, the ^{16th} December, 2013

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER
HON'BLE MR. A.J. ROHEE, JUDICIAL MEMBER

Mahipal Yadav son of Late Banwari Lal, by caste Ahir (Yadav), aged about 55 years, resident of 13, Yadav Nagar, Nine Shop, Panipech, Jaipur. Presently working as Superintendent (Review), Central Excise Commissionerate, Jaipur.

... Applicant

Applicant present in person.

Versus

1. Union of India through the Secretary (Revenue), Ministry of Finance, Government of India, North Block, New Delhi.
2. The Chairman, Central Board of Excise & Customs, North Block, New Delhi.
3. The Chief Commissioner of Central Excise (JZ), New C.R. Building, Statue Circle, Jaipur.
4. The Commissioner of Central Excise, Jaipur II, New C. R. Building, Statue Circle, Jaipur.
5. Shri Ram Dev, Superintendent (AE), Central Excise Commissionerate II, Statue Circle, Jaipur.

... Respondents

(By Advocate: Mr. D.S. Punia proxy to Mr. Anil Mehta)

ORDER

PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

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

- “(i) The letter and order dated 30.09.2011 (Annexure A/1) of respondent no. 4 may be quashed and set aside and the respondents NO. 1 to 4 may be directed to rectify the pay anomaly of the applicant as per the letter dated 01.08.2011 (Annexure A/3) and he may be paid equal amount of pay as being paid to Shri

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Ram Dev, from the date of anomaly till 01.11.2011 with interest and cost.

(ii) Any other relief as deemed fit by the Hon'ble Bench.

2. In brief, the case of the applicant is that the applicant was getting basic pay of Rs.23,120+ Rs.5400 Grade Pay + allowances as on 01.11.2011 whereas Shri Ram Dev was getting Rs.23,830 + Rs.5400 Grade Pay + allowances on the same date. Shri Ram Dev was getting this pay with effect from 01.01.2007 while working as Superintendent. The applicant is much higher in the seniority list even though he is getting lower pay than that of Shri Ram Dev till November, 2011. Thus the simple controversy is about the stepping up of the pay of the applicant to his junior, Shri Ram Dev.

3. The applicant further argued that the Central Administrative Tribunal, Chandigarh Bench vide order dated 19.01.2010 in OA No. 156-JK-2009 in the case of **Ashok Kumar vs. Union of India & Others** (Annexure A/5) has ordered to step up the pay of the applicant of that OA at par with his junior. This order of the Central Administrative Tribunal, Chandigarh Bench was challenged by the respondents before the Hon'ble High Court of Punjab & Haryana at Chandigarh. The Hon'ble High Court vide its order dated 23.07.2010 (Annexure A/5) dismissed the Writ Petition. This order of the Hon'ble High Court of Punjab & Haryana was challenged by way of filing SLP before the Hon'ble Supreme Court, which was also dismissed by the Hon'ble Supreme Court vide order dated 02.05.2011 (Annexure A/5).

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4. The applicant argued that after the decision of the Hon'ble Supreme Court, the matter has attained finality that junior officer cannot get higher pay than his senior inspite of the fact junior has got ACP. Therefore, he prayed that the order dated 30.09.2011 (Annexure A/1) be quashed and set aside respondents be directed to rectify the pay anomaly of the applicant and he may be paid equal amount of pay as being paid to Shri Ram Dev from the date of the anomaly till 01.11.2011 with interest and cost.

5. On the other hand, the respondents have stated in their reply that the Mahipal Yadav, applicant, has earned his promotion to the grade of Superintendent Central Excise Group 'B' from the grade of Inspector on 05.07.1997 i.e. before issuance of ACP on 09.08.1999.

6. That the applicant completed 24 years of regular service on 02.11.2005 with a promotion (Inspector to Superintendent). Therefore, he was granted second ACP upgradation to pay scale band of Assistant Commissioner Group 'A' i.e. Rs.15600-39100 + Grade Pay of Rs.5400 in PB-3 with effect from 02.11.2005 under the ACP Scheme.

7. That consequent upon the implementation of the 6th Pay Commission's recommendation, grade pay of Rs.5400 is in two pay bands, viz. PB-2 i.e. Rs.9300-34800 and Rs.5400 in PB-3 i.e. Rs.15600-39100 with effect from 01.01.2006.

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8. Since the applicant had earned second financial upgradation under the ACP Scheme, he could not be granted non-functional upgradation to the grade pay of Rs.5400 in PB-2 i.e. 9300-34800 as he was already getting the higher pay scale.

9. That respondent no. 5 namely Shri Ram Dev (SC) had joined the Department as Inspector on 21.02.1982, he was granted first financial upgradation to the pay scale of Superintendent Group 'B' w.e.f. 09.08.1999. He was subsequently promoted on regular basis w.e.f. 31.05.2002.

10. That Shri Ram Dev completed four years of regular service on 31.05.2006, therefore, he was granted non functional upgradation to the grade pay of Rs.5400 in PB -2 scale Rs.9300-34800 w.e.f. 31.05.2006.

11. Shri Ram Dev completed 24 years of regular service on 21.02.2007. Therefore, he was granted second financial upgradation to the pay scale of Assistant Commissioner Group 'A' in the pay scale of Rs.15600-39100 + Grade Pay Rs.5400 in PB-3 with effect from 21.02.2007 under the ACP Scheme.

12. The respondents in their reply have stated that as per Para 10 & 11 of the Modified Assured Career Progression Scheme (MACP), 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. It has

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been clarified that no past case would be re-opened. Further while implementing the MACP Scheme, the difference in the pay scales on account of grant of financial upgradation under the old ACP Scheme (of August, 1999) and under the MACP Scheme within the same cadre shall not be construed as an anomaly.

13. The financial upgradation under the MACP 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 employees on the ground that the junior employee in the grade has got higher pay/grade pay under the MACP Scheme. The respondents in their reply given a chart indicating the basic pay with regard to the applicant and Shri Ram Dev. From the perusal of this chart, it is clear that the applicant was drawing less salary than Shri Ram Dev as on 01.07.2007. The pay of the applicant was Rs.19,930 + Grade Pay Rs.5400 equivalent to Rs. 25,330/- and that of Shri Ram Dev Rs.20,550 + Grade Pay Rs.5400 equivalent to Rs.25,950. This position continued till 01.11.2011. From 02.11.2011, the pay of the applicant was fixed at Rs.23980 + Rs.6600 equivalent to Rs.30,580/-. According to the respondents, anomaly of pay has arisen due to grant of second financial upgradation to private respondent no. 5 w.e.f. 21.02.2007 under the old ACP Scheme. Hence in terms of ACP/MACP, the applicant is not entitled for stepping up of pay with reference to the pay of Shri Ram Dev for the period from 01.07.2007 to 01.11.2011.

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14. The respondents have stated that Tribunal cannot issue directives to the Government regarding the policy decision or administrative arrangements. Therefore, this OA has no merit and it should be dismissed.


15. Heard the learned counsel for the parties and perused the relevant documents on record. From the perusal of the letter dated 30.09.2011 (Annexure A/1), it is clear that the case of the applicant for stepping up of his pay has not been rejected by the respondents and it is pending consideration before the senior officers. The learned counsel for the respondents also admitted at Bar that they are willing to consider the case of the applicant in view of the order of the Central Administrative Tribunal, Chandigarh Bench in Ashok Kumar (OA No. 156-JK-2009) decided on 19.01.2010 (supra), which has been upheld by the Hon'ble High Court of Punjab & Haryana vide order dated 23.07.2010 and further upheld by the Hon'ble Supreme Court vide judgment dated 02.05.2011 (Annexure A/5). Therefore, respondent no. 2 is directed to consider the case of the applicant for stepping up of the pay of the applicant at par with his junior, Shri Ram Dev, by passing a reasoned & speaking order within a period of three months from the date of receipt of a copy of this order. It is made clear that if the applicant is still aggrieved, he is at liberty to redress his grievances before the appropriate forum.


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

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17. MA No.312/2013 for deleting the names of respondents nos.

1 & 2 is dismissed.


(A.J. Rohee)
Member (J)


(Anil Kumar)
Member (A)

AHQ