CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 10.12.2014

OA No. 124/2013

Mr. Dharmendra Jain, counsel for the applicant.

Mr. Mahendra Shandilya, Counsel for the respondents.

Heard the learned counsel for parties.

The OA is allowed, the reasons to be followed. The detailed order is to be passed by a separate order on the separate sheets.

Anil Kumar

(ANIL KUMAR)
ADMINISTRATIVE MEMBER

(B.V.RAO)
JUDICIAL MEMBER

Adm/

CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

O.A. No. 619/2012, O.A. No. 620/2012,
O.A. No. 621/2012, O.A. No. 117/2013,
O.A. No. 118/2013, O.A. No. 119/2013,
O.A. No. 120/2013, O.A. No. 121/2013,
O.A. No. 122/2013, O.A. No. 123/2013,
O.A. No. 124/2013, O.A. No. 233/2013
& O.A. No. 234/2013

DATE OF ORDER: 10.12.2014

CORAM :
HON'BLE MR. B.V. RAO, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISITRATIVE MEMBER

1. **ORIGINAL APPLICATION NO. 619/2012**

Girvar Singh Rathore son of Shri Dhan Singh Rathore, aged about 52 years, (Inspector), Central Excise Commissionerate–II, Jaipur-302005, resident of 251, Paschimvihar Colony, behind Vaishali Nagar, Police Station, Vaishali Nagar, Jaipur.

... Applicant

(By Advocate: Mr. P.K. Sharma)

Versus

1. Chief Commissioner, Central Excise, Jaipur Zone, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur-302005.
2. Commissioner, Central Excise, Jaipur-1, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur - 302005.
3. Jagdish Parasar, Inspector, Central Excise and Customs Department at present Diggi House, Jaipur.
4. Jitendra Bhati, Inspector, Central Excise and Customs Department, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur - 302005.

... Respondents

(By Advocate: Mr. V.K. Pareek)

2. **ORIGINAL APPLICATION NO. 620/2012**

Rekha Bhargava wife of Shri Girish Bhargava (Inspector), Central Excise Commissionerate-1st, Jaipur-302005. Resident of Flat No. 401, Madho Pearl Pride, 6-Vivekanand Marg, C-Scheme, Jaipur-302005 (at present Superintendent).

... Applicant

(By Advocate: Mr. P.K. Sharma)

Versus

1. Chief Commissioner, Central Excise, Jaipur Zone, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur.
2. Commissioner, Central Excise, Jaipur-1, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur - 302005.
3. Jagdish Parasar, Inspector, Central Excise and Customs, Department at present Diggi House, Jaipur.
4. Jitendra Bhati, Inspector, Central Excise and Customs Department, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur - 302005.

... Respondents

(By Advocate: Mr. V.K. Pareek)

3. **ORIGINAL APPLICATION NO. 621/2012**

Sunil Kumar Sharma son of Shri M.L. Sharma, aged about 50 years, (Superintendent Custom) SEZ, Sitapura, Jaipur-302022. Resident of 14, Brij Colony, Inside Chambal Power House, Gate No. 2, Hawa Sadak, Sodala, Jaipur-302019.

... Applicant

(By Advocate: Mr. P.K. Sharma)

Versus

1. Chief Commissioner, Central Excise, Jaipur Zone, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur-302005.
2. Commissioner, Central Excise, Jaipur-1, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur-302005.
3. Jagdish Parasar, Inspector, Central Excise and Customs, Department at present Diggi House, Jaipur.
4. Jitendra Bhati, Inspector, Central Excise and Customs Department, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur-302005.

... Respondents

(By Advocate: Mr. D.C. Sharma)

4. **ORIGINAL APPLICATION NO. 117/2013**

Sumat Prakash Jain son of Late Shri Mool Chand Jain, age 48 years, resident of House No. 118/275, Shipra Path, Mansarovar, Jaipur. Working as Inspector in the Office of Chief Commissioner Central Excise (JZ Cadre Control). Presently posted on deputation in the Jaipur Special Economic Zone, Sitapura, Jaipur.

... Applicant

(By Advocate: Mr. Dharmendra Jain)

Versus

1. Chief Commissioner, Central Excise- Jaipur Zone, Cadre Control, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur-302005.
2. Commissioner, Central Excise, Jaipur-1, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur-302005.

... Respondents

(By Advocate: Mr. Mahendra Shandilya)

5. **ORIGINAL APPLICATION NO. 118/2013**

Girdhari Lal Mangal son of Shri Ramjas Mangal, aged 47 years, resident of 119/63, Agrawal Farm, Mansarovar, Jaipur. Working as Inspector in the office of Superintendent, Customs Range, Churu,

... Applicant

(By Advocate: Mr. Dharmendra Jain)

Versus

1. Chief Commissioner, Central Excise-Jaipur Zone, Cadre Control, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur -302005.
2. Commissioner, Customs Commissionerate, Jaipur.

... Respondents

(By Advocate: Mr. D.C. Sharma)

6. **ORIGINAL APPLICATION NO. 119/2013**

Ram Lakhan Meena son of Shri D.R. Meena, age 50 years, resident of Prem Nagar, Jagatpura, Jaipur. Working as Inspector in the office of Law Branch, office of the Commissioner of Central Excise, Jaipur-1.

... Applicant

(By Advocate: Mr. Dharmendra Jain)

Versus

1. Chief Commissioner, Central Excise- Jaipur Zone, Cadre Control, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur -302005.
2. Commissioner, Central Excise, Jaipur-1, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur - 302005.

... Respondents

(By Advocate: Mr. Mahendra Shandilya)

7. **ORIGINAL APPLICATION NO. 120/2013**

Giriraj Prasad Gupta son of Shri Ram Prasad Gupta, aged 51 years, resident of 73, Mohan Nagar, Near Ridhi Sidhi Chouraha Gopal Pura, By Pass, Jaipur. Working as Inspector in the office of Audit Branch, Office of the Commissioner of Central Excise, Jaipur-1.

... Applicant

(By Advocate: Mr. Dharmendra Jain)

Versus

1. Chief Commissioner, Central Excise- Jaipur Zone, Cadre Control, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur -302005.
2. Commissioner, Central Excise, Jaipur-1, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur - 302005.

... Respondents

(By Advocate: Mr. Mahendra Shandilya)

8. **ORIGINAL APPLICATION NO. 121/2013**

Dinesh Mendiratta son of late Shri Jeevan Das Mendiratta, age 48 years, resident of C-369, Kings Road, Nirman Nagar, Jaipur. Inspector of Central Excise, Jaipur-1, Working as Enforcement Officer on deputation in the office of the Joint Director, Jaipur Zonal Office, Directorate of Enforcement, B-67, Bapu Nagar, Jaipur.

... Applicant

(By Advocate: Mr. Dharmendra Jain)

Versus

1. Chief Commissioner, Central Excise- Jaipur Zone, Cadre Control, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur -302005.
2. Commissioner, Central Excise, Jaipur-1, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur - 302005.

... Respondents

(By Advocate: Mr. Mahendra Shandilya)

ORIGINAL APPLICATION NO. 122/2013

Sanjay Mathur son of Late Shri Mohan Lal Mathur, aged 49 years, resident of 10/120, Swarn Path, Mansarovar, Jaipur-302020. Working as Inspector in the office of Vigilance Branch, Office of the Commissioner of Customs, Jodhpur, Hqrs at Jaipur.

... Applicant

(By Advocate: Mr. Dharmendra Jain)

Versus

1. Chief Commissioner, Central Excise- Jaipur Zone, Cadre Control, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur -302005.
2. Commissioner, Commissioner of Customs, Jodhpur, Hqrs at Jaipur, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur-302005.

... Respondents

(By Advocate: Mr. D.C. Sharma)

10. **ORIGINAL APPLICATION NO. 123/2013**

Rukma Nand Swami son of Shri Sukha Ram Swami, aged 48 years, resident of House No. III/C-16, Customs and Central Excise Colony, Sector-7, Vidhyadhar Nagar, Jaipur. Working as Inspector in the Audit Branch, Office of the Commissioner of Central Excise, Jaipur-1.

... Applicant

(By Advocate: Mr. Dharmendra Jain)

Versus

1. Chief Commissioner, Central Excise- Jaipur Zone, Cadre Control, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur -302005.
2. Commissioner, Central Excise, Jaipur-1, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur - 302005.

... Respondents

(By Advocate: Mr. Mahendra Shandilya)

11. **ORIGINAL APPLICATION NO. 124/2013**

Vipin Gupta son of Shri Babu Lal Gupta, aged 49 years, resident of III/C-16, Customs and Central Excise Colony, Sector 7, Vidhyadhar Nagar, Jaipur. Working as Inspector in the Audit Branch, Office of the Commissioner of Central Excise, Jaipur-1.

... Applicant

(By Advocate: Mr. Dharmendra Jain)

Versus

1. Chief Commissioner, Central Excise- Jaipur Zone, Cadre Control, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur -302005.
2. Commissioner, Central Excise, Jaipur-1, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur - 302005.

... Respondents

(By Advocate: Mr. Mahendra Shandilya)

12. **ORIGINAL APPLICATION NO. 233/2013**

Hari Narayan Koli son of Shri Ganesh Narayan Koli, age 48 years, resident of Near Vidhya Sagar School, Sheopur, Sanganer, Jaipur. Working as Inspector in the office of Adjudication Branch, Office of the Commissioner of Central Excise, Jaipur-1.

... Applicant

(By Advocate: Mr. Dharmendra Jain)

Versus

1. Union of India through Revenue Secretary, Ministry of Finance, North Block, New Delhi-110001.
2. Chairman, Central Board of Excise and Custom, North Block, New Delhi-110001.
3. Chief Commissioner, Central Excise- Jaipur Zone, Cadre Control, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur-302005.
4. Commissioner, Customs Commissionerate, N.C.R. Building, C-Scheme, Statue Circle, Jaipur.

... Respondents

(By Advocate: Mr. Mahendra Shandilya)

13. **ORIGINAL APPLICATION NO. 234/2013**

Dinesh Chand Sharma son of Late Shri Brij Bhushan Sharma, aged about 55 years, resident of 144, Janakpuri-II, Imliwala Phatak, Jaipur. Working as Inspector in the Office of Assistant, Commissioner of Customs International Airport, Sanganer, Jaipur.

... Applicant

(By Advocate: Mr. Dharmendra Jain)

Versus

1. Chief Commissioner, Central Excise-Jaipur Zone, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur-302005.
2. Commissioner, Commissioner of Customs, Jodhpur, Hqrs at Jaipur, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur -302005.

... Respondents

(By Advocate: Mr. V.K. Pareek)

ORDER
PER MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Since all the Original Applications i.e. O.A. Nos. 619/2012, 620/2012, 621/2012, 117/2013, 118/2013, 119/2013, 120/2013, 121/2013, 122/2013, 123/2013, 124/2013,

233/2013 & 234/2013 have similar facts and involve similar question of law, therefore, with the consent of the learned counsels for the parties, they were heard together and they are being disposed of by a common order. For the sake of convenience, the facts of O.A. No. 619/2012 (Girvar Singh Rathore vs. Chief Commissioner, Central Excise, Jaipur Zone & others are being taken as a lead case.

2. The brief facts of the case (O.A. No. 619/2012), as stated by the applicant, are that the applicant was initially appointed as UDC by direct recruitment through Staff Selection Commission. Subsequently, he was promoted/upgraded on the post of Tax Assistant and further promoted as Inspector (Central Excise and Customs) on 26.03.1991. He joined on the post of Inspector on 27.03.1991 in the pre-revised scale of Rs. 1640 (Rs. 1640-60-2600EB-75-2900) + applicable allowance. He completed twenty years of service in the grade of Inspector on 27.03.2011.

3. The scale of the post of Inspector has been revised from time to time as per the recommendations of the 5th and 6th Pay Commission, respectively.

4. The private respondent No. 3, namely Shri Jagdish Parasar and private respondent No. 4 namely Shri Jitendra Bhati are junior to the applicant. Shri Jagdish Parasar was at Sl. No. 49 and Shri Jitendra Bhati was at Sl. No. 54 whereas the name of the applicant was at Sl. No. 33 in the seniority list of Inspector in

the year 1991. At the time of the joining, there was no anomaly with regard to the pay of the applicant vis-à-vis the private respondents. But after the year 2003, the pay anomaly was created due to Assured Career Progression Scheme (ACP Scheme). Further anomaly was again created after the introduction of Modified Assured Career Progression Scheme, 2009 (MACP Scheme). The private respondent Shri Jagdish Parasar was granted II MACP vide order dated 05.04.2011 and Shri Jitendra Bhati was granted II MACP vide order dated 05.07.2011. Both the private respondents have been fixed and are getting basic pay Rs. 19430 + GP 5400 + applicable allowance on/after 01.07.2011 whereas the applicant has been fixed and is getting basic pay Rs. 18030 + GP 4600 + applicable allowances.

5. The applicant submitted that in the present O.A., there is no dispute about the seniority of the applicant vis-à-vis the private respondents on the post of Inspector. However, there is simple dispute about the stepping up of pay of the applicant with his juniors i.e. the private respondents. Similarly, when the private respondents were granted first ACP and second MACP, their gross income became higher than the applicant. Thus, a pay anomaly was created.

6. The applicant being aggrieved by this action of the respondents filed a representation on 10.08.2011 to the Commissioner with the prayer that his pay may be stepped up at

par with his juniors from the date of granting first and second financial up-gradation onward and arrear may also be ordered to be given to him.

7. The applicant has stated that a similar controversy has been settled in the case of Shri Ashok Kumar wherein the respondent-department has been directed to step up his pay at par with his junior. Therefore, in view of the settled position of law, the applicant is also entitled for the stepping up of pay at par with his junior(s).

8. On the other hand, the official respondents have filed their reply. In the reply, the official respondents have stated that the Government of India, Ministry of Personnel & Training (DOPT), New Delhi introduced a scheme namely Assured Career Progression Scheme to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. The benefit of the ACP scheme was given to the Government servant concerned on personal basis. In case two prior promotions on regular basis were already earned by an employee before 24 years, no benefit under the ACP scheme was admissible. The financial up-gradation under ACP Scheme was purely personal to the employee and there was no relevance to seniority. No additional financial up-gradation for the senior employee was admissible on the ground that the junior employee in the grade had got higher pay scale under the ACP Scheme. They have further stated in

the reply that the Hon'ble Supreme Court's order dated 02.08.2007 in Appeal (Civil) No. 3250 of 2006 is case specific and is not applicable to the ACP Scheme formulated for Central Government Employees by DOP&T. The Scheme framed by the Haryana Government is different than the scheme introduced by the DOP&T for ACP. The issue of stepping up of pay has been examined in consultation with the IFU and DOP&T and it has been decided that no anomaly is recognized when pay is fixed under the MACP Scheme, which is purely personal to the employees and has no relation to the seniority of the employees, therefore, it was decided that any claim of stepping up of pay based on the seniority of the employee cannot be agreed to.

9. The official respondents have also submitted that the MACP Scheme was introduced on the recommendations of the 6th Pay Commission. As per para 10 and 11 of the OM dated 19.05.2009 by which the MACP scheme was introduced, it has been clearly mentioned 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. It has been clarified that no past case would be reopened. Thus, any difference in pay scales on account of grant of financial up-gradation under the old ACP scheme and under the MACP scheme within the same cadre shall not be construed as an anomaly.

10. The applicant joined as UDC (now Tax Assistant). He earned two promotions to the grades of old Tax Assistant (now Senior Tax Assistant) and Inspector. Recently, he has been promoted to the grade of Superintendent. The private-respondents namely Shri Jagdish Parashar and Jitendra Bhati joined as Inspector under Direct Recruitment Quota on 27.03.1991 and 08.04.1991, respectively (in Jaipur Zone). The private respondents were granted the first ACP after completion of 12 years regular service w.e.f. 27.03.2003 and 08.04.2003, respectively. Further they were granted II financial up-gradation under MACP Scheme w.e.f. 27.03.2011 and 08.04.2011, respectively, after completion of 20 years of regular service without a promotion.

11. The official respondents in their reply have stated that the anomaly, if any, in the pay of the applicant and his juniors has arisen w.e.f. 27.03.2003 or 08.04.2003 whereas the applicant has filed the present O.A. in the year 2012, therefore, the applicant has filed this O.A. after 09 years on the basis of the judgment dated 19.01.2010 of the Hon'ble C.A.T. Chandigarh Bench in the case of Shri Ashok Kumar, therefore, the present O.A. is liable to be dismissed on the ground of limitation alone. The respondents have stated that the Hon'ble Supreme Court in the case of Bhup Singh vs. UOI (JAT 1992 (3) SC 322) has held that "the judgment and orders of the court in another case do not give cause of action. The cause of action has to be reckoned from the actual date".

12. The official respondents have also stated that more than 100 officers were/are drawing less pay than their juniors in the different cadres due to the implementation of ACP Scheme and MACP Scheme. As per rules, the applicant is not entitled for getting the benefit of stepping up of their pay and arrears at the cost of public exchequer.

13. With regard to the case of Shri Ashok Kumar, which was referred to by the applicant, the respondents have stated that it has been decided in consultation with the DOP&T that the judgment dated 02.05.2011 passed by the Hon'ble Supreme Court may be implemented in the instant case only. This would not be quoted as a precedent in future. The judgment in the case of Shri Ashok Kumar has to be treated as an individual case and the same is not to be treated as precedent. The representation of the applicant in this regard has been considered and rejected by a speaking and reasoned order dated 15.06.2012 (Annexure A/1). Therefore, the Original Application has no merit and it should be dismissed with costs.

14. The applicant has also filed a rejoinder.

15. Heard learned counsel for the parties, perused the documents available on record and the case law referred to by the learned counsel for the parties.

16. Learned counsel for the applicants reiterated the facts as mentioned in the Original Application and he mainly relied upon

the orders of the Central Administrative Tribunal, Chandigarh Bench in the case of **Ashok Kumar vs. Union of India & Ors. (OA No. 156-JK-2009)** decided on 19.01.2010 (Annexure A/14), in which it was directed that Shri Ashok Kumar shall be given stepping up of pay only and not the pay scale. Therefore, it was further directed that the pay of Shri Ashok Kumar may be fixed accordingly and arrears be also paid to him within a period of three months from the date of receipt of a copy of the order. He further argued that the department has challenged this order of the Tribunal dated 19.01.2010 before the Hon'ble High Court of Punjab and Haryana at Chandigarh by way of filing CWP No. 12894/2010 but the same has been dismissed vide order dated 23.07.2010 (Annexure A/15). Thus, the order dated 19.01.2010 passed by the C.A.T., Chandigarh Bench was upheld by the Hon'ble High Court. Not only this, the respondent-department filed Special Leave to Appeal (Civil) No. CC 7278/2011 before the Hon'ble Supreme Court against the order of the Hon'ble High Court of Punjab & Haryana at Chandigarh dated 23.07.2010, which was also dismissed vide order dated 02.05.2011 (Annexure A/16). Thus, the order passed by the Central Administrative Tribunal, Chandigarh Bench dated 19.01.2010 in the case of Ashok Kumar vs. UOI & Ors. (supra) has attained finality.

17. Learned counsel for the applicants also argued that the contention of the respondents that the case of Shri Ashok Kumar is in personem and it is not in rem cannot be accepted. The

applicants are similarly situated employees and, therefore, they cannot be discriminated. The official respondents cannot follow one set of principle in the case of one employee and another set of principle in the case of another set of employees. The learned counsel for the applicant argued that the applicant is only claiming the stepping up of pay at par with his junior and not pay scale or pay band and grade pay.

18. With regard to the contention of the official respondents relating to the point of limitation, learned counsel for the applicant argued that in the case of pay fixation, etc. the effect of limitation would not apply because it is a continuing wrong giving rise to a recurring cause of action every month on the occasion of payment of salary. He relied upon the judgment of the Hon'ble Supreme Court in the case of **M.R. Gupta vs. Union of India & Others** 1995 SCC (L&S) 1273.

19. On the other hand, learned counsel for the official respondents argued that as stated in their written reply, the case of Shri Ashok Kumar has been treated not as precedence and the relief granted to Shri Ashok Kumar in compliance to the orders of the Central Administrative Tribunal, Chandigarh Bench cannot be given to other similarly situated employees.

20. Learned counsel for the official respondents further argued that the scheme of ACP and MACP do not provide for stepping up of pay to the seniors with their juniors and that the present

Original Application has been filed beyond limitation, therefore, the O.A. should be dismissed.

21. We have considered the submissions made on behalf of the respective parties.

22. With regard to the submission of the learned counsel for the respondents that the present Original Application has been filed after a considerable delay and, therefore, it should be dismissed on the ground of limitation alone, learned counsel for the applicant relied upon the judgment of the Hon'ble Supreme Court in the case of **M.R. Gupta vs. Union of India & Others** (supra). We have carefully perused the judgment of the Hon'ble Supreme Court in the case of **M.R. Gupta vs. Union of India & Others** (supra) and we are of the opinion that the ratio decided by the Hon'ble Supreme Court in the said case is squarely applicable under the facts and circumstances of the present O.A. The Hon'ble Supreme Court in the case of **M.R. Gupta vs. Union of India & Others** (supra) has held that in the case of pay fixation, it is a continuing wrong against the employee which gave rise to a recurring cause of action each time when he was paid salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to the rules. The proper pay fixation of the applicant cannot be treated as time barred since it is based on a recurring cause of action. In

the present case also the applicant is only claiming the proper fixation of pay after stepping up of his pay at par with his junior(s), therefore, we are not convinced with the arguments of the learned counsel for the respondents that the present Original Application is barred by limitation.

23. On the merits of the case, it is not disputed between the parties that the applicant is senior to the private respondents and that the applicant is drawing less pay than the private respondents because the private respondents were sanctioned the ACP and MACP. It is also not disputed that in the case of Ashok Kumar vs. UOI & Ors. (supra), the Central Administrative Tribunal, Chandigarh Bench vide order dated 19.01.2010 has allowed the stepping up of pay only and not the pay scale to the applicant. The case of Shri Ashok Kumar is similar to the case of the present applicant.

24. We have carefully perused the orders of Central Administrative Tribunal, Chandigarh Bench in the case of **Ashok Kumar vs. Union of India & Ors. (OA No. 156-JK-2009) (supra)**. All these issues, which have been raised by the official respondents in the present Original Application, were also raised before the Central Administrative Tribunal, Chandigarh Bench in the case of Ashok Kumar (supra). The Chandigarh Bench of the Tribunal, relied upon the judgment of the Central Administrative Tribunal, Chandigarh Bench in the case of **Harcharan Singh Sudan vs. Union of India & Others** (OA No. 96-CH-2007) and

Pawan Kumar vs. Union of India & Others (OA No. 97-CH-2007) decided on 23.05.2008 in which in similar circumstances pay of the applicants was ordered to be stepped up. It is also held that the judgment of the Hon'ble Supreme Court in the case of **Commissioner and Secretary to Govt. of Haryana vs. Ram Sarup Ganda & Others** (Civil Appeal No. 3250 of 2006) reported in 2007 (3) RSJ, 154, was a judgment in rem and not in personem.

25. In the case of Ashok Kumar vs. UOI & Ors. (supra), the Chandigarh Bench of the Tribunal has quoted para 14 of the decision in the case of Harcharan Singh Sudan (supra), which is reproduced below: -

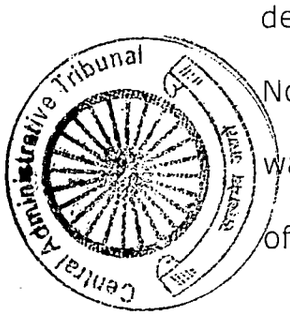
> "14. However, one aspect is to be seen. In the case decided by the Apex Court, the State Government was the appellant and the challenge was against the High Court judgment, which held that the higher pay scale be given to the respondents at par with their juniors whose pay scale became higher on account 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 partly would be maintained in future."

On the basis of these orders and judgment, the Central Administrative Tribunal, Chandigarh Bench in the case of Ashok Kumar vs. Union of India & Ors. (supra) has directed the respondents to step up the pay of the applicant at par with his junior. The relevant para 11 of the order is quoted below: -

> "11. With this O.A. stands disposed of and 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 (supra). It is made clear that the applicant shall be given stepping up of pay only and not the pay scale, as explained above. The pay may be fixed accordingly and arrears be also paid to him within a period of three months from the date of receipt of a copy of this order. However, in the given facts and circumstances of the case, applicant is not entitled to interest. Parties to bear their own costs."

26. This order of the Central Administrative Tribunal, Chandigarh Bench dated 19.01.2010 in the case of Ashok Kumar vs. Union of India & Ors. (supra) was challenged before the Hon'ble High Court of Punjab and Haryana at Chandigarh by way of filing CWP No. 12894 of 2010 and the Hon'ble High Court vide order dated 23.07.2010 dismissed the writ petition filed by the Union of India. In the order, the Hon'ble High Court has held that the order passed by the Tribunal for stepping up the pay of the applicant and bringing it equivalent at pay with his junior does not suffer from any legal infirmity. The respondent-department further filed a SLP [Special Leave to Appeal (Civil) No. CC 7278/2011] before the Hon'ble Supreme Court, which was also dismissed vide order dated 02.05.2011 on the ground of delay as well as on merits.



27. It is also an admitted fact that the order dated 19.01.2010 passed by the Central Administrative Tribunal, Chandigarh Bench in the case of Ashok Kumar vs. Union of India & Ors. (supra) has been implemented by the respondent-department.

28. Thus, we are of the considered opinion that in view of the orders passed by the Central Administrative Tribunal,

Chandigarh Bench dated 19.01.2010 in the case of Ashok Kumar vs. Union of India & Ors. (supra), the applicant being similarly placed is also entitled to the similar benefits. Therefore, the respondents are directed to step up the pay of the applicant at par with his junior(s). It is made clear that the applicant shall be entitled only for the stepping up of pay and not the pay scale, pay band and grade pay. The pay of the applicant may be fixed accordingly and arrears be also paid to him within a period of three months from the date of receipt of a copy of this order. However, in the given facts and circumstances of the case, the applicant is not entitled to interest.

29. The observations and directions given hereinabove shall be applicable in all the other similar Original Applications i.e. O.A. Nos. 620/2012, 621/2012, 117/2013, 118/2013, 119/2013, 120/2013, 121/2013, 122/2013, 123/2013, 124/2013, 233/2013 & 234/2013.

30. Registry is directed to place certified copy of this order in the files of all the said OAs.

31. Accordingly, all the Original Applications are allowed with no order as to costs.

(ANIL KUMAR)
ADMINISTRATIVE MEMBER

(B.V.RAO)
JUDICIAL MEMBER

Kumawat

Copy of The Document
in Case File No. ...
and All The Matter
Have been Legibly and
correct with no Modification

Copying Clerk Section Officer/Judicial
C.A.T. Jaipur Bench