

CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 804/2013
WITH
MISC. APPLICATION NO. 291/00461/2014

ORDER RESERVED ON: 12.12.2014

DATE OF ORDER: 9.1.2015

CORAM

**HON'BLE MR. B.V. RAO, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER**

Radhey Shyam Sharma S/o late Shri Ramji Lal Sharma, Superintendent (retired) aged about 61 years, Jamana Colony Vistar, Behind Beed Ka Balaji, Near Teen Dukan, Sikar Road, Jaipur.

...Applicant

Applicant present in person.

VERSUS

1. Union of India through the Revenue Secretary, Ministry of Finance and Department of Revenue, North Block, New Delhi – 110002.
2. The Chairman, Central Board of Excise and Customs, North Block, New Delhi – 110002.
3. The Secretary, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training (DOPT), New Delhi.
4. The Chief Commissioner, Central Excise, Jaipur Zone, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur.
5. The Deputy/Assistant Commissioner, Central Excise Division, Jaipur-II, Sector-10, Vidyadhar Nagar, Jaipur.

...Respondents

Mr. Mahendra Shandilya, counsel for respondents.

**ORDER
(PER MR. ANIL KUMAR, ADMINISTRATIVE MEMBER)**

The applicant has filed the present Original Application praying for the following reliefs: -

"In view of the facts and grounds mentioned above, it is humble prayed that this Hon'ble Tribunal may

Anil Kumar

graciously be pleased to quash the Order dated 15.07.2013 (Annexure A/1) and to allow this Original Application by directing the respondent Department to step up the pay of the applicant at par with his junior i.e. Shri Kumud Bhatnagar from the date from which the benefit has been given to Shri Kumud Bhatnagar with interest of 12 % per annum.

2. The brief facts of the case, as stated by the applicant, are that he was appointed as Hindi Typist in the Department on 08.08.1972 and thereafter he was promoted as UDC on 03.12.1975 then as Inspector on 26.06.1981. Lastly, he was promoted as Superintendent on 12.08.1996/26.05.1997.

3. The name of the applicant finds place at Sl. No. 44 in the Seniority list of the Superintendent Group 'B' published on 01.04.2011 (Annexure A/2). But some juniors to the applicant like Shri Kumud Bhatnagar were granted the benefits of financial up-gradation under the Assured Career Progression Scheme (ACP Scheme) as well as under MACP Scheme and, therefore, their pay has been fixed at higher than the applicant. Shri Kumud Bhatnagar is at Sl. No. 50 in the seniority list of Superintendent Group 'B'. He is drawing more pay than the applicant. Therefore, the pay of the applicant be stepped up at par with his immediate junior.

4. The applicant submitted that a similar controversy has already been settled by the Central Administrative Tribunal, Chandigarh Bench in the case of **Shri Ashok Kumar vs.**

Anil Kumar

Union of India & Ors. (OA No. 156-JK-2009) decided on 19.01.2010. The Hon'ble Chandigarh Bench of the Tribunal 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. 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. 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.

5. The applicant has further submitted that the similar controversy has also been settled by this Bench of the Tribunal recently in the case of **Girvar Singh Rathore vs.**

Anil Kumar

Chief Commissioner, Central Excise, Jaipur Zone & others (O.A. No. 619/2012), and other connected matters, decided on 10.12.2014 relying upon the decision of the Central Administrative Tribunal, Chandigarh Bench in the case of **Shri Ashok Kumar vs. Union of India & Ors.** (supra).

6. The applicant argued that he is only claiming the stepping up of pay at par with his junior and not pay scale or pay band and grade pay. Therefore, the applicant prayed that this Original Application may also be disposed of in terms of the orders passed by the Central Administrative Tribunal, Chandigarh Bench in the case of **Shri Ashok Kumar vs. Union of India & Ors.** (supra) and also by this Bench of the Tribunal in the case of **Girvar Singh Rathore vs. Chief Commissioner, Central Excise, Jaipur Zone & others** (supra).

7. Learned counsel for the respondents submitted that as per the Scheme of ACP and MACP, the stepping up of pay is not allowed. The ACP Scheme is viewed as a 'Safety Net' to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. The directions given by the Central Administrative Tribunal, Chandigarh Bench for stepping up the pay of the applicant at par with his junior in the case of

Anil Kumar

Shri Ashok Kumar vs. Union of India & Ors. (supra)

was personal to him and it cannot be treated as a judgment in rem or it cannot be treated as a precedence in other cases. However, he admitted that the controversy involved in the present Original Application is similar to the controversy involved in the case of **Shri Ashok Kumar vs. Union of India & Ors.** (supra) and also in the case of **Girvar Singh Rathore vs. Chief Commissioner, Central Excise, Jaipur Zone & others** (supra). Therefore, the present Original Application can be decided in terms of the order passed by this Bench of the Tribunal in the case of **Girvar Singh Rathore vs. Chief Commissioner, Central Excise, Jaipur Zone & others** (supra).

8. Heard the applicant in person as well as the learned counsel for the respondents, perused the documents available on record and the case law referred to by the applicant.

9. It is admitted by the applicant as well as by the learned counsel for the respondents that the controversy involved in the present Original Application is similar to the controversy involved in the case of **Shri Ashok Kumar vs. Union of India & Ors.** (supra) before the Central Administrative Tribunal, Chandigarh Bench and also in the case of **Girvar Singh Rathore vs. Chief Commissioner, Central Excise,**

Anil Kumar

Jaipur Zone & others (supra) before the Central Administrative Tribunal, Jaipur Bench.

10. Therefore, the present Original Application is decided in terms of the order passed by this Bench of the Tribunal in the case of **Girvar Singh Rathore vs. Chief Commissioner, Central Excise, Jaipur Zone & others** (O.A. No. 619/2012), and other connected matters, decided on 10.12.2014 (supra). In para 28 of the said order, this Bench of the Tribunal has observed and given the following directions:

"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."

11. Similarly, in view of the settled position of law, in the present Original Application also, the respondents are directed to step up the pay of the applicant at par with his immediate junior. 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

Anil Kumar

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.

12. With these observations and directions, the present Original Application is allowed with no order as to costs.

13. In view of the order passed in the Original Application, no further order is required to be passed in the Misc. Application No. 291/00461/2014 filed on behalf of the respondents praying for deletion of name of the respondent nos. 1 to 3 and 5 from the array of the respondents and the same is disposed of accordingly.



(ANIL KUMAR)
ADMINISTRATIVE MEMBER



(B. V. RAO)
JUDICIAL MEMBER

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