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CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

(ORDER RESERVED ON 05.02.2016)

O.A No. 060/01014/2014

...
Date of decision: 10.2.2016
...

**CORAM: HON'BLE MR. JUSTICE L.N. MITTAL, MEMBER (J)
HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)**
...

MES NO.313494, Balkaran Singh, aged 52 years, son of Sh. Karnail Singh, presently working as Civilian Motor Driver-I, Office of Garrison Engineer (Utility), Bathinda (Punjab).

...APPLICANT

BY ADVOCATE: Sh. K.B. Sharma, proxy for Sh. D.R. Sharma.

VERSUS

1. Union of India through Secretary, Ministry of Defence, Army Headquarters, Kashmir House, New Delhi.
2. Engineer-in-Chief, Army Headquarters, Kashmir House, DHQ PO, New Delhi - 110011.
3. Chief Engineer, Headquarters South Western Command, C/o 56 APO.
4. Chief Engineer, Headquarters Bathinda Zone, Bathinda Military Station, Bathinda.
5. Principal Controller of Defence Accounts, Western Command, Sector 9, Chandigarh.

...RESPONDENTS

BY ADVOCATE: Sh. K.K. Thakur.

ORDER

HON'BLE MRS. RAJWANT SANDHU, MEMBER (A):-

1. This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:-

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- (i) That the impugned order dated 29.04.2014 (Annexure A-1) be quashed and set aside being wholly illegal and arbitrary.
 - (ii) That the respondents be directed to step up the pay of the applicant at par with his junior Sh.

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Gurcharan Singh w.e.f. 01.09.2008 and grant all consequential benefits like arrears and allowances along with interest @ 18% P.A.

(iii) That the applicant be extended the benefit of the judgments mentioned in O.A.

2. It is stated in the OA that applicant joined service as MT Driver Grade-II (basic grade) on 18.09.1982 on regular basis in the pay scale of Rs.260-400. A policy document was circulated on 05.12.1996 (Annexure A-3), vide which it was decided that initial entry to the driver grade would be in the basic grade in the pay scale of Rs.950-1500 which would be 55% and on completion of nine years regular service in the ordinary grade, the driver would become eligible for the next higher grade of Rs.1200-1800 i.e. Civilian Motor Driver Grade-II, earlier known as Motor Trolley Driver Grade-I. This policy further provides that 20% of the vacancies in the Command would be designated as Civilian Motor Driver Grade-I and Civilian Motor Driver Grade-II on completion of 6 years regular service would become eligible for the said grade. In order to implement this policy the respondent no.3 issued Command seniority list dated 27.03.2002 of erstwhile Motor Trolley Drivers Grade-II as on 08.11.1996. In this list the name of the applicant appeared at Sr. No.37 with the date of appointment as 18.09.1982. In pursuance to the aforesaid seniority list the respondents issued panel for promotion of CMD Grade-II, vide SRO No.19/S/2003 dated 02.06.2003. In this panel some of the juniors to the applicant were shown senior to the applicant. The applicant submitted representations to the respondent department to implement the

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policy dated 05.12.1996 and promote the applicant as CMD-II and CMD-I from the due dates. Since the representations of the applicant were not decided the applicant filed OA No.381/PB/2006, which was disposed of on 30.06.2008 with direction to the respondents to decide the representation of the applicant and pass necessary orders in accordance with law (Annexure A-4). The respondents issued order dated 03.03.2009 rejecting the claim of the applicant for promotion at par with his juniors. The applicant then filed OA No.672/PB/2010 and the same was allowed by the Tribunal vide order dated 19.10.2011. After the applicant filed CP No.114/2012 regarding implementation of order dated 19.10.2011, the applicant was promoted as CMD Grade-II w.e.f. 01.01.1996 and CMD Grade-I w.e.f. 27.10.2004.

3. It is further stated that the applicant is performing the duties of CMD Grade-I, in the pay scale of Rs.5200-20200 plus grade pay of Rs.2800/-. On 01.08.2008, the basic pay of the applicant was Rs.10,700/- and the basic pay of junior to applicant Sh. Gurcharan Singh was Rs.10,370/-. Sh. Gurcharan Singh was granted benefit of 3rd MACP w.e.f. 01.09.2008 (on completion of 30 years of service) and was granted the scale of Rs.9300-34800 plus grade pay of Rs.4200/- and he started getting higher pay than the applicant as is evident from the PTO dated 12.11.2012 (Annexure A-6/A). Applicant is getting Rs.13340/- as basic pay, whereas junior to applicant Sh. Gurcharan Singh is getting Rs.13710/- basic pay. A copy of the PTO issued by the respondents is enclosed as Annexure A-7. As

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per the seniority list dated 31.03.2014 the applicant stands at Sr. no.14, whereas, junior to the applicant stands at sr. no.30 (Annexure A-8). The applicant submitted representation dated 24.02.2014 to the respondent department to grant the stepping up of his pay at par with his junior Sh. Gurcharan Singh (Annexure A-9). The request of the applicant stepping up of his pay at par with his juniors has been rejected by the respondents vide order dated 29.04.2014 on the ground that Sh. Gurcharan Singh was initially appointed as a RR Driver and he was granted the benefit of 3rd MACP. Hence this OA.

4. In the grounds for relief it has, interalia, been stated as follows:-

- (i). Because admittedly Sh. Gurcharan Singh is junior to the applicant in all cadres and is drawing more pay than the applicant. Once the law on the subject has been settled that a Senior Govt. Employee will be entitled to stepping of pay at par with his juniors, there is no reason for denying the claim of the applicant.
- (ii). Because from the perusal of the seniority list dated 09.02.2013 it reveals that the applicant stands at Sr. no.15 whereas junior to the applicant Sh. Gurcharan Singh stands at Sr. no.34. Thus the action of the respondents denying the stepping up of pay at par with his junior is illegal and arbitrary.
- (iii). Because from the perusal of the seniority lists and record, it is evident that the applicant was appointed as MTD-II on 18.09.1982 and was promoted as CMD Grade-II, w.e.f. 01.01.1996 and CMD Grade-I w.e.f. 27.10.2004, whereas Sh. Gurcharan Singh was appointed as MTD-II on 07.03.1983 and promoted as CMD Grade-II w.e.f. 27.10.2004 and CMD Grade-I w.e.f. 10.10.2007. Therefore, the applicant is senior to Sh. Gurcharan Singh and is entitled to stepping up of his pay at par with his junior.
- (iv). Because the case of the applicant is squarely covered by the following judgments:-

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- i. OA No.96/CH/2007 titled as Harcharan Singh Sudan Vs. Union of India & Ors., OA No.97/CH/2007 titled as Pawan Kumar Vs. UOI & Ors., both decided by the common order dated 23.05.2008.
- ii. OA No.842/JK/2007 titled as Madan Gopal Sharma & Ors. Vs. UOI & Ors. decided on 17.11.2009.
- iii. OA No.156/JK/2009 titled as Ashok Kumar Vs. UOI & Ors. decided on 19.01.2010.

5. In the written statement filed on behalf of respondents, it has been stated that Sh. Gurcharan Singh was initially appointed as RR Driver w.e.f. 28.08.1975 and further placed in the pay scale of Rs.260-400 w.e.f. 15.10.1981 as per Government orders. The period for grant of 3rd MACP in respect of him has been counted from the date of initial appointment of Sh. Gurcharan Singh. As against this, the applicant was initially appointed on 18.09.1982 in the pay scale of Rs.260-400 much after Sh. Gurcharan Singh and as such he cannot claim stepping up of pay at par with his alleged junior.

6. It is further stated that the principles relating to stepping up of pay of the seniors with reference to the higher pay of junior are now well settled. In the case of State of Andhra Pradesh vs. G. Sreenivasa Rao (1989) 2 SCC 290, the Hon'ble Apex Court has held that "Equal pay for equal work does not mean that all the members of a cadre must receive the same pay-packet irrespective of their seniority, source of recruitment, educational qualifications and various other incidents of service. When a single running pay-scale is provided in a cadre the constitutional mandate of equal pay for equal work is satisfied. Ordinarily grant of higher pay to a junior would ex-facie be

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arbitrary but if there are justifiable grounds in doing so the seniors cannot invoke the equality doctrine. To illustrate, when pay-fixation is done under valid statutory Rules/executive instructions, when persons recruited from different sources are given pay protection, when promotee from lower cadre or a transferee from another cadre is given pay protection, when a senior is stopped at Efficiency Bar when advance increments are given for experience/passing a test/acquiring higher qualifications or as incentive for efficiency; are some of the eventualities when a junior may be drawing higher pay than his seniors without violating the mandate of equal pay for equal work. The differentia on these grounds would be based on intelligible criteria which has rational nexus with the object sought to be achieved." It was also held that High Courts and Tribunals should not, in an omnibus manner come to the conclusion that whenever and for whatever reasons, a junior is given higher pay, the doctrine of 'equal pay for equal work' is violated and the seniors are entitled to the same pay, irrespective of the scope of the relevant Rules and the reasons which necessitated fixing of higher pay for juniors. Besides in the case of Union of India Vs. R. Swaminathan (1997) 7 SCC 690, the Hon'ble Court considered the government order dated 04.02.1966 issued for removal of anomaly by stepping up of pay of a senior on promotion drawing less pay than his junior and it was held that "As the Order itself states, the stepping up is subject to three conditions: 12 — .

(1) Both the junior and the senior officers should belong to the same cadre and the posts in which they have been promoted should be identical and in the same cadre;

(2) The scales of pay of the lower and higher posts should be identical and;

(3) Anomaly should be directly as a result of the application of Fundamental Rule 22-C which is now Fundamental Rule 22(I)(a)(1). We are concerned with the last condition. The difference in the pay of a junior and a senior in the cases before us is not a result of the application of Fundamental Rule 22(I)(a)(1). The higher pay received by a junior is on account of his earlier officiation in the higher post because of local officiating promotions which he got in the past. Because of the proviso to Rule 22 he may have earned increments in the higher pay scale of the post to which he is promoted on account of his past service and also his previous pay in the promotional post has been taken into account in fixing his pay on promotion. It is these two factors which have increased the pay of the juniors. This cannot be considered as an anomaly requiring the stepping of the pay of the seniors. The Office Memorandum dated 04.11.1993. Government of India, Department of Personnel & Training, has set out the various instances where stepping of pay cannot be done. It gives, inter alia, the following instances which have come to the notice of the department with a request for stepping up of pay. These are:

(a) Where a senior proceeds on Extra Ordinary Leave which results in postponement of date of Next Increment in the lower post, consequently he starts drawing less pay than his junior in the lower grade itself. He, therefore, cannot claim pay parity on promotion even though he may be promoted earlier to the higher grade.

(b) If a senior foregoes/refuses promotion leading to his junior being promoted/appointed to the higher post earlier, junior draws higher pay than the senior. The senior may be on deputation while junior avails of the ad hoc promotion in the cadre. The increased pay drawn by a junior either due to ad hoc officiating/regular service rendered in the higher posts for periods earlier than the senior, cannot, therefore, be an anomaly in strict sense of the term.

(c) If a senior joins the higher post later than the junior for whatsoever reasons, whereby he draws less pay than the junior, in such cases senior cannot claim stepping up of pay at par with the junior.

It is also stated that the applicant is not entitled to benefit of decisions mentioned in para 1 (ii) of the OA which are distinguishable on facts and law as in that case juniors were not appointed prior to a senior. In any case a Full Bench of this Hon'ble Tribunal Bench in OA No.1103 of 2011 dated 22nd March, 2013 has held that no senior could claim MACP benefits on the basis of junior having been granted the same, as the financial

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upgradations are granted on the basis of completion of stipulated years of service and as such, seniority has no role to play.

7. Arguments advanced by the learned counsel for the parties were heard. Learned counsel for the applicant reiterated the content of the OA and placed reliance on judgments cited in the OA. He also referred to order dated 28.10.2014 passed by the Tribunal in OA No.1445/JK/2013.

8. Learned counsel for the respondents placed on record two tabular statement showing the particulars of the applicant and Sh. Gurcharan Singh that reads as under:-

Sr. No.	Details	MES-323494 Sh. Balkaran Singh	MES-366733 Sh. Gurcharan Singh
1.	Date of initial Appt	18 Sep. 1982	28 Aug. 1975
2.	Post at the time of Appt	MTD Gde-II	RR Driver
3.	Date Re-classified as MT Dvr. Gde-II	-	07 Mar. 1983
4.	Date of CMD Class-II	01.01.1996	27 Oct. 2004
5.	Date of CMD Class-I	27 Oct. 2004	10 Oct. 2007

DRAWN STATEMENT WEF AUG 2008-TO 31 JUL 2015

MES-313494 Sh. Balkaran Singh, CMD-I				MES-376733 Sh. Gurcharan Singh, CMD-I			
Year	B/Pay	GP	Total	Year	B/Pay	GP	Total
Aug 2008	10700	2800	13390	Aug 2008	10370	2800	13170
Sep 2008	10700	2800	13390	Sep 2008	10770	4200	14970 #
				# 3 rd MACP granted w.e.f 01.09.2008			
Jul 2009	11110	2800	13800	Jul 2009	11220	4200	15420
Jul 2010	11530	2800	14220	Jul 2010	11690	4200	15890
Jul 2011	11960	2800	14650	Jul 2011	12170	4200	16370
Jul 2012	12870	4200	17070 @	Jul 2012	12670	4200	16870

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@ 3 rd MACP granted w.e.f. 12.09.2012							
Jul 2013	13390	4200	17590	Jul 2013	13180	4200	17380
Jul 2014	13920	4200	18120	Jul 2014	13710	4200	17910
Jul 2015	14470	4200	18670	May 2015	13710	4200	17910

Learned counsel stated that keeping in view the judgment dated 07.08.2013 of the Bench in OA No.127/2012 titled as S. Santhamma Vs. The Senior Superintendent of Posts Offices and Ors. The relief sought by the applicant could not be allowed to him. Moreover, even as per the provisions of the MACP Scheme such relief was not admissible.

9. We have given our careful consideration to the matter. The pleadings of the parties and the material on record have been perused. The judgment of the Full Bench in a similar matter has also been noted. There is no dispute about the fact that the applicant Sh. Balkaran Singh is senior to Sh. Gurcharan Singh in the seniority list of CMD-I. The applicant has been granted 3rd MACP w.e.f. 12.09.2012, when he completed 30 years of service from his date of joining of September 1982. However, if the applicant was to be granted stepping up of pay at par with his junior w.e.f. 01.09.2008, which would imply scale of Rs.9300-34,800 plus grade pay of Rs.4200/-, this would in effect mean that the applicant was getting the benefit of 3rd MACP after completion of only 26 years service, while this benefit can only be allowed after completion of 30 years of service. Para 10 of Modified Assured Career Progression Scheme (MACPS) for the

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Central Government Civilian Employees vide OM

No.35034/3/2008-Estt.(D), dated 19.05.2009 reads as follows:-

"10. 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."

Although the principle that the senior should not be getting lesser pay than his junior has been upheld time and again by the courts, but the applicant cannot get the benefit as sought by him in view of the clear guidance of the MACPs that 3rd Financial Upgradation is only allowed on completion of 30 years of service. Sh. Gurcharan Singh is getting higher pay than the applicant on account of 3rd financial upgradation under MACPS. S. Santhamma (supra) is squarely applicable to this matter. Hence, we conclude that there is no merit in the claim of the applicant and the OA is therefore rejected.

(RAJWANT SANDHU)
MEMBER (A)

(JUSTICE L.N. MITTAL)
MEMBER (J)

Place: Chandigarh.

Dated: 10.2.2016

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