

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
Order reserved on: 08.02.2016

ORIGINAL APPLICATION NO. 060/00847/2014

Chandigarh, this the 10th day of February, 2016

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

MES No. 312597-Khiali Ram, son of Shri Roshan Lal, age 59 years, working as Executive Engineer in the office of Chief Engineer, Chandigarh Zone, 'N' Area, Chandigarh.

....APPLICANT

BY ADVOCATE: SHRI D.R. SHARMA

VERSUS

1. Union of India through Secretary, Ministry of Defence, North Block, New Delhi.
2. Engineer in Chief, Engineer-in-Chief's Branch, Integrated Headquarters of MoD (Army), Kashmir House, DHQ, PO, New Delhi.
3. The Secretary, Ministry of Personnel, Public Grievances & Pension, Department of Personnel & Training, Shastri Bhawan, New Delhi.

....RESPONDENTS

BY ADVOCATE: MS. NIDHI GARG

ORDER

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HON'BLE MR. JUSTICE L.N. MITTAL, MEMBER(J):-

Facts in this O.A. are not in dispute. The applicant joined the respondents as Superintendent Grade-II on 04.07.1977. He was promoted as Superintendent Grade-I. He was promoted as Assistant Engineer (AE) w.e.f. 06.03.1995 in the pay scale of Rs. 6500-10,500/- . Thereafter the posts of Superintendent Grade-II and Superintendent

Grade-I were merged into post of Junior Engineer (JE) in the year 1996.

2. Assured Career Progression (ACP) Scheme was introduced w.e.f. 09.08.1999 providing for 1st financial upgradation after completion of 12 years of service and 2nd financial upgradation on completion of 24 years of service if no promotion is earned in the meantime. Applicant's promotion as AE w.e.f. 06.03.1995 was termed as 1st promotion and, therefore, he was not held entitled to 1st financial upgradation. On completion of 24 years' service, he was granted 2nd financial upgradation w.e.f. 04.07.2001 vide order dated 14.09.2009 (Annexure A-1/A), in the pay scale of Rs. 10,000-15,200/- being scale of promotional post in the hierarchy i.e. scale of Executive Engineer (EE). He was actually promoted as EE on 09.04.2008 although the pay scale remained the same i.e. 10,000-15,200/- revised to 15,600-39,100/-+Grade Pay Rs. 6600/-. Modified Assured Career Progression (MACP) Scheme became effective from 01.09.2008, but prior to it, the applicant got promoted as EE on 09.04.2008 and, therefore, the applicant on completion of 30 years of service on 04.07.2007 was not granted benefit of 3rd MACP.

3. Applicant's juniors Dharam Singh and Chhitar Singh were promoted as EE w.e.f. 05.06.2009 and 01.06.2009 retrospectively. They have been given benefit of 3rd MACP w.e.f. 01.09.2008 on completion of 30 years of service and have been granted pay scale of Rs. 15,600-39,100/-+Grade Pay Rs. 7600/- vide order dated 13.02.2012 (Annexure A-2). The applicant's said juniors are thus drawing higher pay than the applicant.

4. The applicant submitted representation dated 12.12.2012 (Annexure A-4) claiming the benefit of 3rd MACP at par with his aforesaid juniors. The respondents vide letter dated 02.01.2013 (Annexure A-5) intimated the applicant that his case for financial upgradation will be considered under pay parity Scheme and the applicant is not entitled to 3rd MACP. The applicant thereafter submitted representations dated 11.02.2013 (Annexure A-6) and 23.05.2013 (Annexure A-7) to the respondents claiming stepping up of his pay at par with his aforesaid juniors. The said representations were forwarded to the Directorate General Personnel (Respondent no. 2) vide letter dated 06.06.2013 (Annexure A-8). However, no response was received by the applicant, who submitted another representation dated 21.02.2014 (Annexure A-9), but without response.

5. On the aforesaid facts, the applicant has claimed the following relief in this O.A.:-

- i) That the action of the respondents in not stepping up the pay of the applicant at par with his juniors MES NO. 312810, Dharam Singh, MES NO. 502734, Sh. Chittar Singh (Juniors) be declared illegal and arbitrary.
- ii) That the respondents be directed to step-up the pay of applicant at par with his MES no. 312810, Dharam Singh, MES no. 502734, Sh. Chhitar Singh w.e.f. 1.9.2008 and to grant the applicant consequential benefits of arrears of pay and allowances etc along with interest.
- iii) That the applicant be extended the benefit of the judgments mentioned in the present O.A."

(19)

6. Respondents in their written statement while not disputing the factual position, interalia pleaded that as per para 10 of the DoPT O.M. dated 19.05.2009, no stepping up of pay band or grade would be admissible with regard to junior getting more pay than the senior on account of pay fixation under the MACP Scheme. It was thus, pleaded that pay of the applicant has been correctly fixed and is not required to be stepped up. It was also pleaded that the applicant is IDSE officer which is organized Group-A service and has more than 5 years of residual service after his promotion as EE and his case is governed by IDSC RR and will not be entitled for MACP upgradation and his name has been sent for pay parity of EE (SG) in the scale of Rs. 15,600-39000/-+Grade Pay Rs. 7600/- w.e.f. 09.04.2013 (on completion of 5 years service as EE). The applicant is thus entitled to pay parity and not for stepping up. Various other pleas were also raised.

7. The applicant has filed rejoinder wherein he has controverted the stand of the respondents and reiterated his version.

8. We have heard counsel for the parties and perused the case file.

9. Counsel for the applicant reiterated the version of the applicant narrated above and relied on Judgments of this Tribunal dated 17.11.2009 in the O.A. No. 842-JK-2007 titled Madan Gopal Sharma and Ors. versus Union of India and Another (Annexure A-10) and dated 19.01.2010 in O.A. NO. 156-JK-2009 titled Ashok Kumar Vs. Union of India & Ors. (Annexure A-11) and contended that the applicant's case is fully covered by the said judgments and,

therefore, he is entitled to stepping up of his pay at par with his aforesaid juniors who are getting higher pay than the applicant due to grant of MACP to them. It was submitted that the applicant may not be entitled to higher pay scale at par with his said juniors, but he is entitled to stepping up of his pay equal to that of his juniors.

10. On the other hand, counsel for the respondents contended that under the MACP Scheme, a senior is not entitled to stepping up of his pay equal to that of his juniors, who have got the benefit of MACP Scheme. It was also submitted that the applicant is also not entitled to pay parity with his juniors.

11. We have carefully considered the matter. The applicant is not claiming the higher scale which has been granted to his juniors on account of benefit of 3rd MACP given to them. However, the applicant is claiming stepping up of his pay equal to that of his aforesaid juniors who are getting higher pay than the applicant. Admittedly the applicant is senior to the aforesaid Dharam Singh and Chhitar Singh, but is getting less pay than the said juniors. In these circumstances, the applicant is entitled to stepping up of his pay at par with his said juniors although not entitled to the same pay scale as the juniors are getting. Case of the applicant is fully covered by the judgments of this Tribunal in the cases of Madan Gopal Sharma (Supra) Annexure A-10 and Ashok Kumar (Supra) Annexure A-11 which have further relied on judgment of this Tribunal in O.A. NO. 96-CH-2007 titled Harcharan Singh Sudan Vs. Union of India & Others decided on 23.05.2008. In view thereof, in the instant case, also the applicant is entitled to stepping up of his pay at par with his aforesaid juniors although not

entitled to the higher pay scale at par with them. In view thereof, contention raised by the counsel for the respondents that the applicant is not entitled to stepping up of his pay cannot be accepted. However, as regards pay parity, it has already been observed that the applicant is not entitled to the pay scale which has been given to his juniors on account of 3rd MACP benefit and is thus not entitled to pay parity with respect to pay scale. The applicant is entitled to only stepping up of his pay.

12. Resultantly, the instant O.A. is allowed. Denial of benefit of stepping up of pay of the applicant at par with his juniors Dharam Singh and Chhitar Singh is declared illegal and arbitrary. The respondents are directed to step up ~~of~~ pay of the applicant at par with his aforesaid juniors. However, it is made clear that the applicant would be entitled to stepping up ^{of} pay only and not to the pay scale. Pay of the applicant may be refixed accordingly and resultant arrears may be paid to him within 3 months from the date of receipt of copy of this order. The applicant shall not be entitled to any interest. The parties are left to bear their own costs.

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

(RAJWANT SANDHU)
MEMBER(A)

Dated: 10.02.2016

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