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CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

(ORDER RESERVED ON 11.02.2016)

...
O.A No. 060/00350/2014 Date of decision: 16.2.2016
...

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

K.C. Chabra S/o Sh. Girdhari Lal, aged 66 years, Retired as Assistant Engineer E/M office of Garrison Engineer (North), Patiala, Resident of House No.17-F, Model Town, Patiala, Punjab.

...APPLICANT

BY ADVOCATE: Sh. Rohit Seth.

VERSUS

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. Engineer-in-Chief's Branch, Director General of Personnel/EIL(O), Kashmir House, Rajaji Marg, New Delhi - 110011.
3. Directorate General (Personnel), Military Engineer Services, Engineer-in-Chief's Branch, Army Headquarters, New Delhi.
4. Chief Engineer, Western Command, (Record Office), Chandimandir.
5. Principal Controller of Defence Accounts (Pension) Allahabad.

...RESPONDENTS

BY ADVOCATE: Sh. Sanjay Goyal.

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:-

"Quash order dated 18.03.2010 (Annexure A-1) read with order dated 24.09.2013 (Annexure A-2) and order dated 13.11.2013 (Annexure A-3) vide which

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claim of the applicant for grant of 2nd ACP w.e.f. 09.08.1999 in the scale of 10,000-15,200 from due date has been rejected by the respondent no.3 on the ground that applicant had already availed two financial up-gradations i.e. by taking into account promotion from post of Charge Mechanic to Superintendent Grade-II and then as Superintendent Grade-I ignoring the fact that posts of Superintendent Grade-I and Grade-II were re-designated as Junior Engineers and applicant was also so re-designated vide order dated 20.08.2001 (Annexure A-4) hence promotion from Superintendent Grade-II to Grade-I became irrelevant for the purpose of grant of ACP and as applicant had got only one promotion as JE (E/M) on date of consideration for grant of 2nd ACP having completed 24 years of service prior to 09.08.1999 i.e. date of applicability of ACP scheme as has been done in the case of Colleagues and Juniors to the applicant as is apparent from information supplied to him vide letter dated 26.03.2014 (Annexure A-5) in the light of seniority list dated 12.08.2004 (Annexure A-6) and direct the respondents to grant the applicant benefit of 2nd ACP w.e.f. 09.08.1999 and third MACP with all consequential benefits, revised retiral benefits, arrears of pay and pension alongwith interest of 18% per annum and or direct the respondents to step up the pay of applicant at par with his juniors placed at Sr. No.164, 166 and 167 of seniority list of JE's (E/M) circulated vide letter dated 12.08.2004 as named in letter dated 26.03.2014 as they were fixed at higher pay than the applicant despite being at Sr. No.161 and which claim also the respondents have rejected illegally by stating that they are going to file SLP in the matter of grant of stepping of pay which had been granted to similarly placed employees pursuance to orders in OA No.3079/2012 titled as Shri Nanak Chand Sharma and others versus Union of India and others decided on 10.12.2013 (Annexure A-12), OA No.2538/2010 titled as Shri Nanak Chand Sharma and others versus Union of India and others decided on 28.04.2011 (Annexure A-13), OA No.842/JK/2007 titled as Madan Gopal and others versus Union of India and others decided on 17.11.2009 (Annexure A-14) and the same upheld by Hon'ble High Court in SWP No.2271/2010, CMP No.3219/2011 vide order dated 18.04.2012 (Annexure A-15). While extending the benefit of judgments aforesaid to the applicant and while quashing above mentioned impugned orders with all the consequential benefits, revised retiral benefits, arrears of pay and pension alongwith interest of 18% per annum."

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2. Averment has been made in the OA that the applicant joined service as Charge Mechanic on 22.11.1969, he was promoted as Superintendent Grade-II on 08.03.1976, and as Superintendent Grade-I on 23.01.1993. Applicant was redesignated as Junior Engineer (E/M) vide order dated 20.08.2001 (Annexure A-4) on merger of Supdt. Grade-II and Supdt. Grade-I pursuant to letter dated 09.07.1999 (Annexure A-7). Applicant was further promoted as Assistant Engineer (E/M) on 13.10.2005. Applicant retired from service as AE (E/M) on 31.10.2008 in scale of Rs.9300-34,800 with Grade Pay of Rs.4600/-. The name of the applicant was approved by DPC for grant of 2nd ACP w.e.f. 09.08.1999. However, the same was declined by Record Office order dated 18.03.2010 (Annexure A-1) on the ground that applicant had already availed 2 financial upgradations i.e. by taking into account promotion of applicant from post of Charge Mechanic to Superintendent Grade-II and then as Superintendent Grade-I ignoring the fact that posts of Superintendent Grade-I and II were re-designated as Junior Engineer. The 3rd MACP had also not been given to the applicant by the respondents.

3. Aggrieved on this account, the applicant submitted representation dated 09.07.2010 (Annexure A-9) to respondent no.3 seeking grant of IInd ACP w.e.f. due date i.e. 09.08.1999. The applicant received reply on 19.08.2010 (Annexure A-10) in which respondent no.3 stated that his case for fixation of pay had been forwarded for necessary action. The applicant submitted another representation dated 12.07.2011 in reference to both the



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earlier communications. Respondents sat over the matter and no action was taken on the representation dated 12.07.2011. The applicant submitted representation dated 23.04.2013 (Annexure A-11) to step up his pay at par with his juniors who had got judgments passed by this Hon'ble Tribunal in O.A. No.3079/2012 titled as Shri Nanak Chand Sharma and Others versus Union of India and others decided on 10.12.2013 (Annexure A-12), OA No.2538/2010 titled as Shri Nanak Chand Sharma and Others versus Union of India and others decided on 28.04.2011 (Annexure A-13), OA No.842/JK/2007 titled as Madan Gopal and Others versus Union of India and Others decided on 17.11.2009 (Annexure A-14) and the same upheld by Hon'ble High Court in SWP No.2271/2010, CMP No.3219/2011 vide order dated 18.04.2012 (Annexure A-15).

4. It is further stated that the claim of applicant for stepping of pay at par with his junior was declined by the respondents vide order dated 24.09.2013 (Annexure A-2) on the ground that the matter had gone to the Hon'ble High Court and as such benefit cannot be granted. The applicant served legal notice dated 15.10.2013 (Annexure A-16), through his counsel for stepping up of his pay at par with his juniors who were already getting higher pay than the applicant. Vide order dated 13.11.2013 (Annexure A-3), respondents declined the benefit by stating that SLP in the matter of stepping up of pay at par with juniors has now been filed and as such benefit cannot be extended to the applicant. Applicant after receiving order dated 13.11.2013 served another legal notice dated 16.01.2014

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(Annexure A-17) to the respondents through his counsel but to no avail. Hence this OA.

5. In the written statement filed on behalf of respondents, it has been stated that for grant of ACP/MACP two requirements are to be fulfilled.

- (a) Length of service.
- (b) Promotions attained by the Govt. servant during service.


As the applicant had already got two promotions i.e. in 1976 from Charge Mechanic to Supdt. E/M Grade-II in 1976 and Supdt. E/M Grade-I in 1993 and three financial upgradations prior to Aug. 1993 i.e. in March 1976, Jan. 1986 and Jan. 1991 during service, he was not entitled / granted ACP / MACP as per E-In-C's letter No.B/4 1028/ACP/AES/JES/E, (DPC), dated 11.10.2010.

6. In the rejoinder filed on behalf of the applicant, it is stated that he got only two promotions i.e. to the post of Superintendent E/M Grade-II and Superintendent Grade-I in the year 1976 and 1993 but vide order dated 09.07.1999 cadres of Superintendent Grade-II and Superintendent Grade-I ^{were} was merged as a single cadre of JEs. As such, promotion from Superintendent Grade-II to Grade-I became redundant for the purpose of grant of ACP. Applicant had effectively received only one promotion upto the year 2005 and as such he was entitled for the 2nd ACP which was rightly granted by the DPC but wrongly declined by the record office. *As* —



7. In the additional affidavit filed on behalf of the respondents alongwith MA No.060/00985/2015, it has been stated that the orders passed by Hon'ble High Court of Delhi in CWP No.5365 of 2014 in OA No.3079/2012 filed by Nanak Chand Sharma in the similar matter had been contested by the Department through SLP No.35121 of 2014 and that the matter is sub judice before the Hon'ble Apex Court. In view of the same the speaking order had been duly passed (Annexure R-1).

8. When the matter was taken up for hearing, learned counsel for the applicant stated that at this stage, he was not pressing the relief regarding claim for 2nd and 3rd MACP but was only seeking the stepping up of pay at par with his juniors placed at Sr. No.164, 166 and 167 of seniority list of JEs (E/M) circulated vide letter dated 12.08.2004. He further stated that the judgment in Sh. Nanak Chand Sharma (supra) had been upheld by the Delhi High Court and even the SLP filed regarding this matter has been dismissed on 12.08.2015. Hence, the applicant was entitled to stepping up of pay at par with his juniors as the circumstances of the applicant and that of Sh. Nanak Chand Sharma were identical.

9. Learned counsel for the respondents relied on the content of the written statement filed on behalf of the respondents and stated that the speaking order dated 09.09.2015 had been passed accordingly. He also stated that the applicant could not be considered eligible for 2nd ACP in 1999, since he had got two promotions earlier. 

10. We have carefully considered the matter and perused the following judgments:-

- i. OA No.842/JK/2007 titled as Madan Gopal and others versus Union of India and others decided on 17.11.2009 (Annexure A-14)
- ii. OA No.2538/2010 titled as Shri Nanak Chand Sharma and others versus Union of India and others decided on 28.04.2011 (Annexure A-13)
- iii. SWP No.2271/2010, CMP No.3219/2011 titled as Union of India and others versus Jagdish Raj Sharma, vide order dated 18.04.2012 (Annexure A-15)
- iv. OA No.3079/2012 titled as Shri Nanak Chand Sharma and others versus Union of India and others decided on 10.12.2013 (Annexure A-12).

11. It is also seen that vide order dated 12.08.2015 in SLP No.35121/2014 the same has been dismissed and the Tribunal's order in Nanak Chand Sharma (supra) has been upheld. From the reading of all the judgments referred above, it is clear that the Tribunal / Courts have taken the view that in the case of applicants who were Charge Mechanics and were promoted as Superintendent Grade-II and thereafter as Superintendent Grade-I, and later the cadres of the Superintendent Grade-II and Grade-I were merged to form the cadre of JE, a situation had arisen, where the juniors were getting higher pay than the seniors because they had been granted the 2nd ACP, while the seniors were not eligible for the 2nd ACP on account of the promotions availed earlier. In all these cases, it was ordered that the seniors would be entitled to the stepping up of their pay at par with their juniors. Identical relief has been sought by the applicant in the present OA as was allowed in Madan Gopal (supra) (Annexure A/14). The judgment in this OA

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no.842/JK/2007 has also been refereed in OA No.3079/2012 Nanak Chand Sharma Vs. UOI (Annexure A/12). Hence, this OA is allowed.

12. The respondents are directed to step up the pay of the applicant at par with his juniors placed at Sr. No.164, 166 and 167 of seniority list of JE's (E/M) circulated vide letter dated 12.08.2004. Action in this regard may be completed within a period of two months of a certified copy of this order being served upon the respondents and the arrears of pay due to the applicant be released within a further period of one month. Action may also be taken to revise the pension of the applicant, issue fresh PPO and release arrears of pension and other retiral benefits within this period. OA is disposed of with these directions.

13. No costs.


(RAJWANT SANDHU)
MEMBER (A)


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

Place: Chandigarh.
Dated: 16.2.2016

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