

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

OA 1428/2014

Reserved on: 17.08.2016  
Pronounced on: 20.08.2016

**Hon'ble Mr. P.K. Basu, Member (A)  
Hon'ble Mr. Raj Vir Sharma, Member (J)**

B. Bhattacharjee  
S/o Shri N.K. Bhattacharjee  
Directorate General of Export Promotion  
Hotel Janpath, 1<sup>st</sup> Floor  
New Delhi-110001 .... Applicant

(Through Shri Avijit Bhattacharjee, Advocate)

## Versus

1. Directorate General of Export Promotion,  
(Department of Revenue),  
Hotel Janpath, 1<sup>st</sup> Floor  
New Delhi-110001
2. The Chief Commissioner  
Central Excise and Customs (NE Region)  
Crescens Building, Mahatma Gandhi Road,  
Shillong-793001
3. Commissioner of Central Excise  
(Cadre Controlling Authority),  
Morello Compound, M.G. Road  
Shillong-793001
4. Shri Dipak Bhattacharjee  
(Superintendent, Customs and Central Excise,  
Shillong),  
C/o The Chief Commissioner,  
Central Excise and Customs (NE Region)  
Crescens Building, Mahatma Gandhi Road  
Shillong-793001

(Through Shri Manjeet Singh Reen, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

The applicant is Senior Intelligence Officer in Directorate General of Export Promotion. His grievance is that his junior one Shri Dipak Bhattacharjee has been granted the Grade Pay of Rs.6600/- whereas he is continuing in the Grade Pay of Rs.5400/-. He has, therefore, prayed for stepping up of pay vis-à-vis his junior with effect from 1.07.2012 i.e. the date from which his junior has been granted the Grade Pay of Rs.6600/-.

2. Learned counsel for the applicant stated that vide order dated 21.11.2013, applicant's representation has been rejected quoting CBEC's letter dated 5.03.2012 and Ministry's letter dated 26.06.2013. Learned counsel stated that CBEC's letter dated 5.03.2012 is regarding stepping up of pay in case of departmental promotees vis-à-vis directly recruited juniors on or after 1.01.2006. It is stated that this is not the case here in this OA as both the applicant and Shri Dipak Bhattacharjee are promoted as Superintendent. Similarly, it is argued that letter dated 26.06.2013 of Department of Revenue deals with stepping up of pay of senior vis-à-vis junior who is getting higher pay on account of receiving ACP benefit after upgradation of the post i.e. after 21.04.2004, which also is not the fact in the present case.

3. Learned counsel for the applicant cited the decision of Chandigarh Bench of this Tribunal in OA 156-JK-2009, **Ashok**

**Kumar Vs. Union of India and others** in support of his case.

It is stated that this was a similar case, where a direct recruit received financial upgradation and moved into higher scale than the applicant therein. The aforementioned OA was disposed of with a direction to the respondents to step up the pay of the applicant at par with his junior. It is stated that this was challenged before the Hon'ble High Court in CWP No.12894/2010 and vide order dated 23.07.2010, the Writ was dismissed. SLP filed against the judgment in aforesaid Writ was also dismissed vide order dated 2.05.2011 of the Hon'ble Supreme Court.

4. Learned counsel for the respondents stated that in the instant case, Shri Biswajit Bhattacharjee joined the department as Stenographer on 20.02.1976, promoted to the grade of Inspector on 16.11.1982 and subsequently to the grade of Superintendent on 29.09.1996 and on completion of 30 years service with two promotions he was granted 3<sup>rd</sup> MACP in PB-2 with GP of Rs.5400/- whereas, Shri Dipak Bhattacharjee being a direct recruit Inspector joined on 22.01.1982 and promoted to the grade of Superintendent on 29.09.1996 and on completion of 24 years of service he was granted 2<sup>nd</sup> ACP benefit in the pay scale of Rs.8000-13500 with effect from 22.01.2006 which is in PB-3 with GP of Rs.5400/- and again on completion of 30 years he was granted 3<sup>rd</sup> MACP benefit in PB-3 with GP of Rs.6600/-.

5. It is stated that based on above, it is clear that Shri Dipak Bhattacharjee was getting higher pay in the grade of Superintendent on account of granting of 2<sup>nd</sup> ACP benefit in the

pay scale of Rs.8000-13500 which is in PB-3 with GP of Rs.5400/- being a direct recruit Inspector and subsequently granted 3<sup>rd</sup> MACP benefit with effect from 22.01.2002 in PB-3 with GP of Rs.6600/-.

6. The respondents state that as per ACP/MACP Scheme instructions, 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 ACP/ MACP Scheme.

7. We have heard the learned counsel for the parties and gone through the pleadings available on record.

8. The stepping up of pay is governed by FR 22 read in conjunction with the DoP&T OM dated 4.11.1993 and such stepping up can be only on fulfillment of the following conditions:

- "(a) both the junior and senior officer should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre.
- (b) The scales of pay of the lower and higher posts in which the junior and senior officers are entitled to draw pay should be identical.
- (c) The anomaly should be directly as a result of the application of FR 22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advanced increments or any other account the above provisions will not be invoked to step up the pay of the senior officer."

9. From above, it will be clear that the present case does not fall within the scope of FR-22 or OM dated 4.11.1993. The present case arises out of the fact clearly stated by the respondents in para 4 above. As far as order of this Tribunal in Ashok Kumar (supra) is concerned, which has been upheld by the Hon'ble High Court and the Hon'ble Supreme Court, first of all, it was a case of ACP and not MACP benefits and secondly, it was an order *in personam* and not *in rem*. Therefore, the applicant cannot rely on this order to claim relief in this OA.

10. Moreover, we find that none of the parties have brought to the notice of Chandigarh Bench of this Tribunal the provisions of FR 22-C [now replaced by FR 22 (1) (a) (i)] and OM dated 4.11.1993 in Ashok Kumar (supra).

11. In view of above discussion, the OA is found to be devoid of merit and is dismissed. No costs.

(Raj Vir Sharma)  
Member (J)

(P.K. Basu)  
Member (A)

/dkm/