

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 2393/2013

Reserved on: 29.02.2016
Pronounced on: 26.04.2016

Hon'ble Dr. B.K. Sinha, Member (A)
Hon'ble Dr. B.A. Agrawal, Member (J)

Anand Parkash Sharma
S/o late Sh. Jyoti Prasad Sharma,
R/o 37-B, K-1 Extension,
Street No.3, Gurudwara Road,
Mohan Garden, Uttar Nagar,
New Delhi – 110 059. ...Applicant

(By Advocate: Sh. H.S. Dahiya)

Versus

1. Union of India through
Secretary,
Ministry of Defence,
South Block, New Delhi-1.
2. The Joint Secretary (T) & CAO,
Ministry of Defence,
E-Block, Hutmants,
New Delhi – 110 011.
3. Controller General of Defence Accounts,
Ulan Batar Road, Palam,
Delhi Cantt, New Delhi. ...Respondents

(By Advocate: Sh. H.K. Gangwani)

O R D E R

By Dr. B.K. Sinha, Member (A):

The instant OA involves the claim of the applicant for correct fixation of pay. The applicant is aggrieved by failure on part of the respondents in not granting him two financial upgradations under Assured Career Progression Scheme [hereinafter referred to as ACPS] in the pay scale of Rs.6500-

10500/- and Rs.7450-11500/- w.e.f. 09.08.1999 as have been granted to similarly placed employees. He is further aggrieved by the impugned communication dated 19.10.2012 vide which his representation to grant the above financial upgradations has been rejected.

2. The applicant has prayed for the following relief(s):-

- (a) *That Hon'ble Tribunal may be pleased to pass the order of setting aside all the wrong fixation of pay of the applicant w.e.f. 01.01.1986 and consequent revisions w.e.f. 29.03.1988 (date of promotion), 01.01.1996 (5th CPC) and 09.08.1999 (Financial upgradation under ACPS) communicated vide letter dated 05 January 2010.*
- (b) *That Hon'ble Tribunal may be pleased to pass the order of directing the respondents to correctly fix the pay of the applicant in the pay scale of Rs.1640-60-2600-EB-75-2900 which was equated pay scale of Rs.510-15-600-20-700/25-800, which he carried from his previous post in BCB and which was granted to similarly placed other BCB employees instead of wrong fixation at Rs.1950/- in the pay scale of Rs.1600-50-2300-60-2600 w.e.f. 01 January 1986 when the applicant joined on the post of Asstt. Film Librarian after being declared surplus and pay consequential benefits of pay with arrears.*
- (c) *That Hon'ble Tribunal may be pleased to pass the order of directing the respondents to grant the benefit of first financial upgradation in the pay scale of Rs.6500-9000 and second financial upgradation to the applicant in the pay scale of Rs.7450-11500 from 9.8.1999 with all the consequential benefits including arrears with interest thereon @18% p.a., under the Assured Career Progression Scheme.*
- (d) *Any other further order or orders or directions, as may be deemed fit and proper in the interest of justice, may kindly be passed.*

3. The case of the applicant, in brief, is that he joined the Beas Construction Board [hereinafter referred to as BCB] on 08.07.1966 as Typist Clerk in the pay scale of Rs.60-175/- (revised pay scale is Rs.110-250/-). Subsequently, he was

assigned duties of Sub Division Clerk [hereinafter referred to as SDC] and was granted Rs.20/- per month as special pay. Consequent to enactment of the Punjab Re-organization Act, 1966, the applicant was declared surplus and surrendered to the Surplus Cell on 29.07.1985 while he was drawing pay of Rs.660/- in the scale of Rs. 510-800/-. The applicant was subsequently re-deployed as Assistant Film Librarian in the scale of Rs. 330-480/- and his pay was fixed at Rs. 480/- + Rs.12/- (Personal Pay), which was further re-fixed at Rs. 1470/- in the revised pay scale of Rs.1200-1800/- w.e.f. 01.01.1986 as per the recommendations of 4th CPC. The applicant was promoted as Film Librarian w.e.f. 29.03.1988 and his pay was fixed at Rs.1600/- in the pay scale of RS.1200-2040/- which was revised to Rs.4000-6000/- w.e.f. 01.01.1996 on the recommendations of the 5th CPC. The pay of the applicant was fixed at the maximum of Rs. 6000/- in the revised pay scale of Rs.4000-6000/-.

4. The applicant was granted 2nd financial upgradation under the ACPS w.e.f. 09.08.1999 in the pay scale of Rs. 5500-9000 which was pay scale of the next higher post of Chief Librarian. The applicant submits that many surplus employees from BCB were allowed to carry their pay scale of Rs. 510-800/- on their appointment in different departments of Government of India initially under the orders of

Chandigarh Bench of this Tribunal and upheld by the Hon'ble Supreme Court vide their judgment dated 25.02.2004 vide which their pay scale was equated with the pay scale of Rs.1640-2900/- w.e.f. 01.01.1986.

5. Learned counsel for the applicant submitted that the DoP&T vide their OM No.10/5/2004-CH-III dated 05.05.2004 directed the Manager, Government of India Press, Nilokheri (Karnal) that as per rule 5(2) of CCS (Redeployment of surplus Staff) Rules, 1990, the surplus employees shall be permitted to carry their previously pay scale along with their next post further providing that benefits under ACPS are allowed with reference to the protected pay scales and not with reference to pay scales of the post to which they have been appointed [Annexure A-3 page 12 of the paper book]. Accordingly, the applicant submitted representation dated 06.05.2005 to the respondent no.2 seeking fixation of his pay in scale of Rs.510-800/- equated to the pay scale of Rs.1640-2900 w.e.f. 01.01.1986 and revised pay scale of Rs. 5500-9000 w.e.f. 01.01.1996 on the recommendations of the 5th CPC [Annexure A-4 page 13 of the paper book].

6. In response to the representation of the applicant, his pay was fixed at Rs. 1950/- in the scale of Rs. 1600-2600/- w.e.f. 01.01.1986, the date of his joining the post of Asstt.

Film Librarian whereas it should have been fixed in the scale of Rs.1640-2900 which was equated pay scale of Rs.510-800/- which he had carried from his previous post in BCB and had been granted to all similarly placed BCB employees. The applicant was promoted to the post of Film Librarian w.e.f. 29.03.1988 where his pay was fixed at Rs. 2120/- in the pay scale of Rs.1640-2900/- which, the applicant claims, should have been from 01.01.1986. On re-fixation of pay on 10.12.2009, the pay of the applicant was re-fixed at Rs. 7775/- in the scale of Rs. 5500-9000/- w.e.f. 01.01.1996 which was the revised scale of Rs. 1640-2900 on the recommendations of 5th CPC. The applicant was granted second financial upgradation and his pay was fixed at Rs. 8700/- in the scale of Rs.6500-10500 w.e.f. 09.08.1999. The applicant had not been granted his first financial upgradation because his promotion to the post of Film Librarian w.e.f. 29.03.1988 in the pay scale of Rs. 1640-2900/- had been treated as his first promotion. This too has been challenged by the applicant as the scale of Rs. 1640-2900/- had been claimed right from 01.01.1986.

7. It is the claim of the applicant that his pay should have been correctly fixed in the scale of Rs.1640-2900/- on the basis of earlier equated pay of Rs.510-800/- and then he could not be promoted on 29.03.1988 and instead should

have been granted his first financial upgradation in the scale of Rs.6500-10500/- and the second financial upgradation in the scale of Rs. 7450-11500/-. Therefore, the applicant has sought parity in terms of pay with one Budhi Singh Dhima, similarly situated employee, retired Sr. Auditor from the office of the DPDO, Dharamshala (HP), who filed OA No.128-HP-2010 and had been granted the scales of Rs. 6500-10500/- and Rs.7450-11500/- as the first and second financial upgradations respectively under the ACPS from the due date with all consequential benefits.

8. In support of his claim, the applicant also relies upon the decision of Chandigarh Bench of this Tribunal rendered in the case of Shri Bharat Bhushan & Ors. V/s. Union of India & Ors. [OA No. 664/CH/2010 dated 29.04.2011]. It is the contention of the applicant that the decisions in both the above cases have been accepted and implemented by a number of organizations including PCDA, Western Command, Chandigarh, the PDCA (Border Road, Seema Sadak Bhawan, Ring Road, Naraina, New Delhi, the PDCA Northern Command, Narwal Pain Satwari, Jammu and CDA (Pension Disbursement), Meerut Cantt, Meerut and extended the benefit of the judgment to the former employees of BCB.

9. The applicant has also relied upon the decision of the Principal Bench of this Tribunal in the case of Subhash

Chander Aggarwal V/s. Union of India & Ors. [OA No.1370/2009] and upon the order dated 04.10.2011 issued by the Principal CDA (Western Command), Chandigarh seeking options into the pre-revised pay scales of Rs. 6500-10500/- and Rs. 7450-11500/-.

10. The respondents have filed their counter affidavit rebutting the averments made in the OA. The respondents submit that the pay of the applicant had been initially fixed at Rs. 480/- + Rs.12/- (PP) as he had opted for the pay scale of Rs.330-480/-. On implementation of 4th CPC recommendations, the pay of the applicant was fixed at Rs.1950/- in the scale of Rs.1600-2600/-. This pay was again re-fixed at Rs.1940/- in the scale of Rs.1640-2900/- vide order dated 21.02.2014 consequent to extension of the same benefits to one A.P. Sharma as per CAT's order dated 07.10.2002 in OA No.784/PB/2001 in the case of Subhash Chander (supra). They further submitted that the Hon'ble High Court of Punjab & Haryana order dated 21.03.2002 and Hon'ble Supreme Court's order dated 25.02.2004 in the case of Union of India V/s. Nek Ram and Union of India V/s. Rattan Chand granted the pay scale of Rs.1640-2900 w.e.f. 01.01.1986. The respondents further submit that promotion in the grade of Film Librarian could only be done in the scale of Rs.1200-2040/- which is lower than what he had been

getting from 01.01.1986 in the scale of Rs.1640-2900/-.

Thus no financial benefits could accrue to the applicant.

Further, the respondents submit that the applicant is already in receipt of two financial upgradations (one due to promotion on 26.11.1974 and the other due to ACPS w.e.f. 09.08.1999) which has been granted after ignoring his 2nd promotion to the grade of Film Librarian in light of DOP&T OM dated 10.02.2000 and as such the applicant is not entitled for any further financial upgradation under the ACPS.

11. In reply to para 4.12, the respondents submit that the pay of the applicant had been fixed equated with the pay scale of Rs.1640-2900/- w.e.f. 01.01.1986 consequent to occurrence of DOP&T. DOP&T OM dated 09.08.1999 on ACPS provide that all those Central Government employees who have not got 1st/2nd promotion are eligible for grant of 1st/2nd financial upgradations on completion of 12/24 years of service. Such financial upgradations shall be counted against regular promotion including in situ promotion and fast track promotion availed through limited departmental competitive examination from the grade in which the applicant had been directly recruited. The respondents also rely upon para 14 of the OM dated 09.08.1999 to contend that regular services rendered by government employee in

the previous organization are to be counted with regular services rendered in the new organization.

12. The applicant has filed a rejoinder application rebutting most of the points stated in the counter affidavit. In his rejoinder application, the applicant primarily stressed upon three points. In the first instance, he challenges re-fixation of his pay from Rs.480/- + 12/- (PP) to Rs.1940/- in the scale of Rs.1640-2900/- vide letter dated 21.02.2014 w.e.f. 01.01.1986. There is no copy of the fixation order has been attached to the counter reply. Earlier the pay of the applicant had been incorrectly fixed in the scale of Rs.1600-2600/- at Rs. 1950/- w.e.f. 01.01.1986 by granting seven increments @ Rs.50/- i.e. Rs.1600 + 350 = Rs.1950/-, whereas now the pay of the applicant has been fixed in the pay scale of Rs.1640-2900/- w.e.f. 01.01.1986 at Rs.1940/- by granting 5 increments @ Rs.60/- = 300/- i.e. Rs.1640+RS.300=Rs.1940/-. Thus, his pay has been fixed lower at Rs.1940/- from Rs.1950/- when it had been fixed in lower pay scale by illegally reducing the number of increments from seven to five. The applicant is thus entitled to be granted seven increments at Rs.60/- and his pay is to be fixed at Rs.2020/- w.e.f. 01.01.1986. The applicant admits that he had been initially granted a personal pay of Rs.15/- in respect of sterilization operation of his wife which

has been subsequently revised to Rs.30/- per month w.e.f. 01.01.1986 being the lowest rate of increment in that pay scale of pay of Rs.1200-1800/- and was given as personal pay to the applicant every month. This was subsequently revised to Rs.60/- per month w.e.f. 01.01.1986. The applicant claims that he is entitled to be granted sterilization increment at Rs.60/- when his pay was fixed in the scale of Rs.1640-2900/- whereas on fixation of pay, the applicant has been given @ Rs.50/- per month w.e.f. 01.01.1986.

13. In the second instance, the applicant submits that his pay on promotion to the grade of Film Librarian in the scale of Rs.1200-2040/- could not have been treated as promotion and the pay of the applicant has to be revised from time to time as per the initial pay scale of Rs.1640-2900/-.

14. In the third instance, the applicant reiterates that he initially joined as Typist Clerk in the scale of Rs.60-175/- which was revised to Rs.110-250/- and further to Rs.400-600/- and the applicant was placed in the designation of SDC on 26.11.1974 by granting a special pay of Rs.20/- per month extra to the grade of Clerk of Rs.110-250/- for arduous nature of duties. Consequent to revision in the pay scale of Rs.510-800/- w.e.f. 01.01.1978, he was placed in that scale. This does not tantamount to promotion but only replacement in corresponding scale. Therefore, the applicant

is entitled to be granted the first financial upgradation in the scale of Rs. 67500-10500/- which has been granted as the second financial upgradation w.e.f. 09.08.1999. In para 4.12 of the rejoinder, the applicant submits that the respondents have corrected the mistake by fixing his pay in the scale of Rs.1640-2900/- w.e.f. 01.01.1986 but his pay has to be correctly fixed by granting seven increments in place of five increments that had been granted to him.

15. The respondents have also filed additional counter affidavit to the rejoinder application submitting that the pay of the applicant had been fixed at Rs.1940/- vide order dated 21.02.2014. The applicant had been paid the sterilization increment in the form of personal pay when he was drawing his pay in the scale of Rs.1640-2900/- which was revised w.e.f. 01.01.1986 as a consequence of this the pay scale of Rs.1200-2040 granted by way of promotion to the applicant w.e.f. 29.03.1988 had become redundant and no further fixation was required to be done on that date. The respondents also reiterate their earlier submission that the applicant got one promotion to the post of SDC in BCB and another to the post of Film Librarian in the scale of Rs.1200-2040/- (4th CPC Scale) on introduction of ACPS, he was granted second financial upgradation in the scale of

Rs.6500-10500/- and therefore, he is not entitled to any further financial upgradation.

16. We have carefully gone through the pleadings on record and patiently heard the oral arguments advanced by the learned counsel on either side. We note that the additional counter affidavit filed by the respondents has made our task considerably easy. We have already noted that the respondents in consideration of the earlier cases, namely, Subhash Chander Aggarwal (supra); Union of India V/s. Nek Ram (supra) and Union of India V/s. Rattan Chand (supra) have fixed the pay of the applicant at Rs.1940/- and revised his pay in the scale of Rs.1640-2900/- on the basis of the afore decisions. The arrears of personal pay arising from sterilization of his wife are also being paid. This, in our view, takes care of the relief clause (b). It also has the effect of nullifying the promotion dated 29.03.1988 in the scale of Rs.1200-2040/-

17. Now, we are left with the following two issues only:-

(i) Whether the promotion allegedly granted to the applicant to SDC in BCB is a promotion as summed up by the respondents or just placement in the corresponding pay scale, as contended by the applicant?

(ii) How the pay scale fixed at Rs.1940/-, which is less than the previously fixed at Rs.1950/- in the pay scale of Rs.1640-2900/-, has been correctly fixed or not?

18. Insofar as the first of the issues is concerned, we have taken note of the fact that though it has been stated in the additional counter affidavit that a copy of the order dated 21.02.2014 has been annexed but the same is not on record. Despite the fact that the learned counsel for the respondents has been reminded to this effect, the copy of the order has not been produced before us. Therefore, we are compelled to decide this issue on the basis of such documents and pleadings as are available on record.

19. Admittedly, as submitted by the respondents in their additional counter affidavit, the applicant has been placed in the scale of Rs.1640-2900/- w.e.f. 01.01.1986 which is equated to the scale of Rs.510-800/- which the applicant had been getting earlier under various orders of the Courts. It is also an admitted position that the applicant has come to this Tribunal with a grievance instead of being placed in the scale of Rs.1640-2600/- he had been placed in the scale of Rs.1640-2900/- and in this scale his pay had been fixed at Rs.1950/-. It defies reasons that once he has been placed in a scale of Rs.1640-2900/-, how his pay which has been fixed

at Rs.1940/- and reduced by a sum of Rs.10/- all other things being the same. Therefore, in absence of other documents, we have no option but to accept the argument of the applicant that earlier his pay had been fixed in the scale of Rs.1600-2600/- at Rs.1950/- w.e.f. 01.01.1986 by granting seven increments @ Rs.50/- which makes it to Rs.1600/- + Rs.350 = Rs.1950/-. Now the pay of the applicant has been fixed in the scale of Rs.1640-2900/- w.e.f. 01.01.1986 by granting five increments @ Rs.60/- i.e. Rs.1640/- + Rs.300= Rs.1940/- which is decidedly lower when it has been fixed in the lower side. The respondents have nowhere given any explanation as to why the two increments have been deducted while they have been granted earlier. Hence, we are of the opinion that the contention of the applicant that seven increments @ Rs.60/- should be retained and his pay should be fixed at Rs.1640/- + Rs.420/- = Rs.2060/-.

20. Now, we come to the next issue as to whether the applicant has been granted the promotion to the post of SDC with financial benefit of Rs.20/- per month w.e.f. 26.11.1974 while serving in BCB or it was just a placement in the corresponding scale. Here, this Tribunal had directed vide its order dated 07.04.2015 to produce the original service record containing such entry which had been referred to in

para 5 of the additional counter affidavit by the respondents. However, to this date, no such records have been made available and in absence 26.11.1974 while serving in BCB or it was just a placement in the corresponding scale. Here, this Tribunal had directed vide its order dated 07.04.2015 to produce the original service record containing such entry which had been referred to in para 5 of the additional counter affidavit by the respondents. However, to this date, no such records have been made available and in absence of which we are debarred from taking into account what could have been direct evidence and rather we are compelled to make our decision based upon alternative sources.

21. The best way to arrive at the conclusion over this issue is to see as to what has happened in the case of similarly situated employees. We have already noted that the applicant relied upon number of cases of this Tribunal, referred to above. The facts being as stated, we start by taking note of OM dated 05.05.2004 in respect of fixation of pay of Smt. Bimla Devi on replacement, which, *inter alia*, provides as under:-

“2. According to Rule 52)(ii) of CCS (Redeployment of Surplus Staff) Rules, 1990 the surplus employee shall be permitted to carry his/her previous scale along with him/her to the next post. The rule is self-explanatory and is reproduced below:-

“When redeployed in a post carrying a lower scale of pay, the surplus employee shall be permitted to carry his current pay scale along with him to the

next post but this benefit shall not be extended where despite availability of a post in a matching or a higher pay scale, a person is redeployed in the post carrying a lower pay scale on his own request.”

22. We take note of the decision of Chandigarh Bench of this Tribunal in *Ram Saran Verma & Ors. V/s. Union of India & Ors.* [OA356-HP-2010 & Ors. decided on 23.11.2010] wherein the applicant had joined the BCB on 11.11.1969 and was declared surplus in 1984; re-deployed in the respondent organization in 1985 as Clerk in the scale of Rs.260-400 (Revised to Rs.950-1500 w.e.f. 01.01.1986). He was promoted to the post of Auditor w.e.f. 05.02.1996 in scale of Rs.4000-6000/- as revised to Rs.4500-7000/- w.e.f. 01.01.1996. He got further promotion as Senior Auditor w.e.f. 20.02.2001 in the pay scale of Rs.5000-8000/-. The applicant had also been granted the senior scale consequent to the judgment in *Jai Singh & Ors. V/s. Union of India & Ors.* [TA No.534/1986]. Referring to the case of *Bharat Bhushan* (supra), the ex-BCB employees, who were in the pre-revised scale of Rs.510-800/- were granted the revised scale of Rs.1640/2900/- w.e.f. 01.01.1986 and Rs.5500-9000 w.e.f. 01.01.1996. It was contended that the applicant got this scale much higher than the pay scale of promoted post w.e.f. 01.01.1986 and as such he was entitled to first financial upgradation under ACPS in the scale of Rs.6500-10500/- on 09.08.1999 and second financial upgradation in

the scale of Rs.7450-11500/- as he did not earn any promotion in his erstwhile BCB organization, and the subsequent promotion in the department had become immaterial keeping in view the pay scale of the applicant being higher in the grade than the promoted post. The respondents have decided the claim holding that as the applicant has been to Auditor and Senior Auditor, he could not be given any financial upgradation, both these posts being filled up through selective process. The Tribunal has also examined the objective of the ACPS which was to grant at least two financial upgradations where the one has not got any promotion and if one has got one promotion, the second financial upgradation.

23. Here, the applicant had remained without any promotion in financial terms. This Tribunal also quoted that the financial upgradation is to be given in the next higher grade in the hierarchy/category of the post without creating new posts for the purposes. The finding of the Tribunal in this regard is somewhat lengthy but needs to be extracted, which reads as under:-

“11. Para 7 of the Scheme of 1999 further provides that the financial upgradation under the Scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts without creating new posts for the purposes. In cases there are no defined hierarchical grades, financial upgradation shall be given as per scales given in Annexure II of the Scheme. In this case even we take the Standard/Common Pay scales given in Annexure-

II, the next scale over and above Rs.5500-9000 are Rs.6500-10500 and Rs.7450-10500. Same is the position in the hierarchy also.

12. Thus, we are of the view that the applicants are entitled to the first and second financial upgradation in the scale of Rs.6500-10500 and Rs.7450-11500 w.e.f. 9.8.1999 in accordance with ACP Scheme on completion of 24 years of regular service as they had already been granted the scale of Rs.1640-2900 w.e.f. 1.1.1986 by the respondents in compliance to the order passed by this Tribunal and said scale of Rs.1640-2900 (Revised to Rs.5500-9000) is higher than the pay scales granted to the applicants on promotion in the respondent department as Auditor and Senior Auditor and as such those promotions have to be ignored in view of clarification dated 10.02.2000, which inter alia, provides that the benefit of upgradation under ACP Scheme are to be allowed in the existing hierarchy, the mobility under ACPs shall be in the hierarchy existing after merger of pay scales by ignoring the promotion. An employee who got promoted from lower pay scale to higher pay scale as a result of promotion before merger of pay scale shall be entitled for upgradation under ACPs ignoring the said promotion otherwise he will be placed in a disadvantageous position vis-a-vis the fresh entrant in the merged grade etc.

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14. We also find that in similar matters, the DoPT has rendered advice on the similar issue in the cases of S.C. Aggarwal (Annexure A-7) dated 17.9.2009 and in the case of Uttam Chand (Annexure A-8) dated 22.9.2009 as implemented vide office order dated 5.11.2009 (Annexure A-9) that the benefit of first and second financial upgradation under the ACP Scheme would be granted to the officials who were redeployed in the lower post in the immediately next higher (standard/common) pay scales as indicated in Annexure-II of the Scheme dated 9.8.1999 with reference to protected pay scales and not with reference to pay scale of the post to which he has been appointed/redeployed and in that case Shri S.C. Aggarwal, whose entry pay scale was Rs.5500-9000 was redeployed in lower pay scale of Rs.3050-4590 and as such he was held entitled to first and second financial upgradations in the pay scale of Rs.6500-10500 and Rs.7450-11500. We are thus, of the opinion that the applicants are entitled to the financial upgradation in the pay scale of Rs.6500-10500 and Rs.7450-11500 from due dates, with all the consequential benefits of arrears of pay and allowances.”

24. In the case of *Bharat Bhushan* (supra), the Tribunal found that the case was squarely covered by the decision in *Ram Saran's case* (supra). Relevant portion of the decision is extracted hereunder:-

"After careful consideration, we find that this is squarely covered by the ratio of decision in the case of Ram Saran Verma & Ors. vs. UOI & Ors. (OA No.356/HP/2010); Budhi Singh Dhiman & Ors. Vs. UOI & Ors. (OA No.128/HP/2010); H.C. Sharma & Ors. Vs. UOI & Ors. (OA No.168/HP/2010); G.C. Sharma Vs. UOI & Ors. (OA No.336/HP/2010); Ishwar Dass Vs. UOI & Ors. and A.S. Bhangalia Vs. UOI & Ors. (OA No.338/HP/2010) which were disposed of by a common order dated 23.11.2010 of the Chandigarh Bench of C.A.T. (Circuit at Shimla). This case is disposed of on the basis of the same principle as has been laid down in the case of Ram Saran Verma & Ors. Accordingly, the applicants are held entitled to the first and second financial upgradations, as the case may be in respect of each of the applicants, under the ACP Scheme, from due dates with all the consequential benefits. The respondents are directed to pass the necessary orders within a period of three months from the date of receipt of a copy of this order. No order as to costs."

25. In the case of *Subhash Chander Aggarwal* (supra), the case has been verbally conceded by the respondents who have extended the benefits desired under the 5th CPC to the applicant.

26. In light of the above discussion, we are constrained to conclude that in absence of production of original service records of the applicant by the respondents, our discretion may weigh on the side of the applicant and, therefore, we hold that the placement of the applicant as SDC in the corresponding pay scale was not a promotion. We further hold that the facts of this case being squarely covered by

that of *Ram Saran's case* (supra), the same ratio would also apply in the instant case. We have also taken note of the fact that the respondents have themselves admitted that the promotion of the applicant to the scale of Rs.1600-2600/- has become redundant as being in the lower scale. Therefore, we hold that the applicant is entitled to two financial upgradation first in the scale of Rs.6500-10500/- and the second in the scale of Rs.7450-11500/- w.e.f. 09.08.1999. The exercise, as ordained above, be completed within a period of three months from the date of receipt of certified copy of this order.

27. With the above directions, the instant OA stands disposed of with no order as to costs.

(Dr. B.A. Agrawal)
Member (J)

(Dr. B.K. Sinha)
Member (A)

/Ahuja /