

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-4210/2013

Reserved on : 04.01.2017.

Pronounced on : 11.01.2017.

Hon'ble Mr. Shekhar Agarwal, Member (A)

Hon'ble Mr. Raj Vir Sharma, Member (J)

Sh. O.S. Premchandran,
Age 52 years,
S/o late Sh. P. Sukumaran Nair,
R/o T.C. 9/2216 (3), "SUKRTHOM",
Edavacode, Sreekariyam PO,
Thriuvananthapuram.

.... Applicant

(through Sh. S.K. Gupta, Advocate)

Versus

Union of India through

1. Secretary,
Ministry of Communication & Information Technology,
Department of Electronics & Information Technology,
6, CGO Complex, Electronics Niketan,
Lodhi Road, P.O., New Delhi-110003.

2. Director General,
Standardization Testing and Quality
Certification Directorate,
6, CGO Complex, Electronics Niketan,
Lodhi Road, P.O., New Delhi-110003.

3. Director,
Electronics Regional Test Laboratory (South),
Aakulam, Sreekariyam P.O.,
Thriuvananthapuram-695017. Respondents

(through Sh. Amit Kumar, Advocate)

ORDER**Mr. Shekhar Agarwal, Member (A)**

The applicant was appointed as LDC through Staff Selection Commission on 19.05.1987. He was promoted as UDC in March, 1999 and was designated as Assistant (B). On 25.07.2002, he was further promoted as Assistant (C) and further as Assistant (D) on 18.12.2009. His grievance is that he has been granted grade pay of Rs. 4200/- only whereas one Smt. Papri Sen Gupta, who is junior to him, having been appointed as Assistant (C) on 01.04.2003 and having been granted grade pay of Rs. 4200/- w.e.f. 01.01.2006, was granted grade pay of Rs. 4600/- on completion of 10 years of service w.e.f. 01.04.2013. The applicant submitted several representations dated 24.04.2013, 08.05.2013 and 29.05.2013 seeking grade pay of Rs. 4600/- to bring his pay at par with his junior. However, on 18.07.2013, the respondents rejected his representation by the impugned order. Hence, he is now seeking the following relief:-

- “(i) quash and set aside the impugned order dated 18.07.2013 (Annexure-A-1).
- (ii) direct the respondents to grant the scale of Rs.9300-34800 with grade pay of Rs. 4600/- w.e.f. the date when his junior Smt. Papri Sen Gupta was declared entitled to get the aforesaid benefit and the applicant be allowed all consequential benefits.
- (iii) May also pass any further order(s), direction(s) as be deemed just and proper to meet the ends of justice.”

2. Learned counsel for the applicant argued that it is settled principle of law that a junior cannot be permitted to draw higher salary than the senior and that whenever such a situation arises the pay of the senior is stepped up to bring it at par with the junior. In the instant case, however, the respondents have rejected the applicant's representation despite the fact that his junior Smt. Papri Sen Gupta has been drawing higher grade pay as compared to him. Learned counsel has relied on the judgment of a Co-ordinate Bench of this Tribunal in the case of **All India Postal Accounts Employees & Ors. Vs. UOI & Ors.** (OA-2124/2011) dated 01.02.2013 in which the O.A. was allowed holding that junior cannot be allowed to draw higher salary than the senior and, therefore, the pay of the applicants therein was stepped up to bring it at par with the juniors. Learned counsel further stated that the aforesaid judgment of this Tribunal has been upheld by Hon'ble High Court of Delhi vide Writ Petition(C) No. 7421/2013 by order dated 27.11.2013. Special Leave to Appeal (Civil) No. 4952/2014 filed against the judgment of Hon'ble High Court of Delhi had also been dismissed by the Apex Court. Thus, the judgment of the Tribunal has attained finality. Learned counsel for the applicant has also relied on the judgment of Hon'ble High Court of Delhi in Writ Petition(C) No. 7840/2012 dated 03.01.2014 in the case of **Tejbir Singh Dagar & Ors. Vs. UOI & Ors.** In the

aforesaid judgment also stepping up of pay of the seniors has been allowed to bring it at par with juniors.

3. In their reply, the respondents have submitted that Smt. Papri Sen Gupta was granted MACP benefit after completing 10 years of service as she had not earned any regular promotion during the period of 10 years. The applicant, on the other hand, had already earned three regular promotions, hence, he was not entitled to the benefit of the MACP Scheme. Thus, the case of the applicant was completely different from the case of Smt. Papri Sen Gupta. Further, the respondents have relied on the MACP Scheme itself in which it is laid down that 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 the MACP Scheme. Learned counsel for the respondents during the course of arguments also mentioned that while Smt. Papri Sen Gupta was still working as Assistant (C), the applicant was working as Assistant (D). Thus, the two were working in different grades and, therefore, there cannot be any comparison between them.

4. We have heard both sides and perused the material placed on record. We have gone through the judgments relied upon by the applicant and find that in both of them the ratio laid down is that whenever a junior gets pay higher than the senior, the senior is entitled to stepping up of his pay to bring it at par with the junior.

Further in the judgment of **Tejbir Singh Dagar and Ors. Vs. UOI & Ors.** [WP(C) No. 7840/2012] dated 03.01.2014 the Hon'ble High Court of Delhi had discussed both the ACP Scheme as well as the MACP Scheme. They have also discussed Condition No 8 of the ACP Scheme and Condition No. 20 of MACP Scheme, both of which lay down that no stepping up of pay of the senior would be allowed on the ground that a junior employee was getting higher grade pay as a result of grant of ACP/MACP benefit. After discussing both these conditions, Hon'ble High Court of Delhi has allowed the Writ Petition and directed the respondents therein to upgrade the pay of the petitioners. In our opinion, instant case is squarely covered by the aforesaid two judgments and, therefore, deserves to be allowed.

4.1 Learned counsel for respondents had submitted that this case was distinguishable from the cases in the judgments as the applicant and Smt. Papri Sen Gupta were working in different grades. In our opinion, this would not make any difference. In fact, it would further strengthen the case of the applicant, as even after getting promotion to a higher grade, his pay remains less than his junior's pay.

5. Accordingly, we allow this O.A. and quash the impugned order dated 18.07.2013. We further direct that the applicant shall be granted grade pay of Rs. 4600/- w.e.f. the date Smt. Papri Sen Gupta

was granted the same grade pay. He shall also be entitled to arrears arising out of increase in grade pay. The above benefit shall be given to the applicant within a period of 08 weeks from the date of receipt of a certified copy of this order. No costs.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

/Vinita/