

CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
CHANDIGARH

OA. No. 060/00304/2017

Order pronounced on : 15.02.2018
Order reserved on : 12.02.2018

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CORAM: HON'BLE MR.JUSTICE M.S. SULLAR, MEMBER(J)
HON'BLE MRS.P. GOPINATH, MEMBER(A)

...
Smt. Kamlesh Sharma w/o Sh. Rajesh Kumar Sharma, aged 63 years, Superintendent (Retired), Central Excise Commissionerate, Chandigarh, Resident of House No. 3363, Sector 47-C, Chandigarh.

.....Applicant

BY: **Sh. D.R. Sharma**

VERSUS

1. Union of India, through Secretary, Government of India, Ministry of Finance, New Delhi.
2. Chief Commissioner of Central Excise & Customs Central Zone, Chandigarh Commissionerate, C.R. Building, Sector 17, Chandigarh.

.....Respondents

BY ADVOCATE: **Sh. K.K. Thakur**

ORDER

HON'BLE MRS. P. GOPINATH, MEMBER(A):-

1. Applicant joined service as Stenographer in 1973 and was promoted to the post of Inspector on 03.09.1980 and Superintendent on 29.08.1997. Applicant superannuated on 31.03.2014. As per seniority list of Superintendent of Central Excise Group 'B' on 09.03.2012, applicant's name appears at Sr. No. 64. Applicant argues that her junior whose name appears at Sr. No.71,

was drawing higher pay than the applicant. This was by virtue of grant of benefit under the ACP Scheme.

2. Applicant filed OA No. 1302/CH/2013 claiming stepping up of pay at par with the above cited junior. The Tribunal directed the respondents to consider extending her the benefit as per rule and law. The respondents implemented the order of the Tribunal vide Annexure A-2 dated 27.08.2014. Applicant's pay was stepped up at par with junior Gurdish Pal Singh, Superintendent w.e.f. 25.11.2004, the date on which the junior started drawing higher pay than the applicant. This order being passed almost five months after retirement, the retiral benefits were to be refixed on the basis of stepping up of pay. However, the respondents did not agree to the refixing of retiral benefits of the applicant.

3. Applicant rests her case on Annexure A-3, CAT judgement in OA No. 1302/CH/2013 and Annexure A-6, judgement in OA No. 428/PB/2013 passed by this Bench wherein the issue was whether a senior employee is entitled to stepping up of pay at par with junior to remove the anomaly caused as a result of grant of MACP benefit to the junior. While passing the judgement, this Tribunal relied on judgement passed by this Bench on 19.01.2010 in **OA No. 156/JK/2009 titled Ashok Kumar Vs. UOI & Ors.** holding that a senior is entitled to stepping up of pay, and restricting the arrears of pay and allowances to a period of three years. This order was upheld by Punjab and Haryana High Court in CWP No.

12894/2010 decided on 23.07.2010. SLP filed was also dismissed on 02.05.2011 on the ground of delay and merit.

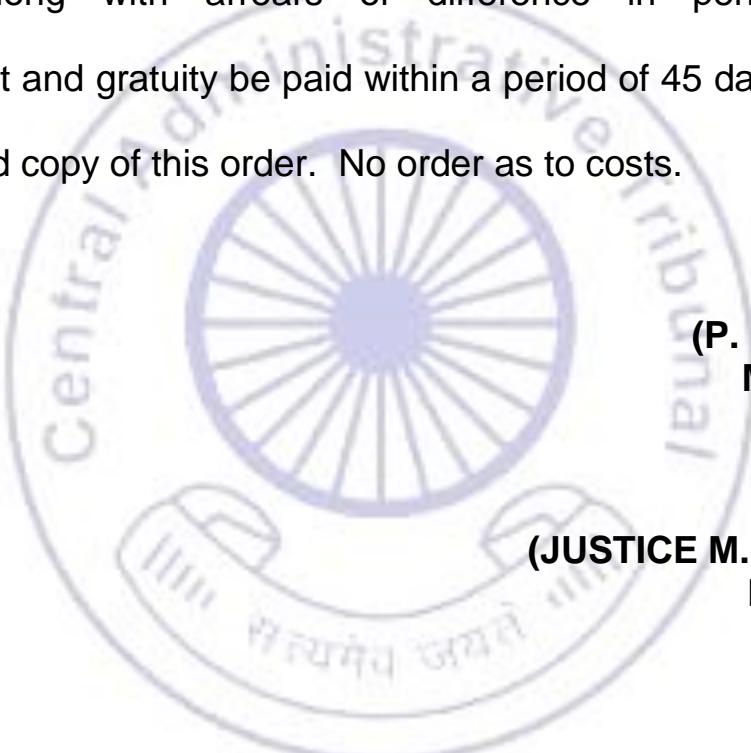
4. In Annexure A-6 judgement, passed by this Bench in **OA No. 428/PB/2013 titled Hardyal Singh & Ors. Vs. UOI & Ors.**, the issue was that once the pay of the applicant had been stepped up at par with juniors, such pay is to be treated as such for all intents and purposes and the pensionary and retiral benefits of the applicants be re-fixed on the basis of stepping up allowed at par with junior and to pay arrears of pay and allowances from due date along with revised pensionary benefits including arrears of pension, difference in leave encashment and difference in gratuity. It was further held as follows:-

“9. I have carefully considered the pleadings of the party, the material on record and the arguments advanced by learned counsel. In the case of the applicants and similarly placed employees, the seniors were getting lower pay than the juniors on account of the juniors having been allowed the benefit of financial upgradation under the ACP Scheme while the seniors who had got some promotions, were not allowed such financial upgradation. Hence, in Ashok Kumar (supra), the view was taken that the seniors were entitled to stepping up of pay at par with their juniors since it was settled law that a senior in a cadre should not be drawing lower pay than his junior. This was a special judicial dispensation in view of the circumstances of the case, but the stand of the respondents that Personal Pay is not to be included for calculating the retiral benefits, negates the same. An anomalous situation would indeed arise if a junior and a senior retire on the same date, but the senior gets lower pension on account of his personal pay not being included for computing pensionary benefits although earlier the pay of the senior had been stepped up to bring the same at par with his junior. Such a proposition is quite unfair to the seniors who have obtained benefit of stepping up of their pay through judicial pronouncements, but are later effectively denied this benefit at the time of computation of retiral benefits.

10. In view of the discussion above, the present OA is allowed to the extent that Annexure A-1 (colly) is quashed and the respondents are directed to re-compute the pensionary and retiral benefits of the applicants after including the

personal pay that they were drawing at the time of retirement on account of their pay having been stepped up at par with their juniors in compliance with judicial pronouncements. For these very reasons, dearness allowance is also to be computed after including "Personal Pay" as pay. The claim for interest is however disallowed. No costs."

5. The applicant's case is clearly covered by the judgement in the above two cited cases. Hence, prayer of the applicant is allowed. The stepping up of the pay of the applicant along with payment of arrears of pay and allowances with revised pensionary benefits along with arrears of difference in pension, leave encashment and gratuity be paid within a period of 45 days of receipt of a certified copy of this order. No order as to costs.



(P. GOPINATH)
MEMBER(A)

(JUSTICE M.S. SULLAR)
MEMBER(J)

Dated
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