

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

Order reserved on: 09.07.2018

ORIGINAL APPLICATION NO. 060/ 00556/2017

Chandigarh, this the 13TH day of July , 2018

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MRS. AJANTA DAYALAN, MEMBER (A)**

...

1. Jaswant Kaur w/o Sh. Hukam Chand, aged 60 years, r/o H.No.914 Sector 17, Panchkula. Group-B.
2. Paramjit Kaur d/o Late Sh. Himat Singh r/o H.No.3204/1, Sector 47-D, Chandigarh.
3. Geeta Bharti w/o Sh. Krishan Kumar Adhlakha r/o H.No.5299/1, Mani Majra Housing Complex, Mani Majra Chandigarh.
4. Veena Kumari w/o Sh. Naresh Kumar r/o H.No. 3270, Sargodha Society, Sector 50-D, Chandigarh.
5. Varinder Kumar S/o Late Sh. Ratti Ram r/o H.No. 1815, Sector 7-C, Chandigarh.
6. Rajesh Kumar Chodha s/o Late Sh. Mohan Lal Chodha r/o Flat No. 1301, Block-B3, 13th Floor, Kendriya Vihar, Sunny Enclave, Sector 125, Mohali.
7. Kanchan Bala w/o Sh. Arjun Dev Verma, r/o House No.11 Ground Floor, Phase III, Swastik Vihar, Mansa Devi Complex, Sector-5, Panchkula.
8. Manmohan Kumar s/o Late Sh. Rattan Pal, r/o H.No.1913, Sector 22-B, Chandigarh.

....APPLICANTS

(All working as Senior Supervisors (Group B) except at Sr. No.7 who is working as Assistant Director (Data Centre) and Sr. No.8 who is retired Assistant Director (Data Centre) in the Office of Directorate of Census Operations, U.T. Chandigarh).

(Argued by: Shri Rohit Seth, Advocate)

VERSUS

1. Union of India, through Secretary, Ministry of Home Affairs North Block, Central Secretariat, New Delhi, 11007.
2. Registrar General India-cum-census commissioner, 2-A, Man Singh Road, New Delhi.

3. Directorate of Census Operations, U.T., Plot No. 2B, Sector 19A, Madhya Marg, Chandigarh.

....RESPONDENTS

(By Advocate: Shri Arvind Moudgil)

ORDER

AJANTA DAYALAN, MEMBER (A)

By means of the present Original Application (O.A.), the applicants are seeking quashing of impugned order dated 20.10.2016 (Annexure A-1), vide which their claim for stepping up of pay, at par with their juniors, has been declined. It is also prayed to remove the anomaly in pay fixation of applicants by stepping up their pay, at par with their juniors, in the light of DoPT O.M. dated 4.10.2012 (Annexure A-9), with all consequential benefits.

2. The brief facts of the case are that all the applicants initially joined as Operator in the respondent department, later on redesignated as Data Entry Operator (DEO) and were promoted as Junior Supervisor on different dates prior to 1.1.2006. However, due to merger of cadres of Junior Supervisor and Senior Supervisor w.e.f. 1.1.2006, their juniors who were granted Assured Career Progression Scheme(ACP)/Modified Assured Career Progression (MACP) are drawing more pay than them. Hence the present O.A.

3. The respondents have filed their written statement contesting the claim of applicants.

4. The applicants have filed rejoinder controverting the plea taken by the respondents in the written statement and reiterating the grounds taken in the O.A.

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

6. The learned Counsel for the applicants has based his contention on the principle of justice, the impugned order being violative of Articles 14 and 16 of the Constitution of India. It is also contended that the O.M. of DoPT dated 4.10.2012 (Annexure A-9) is applicable to all the Central Government employees; but the interpretation of condition no. 3(i) which is one of the conditions for removal of anomalies between seniors and juniors, is being misrepresented by the respondents. According to him, their entitlement of stepping up of their pay to the level of the juniors in terms of this O.M. exists.

7. The counsel for the applicants also quoted judgment passed by the Hon'ble Madras High Court in Writ Petition Nos. 18611 & 18612 of 2011, whereby the Hon'ble High Court has dismissed the Writ Petitions filed by the respondents against the order of Chennai Bench of this Tribunal, allowing stepping up of pay of seniors at par with their juniors, in term with the principle of parity and equity, enshrined under Article 14 of the Constitution of India. The order of the High Court was upheld in the Hon'ble Supreme Court and the SLP No. 11103/2014 filed by the respondents was dismissed on 19.8.2014. The learned counsel for applicants has stated that by applying the same ratio of law, the applicants are also liable to be granted the benefit of stepping up by the respondent department.

8. On the other hand, the learned counsel for the respondents stated that the Junior Supervisor cadre in the pay scale of Rs. 5000-8000/- and the Senior Supervisor in the pay scales of Rs. 5500-9000/- were both merged in the pre-revised pay scale of Rs. 5500-9000/- w.e.f. 1.1.2006. The ACP Scheme was introduced on the recommendations of 5th Central Pay Commission report vide DoPT letter dated 9.8.1999. As per this Scheme, two financial upgradations were allowed to the Central Government employees, on completion of 12 and 24 years of regular service, in case no regular promotions were granted during the prescribed period. All the applicants were promoted prior to 1.1.2006 i.e. prior to the merger of the two cadres of Junior Supervisor and Senior Supervisor. Hence their financial upgradation under the ACP Scheme in operation at that point of time was in order. He further submitted that subsequently MACP Scheme was introduced by the DoPT vide O.M. dated 19.5.2009 w.e.f. 1.9.2008 on the recommendations of 6th Central Pay Commission report. As per this Scheme, three financial upgradations on completion of 10, 20 and 30 years of service were to be granted to the employees in case no regular promotion was available to them during the prescribed period. As the cadre of Junior Supervisor and Senior Supervisor already stood merged, the employees manning the post of Senior Supervisor after the merger were given financial upgradation to the next higher scale with grade pay of Rs 5400/- as per this Scheme.

9. The learned counsel for the respondents stated that condition no. 8 of ACP Scheme (Annexure-I of A-3), clearly provides that 'the

financial upgradation under the ACP Scheme shall be purely personal to the employees and shall have no relevance to his seniority position. As such, there shall be no additional financial upgradation for the senior employee on the ground that the junior employee in the grade has got higher pay scale under the ACP Scheme'. He also observed that the same condition is also provided under MACP Scheme under para 20 thereof (Annexure-I of A-5).

10. Learned Counsel for respondents further pointed out that the applicants have not correctly brought out the condition laid down by DoPT in their order dated 4.10.2012 (Annexure A-9) while allowing the stepping up of the pay of the seniors with their juniors. As per this O.M., pay of the senior is to be stepped up only if four conditions laid down therein are fulfilled. The first of these conditions which is relevant is in para 3 (i) of the O.M. This clearly states that 'Both the junior and the senior Central Government servants should belong to the same cadre and the posts in which they have been promoted/financially upgraded should be identical in the same cadre'. This condition is obviously not fulfilled in the present case as the cadres of the juniors and the seniors for promotion/ financial upgradation are not the same due to merger of cadres.

11. The facts of the case are quite clear and it is not disputed that the juniors are drawing higher pay than their seniors. It is also not disputed that this anomaly has arisen due to merger of cadres of Junior Supervisor and Senior Supervisor w.e.f. 1.1.2006. All the

applicants in the present O.A. had been granted their 2nd financial upgradation before 1.1.2006 i.e. before merger of cadres.

12. The basic question before this Tribunal is whether operation of the ACP/MACP Scheme simultaneously with the merger of the cadres may be allowed to deny the applicants their prima-facie entitlement of equal pay to their juniors. In this context, we observe that both the ACP and MACP Schemes have clear provisions for the financial upgradation to be purely personal to the employees with no relevance to their seniority position. Also they both provide that there shall be no financial upgradation for the senior employees on the ground that the junior employee in the grade is getting higher pay scale under the ACP/MACP Scheme. It is also true that the Career Progression Schemes have been in operation since 1999 in all the Union Government offices across the country. Any alteration in this Scheme at this point of time may lead to some administrative difficulties. However, on this account alone, the senior employees cannot be denied their right to draw pay at least equal to their juniors especially when both of them are equally qualified and having same level of responsibility. This anomalous situation has arisen because of provisions of the ACP and MACP Scheme disallowing removal of anomaly in such cases. However, these provisions in the ACP and MACP clearly conflict with the principles of equity. There is no reason why senior employees should not get their pay at least equal to their juniors unless there are clear cut distinguishing circumstances like

passing of examination by the juniors etc. No such distinguishing circumstances are existing in the present case.

13. In the light of above discussion, the O.A. succeeds and is allowed. The impugned order dated 20.10.2016 (Annexure A-1) is hereby quashed and set aside. The respondents are directed to reconsider the claim of the applicants for fixation of their pay at par with their juniors, so as to remove the anomaly, in the interest of equity and fair play. This exercise may be completed within a period of 3 months from the date of receipt of a certified copy of this order.

14. No costs.

(AJANTA DAYALAN)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 13.07.2018

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