

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

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**(I) OA No.60/1032/2017 &
MA No.60/1016/2018**

**(II) OA No.60/715/2017 &
MA No.60/1113/2018**

Chandigarh, this the 22nd day of November, 2018

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MRS. P. GOPINATH, MEMBER (A)**

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(I) OA NO.60/1032/2017 & MA No.60/1016/2018

Neelam Sharma, aged 66 years, w/o Sh. Ashok Sharma, Senior Accountant (Retd.), O/o Director of Accounts (Postal) Ambala, R/o H.No.59, Shankar Park, Ambala Cantt. Haryana, Group-A.

... APPLICANT

(Present: Mr. R.K. Sharma, Advocate)

VERSUS

1. Union of India through the Secretary to Govt. of India, Ministry of Communications & Information Technology, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. Director General Postal Accounts Wing, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
3. Chief Post Master General, Haryana Circle, Ambala.
4. Director of Accounts (Postal), Ambala.

... RESPONDENTS

(Present: Mr. Ram Lal Gupta, Advocate).

(II) OA NO.60/715/2017 & MA No.60/1113/2018

1. Tejinder Pal Singh, aged 61 years, S/o Sh. Manmohan Singh, Senior Accountant (Retd.), O/o Director of Accounts (Postal), Ambala, R/o H.No.30, Vikas Vihar, Ambala City, Haryana, Group-A.
2. Nirmal Kumar, aged 62 years, S/o Sh. Jai Ram, Senior Accountant (Retd.), O/o Director of Accounts (Postal) Ambala, R/o H.No.112, Village and Post Office Rampur Bihta, Ambala, Haryana, Group-A.
3. Agya Ram Manocha, aged 62 years, S/o Sh. Ram Lal, Senior Accountant (Retd.), O/o Director of Accounts (Postal) Ambala, R/o 16/250, Baldev Nagar, Ambala City, Haryana, Group-A.
4. Ramesh Chander Arora, aged 64 years, S/o Sh. Sona Ram, Senior Accountant (Retd.), O/o Director of Accounts (Postal Ambala, R/o House No.695, Sector 9, Urban Estate, Ambala City, Haryana Group-A.

... APPLICANTS

(Present: Mr. R.K. Sharma, Advocate)

VERSUS

1. Union of India through the Secretary to Govt. of India, Ministry of Communications & Information Technology, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
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(Present: Mr. Ram Lal Gupta, Advocate).

ORDER (Oral)

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SANJEEV KAUSHIK, MEMBER (J) :-

1. This order shall dispose of the above captioned two Original Applications (OAs), as they involve identical facts, questions of law and relief claimed therein and likewise is also requested by learned counsel for the parties.
2. For convenience, facts are being taken from the OA No.60/1032/2017 titled as Neelam Sharma versus Union of India and others.
3. The present OA has been filed by the applicant assailing the order dated 04.12.2015 (Annexure A-1), whereby her claim for extending the benefit of judgment dated 15.05.2007 rendered in OA No.574/HR/2004 titled as Roop Krishan Kaul and another versus Union of India and others, and judgment dated 05.05.2009 rendered in OA No.794/HR/2007 titled as Ravi Chand Jain and another versus Union of India and others, which has been upheld by the Hon'ble Supreme Court has been declined.
4. At the time of argument, learned counsel for the applicant submitted that pending the OA, the respondents have withdrawn the impugned order and have passed fresh order dated 14.05.2018 (Annexure MA-1), which has also been impugned by him by filing MA No.60/1016/2018, whereby he has sought amendment of the OA with a prayer to set aside that order. MA stands allowed and amended OA is taken on record.

5. Mr. R.K. Sharma, learned counsel for the applicants submitted that the applicants are similarly situated persons like the applicant in case of *Roop Krishan Kaul (supra)*, wherein this court, after considering the pleadings on record, has recorded categorical finding in para 9, rejecting the plea raised by the respondents for excluding service rendered by the applicant prior to absorption as Junior Accountant, for counting towards grant of benefit of ACP scheme. He also submitted that court has also recorded finding in para 10 with regard to the fact that promotion to the post of UDC / Junior Accountant in the pay scale of Rs.4000-6000 w.e.f. 01.01.1996 has to be ignored. He submitted that immediately after the decision by this court in the above noted case, the applicants staked their claim for grant of benefit, by submitting a representation dated 31.08.2007, but the same was kept in abeyance by communication dated 22.02.2008 (Annexure A-8), on the plea that the matter is sub-judice and no final decision has been given by the Hon'ble High Court, where the writ petition is pending challenging the order of this court in the judicial view.

6. Learned counsel for the applicants submitted that the CWP No.19592-CAT of 2007 was dismissed, vide order dated 16.05.2014 (Annexure A-10), wherein the order of this court was affirmed. Still aggrieved with the order of Hon'ble High Court, the respondents have filed SLP No.20387/2014, which was also dismissed on 23.03.2015. Thus, he submitted that the respondents themselves have to accept the claim of the applicants, which was kept pending by

communication dated 22.02.2008 (Annexure A-8). When the respondents did not respond, the present applicants approached this Tribunal. Representation was turned down by Annexure A-1, against which the applicant approached this court with OA no.60/220/2016, which was dismissed as withdrawn on 12.05.2017, on technical ground with a liberty to the applicants to file a fresh OA, on the same cause of action. It is, thereafter, the applicant filed the present OA.

7. Learned counsel for the applicant submitted that the pending OA, where the applicant impugned the arbitrary order dated 04.12.2015 (Annexure A-1), the respondents have passed another order, wherein they have withdrawn earlier two orders and have passed order taking a plea, which has also been negated by this court as affirmed by the Hon'ble High Court. Therefore, it is submitted that action of the respondents to deny him the benefit, which has already been granted by this Tribunal rejecting stand of the respondents, and have been affirmed upto the Hon'ble Supreme Court in a similar case is illegal. He also submitted that the OA be allowed and both the impugned orders dated 04.12.2015 (Annexure A-1) and 14.05.2018 (Annexure MA-1) be quashed and set aside.

8. Learned counsel for the respondents has also raised preliminary objection of delay and latches. He also submitted that the applicant submitted a representation for grant of relevant benefits belatedly as he had retired on 30.08.2010, and had filed first OA before this court in the year 2016, which was withdrawn on 12.05.2017, therefore, this petition is barred by limitation. He also

submitted that in earlier OA, the applicant has also moved an application for condonation of delay, but in the present petition, he has not been filed MA for condonation of delay, as the applicant had retired and representation is prior in point of time i.e. of the year 2007. Therefore, the present petition be dismissed on the ground of delay and latches.

9. On merit, learned counsel for the respondents submitted that all the facts were not placed before the court by the respondents through their counsel at that time, therefore, that judgment cannot be considered as a binding precedent and benefit arising out of that cannot be extended to the applicant, but he is not in a position to show anything contrary to findings recorded by this court, on relied upon case.

10. Considering the plea raised by the respondents that there is a delay in approaching this court on the part of the applicant, we proceed to consider the same in the first instance. To our mind, once a representation was kept pending by the respondents, consciously till the decision is taken by the Hon'ble High Court, despite the fact that this court has already granted the benefit to the similarly placed persons, then it cannot be said that there is delay in approaching this court for relevant benefit as issue was finalized on 23.03.2015 by Apex Court. Accordingly the objection raised by the respondents is rejected.

11. We have heard the learned counsel for the parties, perused the pleadings available on record, and given our thoughtful consideration to the entire matter.

12. The short prayer made in the OA, as noted above, is to direct the respondents to grant the benefit arising out of judgment rendered in case of *Roop Krishan Kaul (supra)*, so we can dispose of this petition with a direction to the respondents to grant the relevant benefit. The findings recorded by this Court in the case relied upon by the applicants appear to be on similar facts as involved in this case. In the decision rendered by this court, it has been categorically held as under:-

"9. We do not find any legal justification for excluding service rendered by the applicants before they were absorbed as Junior Accountants as the grade of Junior Accountant and that of UDC was the same. No other Govt. instructions have been brought to our notice which provide for ignoring the service rendered at a particular pay scale under the same department with the change of designation only. Besides, this court has considered this aspect a number of times even when a person had been absorbed in a different department unlike the present case, though on similar scale of pay. Since consideration was grant of benefit of ACP scheme, it has been held that earlier service shall not be ignored for the purpose of ACP scheme. It was so held in the case of Dwijan Chandra Sarkar and another vs. Union of India and another-AIR 1999 SC 598. In this case, the concerned Govt. employees were earlier employees of Rehabilitation Department and were transferred to P&T Department in public interest with the stipulation that service in the earlier Department would not count for seniority. The Hon'ble Supreme Court held that not counting of past service for seniority cannot have any bearing on the eligibility for time bound promotion as these are two different concepts. It was ordered that the past service shall be counted for the limited purpose of eligibility for computing the number of years of qualifying service to enable them to claim the higher grade under the scheme of time bound promotion as grant of such higher grade under the scheme does not offend the condition imposed in the transfer order of losing seniority in the new department. In that case it was ordered that the petitioners would be entitled to the higher grade on completion of 16 years of service computed on the basis of their total service rendered under the Rehabilitation Deptt. and the P&T Deptt. In our opinion,

the facts of the present case are definitely comparable to the principle laid down by the Hon'ble Supreme Court in that case as here also no other benefit is being extended, except consideration of grant of financial upgradation on considering that an employee has remained on a particular grade or scale of pay for 12 years and 24 years in regular service. We, thus, hold that the respondents were wrong in deciding that only the service rendered in the Accounts Branch shall be computable for the purpose of grant of financial upgradation under the ACP scheme.

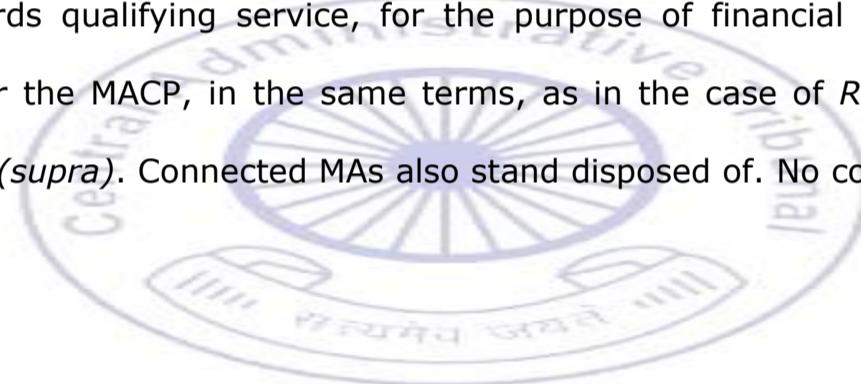
10. There is another angle on which the applicants have placed stress for staking their claim to the financial upgradation. They were both Postal Assistants and earlier post of UDC/Junior Accountant was a post having higher scale of pay as compared to that of PA. Both applicants had been promoted to the post of UDC. However, by a decision taken by the respondent-department, the post of PA/UDC and Junior Accountant were placed in the scale of pay of Rs. 4000-6000 w.e.f. 01.01.1996. Applicants claim that this amounted to merger of scales of pay and thus for consideration of their claim of upgradation under the ACP scheme, their first promotion to the scale of UDC/Junior Accountant has to be ignored. For this reliance is placed on clarification issued by Govt. of India through their OM dated 10.02.2000, Annexure A-5, relevant part of which is being reproduced below:

" Since the benefits of upgradation under ACP Scheme (ACPS) 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 scales shall be entitled for upgradation under ACPS ignoring the said promotion as otherwise he would be placed in a disadvantageous position vis-a-vis the fresh entrant in the merged grade."

In our opinion, the point raised by the applicants is not without merit. It is not disputed by the respondents that in fact the post of UDC, Junior Accountant and Postal Assistants were placed in the same scale of pay w.e.f. 1.1.96 and thus the first promotion granted to the applicants is not to be treated as a promotion for the purpose of ACP scheme. Respondents shall consider this aspect."

13. The order of this court has also been affirmed by the Hon'ble High Court as noticed above, where the Lordships have recorded the finding that view taken by the Tribunal does not suffer from any perversity. The direction was issued to the respondents to count the

service rendered by the applicant therein for financial upgradation, and the promotion to the post of UDC be also ignored for granting the benefit. Though the respondents tried to persuade us that this will lead to administrative problems and raised pleas which have already been rejected judicially and order stands implemented in compliance of the order passed by the Hon'ble Jurisdictional High Court, which has been affirmed by the Supreme Court, therefore, they cannot take a different view now. Accordingly for the parity of reasons given therein, these OAs are allowed, impugned orders are set aside. The respondents are directed to count the earlier service of the applicants, towards qualifying service, for the purpose of financial upgradation under the MACP, in the same terms, as in the case of *Roop Krishan Kaul (supra)*. Connected MAs also stand disposed of. No costs.



(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Date: 22.11.2018.

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