

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

ORIGINAL APPLICATION No.2182 OF 2014

Dated this Thursday, the 4th day of January, 2018

**CORAM: HON'BLE SHRI ARVIND J. ROHEE, MEMBER (J)
HON'BLE SHRI R. VIJAYKUMAR, MEMBER (A)**

Pramod R. Sharma, S/o R.R. Sharma,
Aged about 59 years,
Superintendent of Central Excise,
Nagpur (MS)
Resident of 57- Vijay Nagar,
Chhaoni, Nagpur 440 013. .. Applicant.

(By Advocate Shri R.K.Shrivastava)

Versus

1. The Union of India,
Through its Secretary,
Ministry of Finance,
Govt. of India, Department of Revenue,
North Block, New Delhi 110 001.
2. The Chairman, Govt. of India,
Central Board of Excise & Customs,
Department of Revenue,
North Block, New Delhi 110 001.
3. The Chief Commissioner of Central Excise
Customs and Service Tax,
[Cadre Controlling Authority]
Central Revenue Building,
Opposite Maida Mill,
Hoshangabad Road, Bhopal (M.P.).
4. The Commissioner,
Central Excise, Customs & Service Tax,
Kendriya Utpad Shulk Bhavan,
Telangkhedi Road,
Nagpur 440 001.

(By Advocate Shri R.G.Agarwal)

Order reserved on 03.11.2017

Order delivered on 04.01.2018

O R D E R**PER : R. VIJAYKUMAR, MEMBER (ADMINISTRATIVE)**

This is an application filed on 03.07.2014 by a Superintendent of the Central Excise and Customs Department, who was initially appointed as LDC on 03.07.1971, promoted as UDC on 26.03.1975 and again promoted as Inspector of Central Excise on 27.11.1980 and was, therefore, senior to another officer, Shri S.K. Mahapatra, who was recruited directly as Inspector and joined on 17.11.1980 and was placed junior to the applicant. Both were promoted as Superintendent of Central Excise on 28.06.1996. After the ACP Scheme was introduced on 09.08.1999, the applicant's junior, Shri Mahapatra, received a second ACP benefit on 17.11.2004 since he had received only one promotion in a service period of 24 years. After pay fixation, the applicant received less pay than his

junior and after his junior received the benefit of third MACP on 26.04.2011, the junior's pay was further enhanced. It is noted that the applicant received three promotions in his entire service and was, therefore, found ineligible for third MACP at the end of 30 years or on 01.09.2008 when the MACP Scheme was introduced. He has asked for stepping up of his pay on par with his junior from 17.11.2004, revision in pay fixation consequent to VI Pay Commission on par with his junior and further, stepping up on 17.11.2010 when his junior received third MACP. He has also asked for arrears, interest and costs.

2. The applicant claims for stepping up are argued on the basis of equity and treatment of seniors vis-a-vis juniors with the consequent need of stepping up. The applicant has also cited a catena of cases based on which he had filed

his representation before the respondents for which he has not received any relief. The cases cited by him are :-

1) Decision of CAT Chandigarh Bench in OA No.156-JK-2009 dated 19.01.2010 of Ashok Kumar Vs. Union of India & Others.

2) High Court of Punjab and Haryana at Chandigarh, CWP No.12894 of 2010 decided on 23.07.2010 of Union of India and others Vs. CAT, Chandigarh in respect of the cases decided by CAT at item No.1 above.

3) SLP in CC No.7278 of 2011 arising out of CWP No.12894 of 2010 decided on 02.05.2011 in Union of India Vs. Ashok Kumar, which dismissed the SLP on ground of delay as well as on merit.

4) CWP Nos.25128 of 2012, Union of India and another Vs. CAT, Chandigarh Bench decided on 18.12.2012 in a batch of cases similar to item No.1.

5) CWP No.25306, 25461 and 25467 of 2012 decided on 19.12.2012 of Union of India and another Vs. CAT Chandigarh Bench or similar nature.

6) OA No.416 of 2008 decided on 06.12.2012 by the CAT Jabalpur Bench.

7) High Court of Madhya Pradesh, WP No.16240 of 2013 decided on 20.01.2014, which upheld CAT order above.

8) SLP (Civil) No.20264 of 2004 and Civil Appeal No.3250 of 2006 decided on 02.08.2006, which was an appeal from the High Court of Punjab and Haryana in a decision dated 10.10.2002 relating to Commissioner and Secretary to Government of Haryana and others Vs. Ram Sarup Ganda and others.

9) WP (C) No.16811 of 2003 of the High Court of Punjab and Haryana decided on 23.09.2005 between G.S.Grewal and Satinder Singh Vs. PSEB and others.”

10) SLP (Civil) No.12512-12514 of 2007 linked with Civil Appeal No.65-67 of 2009 of Er. Gurcharan Singh Grewal and Another Vs. Punjab State Electricity Board and others decided on 09.01.2009 and which was an appeal by the second petitioner against the above (at 9) orders on Review Petition, of the High Court of Punjab and Haryana.”

3. In their reply, the respondents have asked for deletion of respondent No.1 and in reference to the merits of the case, have essentially reflected the position of facts as enunciated the applicant. However, they have pointed out that the pay difference arose because the applicant's junior received benefit of the ACP and the MACP and not because of any other reason which could warrant stepping up in terms of FR 22(a)(i). They state that they have forwarded the representation of the applicant and other similarly placed petitioners to the CBEC, New Delhi for

considering by reference to the orders of Courts and Tribunals especially the order of the CAT, Jabalpur supra. They have also conveyed the instructions of the CBEC that where the Court orders are adverse to the interest of the Department/Government, such orders should not be implemented without clearance from the Board. They have, however, contested the claim of the relief of the applicant since they amount that the pay fixation of both the applicant and his junior have been done strictly as per rules and as per the provisions of ACP and MACP for which they have pointed out the relevant provisions of ACP and the MACP schemes.

4. The applicant in his rejoinder has questioned doubts expressed by the respondents regarding his seniority as unnecessary and that the respondents should have referred to their

records before filing such a reply.

The applicant has also referred to the need to abide by the order of the Court or Tribunal and that the respondents could not plead that they were waiting for the orders of their superiors for implementing the lawful directions of Courts and Tribunals.

5. We have gone through the OA along with Annexures filed on behalf of the applicant. We have also gone through the reply along with Annexures filed on behalf of the respondents and have examined the files and cognized all relevant facts of the case.

6. We have heard the learned counsel for the applicant and the learned counsel for the respondents and carefully considered the facts and circumstance, law points, case law and rival contentions in the case.

7. Under the ACP Scheme at

condition No.8, it is clearly pointed out that the financial upgradation is purely personal to the employee and shall have no relevance to his seniority position. Further, no additional financial upgradation will be available for the senior employee on the ground that the junior employee in the grade has got higher pay scale under the ACP Scheme. Condition No.9 under the MACP Scheme also states out that no stepping up pay in the pay band or grade pay could be admissible with regard to junior getting more pay than the senior on account of pay fixation under MACP Scheme.

8. The present application revolves around a single aspect as to whether the provisions of FR 22(I) (a) (1) are applicable in the present instance where the junior of the applicant received benefits under the ACP Scheme and the MACP

Scheme and is, therefore, receiving more pay than the applicant. The condition set out above in these two schemes clearly rules out any such consideration. However, it is necessary to consider the catena of cases that the applicant has brought to the notice of this Tribunal and where apparently, cases similar to him have received the benefit and whose judgment, could be interpreted "*in rem*" and not merely "*in personam*". These cases are discussed below :-

1. In the case of **Punjab Electricity Board & Others vs. Gurmail Singh** in C.A.No.2898/2008 (arising out of SLP (C) No.5223/2004, the issue related to differential treatment of LDCs who had been promoted after 01.01.1986 and those who were promoted prior to 01.01.1986 for the application of the scheme for grant of TBOP to higher scale of pay issued by the Finance Department on 23.04.1990. Even as factual elements in this case are vastly different, the Hon'ble Supreme Court observed that the claim of an employee for selection grade post was to be done in accordance with the provisions of the circular and the Hon'ble High Court, overlooking the provisions, exercised the power of Judicial review which should not have been done considering that Article 14 is a positive and complete scheme of equality which cannot be applied in illegality especially

when the circulars were not found otherwise invalid. Denying relief under Article 136 since respondents had exercised a particular option and taking into account the stepping up provisions of FR22(1)(a), the Hon'ble Apex Court exercised its powers under Article 142 of the Constitution and granted relief to the respondents while upholding the circular of the PSEB. The fact remains that the issue in this case is completely different and is not applicable to the present applicants.

2. In the case of Commissioner and Secretary to Govt. of Haryana vs. Ram Sarup Ganda & Others 2007 (3) RSJ-154 decided by the Hon'ble High Court on 10.10.2002 and by the Hon'ble Apex Court on 2.8.2006, the respondents were employees of the Haryana Government which had introduced an ACP Scheme called the Haryana Civil Services ACP Scheme Rules, 1998. Respondents were promoted officers who were senior to the direct recruits but were drawing lower pay than direct recruits because the latter had obtained the benefit of the ACP Scheme. The Hon'ble Apex Court quoted Rule 9 of the Haryana Government ACP Scheme, 1998 which denies stepping up to direct recruits on the plea that the junior promotees drew more salary based on ACP upgradation. Since the respondents case was exactly the opposite and not barred by the provisions of rules, the Supreme Court confirmed the availability of stepping up under FR-22(1)(a) to the respondents. This particular Rule 9 of the Haryana ACP Rules contrasts to Condition-8 of the ACP Scheme formulated on 09.08.1999 by the Government of India which reads that there should be no additional financial upgradation for senior employees on the ground that junior employees in the grade has got higher scale under the ACP. The Central Government Scheme covers both possibilities of senior/junior promotees or

direct recruits and its provisions have not been held to be ultra vires. In fact, Hon'ble Apex Court in its observations on the nature of the Hon'ble High Court judgment and the limits of judicial review in **Gurmail Singh's** case underline the need to follow the rules laid down, if otherwise valid. This case is also irrelevant to the present applicants.

3. In the case of **Madan Gopal Sharma & Others vs. U.O.I. & Others** O.A.No.842-JK-2007 relief was granted to the applicants on the basis of orders of the Hon'ble Apex Court in the case of **Government of Haryana and others Vs. Ram Sarup Ganda & Others, Punjab Electricity Board & Others vs. Gurmail Singh and Harcharan Singh Sudan Vs. U.O.I. & Others.** The O.A.No.97-CH-2007 decided by the Chandigarh Bench of this Tribunal in the case of **Pawan Kumar vs. Union of India & Others** pronounced on 23.05.2008 was also based on the judgment of the Hon'ble Supreme Court in **Ram Sarup Ganda's** case which has been discussed above. Therefore, the utility of **Madan Gopal Sharma's** decision in the coordinate bench of this Tribunal will depend upon validity of application of the three cases cited and adopted for granting relief. Of these, only the case of **Harcharan Singh Sudan Vs. UOI and Ors** remains for consideration on relevance.

4. In the case of **Gurcharan Singh Grewal and Another vs. Punjab State Electricity Board & Others** (2009) 3 SCC-94, no relief had been granted by the Hon'ble High Court of Punjab & Haryana but by reference to the reply written statement in the writ petition where the respondent Government had accepted the anomaly pointed out in respect of the second petitioner, the writ petition was declared as rendered infructuous and disposed of as such on 23.09.2005. When the first petitioner filed a Review Petition and requested similar

relief, it was found that he had not sought specific relief in the writ petition although he had been joined as party and on that technical objection, his prayer was rejected and then considered by the Hon'ble Supreme Court which directed the respondents to deal with him on the same basis as Petitioner 2 on the general rule of equity. A plain reading of the records of the case that were obtained from the Hon'ble High Court of Punjab and Haryana showed, in the writ petition filed, that the seniors wanted stepping up of their pay to the level of the junior because their dates of increment were different. This is merely the application of FR 22(I)(a)(1) and that may also explain why this case was not uploaded as it was of a completely routine nature and completely unrelated to ACP or MACP. These judgments of the Hon'ble High Court and Hon'ble Apex Court set out no ratio or principle which could be used in deciding the specific case of the applicant which is on the difference arising out of grant of ACP/MACP to one or the other party in the case.

5. In the case of **Ashok Kumar vs. U.O.I. & Others (Direct Taxes)** in 156/JK/2009 of the Chandigarh Bench of this Tribunal, reliance has been placed upon the judgment of **Ram Sarup Ganda, Harcharan Singh Sudan vs. U.O.I. & Others, Punjab Electricity Board & Others vs. Gurmail Singh** and two cases of **U.O.I. & Others vs. P. Jagdish** in 1997 (2) SCT-664 and O.A.No.97-CH-2007 decided by the Chandigarh Bench of this Tribunal in the case of **Pawan Kumar vs. Union of India & Others** decided on 23.05.2008. After considering all these cases, the decision took for reference, the case of **Madan Gopal Sharma vs. U.O.I. & Others** decided by that bench and the cases of **Harcharan Singh Sudan's** case and provided relief to the applicant. Therefore, this case also depends on the applicability of those two cases and have

no independent value as reference. The case was also agitated before the Hon'ble High Court of Punjab & Haryana which referred to a catena of cases that adopted this decision for confirming this order. At the level of Hon'ble Apex Court, the SLP filed by the Government was dismissed on the ground of delay and on merits which evidently depended on the basis of the case considered by the Hon'ble High Court. Based on this decision of the Tribunal, four other cases also went up before the Hon'ble Punjab & Haryana High Court where the orders of the coordinate Bench of this Tribunal in the case of **Ashok Kumar vs. U.O.I. & Others** continued to be upheld. Therefore, this case was effectively dependent on the relevance of the case of Harcharan Singh Sudan Vs. UOI and Ors.

6. In the decision of Jabalpur Bench of this Tribunal in O.A.No.416/2008 decided on 06.12.2012 in the case of **V.N. Mishra & Others vs. U.O.I and Others**, Inspectors of Central Excise, stated as LDC, UDC, Stenographers etc and had been promoted once or twice but were receiving less pay than direct recruits although the direct recruits were junior to the promotees. The decision of the Jabalpur Bench of this Tribunal in this case was dependent on the decision of Hon'ble Apex Court in **Ram Sarup Ganda, Harcharan Singh Sudan vs. U.O.I. & Others**, the Coordinate Bench of this Tribunal in Ashok Kumar's case, the decision of the Hon'ble Apex Court in **Gurcharan Singh Grewal and Another vs. Punjab State Electricity Board & Others** (2009) 3 SCC-94 and the **Harcharan Singh Sudan's** case. In particular, they referred to the decision of the Chandigarh Bench of this Tribunal in O.A.No.156/JK/2009 of Ashok Kumar and also O.A. No.1063-JK-2001 which related to promotee officers of Central Excise and concluded that those decisions were squarely applicable to the applicant in the

case. They have also referred to the observations of the Hon'ble Apex Court in the case of **Gurcharan Singh Grewal's** case wherein the first petitioner had been denied any relief in the absence of specific prayer and therefore, approached the Hon'ble Supreme Court. Against one of the arguments made by respondents about the date of increment in the scale of applicant no.1 and the compared junior, the Hon'ble Supreme Court held, as a settled principle of law, that the senior cannot be paid lesser salary than junior. Therefore, the pay of the applicant no.1 was stepped up to the junior as appears to have been done in the case of applicant no.2. To recall, as discussed in the Grewal case, the Hon'ble High Court of Punjab & Haryana had declared the writ petition infructuous in view of the admission made by the respondents in their written statement in reply and grant of such relief directly by respondents to the second petitioner. Therefore, the decision of the coordinate bench of Jabalpur also relies entirely on this precedent case, without examination of the relevance of the principle laid down. Instead, it could have been based on evaluation of their reliance for comparison and on whether any ratio decidendi had been established for use in the considered case. Eventually, as discussed above, this case also rests on the fragile relevance of Harcharan Singh Sudan Vs. UOI & Ors.

9. The case of Harcharan Singh Sudan is of a peculiar nature. The individual had filed an OA No.768/2002 before the CAT Chandigarh Bench, which was dismissed and a Review Petition was also dismissed by the same Bench on

23.05.2008. This application had contested the validity of Condition No.8 of the ACP Rules quoted above with the rejection, and that case has reached finality with the integrity of condition No.8 upheld. Later, the applicant Harcharan Singh Sudan filed another OA before the Chandigarh High Court in OA No.96/CH/2006, which was considered along with OA No.97/CH/2007 of Pawan Kumar Vs. UOI and was decided on 23.05.2008. The decision was upheld by the High Court in CWP No.12894 of 2010 dated 23.07.2010 and also by the Hon'ble Apex Court on 02.05.2011 on the plea made that applicant should get stepping of his pay on par with his juniors. The history of the applicant's case before the Tribunal is set out to show how in chronological terms, the decision of the Courts in the case of Ram Sarup Ganda Vs. Secretary, Govt. of Haryana intervened and became the

basis for the decision in this case.

The observations in this case at para No.14 has been replicated in the CAT decision of OA No.156-JK-2009 decided on 19.01.2010 of ***Ashok Kumar Vs. Union of India and others.***

This para is reproduced below :-

*"14. However, one aspect is to be seen. In the case decided by the Apex Court, the **State Government** was the appellant and the challenge was against the High Court judgment, which held that the higher pay scale be given to the respondents at par with their juniors whose pay scale became higher on account of the benefit of ACP afforded to them. The application was not dismissed but partly allowed and it was declared that the respondents were entitled to stepping up of pay. In other words, there shall only be the stepping up of pay and not the pay scale. The pay scale in respect of the applicants would remain the same as of date but the pay would be fixed in appropriate stage and if there is no stage to match the pay drawn by the junior, the difference shall be treated as one of personal pay. The pay partly would be compared annually and partly would be maintained in future."*

(highlighting for these orders)

10. On obtaining and after our examination of the decision of the CAT, Chandigarh in this batch of three applications, we note as mentioned above that this case depends entirely on the decision of

the Hon'ble High Court and the Hon'ble Apex Court in the Ram Sarup Ganda case supra as relied upon by applicants (para 3 of order). In view of our previous observations, we specifically point to the critical observation made while recording the facts of the matter for the judgment at para 8 which reads "the facts of the case of Ram Sarup Ganda are as follows. In the State of Haryana, ACP Scheme was introduced almost in the same pattern as that of the Central Government". As discussed above for the Ram Sarup Ganda case supra, when the schemes are different, the views of the Hon'ble Apex Court in Gurmail Singh case should have been applied. Instead, wrong assumptions led to a parallel being drawn without any basis. The decision of that Bench of the Tribunal in this case thereafter discusses, at length, whether the decisions of the Hon'ble

Apex Court was in rem or in personam but these are clearly irrelevant. Therefore, we have no option but to discard this precedent.

11. To recapitulate, it is, therefore, clear that the Harcharan Singh Sudan order of the Tribunal and consequently, the Hon'ble High Court and the Hon'ble Apex Court were based on the previous judgment in the cases of Ram Sarup Ganda and Gurmail Singh (Supra) where the State Government was the opposing party and not the Central Government. As mentioned above, the Gurmail Singh case has no application whatsoever to the present applicants. The Ram Sarup case is based on the strength of the provisions of the ACP circular issued by the Government of Haryana and as discussed above, are totally at variance with the condition set out by the Government of India in its ACP circular especially with

regard to the issue of seniors getting less pay than juniors as a result of ACP.

12. In the circumstances, the condition and rules as set out under the ACP Scheme and MACP Scheme shall clearly apply and any decisions in previous cases that have reached finality but involve consideration of these schemes as ordered by Government of India can only be considered to have been made in personam and may have no application to the present plea of the applicants. In the result, there are no merits left favouring the applicant and rules squarely apply against the relief sought by the applicant.

13. The OA is, accordingly dismissed and there shall be no order as to costs.

(R. Vijaykumar)
Member (Administrative)

(Arvind J. Rohee)
Member (Judicial)

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