

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

O.A. No.60/976/2017

Date of decision: 02.05.2019

(Reserved on: 10.04.2019)

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

...

1. Sehdev Paswan S/o Lt. Sh. Lila Ram, aged 57 years, working as Data Entry Operator Grade 'B', office of Directorate of Census Operations, U.T. Chandigarh. Group 'B'.
2. Malkiat Kaur, W/o Sh. G.S. Kang, aged 60 years, working as Data Entry Operator Grade 'B', office of Directorate of Census Operations, U.T. Chandigarh.
3. Savira Bajaj, D/o Sh. Balraj Bajaj, aged 59 years, working as Data Entry Operator Grade 'B', office of Directorate of Census Operations, U.T. Chandigarh.
4. Sudha Jain, W/o Sh. P.K. Jain, aged 58 years working as Data Entry Operator Grade 'B', office of Directorate of Census Operations, U.T. Chandigarh.
5. Rajinder Kaur, W/o Sh. Jarnail Singh, Data Entry Operator (Retired), office of Directorate of Census Operations, U.T. Chandigarh.
6. Smt. Rama Kumari Sharma, W/o Sh. Rajinder Kumar, aged 60 years, Data Entry Operator (Retired), office of Directorate of Census Operations, U.T. Chandigarh.

(Group B).

... APPLICANTS

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 19-A, Madhya Marg, Chandigarh.

... RESPONDENTS

PRESENT: Sh. Rohit Seth, counsel for the applicants.
Sh. Arvind Moudgil, counsel for the respondents.

ORDER**MRS. P. GOPINATH, MEMBER (A):-**

1. Applicants in this O.A. are praying for stepping up of their pay at par with their juniors.
2. Respondent argues that the claim of the applicants, for grant of scale in the hierarchy, under ACP Scheme is subject to the condition that all the promotional norms including educational qualification of the promotional post have to be fulfilled for grant of ACP upgradation. Applicants do not possess educational qualification required for the promotional post. Respondent also cites para 3(1) and 3 (ii) of the DoPT OM dated 4.10.2012 which cites certain conditions for stepping up of pay of seniors who are drawing less pay than the juniors, which condition applicants do not fulfill. Applicants are placed in PB-2 with grade pay of Rs.4600/4800, whereas juniors who fulfill educational qualification are placed in PB-3 with grade pay of Rs.5400/6600. Respondents are denying similar benefit stating that applicants are seeking pay scale of a promotional post despite not being qualified to hold the promotional post.
3. Heard learned counsel for the parties and perused written submission.
4. First distinction that is required to be made is that applicants are seeking benefit of upgradation under the ACP Scheme and not promotion to the post. The applicants on grant of said benefit would not be discharging the responsibility of the higher post but

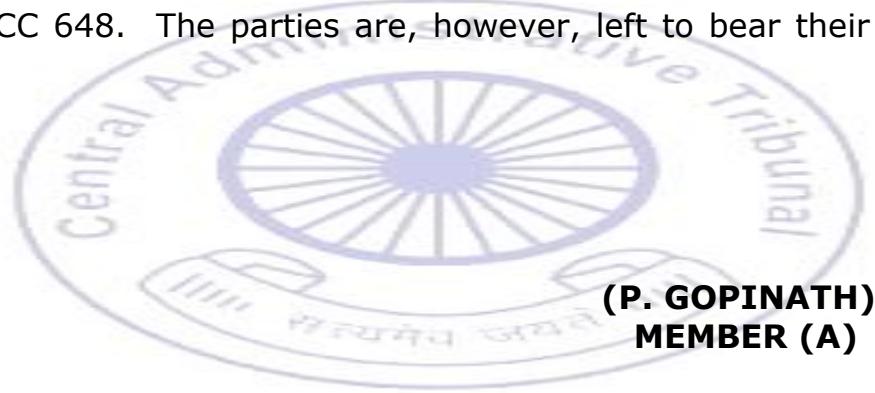
discharging the responsibility of the post they are holding. The ACP Scheme is only intended to give a higher pay scale on account of stagnation. Hence a distinction ought to be made between benefit of upgradation and promotion. Applicants are seeking upgradation and not promotion.

5. The subject matter of this O.A. has already been adjudicated and the applicants are covered by decision dated 30.07.2018 in O.A. No.60/558/2017. Since issue in this matter is identical to one decided in the case of **Jaswant Kaur & Ors. vs. UOI & Ors.** (O.A. No.60/556/2017) decided on 13.7.2018, this O.A. is also allowed on the same grounds for parity of reasons given therein. Relevant paragraphs of the order relied upon read as under:-

“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."

6. This O.A. succeeds and is also allowed as above and applicants be given the benefit of stepping up of pay at par with their junior within a period of 45 days so as to remove the anomaly in the interest of equity and fairplay. The arrears be restricted to three years prior to date of filing present petition as per Apex Court judgment in **Union of India vs. Tarsem Singh**, 2008 (8) SCC 648. The parties are, however, left to bear their own costs.



**(SANJEEV KAUSHIK)
MEMBER (J)**

Date:

Place: Chandigarh.

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