

13.3
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

LIBRARY

O.A.NO. 350/ 494 /2018

In the Matter of :

An application u/s 19 of
the A.T. Act, 1985;

-And-

In the Matter of :

Nirmal Kumar Sen, son of
Late Brindaban Chandra Sen,
aged about 60 years, EX-AAO/
I.A.Section, Office of the
General Manager(P&F), West
Bengal Postal Circle, Govt.
of India, Kolkata-700 012;
residing at 245/3, Rafi
Ahmed Kidwai Road, Kolkata-
700 055.

.. Applicant

-Versus-

1) Union of India through
the Secretary, Ministry of
Communications & IT, Deptt.
of Posts, Postal Accounts Wing,
Dak Bhawan, New Delhi-110 001.

2) The Director(Budget),
Ministry of Communications &
IT, Deptt. of Posts, Dak
Bhawan, Sansad Marg, New Delhi
-110 001.

3) The Asstt. Director General

(PA-Admin), Deptt. of Posts,

W.B.Postal Circle, P-36, Chitt-

ranjan Avenue, Yogayog Bhawan,

Kolkata-700 012.

4) The Secretary, Ministry of

Personnel, Public Grievances &

Pensions, Deptt. of Personnel &

Training, Govt. of India, 3rd

floor, Lok Nayak Bhavan, Khan

Market, New Delhi-110 003.

5) The General Manager(Postal

Accounts & Finance), W.B.Circle,

Dept. of Posts, P-36, C.R.Avenue

Yogayog Bhawan, Kolkata-700 012.

6) The Director (Budget), Min. of Communication, Dotary, U.R.D.A.

7) Shri Uma Sankar Chakraborty, Ex

Sr.Accountant, Office of the C.M.

(PA&F), W.B.R Circle, Deptt. of

Posts, P-36, C.R.Avenue, Yogayog

Bhawan, Kolkata-700 012.

8) Sri Sunil Chandra Biswas, Sr. Accountant in the Office

of the G.M (PA&F), W.B. Respondents

Circle, Deptt. of Posts, Yogayog Bhawan,

Kolkata-700012.

No. O.A. 350/00494/2018

Dated: 13.3.2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
 Hon'ble Dr. Nandita Chatterjee, Administrative Member

(NIRMAL KR. SEN VS. POSTS)

For the Applicant : Mr. K. Sarkar, Counsel

For the Respondents : Mr. R. Roychowdhury, Counsel

ORDER (Oral)Per Ms. Bidisha Banerjee, Judicial Member:

This O.A. has been filed to seek the following relief:-

- (i) To direct the respondents to step up the pay of the applicant at par with the pay of the Respondent Nos. 7 & 8 herein w.e.f. 16.03.2005 in all respects along with the arrears of pay and allowances relating thereto till his retirement from service on 31-01-2018 and to fix the pension and pensionary benefits thereafter accordingly;
- (ii) To direct the respondents to cancel, withdraw and/or rescind the purported Memo. dated 22.11.2017 as contained in Annexure "A-7" herein;
- (iii) To direct the respondents to produce the entire records of the case before this Hon'ble Tribunal for effective adjudication of the issues involved herein;
- (iv) And to pass such further or other order or orders as to this Hon'ble Tribunal may deem fit and proper.

2. Heard Ld. Counsel for both sides and perused documents on record.

3. At hearing, Ld. Counsel for the applicant would seek benefit of the order passed in O.A. Nos. 350/00246/2018 to O.A. Nos. 350/00320/2018 dated 11.2.2019, order whereof is extracted hereunder:

"Heard both.

2. The 26 applicants in these OAs have prayed for similar relief. Therefore, all these OAs are taken up for hearing analogously to be disposed of by a common order.

3. For the sake of brevity OA is delineated and discussed hereinbelow.

The order under challenge in the present OA reads as under:

"No.I-53A/cs/Admin.I 7125

Dated: 16.01.2018

MEMORANDUM

Subject: - Compliance to the judgement dated 19.07.2017 of Hon'ble Central Administrative Tribunal, Calcutta Bench in OA No 350/1453 of 2015 (MA No 350/00140/2017) filed by Shri Tuhin Kar & ors.

- 1) Whereas ShriTuhinKar along with others have filed an OA No 350/1453 of 2015 in the Hon'ble Central Administrative Tribunal, Calcutta Bench for extending the benefit of decision of Hon'ble CAT, Principal Bench New Delhi dated 01.02.2013 in OA No 2124/2011 regarding stepping up of pay of senior employees on par with junior employees who have got higher pay scale under Assured Career Progression (ACP) scheme of August 1999.
- 2) Whereas the Hon'ble Central Administrative Tribunal, Calcutta Bench vide its order dated 19.07.2017, passed an order, directing the Respondents to consider the representation of the applicants and pass appropriate order within a reasonable period of time, but in any case, within a period of three months from the date of receipt of copy of this order.
- 3) Whereas the copy of the Hon'ble Central Administrative Tribunal, Calcutta Bench order dated 19.07.2017, passed in OA No 350/1453 of 2015 was received on 25.07.2017.
- 4) Whereas the applicant ShriTuhinKar has made a representation dated 31.07.2017 for considering the extending the ibid judgement in his case.
- 5) The representation of the applicant has been considered by the competent authority with the following observations:-
 - (i) ACP scheme as recommended by 5th CPC has been introduced to provide relief in the case of acute stagnation. Benefits granted under the scheme are personal in nature and in recognition of long hardship faced by stagnating employees. This stagnation is the fundamental reason for grant of benefit of ACP scheme and concept like senior/junior issue, which have otherwise no relevance, cannot be brought in to dilute the very purpose of the scheme. Notwithstanding grant of higher pay scale to a junior under ACP scheme, a senior will always remain senior for promotion. ACP scheme envisages mere placement in higher pay scale on a personal basis. A letter granted to Govt. servants facing stagnation/hardship cannot provide a ground for claiming identical relief by others who are not similarly circumscribed.
 - (ii) ShriTuhin Kar and others have filed the OA seeking stepping up of pay with respect to their junior namely Shri Sunil Chandra Biswas, SA as per Directorate order no 35(3)/10/PA/Admn.I-128-153 dated 14.02.2014. While taking up the representation of the first applicant, ShriTuhin Kar and alike others, it has been found that none of them is covered by the judgement referred to by the applicants. Moreover, none of them was also member of AIPAEA on the date of application which was then condition precedent or pre-requisite condition for considering the stepping up of pay cases. The above position has been revealed on meticulous examination of the representations of the applicants, which they have submitted in compliance of the order passed by the Hon'ble CAT, Calcutta Bench by order dated 19.07.2017 in OA No 350/01453 of 2015.
 - (iii) Further, it is emphasized that according to the judgement delivered by the Hon'ble Principal Bench of CAT, New Delhi in OA No 2124/2011 dated 01.02.2013 and communicated under Directorate (PA wing) letter dated 01.04.2014, the effect of the Principal bench judgement is applicable to members of AIPAEA. Similarly, as per the judgement in OA no 440 of 2014 of Hon'ble Patna Bench dated 11.05.2015, the benefit was extended to the members of BPAOE only. As already stated, at the time of filling the OA, none of them was members of either AIPAEA or BPAOE. This is also the reason for which the judgement of the Principal Bench of the Hon'ble Tribunal is not applicable in the instant case.
- 6) Accordingly, it is regretted that request made by the applicant in his representation dated 31.07.2017 for stepping up of pay cannot be acceded to. This is issued in compliance with the order dated 19.07.2017 in OA No 350/01453 of 2015.

Sd/-
(S. Dora)

General Manager (Postal Accounts & Finance)

West Bengal Circle, Kolkata"

4. Identical orders have been issued to other applicants. Drawing our attention to the order extracted supra, Id. Counsel for the applicant would submit that the impugned order manifests that the applicants are not the members of the Union which had approached the Patna Bench and the Principal Bench of this Tribunal and, on behalf of their Members, obtained orders in OA. 440 of 2014 (Patna Bench) and OA. 2124 of 2011 (Principal Bench), but that cannot be a ground justifying non-extension of the benefits of the said decisions to the present applicants who are identically circumstanced, only because their cases have not been taken up by an Union.

5. Per contra, Id. Counsel for respondents at hearing would defend that Jr. Accountants who joined as direct recruits were promoted as Sr. Accountants and granted two ACPs upon completion of 12 and 24 years of service, whereas, the present applicants were appointed as LDC and granted two promotions to the posts of Junior Accountant and then to Senior Accountant and therefore, they are not eligible to be bestowed with the identical benefits as granted to their counterparts who approached the Patna Bench and Principal Bench of this Tribunal. Moreover, ACP benefits being personal in nature, could not be extended to persons on the basis of seniority alone.

6. Upon examining in details, we found that no plausible reason exists to differentiate between the two categories of employees, the one who approached the Patna Bench and Principal Bench and the present applicants.

7. Moreover, we find that the applicants who approached the Principal Bench were identically circumstanced as the present applicants. They were Sr. Accountants promoted through LDC via Jr. Accountants as the applicants in the present OAs. They were granted stepping up on par with such directly recruited Jr. Accountants who were bestowed with two ACPs. The present applicants who are exactly similarly circumstanced, cannot be discriminated. Accordingly, the impugned order denying them the pay parity with the directly recruited Jr. Accountants, is without any basis rhyme or reason and therefore arbitrary and discriminatory.

8. Having noticed that the applicants before us are palpably victims of invidious discrimination, we quash the impugned order dated 16.01.2018 and remand back the matter to the authorities for re-examination of their claim for stepping up on par with their juniors on the basis of the order of Patna Bench and Principal Bench cited and extracted supra, and issuance of an appropriate order within a period of 3 months granting the benefits as the applicants would be entitled to in accordance with law and in accordance with the said decisions.

The OAs are accordingly disposed of. No costs.

4. At hearing, Id. Counsel for the applicant submitted at the bar that he would be satisfied with a direction to consider his representation dated 22.5.2017 and to dispose it of with a reasoned and speaking order, within a specific time frame.
5. Id. Counsel for the respondents did not object to the same.
6. Accordingly, without going into the merits of the matter and with the consent of the parties, we hereby direct the concerned respondent authority to consider the representation of the applicant dated 22.5.2017 in the light of

decision cited above and issue a reasoned and speaking order within four months from the date of receipt of a copy of this order and communicate the decision arrived at to the applicant forthwith.

7. With these directions, the O.A. is disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

SP

