

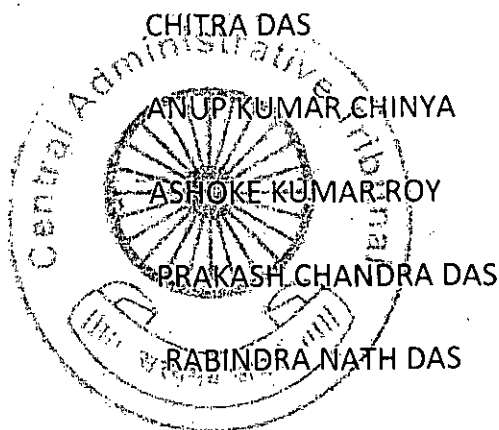


CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

Date of order: 11.02.2019

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

OA. 350/246/2018	TUHIN KAR
OA. 350/247/2018	SANNTA CHATTERJEE
OA. 350/248/2018	SISIR KUMAR BEPARI
OA. 350/249/2018	JHUMPA BOSE
OA. 350/250/2018	PRADIP KUMAR BHOWMIK
OA. 350/251/2018	CHITRA DAS
OA. 350/252/2018	ANUP KUMAR CHINYA
OA. 350/253/2018	ASHOKE KUMAR ROY
OA. 350/254/2018	PRAKASH CHANDRA DAS
OA. 350/255/2018	RABINDRA NATH DAS
OA. 350/256/2018	ASIT KUMAR SAHA
OA. 350/257/2018	BARUN KUMAR DAS
OA. 350/258/2018	SWAPAN KUMAR DAS
OA. 350/259/2018	MAYA PATHAK
OA. 350/260/2018	MINATI MAJUMDER
OA. 350/261/2018	CHANDAN MUKHOPADHYAY
OA. 350/262/2018	SABITA SAHA
OA. 350/263/2018	KRISHNA JANA
OA. 350/264/2018	ANANTA KUMAR SARKAR
OA. 350/265/2018	SANTANU BANDYOPADHYAY



OA. 350/266/2018	MITHUA BASU
OA. 350/267/2018	ANIL CHANDRA MONDAL
OA. 350/268/2018	DEBABRATA SARKAR
OA. 350/318/2018	GOBINDA LAL GUHA THAKURATA
OA. 350/319/2018	BIPUL KUMAR NANDI
OA. 350/320/2018	PRADIP KUMAR PODDAR

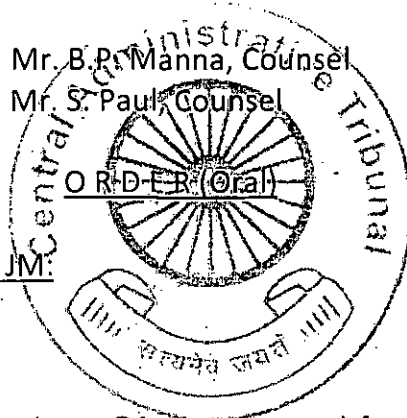
-VERSUS-

Union of India & Ors. (Posts)

For the Applicant : Mr. A. Chakraborty, Counsel
Ms. P. Mondal, Counsel

For the Respondents : Mr. B. P. Manna, Counsel
Mr. S. Paul, Counsel

Per Ms. Bidisha Banerjee, JM:



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/Admn.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 Shri Tuhin Kar 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 **Shri Tuhin Kar** 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 envisage merely placement in higher pay scale on personal basis. A relief granted to Govt. servants facing stagnation/hardship cannot provide a ground for claiming identical relief by others who are not similarly circumstanced.
 - (ii) Shri Tuhin 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 33(3)/10/PA Admn.I-128-153 dated 14.02.2014. While taking up the representation of the first applicant, Shri Tuhin 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 counter

parts 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. Accountant 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.

(Dr. Nandita Chatterjee)
Member (A)

pd

(Bidisha Banerjee)
Member (J)