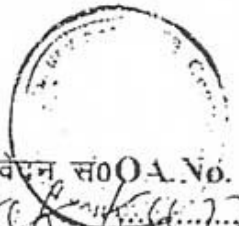


प्रेषण सं० / Despatch No. 1007 दिनांक / dated 18/12/10

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal,
चण्डीगढ़ न्यायपीठ / Chandigarh Bench.
चण्डीगढ़ / Chandigarh.

From
रजिस्टार / The Registrar.
केन्द्रीय प्रशासनिक अधिकरण / Central Administrative Tribunal.
चण्डीगढ़ / Chandigarh Bench.
To

- ① Sh. D. R. Sharma, Adm
16/11/10, CMO
- ② Sh. Rakesh Sharma, Adm
C/O CAT, Bar Ass, CMO



मूल / स्थान आवेदन सं० O.A. No. 15E/OK/09
As h... .. ज्ञानी / Applicant(S)
Versus

Union of India..... प्रतिवादी / Respondent(S)
महोदय / Sir

उपरोक्त तार के सम्बन्ध में मुझे इस अधिकरण की न्यायपीठ के माननीय
I am directed to forward herewith a copy of order

श्री. 19/11/10 प्रशासनिक / न्यायिक सदस्य
dated 19/11/10 passed by a Bench of this Tribunal comprising
तथा माननीय श्री / श्रीमती प्रशासनिक /
Hon'ble Mr / Mrs. S. Sharma, Jm Aml and

न्यायिक सदस्य समाविष्ट हैं द्वारा दिनांक को पारित आदेश हुआ है।
Hon'ble Mr / Mrs. S. Sharma, Jm Aml in the
above mentioned case for information/compliance and necessary action
please.

गतदीव / Yours Faithfully.
18/12/10
अनुगाम अधिकारी न्याय
SECTION OFFICER (R)
कते रजिस्टार / FOR REGISTRAR.

Encls. As above.

CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

O.A. No.156-JK-2009

Date of order: 19.01.2010

Coram: Hon'ble Mrs. Shyama Dogra, Member (J)
Hon'ble Mr. Khushi Ram, Member (A)

Ashok Kumar S/o Late Sh. Bhatinda Kishore aged about 50 years,
Inspector, Office of Customs Preventive Station, Rajouri.

Applicant

By : Mr. D. R. Sharma , Advocate.

Versus

1. Union of India through Secretary to Government of India, Ministry of finance, Department of Revenue, New Delhi.
- 2: Central Board of Direct Taxes, New Delhi.
3. Chief Commissioner of Central Excise & Customs, Chandigarh Commissionerate, Chandigarh.

..... Respondents

By : Mr. Rohit Sharma, Advocate.

O R D E R (oral)

Hon'ble Mrs. Shyama Dogra, Member (A):

The applicant has filed this O.A. pleading that he initially joined as Lower Division Clerk on 25.1.1980. He was promoted as Upper Division Clerk on 2.8.1988 and then as Tax Assistant on 30.11.1990. He was promoted as Inspector



Government and Scheme of Central Government is definitely different.

4. Reliance is also placed by the respondents on instructions dated 4.1.2008, Annexure A-1, under which no anomaly is recognized when pay is fixed under ACP Scheme. Rule 8 of the ACP Scheme of 1999, which discourages stepping up on grant of benefit under ACP Scheme, is also under challenge by the applicant. Placing reliance on Commissioner and Secretary to Govt. of Haryana vs. Ram Sarup Ganda & Others, 2007 (3) RSJ, 154; Punjab State Electricity Board and Others Vs. Gurmel Singh, 2008 (3) SCT 18 and Union of India & Others Vs. P. Jagdish, 1997 (2) SCT, 664, it is claimed that pay/scale of the applicant deserves to be up held. It is also claimed that case is covered by decision in O.A. No. 96-CH-2007 titled Harcharan Singh Sudan Vs. Union of India & Others and O.A. No. 97-CH-2007 titled Pawan Kumar Vs. Union of India & Others, decided on 23.5.2008 in which in similar circumstances pay of the applicants was ordered to be stepped up. The judgment of the Hon'ble Supreme Court in Ram Sarup Ganda (supra) is in rem and not in personem.

5. The applicant has prayed for setting aside the order dated 6.3.2008, Annexure A-2 and order dated 4.1.2008,

Slp

Government and Scheme of Central Government is definitely different.

4. Reliance is also placed by the respondents on instructions dated 4.1.2008, Annexure A-1, under which no anomaly is recognized when pay is fixed under ACP Scheme. Rule 8 of the ACP Scheme of 1999, which discourages stepping up on grant of benefit under ACP Scheme, is also under challenge by the applicant. Placing reliance on Commissioner and Secretary to Govt. of Haryana vs. Ram Sarup Ganda & Others, 2007 (3) RSJ, 154; Punjab State Electricity Board and Others Vs. Gurmel Singh, 2008 (3) SCT 18 and Union of India & Others Vs. P. Jagdish, 1997 (2) SCT, 664, it is claimed that pay/scale of the applicant deserves to be up held. It is also claimed that case is covered by decision in O.A. No. 96-CH-2007 titled Harcharan Singh Sudan Vs. Union of India & Others and O.A. No. 97-CH-2007 titled Pawan Kumar Vs. Union of India & Others, decided on 23.5.2008 in which in similar circumstances pay of the applicants was ordered to be stepped up. The judgment of the Hon'ble Supreme Court in Ram Sarup Ganda (supra) is in rem and not in personem.

5. The applicant has prayed for setting aside the order dated 6.3.2008, Annexure A-2 and order dated 4.1.2008,

Slp

Annexure A-1; provision of ACP Scheme dated 9.8.1999, Annexure A-7, being discriminatory and for directing the respondents to step up his pay at par with his junior, in higher grade with arrears and interest.

6. The respondents have filed a reply. They submit that the applicant is not entitled to any relief as he has got more than two promotions and under ACP Scheme of 1999, one is entitled to benefit of two financial up-gradations, if he has not got any promotion and one financial up-gradation, if he has got one financial up-gradation. It is further submitted that since junior to the applicant was appointed directly as Inspector, he was granted benefit of next higher grade than the applicant. In the scheme of 1999, the concept of junior or senior for the purpose of stepping up of pay is not recognized.

7. No rejoinder has been filed by the applicant.

8. We have heard learned counsel for the parties and perused the material on the file.

9. The issue raised in this case as to whether a senior person, though having received two promotions, is entitled to stepping up of his pay at par with his junior, who has been granted benefit under ACP Scheme and by virtue of this, is receiving higher pay than his senior, stands clinched by various decisions of this Tribunal including in O.A. No. 842-

Sp

JK-2007 decided on 17.11.2009 titled Madan Gopal Sharma & Others Vs. Union of India & Others. In that case reliance was placed on decisions of Apex Court in the case of Ram Sarup Ganda (supra) and (Gurmail Singh). Reliance was also placed on decision in the case of Harcharan Singh Sudan (supra). It was held that seniors are entitled to step up their pay as a general rule as and when any junior gets fixed in a pay scale higher to them on a count of grant of ACP Scale. Para 14 of the decision in the case of Harcharan Singh Sudan (supra) in Para 14 is reproduced as under:

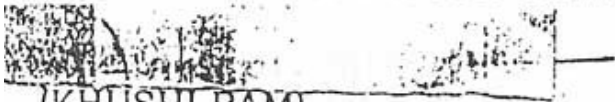
“14. However, one aspect is to be seen. In the case decided by the Apex Court, the State Government was the appellant and the challenge was against the High Court judgment, which held that the higher pay scale be given to the respondents at par with their juniors whose pay scale became higher on account of the benefit of ACP afforded to them. The appeal 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..”.

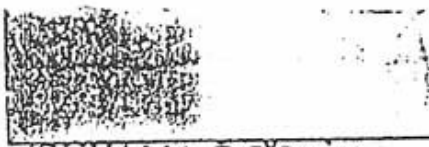
10. Finding that the facts of this case are covered by the decision in the case of Harcharan Singh Sudan's case as well as Madan Gopal Sharma & Others (supra), this Original Application is



allowed to the extent that Annexure A-2 relating to rejection of claim of applicant is quashed and set aside.

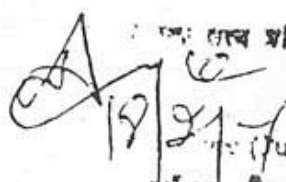
11. With this O.A. stands disposed of and the respondents are directed to step up the pay of the applicant at par with his junior aforesaid and in terms of the directions contained in the case of Harcharan Singh Sudan(supra). It is made clear that the applicant shall be given stepping up of pay only and not the pay scale, as explained above. The pay may be fixed accordingly and arrears be also paid to him within a period of three months from the date of receipt of a copy of this order. However, in the given facts and circumstances of the case, applicant is not entitled to interest. Parties to bear their own costs.


(KHUSHI RAM)
MEMBER (A)


(SHYAMA DOGRA)
MEMBER (J)

Place: Chandigarh.
Dated: 19.01.2010

HC*


19/01/10
CHANDIGARH

ITEM NO.13
IVB

COURT NO.5

SECTION

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition for Special Leave to Appeal (Civil)...../2011
CC 7278/2011

(From the judgment and order dated 23/07/2010 in CWP No.
12894/2010 of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

UNION OF INDIA & ORS.
Petitioner(s)

VERSUS

ASHOK KUMAR
Respondent(s)

WITH I.A. 1 (C/DELAY IN FILING SLP)

Date: 02/05/2011 This Petition was called on for hearing
today.

CORAM :

HON'BLE MR. JUSTICE D.K. JAIN
HON'BLE MR. JUSTICE H.L. DATTU

For Petitioner(s)	Mr. Mohan Jain, ASG
	Mr. D.K. Thakur, Adv.
	Mr. Manish Pushkarna, Adv.
	Ms. Yogita Yadav, Adv.
	Ms. Mudrika Bansal, Adv.
For Respondent(s)	Mr. B. Krishna Prasad, Adv.

UPON hearing counsel the Court made the following
O R D E R

The Special Leave Petition is dismissed on
the ground of delay as well as on merits.

(VINOD LAKHINA)
Court Master

(KUSUM GULATI)
Court Master

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.CWP No. 12894 of 2010
Date of decision 23 .7.2010

Union of India and others ..Petitioners

Versus

Central Administrative Tribunal , Chandigarh ... Respondents.

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE A.N. JINDALPresent: Mr. Heman Aggarwal ,Advocate
Addl. Central Govt. Standing counsel for the petitioners

- 1.To be referred to the Reporter or not ?
- 2.Whether the judgement should be reported in the Digest ?

M.M.KUMAR, J.

The instant petition filed under Article 226 of the Constitution is directed against a part of the order dated 19.1.2010 passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for brevity 'the Tribunal'). The challenge is only to that part of the order where the pay of the petitioner has been ordered to be stepped up so as to match the pay drawn by his junior without granting him the pay scale which stood granted to his junior.

The petitioner had initially joined the office of the Chief Commissioner- appellant No. 2 as Lower Division Clerk on 25.11.1980. Thereafter he was promoted as Upper Division Clerk on 2.8.1988 and then as Tax Assistant on 30.11.1990. He was eventually promoted as Inspector, Central Excise and Custom and joined as such on 29.3.1993. One Ram Chand Sharma joined as Inspector by way of direct recruitment on

31.3.1993 and is apparently junior to the petitioner. In the seniority list of Inspectors his name figures at serial No. 268 whereas that of the petitioner is at serial no.206. The petitioner approached the Tribunal with the grievance that in pursuance of Assured Career Progression Scheme (ACP) dated 9.8.1999 the aforesaid Ram Chand Sharma has been given the benefit of upgradation on completion of 12 years of service in the pay scale of Rs. 7500-12000 whereas the petitioner continues to work in the pay scale of Rs.6500-10500 although he is senior to Ram Chand Sharma. He made representation which was turned down vide letter dated 6.3.2008 (A.1). The petitioner had placed reliance on a judgement of Hon'ble the Supreme Court rendered in the case of Commissioner and Secretary to Govt. of Haryana and others v. Ram Sarup Ganda and others 2007(2) SCT 476. The respondent took the view that judgement in Ram Sarup Ganda's case (supra) was judgement in *persona* and not a judgement in *rem* and on that basis has rejected the claim.

However, the Tribunal set aside the order passed by the respondents and granted the petitioner the relief of stepping up of pay and bringing it at par with the pay of his junior but it has refused to grant him the benefit of giving pay scale which is being drawn after the grant of ACP to his junior. Similar view was taken by the Tribunal in the case of Harcharan Singh Sudan v. Union of India (OA No. 97 CH of 2007) decided on 23.12.2008 which in turn is based on the judgement of Hon'ble the Supreme Court in Ram Sarup Ganda's case (supra).

Having heard the learned counsel we are of the considered view that the order passed by the Tribunal for stepping up the pay of the petitioner and bringing it equivalent with the pay of his junior Shri Ramesh Chand Sharma does not suffer from any legal infirmity. There is no

provision in the ACP Scheme that the petitioner is entitled to the same pay scale as is given to his counter part who is a direct recruit. Moreover, the petitioner had already earned three promotions and therefore would not be entitled to any other benefit in the shape of higher pay scale.

Accordingly, the writ petition fails and the same is dismissed.

(M.M.Kumar)
Judge

(A. N. Jindal)
Judge

23 .7.2010

okg