

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of Decision: July 19, 2017

1. **C.W.P.No.10300 of 2015**

Union of India & others

...Petitioners

Versus

Central Administrative Tribunal, Chandigarh & others

...Respondents

2. **C.W.P.No.10299 of 2015**

Union of India & others

...Petitioners

Versus

Central Administrative Tribunal, Chandigarh & others

...Respondents

**CORAM: HON'BLE MR.JUSTICE AJAY KUMAR MITTAL, JUDGE
HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE**

Present: Mr.Praveen Chander Goyal, Advocate,
for the petitioners in both the petitions.

Mr.Shailendra Sharma, Advocate,
for the private respondents in both the petitions.

AMIT RAWAL, J.

By this order, we shall dispose of two Civil Writ Petitions bearing No.10299 and 10300 of 2015 as the common questions of law and fact are involved in both the cases.

Civil Misc.Nos.9573-74 of 2017 in CWP No.10300 of 2015

Documents Annexures P-9 and P-10 are taken on record.

Exemption is also granted from filing certified copies thereof.

Applications stand disposed of.

Civil Writ Petition No.10300 of 2015

Union of India-Department of Engineer-in-Chief, Ministry of Defence have assailed the order of the Central Administrative Tribunal, Chandigarh Bench (for short “CAT”) dated 2.12.2014 (Annexure P-3), whereby the Original Application No.304/HR/2012 titled as “Ashok Kumar & others Versus Union of India & others”, has been allowed.

Mr.Praveen Chander Goyal, learned counsel representing the petitioner-Union of India submitted that the order of the CAT is not sustainable as the claim of the private respondents (applicants in the Original Application) seeking relief of stepping up of the pay to the level of the pay drawn by the persons junior to them could be granted from the date when they started getting higher pay, especially when two of the applicants have already retired. The direction for re-calculation of the retiral benefits after the stepping up of the pay, was also urged to be not maintainable as in the year 1973, they were initially recruited as Mazoors and after undergoing the trade test, on 1.8.1977, 2.8.1977 and 11.7.1978 were promoted as Motor Pump Attendant (for short “MPA”). On the contrary, junior persons, as referred to in the Original Application, were directly appointed as Oil Engine Drivers on 27.5.1978, 30.6.1978, 31.1.1979 and 1.2.1979. No doubt, in the year 1996, all the posts were re-designated as Fitter General Mechanic (for short “FGM”), therefore, the private respondents were promoted, whereas alleged junior persons were direct appointees.

He further submitted that w.e.f. 9.8.1999, Assured Career Progression (for short “ACP”) Scheme was introduced and the 1st ACP of

Rs.4000-6000 was given to four persons, namely, Shamsheer Singh, Suraj, Ram Kumar and Ramesh Masih from the aforementioned date after completion of 12 years of service and benefit of 2nd ACP of Rs.5000-8000 after completion of 24 years of service, i.e., in 2002 and 2003, but the benefit of 2nd ACP was denied to the applicants-private respondents as they were only entitled to one ACP owing to the fact that they had got one promotion.

It was argued that the stand of the petitioners has not been appreciated by the CAT as there is no provision in any rule or law for stepping up of a pay scale or grade pay as it carries the element of increase of one or two increments and not the entire pay scale. He has also referred to the order dated 10.3.2015 passed in O.A.No.568/HR/2013 titled as “Vinod Kumar & others Versus Union of India & others”, whereby, identical relief to the similarly situated persons, who were appointed as Mazdoors in the pay scale of Rs.196-232 as revised from time to time and were promoted to the post of Valveman (Semi Skilled) in the pay scale of Rs.210-290, was denied. The benefit of grant of ACP Scheme is personal to the individuals and has no relation to the seniority. In essence for claiming up the stepping up of pay of a senior at par with his junior, three ingredients are required to be satisfied, namely, (i) both the junior and senior officer should belong to the same cadre and the posts in which they have been promoted or appointed are identical and in the same cadre; (ii) the scale of pay of the lower and higher posts in which the junior and senior officers are entitled to draw pay should be identical; and (iii) the anomaly should be directly as a result of the application of FR 22-C. The CAT has erred in not allowing the review as the matter was required to be referred to the larger

bench in view of the existence of anomalous situation, vis-a-vis the judgments of the same Court.

Civil Writ Petition No.10299 of 2015

The applicants in O.A.No.1361/HR/2012 sought the relief from the CAT that their pay be re-fixed by stepping up the pay to the level of the pay of their junior in the pre-revised scale of Rs.5000-8000 prior to 1.1.2006 and in the scale of Rs.9200-34400 w.e.f. 1.1.2006 from the date when the juniors started drawing more pay as compared to them.

Mr.Goyal submitted that the applicants before the CAT were initially recruited as Mazdoors and subsequently promoted as Motor Pump Attendant (for short “MPA”), whereas the persons referred to in the Original Application, i.e., Charanjit Singh, Naresh Kumar, Albert, Ravi Raj and Balwant Singh were appointed as MPA from the dates subsequent to the date of promotion of the applicants as MPA. The names of the applicants figured at 48, 52, 90, 51, 62, 91, 65, whereas persons junior to them were at 98, 97, 96, 95 and 82 respectively. However, since 1995, the post of MPA was re-designated as Fitter General Mechanic (for short “FGM”), the CAT could not have ordered for stepping up of the pay of the applicants as it has not taken into consideration Para 8 of the Scheme, which specifically stated that the grant of ACP shall be purely personal to the employee and shall have no relevance to the seniority position. Thus, there cannot be any additional financial up-gradation on the ground that the junior has got higher pay scale under the aforementioned Scheme. The CAT has also not considered the fact that on completion of 24 years of service, all the private respondents were duly granted 2nd ACP in the pay scale of Rs.4000-6000 to which they were legally entitled to as they were already promoted, thus, the

question of re-fixation of pay did not arise. In essence all the applicants have availed promotion and, therefore, they were not entitled to the grant of 1st ACP and, thus, urged this Court for setting-aside the impugned orders.

Per contra, Mr.Shailendra Sharma, learned counsel representing the private respondents submitted that there is no illegality and perversity in the orders of the CAT. The petitioners have not implemented the orders and have been adopting all possible dilatory tactics in delaying the implementation of the same by filing the review petition. Even the respondents were compelled to file a contempt petition under Section 17 of the Administrative Tribunal Act, 1985. The decision rendered in OA No.568/HR/2013 is not identical to the facts and circumstances of the present case as the ACP Scheme envisages grant of two financial up-gradations on completion of 12 and 24 years of service for a person, who remain stagnated on a post without getting any promotion. The facts of the aforementioned Original Application are not identical to the present one and the said decision does not advance the case of the petitioners and, thus, urged this Court for dismissal of the writ petitions.

We have heard the learned counsel for the parties, appraised the paper books and of the view that there is no force and merit in the submissions of Mr.Goyal. Admittedly, the applicant-private respondents were appointed before their juniors, who were appointed in the years 1978 and 1979 and further all the posts have been re-designated as FGM. Therefore, the applicants before the CAT are entitled to draw the same pay scale as was being drawn by the juniors in view of the fact that the claim was for re-fixation of the pay to bring them at par with their juniors and not for granting of the ACP. There is no parity with the decision rendered in

O.A. No.568/HR/2013 on which reliance had been placed by the petitioners therein as the applicants claimed the higher ACP which is not the case here. Referring to the order dated 2.3.2012 rendered in O.A.No.4178 of 2010 titled as “Arjun Kumar & another Versus Union of India & others” is concerned, suffice it to notice that learned counsel for the petitioners was unable to substantiate that the issue in the two cases was identical.

The CAT has relied upon the decision dated 18.7.2014 rendered in O.A.No.1361/HR/2012, where similarly situated applicants had sought re-fixation of their pay. Respondent Nos.2 and 3 before the CAT were directed to re-calculate the retiral benefits of applicant Nos.2 and 3 as admissible to them after stepping up of their salary.

It could not be controverted that the recommendations of 6th Central Pay Commission were implemented in the year 2009, though w.e.f. 1.1.2006. The private respondents-applicants were in the pay scale of Rs.4000-6000 prior to 1.1.2006 and were placed in the pay scale of Rs.5200-20200 with grade pay of Rs.2400/-, whereas the persons junior to them were placed in the pay scale of Rs.5000-8000 prior to 1.1.2006 and post 1.1.2006 in pay scale of Rs.9300-34800 with grade pay of Rs.4200/-.

The Tribunal in its earlier decision rendered in O.A.No.1361/HR/2012 titled as “Mohinder Singh & others Versus Union of India & others” had directed re-fixation of pay under similar circumstances. Nothing was shown that said decision was ever overturned by this Court.

The argument of Mr.Goyal is wholly devoid of merit and is hereby rejected.

In view of what has been observed above, we do not find any illegality and perversity in the impugned orders. Consequently, by

upholding the orders of the CAT, the writ petitions are dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(AMIT RAWAL)
JUDGE

ramesh
July 19, 2017

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No