



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 7330 OF 2024

Ashwani Dwarakaprasad Gupta,
Aged about 60 years, Occ. Retired,
R/o 149-A, Wardhaman Nagar, Nagpur-440008.

PETITIONERS

- VERSUS -

1. Union of India, Ministry of Mines,
Through its Secretary, Shastri Bhavan,
New Delhi-110 001.
2. Indian Bureau of Mines, Through its
Controller General, Indira Bhavan, Civil Lines,
Nagpur-440001.
3. Pay and Accounts Officer,
Indian Bureau of Mines, Nagpur,
Indira Bhavan, Civil Lines, Nagpur-440001.

RESPONDENTS

Shri A.S. Jaiswal, Senior Advocate with A.A. Sambaray, counsel for the
petitioner.

Shri N.S. Deshpande, DSGI for the respondent-Union of India.
Shri C.J. Dhumane, counsel for the respondent no.3.

CORAM : NITIN W. SAMBRE AND VRUSHALI V. JOSHI, JJ.

DATE : APRIL 28, 2025

ORAL JUDGMENT (PER : NITIN W. SAMBRE, J.)

RULE. Rule returnable forthwith. Heard finally with the consent of
the learned counsel for the parties.

2. The petitioner questions the action on part of the respondent no.3,
in issuing a pension pay order with reduced last Pay of Rs.1,17,400/- on
November 05, 2024 as a result of which the pay level of the Petitioner has
been reduced from Level 12 to 10, which has also resulted in pay cut of
Rs. 1000/- from the Basic pay of his pension, which is claimed to be
contrary to the approved merger of the posts of Senior Technical Assistant

(Geology) [STA (Geo) for short hereinafter] and Assistant Mining Geologist/ Mineral Officer (Intelligence) [AMG/ MO (I), for short hereinafter] which was done on January 15, 2010 and implemented with effect from January 01, 2006, and consequential benefits arising there from. Gratuity of petitioner was withheld even after one month of retirement. The petitioner also claims discrimination, between the persons of the same cadre, by the respondent no.3, by treating the petitioner and persons similarly situated to him, on a different footing, than those who belonged to the same cadre and have superannuated.

3. The facts giving rise to the present petition are as under :

3.1 The Petitioner, a retired employee of the Indian Bureau of Mines (IBM), served for 35 years, retiring as Junior Mining Geologist on October 31, 2024 with a basic pay of Rs.1,19,300/-.

3.2 The petitioner originally joined as a STA (Geo) in 1989. Initially, his pay scale was Rs.5500–9000, which was later upgraded to Rs.6500–10500 in 2003, placing STA (Geo) and its promotional post AMG/MO (I) in the same pay scale. Despite this, the posts were not merged at the time, and promotions were granted with only a Rs.100/- increment as per Department of Personnel & Training [for short, 'DoPT'] clarification.

3.3 That consequent to the 6th Pay Commission, pay scales were replaced with grade pay; STA (Geo) was granted a Grade Pay of Rs.4600/- from January 01, 2006.

3.4 Eventually, after continued representations, the posts of STA (Geo) and AMG/MO (I) were officially merged on January 15, 2010, making the

merged post, the new entry-level position in the hierarchy. The petitioner got financial upgradation under MACP vide Office Order dated May 21, 2010.

3.5 The Petitioner was granted the 1st and 2nd Modified Assured Career Progression (MACP) benefits with Grade Pay of Rs.4800 and Rs.5400 in 2008 and 2009 respectively.

3.6 Initially, the merger of the STA (Geo.) and AMG/MO(I) posts was made effective from January 15, 2010. However, employees, including the Petitioner, sought retrospective merger from January 01, 2006, citing pay parity and the Ministry of Finance Office Memorandum dated November 13, 2009.

3.7 The respondent no.1, following representations and departmental review, accepted this demand and officially revised the merger date to January 01, 2006 which is reflected from the letter dated July 12, 2013. This granted all financial benefits retrospectively.

3.8 The Departmental Screening Committee (DSC) approved 1st ACP in Grade Pay Rs.5400 (PB-3) effective from January 01, 2006 and subsequently 2nd MACP with Grade Pay Rs.6600 from 01.09.2008. These pay fixations were implemented without objection by the Pay & Accounts Office (PAO), IBM/ Respondent No. 3.

3.9 The 3rd MACP was granted after 30 years of service via Office Orders in 2021, with approvals from higher authorities, and again pre-verified by the PAO/respondent no.3. This consistent implementation over 15 years according to the petitioner confirms that the revised merger date

of January 01, 2006 was accepted and acted upon by all Respondents.

3.10 That following a long-standing demand by 73 officers, including the Petitioner, the merger of STA (Geo) with AMG/MO(I) was officially recognized to take effect from January 01, 2006, based on Ministry of Finance's Office Memorandum dated November 13, 2009 and in consultation with DoP&T and Department of Expenditure. This decision was implemented by Respondent No. 1, & was carried out by Respondent No. 2, and fully accepted by Respondent No. 3 (PAO, IBM Nagpur) for over a decade without any objection. Financial upgradations under ACP/MACP were accordingly granted and pension benefits provided.

3.11 However, in 2021, the then incumbent of Respondent No. 3 raised an objection for the first time, wrongly claiming the merger was actually a cadre restructuring, which invalidated the retrospective grant of ACP benefits. This objection contradicted past approvals.

3.12 Despite clarifications by IBM (Respondent No. 2), and even DoPT's reaffirmation in 2023 that it was a **merger** (not restructuring), the PAO continued discriminatory actions.

3.13 It is also claimed that out of 73 officers in the merged cadre of STA(Geo.)/AMG& MO(I), as many as 68 persons have already retired with the benefit of the merger granted to them. One Shri Shailendra Saklani, was granted full benefits. Another officer Shri R.A. Yadav, in respect of whom deductions were made, and who had approached the Chief Commissioner for persons with Disabilities, was also granted full benefits, by withdrawing the order of deductions, made earlier against him. Only

remaining 4 employees, of which the petitioner is one, have been denied the financial upgradation. This according to the petitioner creates discrimination between persons similarly situated in the same cadre and this violates the fundamental rights of the petitioner of being treated identically, with persons in the same cadre.

3.14 It is thus contended that the petitioner's pension was unjustly reduced in November-2024, from Level 12 to Level 10, ignoring the Last Pay Certificate and 15 years of accepted pay structure.

3.15 It is also contended that the respondent no.3, had no authority to refuse to implement the accepted position of merger of posts ordered by the Ministry of Mines and thereby administratively review decisions by his superior and make hostile discrimination between identically situated employees and thereby illegally reduce the basic pay and pension of the petitioner on the last day of his service.

4. Shri N.S. Deshpande, Learned DSGI, for the respondents 1 and 2 admits the merger of the posts of STA (Geo) and AMG /MO(I) with effect from January 01, 2006. He also admits that out of total 68 persons in the merged cadre, 64 persons in the cadre have retired and been granted the benefits. It has also been admitted that the grant of the First, Second ACP/MACP and Third MACP to the persons in the merged cadre was examined by the respondent no.3, who *vide* letter dated January 21, 2021, had intimated that the recommendations for grant of ACP/MACP were in order. It is further stated that in the internal audit of the accounts of the respondent no.1 for the period upto March 31, 2020 no objection

was raised by the internal audit wing of the Ministry of Mines in respect of the ACP/MACP granted to the merged posts. It is also admitted that upon implementation of the recommendations of the 7th Pay Commission, the pay fixation in the 7th CPC scale was also made and all such pay fixation cases of the posts were checked by the respondent no.3 and no anomaly or irregularity was found. It is however contended that the then incumbent of respondent no.3, for the first time *vide* letter dated March 22, 2021 raised an objection regarding grant of First ACP to the officials of the erstwhile post of STA (Geo) on the basis of his understanding that the merger of the post of STA (Geo) with the post of AMG/MO(I), effected from January 01, 2006 amounted to Cadre restructuring, on account of which, clarification issued by the DoPT against point of doubt no.41 was claimed to be attracted by him. It is contended that in spite of a reply dated March 31, 2021, by the respondent no.2, that the bringing together of the post of STA (Geo) with the post of AMG/MO(I), was in fact a merger and not the outcome of Cadre restructuring, the same was not accepted by the respondent no.3, who continued with his stand that it was cadre restructuring and not merger. It was stated that the matter was pending with the DoPT again in view of the clarification sought *vide* the proposal dated January 07, 2025, in response to its stand as indicated in the letter of DoPT dated June 28, 2023.

5. Mr. Charan Dhumne, learned Counsel for the respondent no.3, submits that though the post of STA (Geo) and that of AMG/MO(I) have

been merged with effect from January 01, 2006, however, since the clarification to Doubt 41 was attracted, the same would amount to cadre restructuring on account of which the grant of revised 1st ACP to the petitioner was not permissible and the First ACP granted to the petitioner would have to be counted as an ACP, independently, on account of which the pay grade of the petitioner and persons similarly situated to him, would have to be downgraded and that having been correctly done, the petition is required to be dismissed. ***Chandi Prasad Uniyal /State of Uttarakhand (2012) 8 SCC 417***, is also being relied upon.

6. In rebuttal Shri A.S. Jaiswal, learned Senior Counsel for the petitioner, has pointed out that the bringing together of the posts of STA (Geo) and AMG/MO(I), was in fact a merger, which is a position which stands as an admitted position by the respondents 1 and 2, who are the employers of the petitioner. Not only this he further invites our attention to the letter of DoPT dated June 28, 2023, and specifically para 2(e), thereof, to submit that even the DoPT, has admitted that the same is a merger and not cadre restructuring and therefore the stand which now is been taken by the respondent no.3, to deny the benefits to the petitioner and similarly situated persons, is clearly not tenable. Even the further clarification issued by DoPT dated March 18, 2025 and the subsequent communication issued by the Ministry of Mines dated March 21, 2025 states that the aforesaid letter of DoPT dated June 28, 2023 holds the field where it is admitted that merger of erstwhile posts of STA (Geology) and AMG in IBM does not amount to cadre restructuring but it is a mere merger.

7. Entire controversy, boils down to whether the posts of STA(Geo) and AMG/MO(I) together, was a merger or cadre restructuring. In this regard the stand of the respondent nos. 1 and 2, as noted above indicates that they agree with the stand of the petitioner that the same was merger and not cadre restructuring. The DoPT, also has admitted to this position. The respondent no.3, however insists that it is not a merger but cadre restructuring. In this context, it is necessary to note that the Office Memorandum ('OM' for short) dated November 23, 1987, by the DoPT, speaks about how a Cadre restructuring is to take place. In terms of this OM, the Cadre review for the cadre restructuring is to be carried out by the Cadre Controlling Authority, by setting up Departmental Cadre Review Committees, which Committees are to comprise of representatives of (a) Attached/Subordinate officers concerned, (b) Integrated Finance, (c) The personnel Unit, (d) Concerned Field Organisations and (e) any other member considered necessary by the Cadre Controlling Authority. The O.M. then goes on to delineate the principles governing Cadre reviews in paras 3.3 to 3.9. Here, admittedly, the entire exercise, as indicated by the OM dated November 23, 1987, has never been done. That would indicate to us, that when cadre re-restructuring requires the exercise to be done, in terms of the above O.M, absence of such an exercise, would indicate that what had actually taken place was a simple merger of the post of STA (Geo) in the post of AMG/MO(I), and not cadre restructuring, in view of which the clarification to Doubt no.41, which is being relied upon by the respondent no.3, would not be attracted at all.

8. That there was a merger is also indicated from the Circular dated February 19, 2010, issued by the Chief Administrative Officer, Government of India, Ministry of Mines, which records that the sanctioned strength of STA (Geo) was 68, out of which 18 posts would stand merged with MO(I) and 50 with AMG, thereby increasing the sanctioned strength of MO(I) to 22 and that of AMG to 65, in view of which all the STA(Geo) in IBM were called upon to give their option to merge with MO(I) or AMG, subject to the conditions as stated therein.

9. The letter dated January 15, 2010 by the Deputy Secretary to the Government of India, also records that the Competent Authority after due consideration has approved the merger of the posts of STA (Geo) with AME/MO(I) in Indian Bureau of Mines thereby converting the post of AMG and MO(I) as junior most post in the hierarchy and feeder post for the next promotional post of Junior Mining Geologist and Assistant Mineral Economist (I) respectively, which also indicated that the Government has also accepted it as a merger.

10. In this context, the minutes of the meeting of the Departmental Screening Committee under ACP scheme held on February 12, 2014 for consideration of financial upgradation for AMG/MO(I) in IBM, placed by the petitioner on record, needs to be considered. In this meeting what has been recorded being material, is reproduced as under :

“5. The DSC noted that Senior Technical Assistant (Geology) were initially in the pay scale of Rs.5500-9000 and accordingly on completion of 12 years regular service, employees concerned

were granted 1st ACP in the scale of Rs.6500-10500 (pre-revised) as per ACP Scheme of 9.8.99 and fixation were done as per rules. The pay scale of Rs.5500-9000 of Senior Technical Assistant (Geology) was upgraded (after 5th CPC) to Rs.6500-10500 vide Ministry's letter No.26/3/2001-Mines.III dated 21.10.2003 w.e.f. 1.1.1996. In 6th CPC the Pay Scales of Rs. 6500-10500 and Rs.7450-11500 were merged and placed in GP of Rs.4600 w.e.f. 1.1.2006 in terms of DOPT OM dated 13.11.2009. Consequent to this the 1st ACP granted in the pay scale of Rs. 6500-10500 had been ignored, being in identical GP of Rs.4600, on the analogy of clarification of doubt No.27 (iii) of FAQs issued by DOPT vide file No.35034/3/2008-Estt.(D) dated 1.4.2011. The post of STA(Geology) has been merged with the cadre of Assistant Mining Geologist/Mineral Officer (int.) and re-designated as Assistant Mining Geologist or Mineral Officer (int.) respectively, with effect from 1.1.2006 vide Ministry's letter No.31/65/2009-M.III dated 12.7.2013.

This would clearly indicate that the ACP was not revised but only the benefits of financial upgradation was given to the persons in the merged post, which was done by the Ministry of Mines. In that view of the matter, the contention of the learned Counsel for the respondent no.3, cannot be sustained.

11. The respondent no.3, in its written submissions in this Court dated March 10, 2025, has also in para 3, stated that there was merger of these two posts, it, however in the same breadth, goes on to contradict it, by stating that Clarification to Doubt no.41, would be attracted, making it a cadre restructuring, which in law is not permissible on the principles of approbate and reprobate, as these stands are contrary to each other.

12. In this context the clarification given by the DoPT, in respect to Doubt No.41, which is being relied upon by the respondent no.3, as

quoted in its reply dated March 10, 2015, needs to be considered. A perusal of the clarification, and its language would indicate that it specifically considers a case of Cadre restructuring, in the context of the example cited therein regarding a Cadre consisting of Grades A, B, C & D in ascending order wherein upon restructuring, Grade B is abolished. This would indicate that what is being clarified is the abolishing of a post within a Cadre and not a case of a post outside the Cadre being brought in. Thus in our considered opinion, neither Doubt 41 nor its clarification have any applicability in the present context, when the post of STA (Geo), was initially never a part of the Cadre to which the post of AMG/MO(I) belonged, but was brought in, on account of a merger. The reliance by the respondent no.3, on the clarification to Doubt 41, to deny the benefit to the petitioner and persons similarly situated to him, would therefore clearly be unjustifiable in law and cannot be sustained, as the petitioner and persons similarly situated to him, were entitled to the financial up gradation.

13. What also is to be considered is that the then incumbent of the respondent no.3, itself, has accepted the bringing together of the posts of STA (Geo) and AMG/MO(I), as being a merger, by approving the Pension Pay Order of one Shri Shailendra Saklani, who was identically situated to the petitioner, by granting him full benefits. It is also not disputed that another officer Shri R.A. Yadav, in respect of whom deductions were made, by the same then incumbent of the Respondent no.3, and who had approached the Chief Commissioner for persons with Disabilities, was also granted full benefits, by withdrawing the order of deductions, made

earlier against him, by the same incumbent. The same person, has then taken a contradictory stand, thereafter which is being sought to be justified by relying on the communication of the Chief Controller of Accounts, which ignores the position as discussed above, which again cannot be countenanced, in law, for if the then incumbent of the respondent no.3 was of a particular opinion, he cannot be heard to say that the said opinion regarding a particular position, would be applied, selectively, at his discretion, to individual employees, for consistency of applicability of the service conditions and the grant of benefit, on an even keel, are the very gravamen of the rule of equality and equal treatment, in law.

14. This would further indicate that out of total strength of the Post of AMG/MO(I), which on account of the merger became 68 according to the respondents 1 & 2, as many as 64 persons have already retired, who have already been granted the benefit and it is only four persons including the petitioners, who have been denied the benefit, on the plea that the merger was not in fact a merger but cadre restructuring. Such an action on part of the respondent no.3, cannot be sustained in law, as that denies a similar treatment to the petitioner, and persons similarly situated to him, as that granted to the persons who were identically situated to the petitioner. The action of the respondent no.3, of denying the benefit to the petitioner and persons similarly situated to him, would therefore be violative to the principle of equality as enshrined in Article 14 of the Constitution.

15. Though *Chandi Prasad Uniyal* (supra) is being relied upon, however considering what has been discussed above, we do not see its applicability to the present case.

16. We are therefore of the considered opinion, that the petitioner and persons similarly situated to him, in light of what has been held in *Lt. Col. Suprita Chandel Versus Union of India and Others*, **2024 SCC OnLine SC 3664**, which holds that it is a well settled principle of law that where a citizen aggrieved by an action of the government department has approached the court and obtained a declaration of law in his/her favour, others similarly situated ought to be extended the benefit without the need for them to go to court, are entitled to the benefits as claimed, which have been wrongly denied to them.

17. In view of the above discussion, we allow the petition in terms of prayer clauses A to E, and further direct the respondent to ensure actual disbursement to the petitioner, within a period of two weeks from the date of this judgment.

18. The writ petitions stands disposed of in aforesaid terms. In the facts of the case, there would be no order as to costs.

(VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)