

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
(JUDICIAL)

61/35, Copernicus Marg, New Delhi.
Dated: 12/09/2013

From:

The Principal Registrar
Central Administrative Tribunal
Principal Bench, New Delhi.

To,

- 1 Shri Deepak Verma, counsel for the applicant, CAT Bar New Delhi.
- 2 Shri R.N. Singh, counsel for the respondents, 540-541, Lawyers Ch. Patiala House Court, New Delhi.

O.A. No. 713/2012.....

MA No. 596/2012

All India Asso. of Stat. Investigators & Ors Applicant

Versus

UOI & Ors

Respondent

Sir,

I am directed to forward herewith a copy of Judgment / Orders dated 06/09/2013 passed by this Tribunal in the above mentioned case for information and necessary action, if any.

Please acknowledge the receipt.

Yours faithfully,

Ray
12/09/13

Section Officer, (Judl.)
For Principal Registrar



dm
16/9/13

Sardar Patel Bhawan, Sansad Marg,
New Delhi-110001.

3. The Secretary,
Department of Expenditure,
Ministry of Finance,
North Block,

**Central Administrative Tribunal
Principal Bench**

O.A. No.713/2012
MA No.596/2012

Order reserved on: 12.08.2013

Order pronounced on: 06.09.2013

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. V.N. Gaur, Member (A)

1. All India Association of Statistical Investigators (SSS) through its General Secretary Ajay Saxena, Sardar Patel Bhawan, New Delhi-110001.
2. Gurbax Singh
S/o late Shri Waryam Singh,
11519/9 Subhash Park Extension,
Navin Shahdara,
Delhi-110062.
3. Mitre Lal S/o Shri Sant Lal Verma,
All/59 Dr. Ambedkar Nagar,
Sector-4, New Delhi-110062.
4. Sushil Kohli S/o late Sh. B.S. Kohli,
GH 14/338, Paschim Vihar,
New Delhi-110087. -Applicants

(By Advocate Shri Deepak Verma)

Versus

1. Union of India,
through the Secretary,
Department of Personnel & Training (DOP&T),
North Block, New Delhi-110001.
2. The Secretary,
Ministry of Statistics & Programme Implementation,
Sardar Patel Bhawan, Sansad Marg,
New Delhi-110001.
3. The Secretary,
Department of Expenditure,
Ministry of Finance,
North Block,

New Delhi-110001.

-Respondents

(By Advocate Shri R.N. Singh)

ORDER

Mr. V.N. Gaur, Member (A):

MA No.596/2012, for joining together in single application under Rule 4 (5) (a) of Central Administrative Tribunal (Procedure) Rules, 1987 is allowed in the interest of justice.

2. The applicants in this OA are members of Subordinate Statistical Service (SSS) constituted in the year 2002. Their prayer is to allow 1st and 2nd financial upgradations under the Assured Career Progression Scheme (ACP) of 1999 in the functional grades only along with all consequential benefits. Earlier, the All India Association of Statistical Investigators, National Sample Survey Organisation & Others filed OAs No.2770/2003 and 1845/2004 before this Tribunal on which the Tribunal passed the following order on 27.06.2005:

"In the result, for the foregoing reasons, O.A. No.2770/2003 and 1845/2004 are partly allowed. The action of the respondents to treat four tier structure including two non-functional grades as existing hierarchy for ACP and their decision to adopt such a hierarchy vide letter dated 25.06.2004 is set aside and the matter is remanded back to the respondents to reconsider the entire issue in the light of condition No.13 of the ACP Scheme as well as decision of the High Court of Delhi in F.C. Jain's case (supra). This exercise shall be done with a speaking order to be passed, within a period of six months from the date of receipt of a certified copy of this order. No costs."



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3. Against the decision of the Tribunal the respondents filed Writ Petitions (Civil) before the High Court of Delhi Nos.13845-46/2006 and 13855-57/2006, which were disposed of by the High Court on 20.01.2009 with the following order:

"The matter may be considered by the Anomaly Committee, to which even the respondents have no objection. However at the same time it should be pointed out that directions were given by the Tribunal in June, 2005 for completing the exercise within a period of six months. More than three and half years have passed because of the pendency of these writ petitions. Therefore it would be appropriate to refer the matter to the Anomaly Committee immediately and the Anomaly Committee shall also decide the issue within six months from today. This Anomaly Committee shall also take into consideration the observations made by the Tribunal in the judgment dated 27.6.2006. We are further informed that even the DOPT had agreed with the observations of the Tribunal in the aforesaid judgment with certain anomalies. We expect that the Anomaly Committee shall take into consideration the observations of the DOPT as well."

4. Respondent No.2 constituted a Special Anomaly Committee in compliance of the direction of the High Court of Delhi, which after examining all the relevant issues and the decision of the High Court in **F.C. Jain's** case (CWP 4664/01) made the following recommendations in the meeting held on 09.07.2009:

"(i) In respect of cases for the period after formation of SSS and implementation of MACPs Scheme (12.2.2002 to August 2008), the committee considered the Orders passed by various Tribunals/Courts in the ACP matters of SSS and also provisions/guidelines issued by DOP&T and recommended that ACP in SSS may be considered only in functional grades of hierarchy i.e. inducted in



Rs.5000-8000/- scale, first ACP in 6500-10500/- and second ACP in 8000-13500/- scale.

(ii) Committee also observed that while implementing the above decision another anomaly may arise in respect of persons who have already received ACPs in their existing hierarchy prior to 12.2.2002 as their pay would be less than the persons who will get ACP in functional grades after 12.2.2002. To remove such anomaly, as a onetime measure, it is suggested that pay of those persons who got ACP or deemed to have got ACP prior to 12.02.2003 may be refixed in the functional grade of SSS i.e. 1st ACP in the scale of Rs.6500-10500/- and 2nd ACP in the scale of pay of Rs.8000-13500/- w.e.f. 12.2.2002 ignoring earlier ACPs. This may be accepted by the competent authority in the light of MACP guidelines where MACP in next grade pay has been allowed irrespective of scales in which incumbents were granted ACP earlier."

5. However, after consultation with the Department of Personnel and Training and Department of Expenditure the respondents have issued the order dated 15.09.2011 (impugned) where they have maintained 4 tier structure in the SSS during the period 12.02.2012 to 31.08.2008 for the purpose of granting ACP. In effect the scales of Rs.5500-9000 and Rs.7450-11500 which are non-functional grades will also be counted for the purpose of granting ACP. According to the applicants this is contrary to the orders passed by this Tribunal in OA-2777/2003 and OA-1845/2004 and the direction given by the High Court of Delhi in Writ Petitions (Civil) Nos.13845-46/2006 and 13855-57/2006 vide order dated 20.01.2009.

6. Shri Deepak Verma, learned counsel appearing for the applicants argued that 4-tier structure in the SSS for the

purpose of granting financial upgradation under ACP Scheme was set aside by this Tribunal in OA 2770/2003 and 1845/2004. He also referred to a recent order of a Coordinate Bench of this Tribunal at Bangalore in OA-37/2012 where the applicants, who were similarly placed, have been allowed the benefit of excluding non-functional grade for granting financial upgradation under the ACP Scheme. He further argued that the departmental Anomaly Committee is an expert body and its recommendations cannot be overruled by the respondents. In this regard he relied on the judgment of the High Court of Punjab and Haryana in LPA No.176, 211 of 2005 - **Prem Chand Garg and Ors. V. State of Punjab and Ors.**, 2011 (4) SCT 135 (P&H) where it was held that:

"Tinkering with the recommendations either of the pay Commission or of the Senior Officers' Committee constituted for removal of anomaly would be wholly unwarranted because they are expert body and their recommendations are made after hearing all sides."

7. Learned counsel referred to the practice followed in Department of Revenue [No.A-23011/29/2010 Ad-IIA dated 20.05.2011] and CPWD [OM No.4-111014/4/99-EC.VI dated 27.10.1999] where the financial upgradation is allowed only in functional grades. The incumbents of the SSS, therefore, cannot be discriminated in this respect. The learned counsel also referred to para-13 (B) (ii) of the impugned OM which referred to the manner in which the pay will be fixed after granting financial upgradation. This OM provides for the



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fixation of pay under FR 22 (1)(a) (ii), whereas according to the original ACP Scheme, it is to be regulated under FR 22 (1)(a)(i). This provision of the impugned OM amounts to modifying the Scheme itself which the respondents cannot do. He referred to the judgment of High Court of Delhi in Writ Petition (Civil) No.5195-97/2005 - **Union of India & Ors. v. Kesho Ram & Ors.** where it was held:

"We, therefore, are of the considered view that the aforesaid circular which was subsequently issued by the appellant by way of clarification could have only supplement the provisions of the Scheme and could not have supplant the provisions of the Scheme."

8. Shri R.N. Singh, learned counsel appearing for the respondents submitted that the OA itself was not maintainable, because the OM dated 15.09.2011 (impugned) is a policy decision of the Government which has been taken after due deliberations at all levels, including the Ministries of Personnel and Finance. Pursuant to the issue of the OM dated 15.09.2011 (impugned), the learned counsel pointed out that the respondent No.2 has already issued orders on 25.10.2011 and two orders dated 01.08.2012, granting financial upgradations to more than 600 members of the SSS under ACP Scheme. The applicants have not challenged these orders. In the context of the recommendations of the Anomaly Committee in its meeting held on 09.07,2009, learned counsel drew attention to a subsequent meeting of that Committee held on 22.03.2011 where representatives

from the staff sides were also present. While reiterating its earlier recommendations the Committee stated that:

“Cadre may examine the decision of the first meeting of the committee in consultation with DOP&T and Ministry of Finance.”

The respondents, therefore, followed all the logical steps in compliance of the order of the High Court of Delhi and issued the impugned order dated 15.09.2011. A policy decision to retain 4-tier structure of the SSS taken by the respondents after considering all relevant factors, including implications of implementing the recommendations of the Anomaly Committee in the post 6th CPC scenario and to avoid any further anomaly to be created cannot be questioned.

9. We have considered the rival submissions and note that in OA-2770/2003 this Tribunal conscious of the fact that it was a policy decision had remanded the matter back to the respondents to reconsider the matter in the light of **F.C. Jain** (surpa) and Condition No.13 of the ACP Scheme.

10. While considering the Writ Petitions (Civil) No.3845-46/2006 the High Court of Delhi directed that the matter be referred to the Anomaly Committee, which should decide the issue within six months, taking into consideration the observations made by the Tribunal in its judgment. The Anomaly Committee, as can be seen in the Minutes dated

09.07.2009, extracted above, has recommended that only the functional grade be considered for financial upgradation of the ACP Scheme. This has also been examined by the Department of Personnel and from the copy of the noting dated 30.06.2011 in its internal file No.C-716(46198)/JSP/2011 obtained by the applicant under RTI and annexed to the OA, it can be seen that DOPT had also agreed with the recommendations of the Anomaly Committee. It is in the final order issued on 15.09.2011 that the following has been mentioned that:

“there were difficulties in implementing the recommendations of the Anomaly Committee as some juniors may have got higher pay in their cadre due to ACP granted prior to 12.02.2002 and their seniors in the new service may not have got the same scale in the Cadre, after becoming eligible for ACP. Since, there was no provision for stepping up under ACP rules it was decided to seek the approval of DOP&T and on their advice, D/o Expenditure was requested to hold a tripartite meeting consisting of Department of Expenditure, DOP&T and M/o S & PI to resolve the issue. At this stage Department of Expenditure made following observation:

“The matter has been considered in this department. In this context, it is intimated that this Department is of the view that at the present stage, instead of holding a tripartite meeting, it would be better if the matter is examined by D/o Expenditure on file. Accordingly, administrative ministry is advised to submit a self-contained note on the matter taking into account this Department's advice rendered vide Joint Secretary (Per)'s D.O. letter dated 21.05.2008 and bringing out the impact of the recommendations of Sixth CPC on the matter i.e. the introduction of 2 grade structure for SSS w.e.f. 01.01.2006 and the introduction of MACP Scheme w.e.f. 01.09.2008.”



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11. It is observed that at some stage the question of implementation of ACP Scheme has been linked to the MACP Scheme that has been implemented from 01.09.2008. In our view, this was an unwarranted exercise and as the sequence of events narrated in the impugned order shows, used only as a ruse to avoid taking a decision. For deciding a question relating to ACP for the period 12.02.2002 to 31.08.2008 there was no justification to consider the impact of MACP on granting financial upgradation under ACP. The only issue to be decided was whether the non-functional grade is to be considered for the purpose of ACP or not. This Tribunal has already set aside (vide its order dated 20.01.2009) the order dated 25.06.2004 prescribing a 4-tier structure, including two non-functional grades as existing hierarchy for ACP grade. While reconsidering the entire issue as directed by this Tribunal and the Delhi High Court, the respondents have gone back to the same formulation that was set aside by this Tribunal. This is clearly a violation of that order. Subsequently, the recommendation of the Anomaly Committee was also not accepted mainly on three grounds :

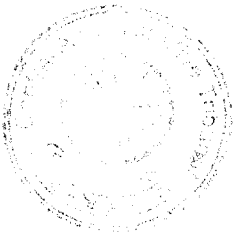
- (a) Seniors may get less pay than some juniors;
- (b) if ACP Scheme was withdrawn and only non-functional scheme was allowed to continue, it may cause hardship to a group of employees;
- (c) 4-Tier structure was finalized on 13.12.2001 in a Tripartite meeting between Ministries of

Finance, DOPT and S&PE, while Delhi High Court order was passed on 18.04.2002. None of these reasons appears convincing as the Anomaly Committee itself had suggested how to deal with situations where a junior may get higher pay than his senior. This should take care of both the reasons (a) and (b) with regard to (c), as already pointed out, this Tribunal and the Delhi High Court in the orders in OA 2770/2003 and W.P.C. No.13845-46/2006, respectively, have explicitly or implicitly rejected the 4-tier structure for ACP purpose. Here we would like to distinguish between hierarchy in the structure of the SSS as per the Service Rules and consideration of scales for ACP purpose. The issue with regard to the policy of having 4-tier structure with the SSS has already been settled vide this Tribunal's order in OA 351/2003. We are concerned with the relevant scales for ACP.

12. The conditions No.7 & 10 of the ACP Scheme provides as follows:

"7. Financial up-gradation under the Scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts without creating new posts for the purpose.

10. Grant of higher pay-scale under the ACP Scheme shall be conditional to the fact that an employee, while accepting the said benefit, shall be deemed to have given his unqualified acceptance for regular promotion on occurrence of vacancy subsequently. In case he refuses to accept the higher post on regular promotion subsequently, he shall be subject to normal debarment for regular promotion as prescribed in the general instructions in this regard."



13. The Scheme, therefore, envisages that the upgradation will be in a scale which is actually the promotion scale as the employee has to give an "unqualified acceptance for regular promotion on occurrence of vacancy subsequently". The grant of non-functional grade, on the other hand, is not a 'promotion'. Here, we are guided by the following observations of Delhi High Court in CWP No.4664/2001 (decided on 18.04.2002) :

"10. It is one thing to say that a person is entitled to a higher scale of pay having regard to the policy decision adopted by the State, but the same has nothing to do with the ACP Scheme, which stand on absolutely different footing.

11. By reason of fitment in the scale of pay, the respondent herein had not been promoted to a higher post or to a higher grade of pay.

12. Para 13 of the ACP Scheme, as referred to hereinbefore, merely excludes its operation only when there exists anytime-bound promotion scheme including in-situ promotion scheme.

13. The scope and purport of both the Schemes are absolutely different whereas in terms of former, the pay scale is revised, which is confined to 50% of the cadre strength; by reason of the ACP Scheme who are stagnated in a particular post or a particular scale of pay is given higher scale of pay.

14. A beneficial scheme, it is trite, should be construed liberally. Unless and until it is found that by reason of the provisions of the ACP Scheme, the other rule would be inapplicable in a case where the benefit like the Scheme in question has been extended and made, the Respondent cannot be deprived thereof."

14. Further, ACP Scheme is not a department specific Scheme. Once adopted it has to be applied in totality and without any deviation as laid down in condition No.13. The Scheme cannot be tailored to suite the specific requirement in any particular department/cadre. It has been shown by the learned counsel for the applicants that in many Central Government Departments, non-functional scales have been excluded from the purview of ACP. In fact, under the Ministry of Finance itself, the Department of Revenue vide No.A-23011/29/2010-Ad.IIA dated 20.05.2011 have issued a "Clarification on 6th CPC replacement pay to the pre-revised scale of pay of Rs.8000-275-13,500 granted on account of financial upgradation under the Assured Career Progression (ACP) Scheme", which is reproduced below:

"4. Further, the benefits of ACPS of August 1999 had been allowed till 31.08.2008 and only functional promotion(s) is/are counted for the purpose of Scheme. Besides, there is no provision for counting 'Non-functional scale' for the purpose of ACP Scheme."

15. Thus, taking all these factors into account, we are of the view that there is no justification for inclusion of non-functional scale in the hierarchy for the purpose of granting financial upgradation under ACP to the cadre of SSS. The ACP Scheme has to be implemented in accordance with OM dated 09.08.1999 by excluding non-functional grade from the hierarchy. The impugned OM dated 15.09.2011 is accordingly set aside and quashed as the same is not in

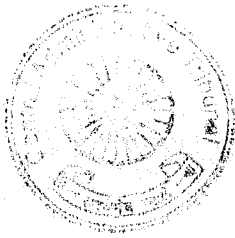
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conformity with the ACP Scheme. The respondents shall issue a fresh order to regulate the ACP for the members of the SSS for the period from 12.02.2002 to 31.08.2008 excluding the non-functional grades and in conformity with ACP Scheme within a period of 3 months and grant financial upgradation and consequent financial benefits to the applicants. The OA is allowed. No costs.

(V.N. Gaur)
Member (A)

(V. Ajay Kumar)
Member (J)

'San.'



File No. 12/09/13
 12/09/13
 Jay
 Genl. Secy. to Govt.
 P.W.D. Deptt. Govt. of India
 New Delhi