

(2021) 10 CAT CK 0050

In the Central Administrative Tribunal

Case No : Original Application No. 1868, 2693 Of 2016

Vijay Kumar Sharma & Others

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 04-10-2021

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19, 22(2)

Citation : (2021) 10 CAT CK 0050

Hon'ble Judges : A.K. Bishnoi, Member (A), R.N. Singh, Member (J)

Bench : Division Bench

Advocate : Sudarshan Rajan, Hanu Bhaskar, Avnish Ahlawat, Avinash Kaur, Amit Anand, M.S. Reen

Final Decision : Allowed

Judgement

R.N. Singh, Member (J)

1. In the aforesaid OAs filed under Section 19 of the Administrative Tribunals Act, 1985, the applicants, who are admittedly similarly situated, have raised a common issue and the reliefs sought by them are also same and similar, therefore, with the consent of the learned counsels for the parties, these matters have been heard together and are being disposed of by this common order.

2. In OA No.1868/2016, the applicants are working on the post of DTP Operators and/or are retired as such from the service of the respondent no.3. In this OA the applicants have challenged the order dated 30.03.2016 (Annexure A-1) which is purported to have been passed in compliance of the directions of this Tribunal contained in order dated 23.12.2015 passed in OA No.4709/2015 (Annexure A-19) i.e. first round of litigation by the applicants.

3. In OA No.2693/2016 when the applicants have approached this Tribunal, have been working on the post of DTP Operators under respondent no.3. Applicant no.2 during the pendency of this OA has expired and his legal heir has come on record under the order of this Tribunal dated 09.08.2017. In this OA the

applicants have challenged order dated 24.06.2016 and 16.05.2016 [Annexure A-1 (Colly)].

4. In both the OAs the applicants have prayed for quashing of the respective impugned orders and a direction to the respondents to grant benefits of 1st, 2nd and 3rd MACP in the grade pay of Rs.4600/-, Rs.4800/- and Rs.5400/- respectively with effect from the respective date(s) from which they have become eligible for grant of such benefits. The applicants, who have retired, have prayed for a direction to the respondents to accord them such benefits and also to recalculate their terminal benefits like pension etc. keeping in view their last pay drawn in the grade pay of Rs.5400/-.

5. The basic precise facts, leading to the present Applications, are that the applicants were initially appointed as Mono/Lino Operators. They were subsequently deployed as DTP Operators and were placed in the pay scale of Rs.4500-7000 though the existing Mono/Lino Operators, junior to the applicants, were granted the ACP benefit in the pay scale of Rs.5000-8000. In view of anomalous situation wherein the juniors to the applicants were getting higher pay scale, the applicants approached the respondents and the respondents granted them the benefit of ACP in the pay scale of Rs.5000-8000. The DTP Operators of a few Government of India Press have been granted the benefits of 1st, 2nd and 3rd MACP in the grade pay of Rs.4600, Rs.4800 and Rs.5400 respectively whereas the respondents afforded such benefits under MACP to the applicants only in the grade pay of Rs.4200/-, Rs.4600/- and Rs.4800/-. Once the grievance of the applicants herein were not redressed, they filed representations before the respondents, which were disposed of vide orders, impugned in the present OA.

6. Mr. Sudarshan Rajan, learned counsel for the applicants in OA No.1868/2016 submits that the issue involved in the present OA is no more res integra in view of the fact that the respondents were directed by this Tribunal vide orders dated 10.10.2013 [Annexure A-21 (Colly.)] in OA No.4008/2012 tiled as I.D. Sharma & Ors vs. Union of India & Ors. to consider their claim and to pass appropriate speaking and reasoned orders. In compliance of the said order dated 10.10.2013 read with Tribunal's order dated 06.05.2014 in CP No.07/2014 in the said OA, the respondents have passed the following order:-

"2. Now in compliance of Hon.CAT (PB), New Delhi Order dated 10-10-2013 in OA No.4008/2012 and order dated 06.05.2014 in CP No.07/2014 in OA No.4008/2012 filed by Sh. I.D. Sharma and Others vs. UOI & Others, the following orders are made:-

(i) Order No.D-31/DI/4830/2012 dated 20.11.2012 is withdrawn;

(ii) Redeployment of the applicants in the above OA from the post of Lino/Mono Operators to the post of Key Board Operators would not be considered as promotion for the purpose of implementation of ACP/MACP; &

(iii) They will be continued to be paid their salary after the MACP is duly taking into account the past services rendered by the applicants.”

7. Mr. Rajan has argued that once the benefit which is sought by the applicants has been accorded by the respondents to similarly situated persons in the case of I.D. Sharma (supra), it was incumbent upon them to extend the same benefit to the applicants herein and/or similarly placed persons, however, the respondents have failed to do so and thus compelling the applicants to approach this Tribunal by way of OA No.4709/2015 and when this Tribunal has directed them to consider the representations of applicants and to pass orders vide order dated 23.12.2015 (Annexure A-19), the respondents have passed the impugned orders without application of mind and without extending the benefits as given to the similarly placed persons in the case of I.D. Sharma (supra). He has further argued that such action and orders of the respondents are contrary to the law laid down by the Hon'ble Apex Court in *Amrit Lal Berry v. Collector of Central Excise, New Delhi & Ors.*[1975 AIR SC 538]. Besides this, the applicants have expressly contended in the pleadings that the DTP Operators working in Govt. of India Press, Minto Road, Govt. of India Press, Maya Puri and Govt. of India Press, Faridabad etc. are all inter-changeable from one Press to another and they are governed by the same set of Recruitment Rules (RRs).

8. Learned counsel for the applicants invited our attention to para-4.24 of the OA wherein it is specifically asserted that the applicants are similarly placed as the applicants in I.D. Sharma (supra), who have already been accorded the benefit of 1st, 2nd and 3rd financial upgradation under MACP in the grade pay of Rs.4600/-, Rs.4800/-and Rs.5400/- respectively.

9. Mr. Rajan submits that one Mr. R.N. Srivastava, who was similarly placed as applicants in I.D. Sharma (supra) as well as the applicants in the present OAs, approached this Tribunal by way of OA No.3160/2012 and the said OA was disposed of by the Tribunal vide order dated 21.04.2016. Aggrieved by the said order dated 21.04.2016 of this Tribunal, Shri R.N. Srivastava approached the Hon'ble High Court of Delhi in W.P.(C) No.10367/2016, which was disposed by the Hon'ble High Court vide order and judgment dated 28.03.2017 (pages 178-182 of paper-book) by considering the order of this Tribunal in I.D. Sharma (supra) as well as in R.N. Srivastava. For the sake of clarity, the said order dated 28.03.2017 is reproduced hereunder:-

“The petitioner - R. N. Srivastava in this writ petition impugns the order dated 21.04.2016 passed by the Principal Bench, Central Administrative Tribunal (Tribunal) disposing of OA No. 3160/2012 with the following directions.

“6. In the order dated 10.10.2013 passed in OA No. 4008 of 2012 (L. D. Sharma and others Vs. Union of India and others), it was clearly observed by the Tribunal that the respondents had filed a short counter affidavit stating that the applicants were entitled for the relief claimed by them in the O.A. In the instant case, the respondents had filed a counter reply resisting the claim for the applicant. Thus,

the submission made by Mr. Sudershan Rajan, the learned counsel appearing for the applicant, before the Hon'ble High Court, that the respondents had conceded the applicant's claim is not borne out by the record. Ms. Avnish Kaur, the learned counsel appearing for the respondents, submitted that no instruction was received by her from respondents to give consent for passing of an order similar to the one passed by the Tribunal in I. D. Sharma & Ors. Vs. UOI & Ors. (supra). Section 22(2) of the Administrative Tribunals Act, 1985, mandates that the Tribunal shall decide every application made to it on a perusal of documents and written representations filed by the parties, and after hearing such oral arguments as may be advanced. Furthermore, if a concession made by a counsel is contrary to the pleadings and/or written representation of the party represented by him/her, the Tribunal is not bound to act upon the same, while deciding the application made to it in accordance with law.

7. However, considering the totality of the facts and circumstances of the case, and keeping in mind the judgment dated 21.08.2015 passed by the Hon'ble High Court of Delhi in W.P. (C) No. 7705 of 2014, I think that the ends of justice would be met, if the O.A. is disposed of with a direction that in the event the applicant makes a representation claiming release of his pensionary/terminal benefits on the basis of his salary with Grade Pay of Rs.5400/-, and payment of interest thereon, the respondents shall consider and take a decision on the applicant's representation by passing a speaking and reasoned order within six months from the date of receipt of the same. The applicant is free to furnish copies of the aforesaid pay slip for the month of September 2014, and the letter dated 6.2.2015 issued by the P.A.O. (Ptg.), Ministry of Urban Development & Poverty Alleviation, New Delhi, to the Pay & Accounts Officer, Central Pension Accounting Office, Ministry of Finance, Government of India, New Delhi, along with his W.P. (C) representation. Ordered accordingly."

2) Pursuant to the aforesaid directions the respondents vide the order dated 19.08.2016 have reiterated that the petitioner would be entitled to third financial upgradation to the Grade Pay 4800 and not Grade Pay 5400 under the Modified Assured Career Progression Scheme (MACP).

3) The petitioner is a retired employee and submits that he is not in a position to again approach the Tribunal. It is submitted that other similarly situated employees have been granted benefit of grade pay of Rs.5400. The Tribunal in paragraph 6 of the impugned order dated 21.04.2016 quoted above, had referred to the OA No. 4008/2012 filed by L. D. Sharma and 10 others, who are working in the same service and are identically placed as the petitioner. They have been granted grade pay of Rs.5400. This is undisputed and not challenged.

4) The order dated 10.10.2013 passed in OA No.4008/2012, in the case of L. D. Sharma and 10 others reads:-

The applicants filed the present OA questioning the impugned order dated 20.11.2012 wherein the respondents have rejected the claim of the applicants

for granting MACP benefits, which was originally granted and withdrawn later.

2. Now, the respondents have filed a short counter affidavit stating that the applicants are entitled for the relief claimed by them.

3. In view of the stand taken by the respondents, the OA is allowed, and the respondents are directed to pass appropriate speaking and reasoned orders on the claim of the applicants within eight weeks from the date of receipt of a copy of this order. No order as to costs.

5) On the last date of hearing, counsel appearing for the Union of India had sought time to obtain instructions whether other employees have been given benefit of grade pay of Rs.5400, whereas the petitioner alone is singled out and given grade pay of Rs.4800.

6) Learned counsel for the respondents states that this is factually correct and that other employees have been granted grade pay of Rs.5400. On merit, it is stated that grade pay of Rs.5400 may not be admissible.

7) We find that even on merits the case, the stand of the respondents is ambiguous and unclear. The petitioner who was originally appointed as a Mono/ Line Operator in 1973 was asked to work as a Key Board Operators (Offset) in 1989. Further there has been merger of pay scale of Rs.5000-8000, Rs. 5500-9000 and Rs.6500-10500. As noticed above, the respondents in response to the OA No.4008/2012 had conceded and accepted the entitlement to L. D. Sharma and 10 others. We would recognise and accept that this acknowledgement was after due deliberation and application of mind.

8) In these circumstances, we would not like to relegate the petitioner in to the another round of litigation, noticing that he has retired and grade pay of Rs.5400 stands granted to all other employees after due consideration by the respondents themselves. The respondents have not withdrawn the said grade pay, inspite of contention raised in the present proceedings. Possibly, they cannot in view of the judicial order.

9) In the aforesaid circumstances, the present writ petition is allowed with the direction that the petitioner would be entitled to the grade pay of Rs.5400, Arrears of pay and pension as well as other benefits, if any, would be paid within a period of three months after a copy of the order is received by the respondents. No costs."

10. In response to the notice(s) of this Tribunal issued in these OAs, the respondents have filed their reply. In response to para-4.24 of the OA, they have not denied that the applicants are similarly placed with the applicants in I.D. Sharma (supra). They have only averred that the benefits have been given to the applicants in I.D. Sharma (supra) as per the advice of the DoP&T and the DoP&T has also advised them to explore the possibilities of filing a review in CAT or Writ Petition (Civil) in Hon'ble High Court against the order of this Tribunal in I.D. Sharma's case (supra). Accordingly, Department of Legal Affairs has been

approached for their advice. Such a reply was filed by the respondents on 01.03.2017.

11. Though in the reply the respondents have prayed for dismissal of the OA, however, it is not disputed by the respondents that the applicants are similarly placed with the applicants in I.D. Sharma (supra). Rather Ms. Avinash Kaur, learned counsel for the respondents has very fairly submitted that the applicants are of course similarly placed with the applicants in I.D. Sharma (supra) as well as R.N. Shrivastava, as referred to hereinabove. She has further added that to her knowledge the order in I.D. Sharma (supra) as well as judgment in R.N. Shrivastava (supra) still holds the field and they have neither been reversed nor set aside.

12. Mr. Amit Anand, learned counsel for the applicants in OA No.2693/2016 has adopted the arguments advanced by Mr. Sudarashan Rajan, learned counsel for the applicants in OA No.1868/2016. However, he has further added that once the issue as to whether the services of the applicants prior to their deployment to the post of DTP Operators is to be taken into consideration for grant of benefits under ACP/MACP has been decided by the respondents themselves in view of the order of this Tribunal in I.D. Sharma (supra) and in view of the decision of the Hon'ble High Court in R.N. Shrivastava (supra), it was incumbent upon the respondents to treat the applicants, who are similarly placed, in the same manner as the applicants in I.D. Sharma (supra) and in view of the decision in R.N. Shrivastava (supra), and the same benefits as accorded to them should have been accorded to these applicants as well.

13. Per contra, Mr. M.S. Reen, appearing for the respondents in OA No.2693/2016 submits that the action of the respondents is in consonance with the provisions of ACP/MACP and clarification issued by the Government, particularly the DOP&T issued from time to time. He further adds that OA No.1868/2016 is barred by limitation. However, he has not been able to show any distinction which may lead to a conclusion that the applicants in OA No.1868/2016 or the other OA are not similar to applicants in I.D. Sharma (supra) or R.N. Shrivastava (supra) under reference. He has also not been able to show as to how the OA is barred by limitation once the respondents themselves have considered the claim of the applicants and rejected vide orders dated 24.06.2016, 16.05.2016 and 30.03.2016 respectively [Annexure A-1 (Colly.)] and the OA has been filed in August, 2016 itself.

14. No other ground has been urged by the learned counsels for the parties.

15. We have heard the learned counsel for the parties, have carefully considered the submissions made on behalf of the respective parties and also perused the pleadings on record.

16. We are of the considered view that when the applicants in present two OAs are admittedly similarly placed as the applicants in I.D. Sharma (supra) and the petitioner in R.N. Shrivastava (supra) and the reliefs sought by the applicants

herein have been extended to the applicants in I.D.Sharma (supra) and petitioner in R.N. Shrivastava (supra) in view of the law settled by the Hon'ble Apex Court in Amrit Lal Berry (supra) and Inder Pal Yadav & Ors. Etc. v. Union of India & Ors., [(1985) 2 SCC 648], the applicants are also entitled for the same benefits.

17. In view of the aforesaid, the impugned orders in the present OAs are quashed. The respondents are directed to treat the applicants in the present OAs in the same manner as they have treated the applicants in the two cases, referred to hereinabove, and accord the benefits of grant of 1st, 2 nd and 3rd financial upgradation in the Grade Pay of Rs.4600/-, Rs.4800/- and Rs.5400/- respectively from the dates from which they have become eligible therefor. In the case of the applicants, who have either retired or expired, the respondents shall also revise the pension/familypension and redraw the pensionary benefits/terminal dues. The respondents shall pass necessary orders in this regard as expeditiously as possible and preferably within six weeks from the date of receipt a copy of this order and they shall release the admissible arrears towards pay, pension and other dues consequential to grant of the upgraded grade pay, upgraded pay/pension within six weeks of passing the relevant order.

18. The present Original Applications are allowed in the aforesaid terms. Pending MAs, if any, also stand disposed of accordingly.

19. However, in the facts and circumstances of these cases, there shall be no order as to costs.