

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00763/2019

DATED THIS THE 29TH DAY OF JANUARY 2020

HON'BLE DR. K.B. SURESH, MEMBER (J)

HON'BLE SHRI CV.SANKAR MEMBER (A)

Rajendra Katti,
Programme Executive (Retd)
aged about 61 years
s/o. Gopala Katti,
No.250-B, 57th Cross,
3rd Block, Rajajinagar,
Bangalore-560010.

...Applicant

(By Advocate Shri.N. Obalappa)

Vs.

1. The Union of India
Represented by its Secretary,
Min. of Information and Broadcasting,
'A' Wing, Shastray Bhavan,
New Delhi – 110 001.

2. The Chief Executive Officer,
Prasar Bharati, I "C" Tower,
Doordarshan Bhavan,
Copernicus Marg,
Mandi House,
New Delhi - 110 001

3. The Director General,
All India Radio,
Akashvani Bhavan,
Parliament Street,
New Delhi – 110 001. (**Cadre Controlling Authority**).

4. The Director General,
Doordarshan,Doordarshan Bhavan,
Copernicus Marg,
Mandi House,
New Delhi - 110 001

5. The Dy. Director General / HOO
Doordarshan, Doordarshan Kendra,
J.C.Nagar, Bangalore- 560 006.

6 The Pay & Accounts Officer,
Doordarshan Kendra,
Swamy Sivananda Salai,
Chennai-5

...Respondents

(By Shri MV.Rao, Senior Panel Counsel)

ORDER (ORAL)

HON'BLE DR K.B.SURESH, MEMBER (J)

1. Heard. The matter is in a very small compass. All these matters (OA.763, 762, 871/2019), are heard together and by common consent OA.No.763/2019 is taken as the leading case.

2. Apparently, the applicant in the leading case was appointed on 6.2.1984. The matrix factually is the same for every one. It appears that they were given across the country an upgraded pay scale on 1/1/1996. The question raised is whether this upgradation will have any impact on their financial stagnation. Following the stagnation rule propounded by the Hon'ble Apex Court, we have also heard in several cases including SH.Anjanappa case that it will not be so. This has nothing to do with the way in which promotional careers and its aspects should be handled by the Government for its employees as it is clear on the dictates of the Hon'ble Apex Court judgement. This has been made clear by the DoPT also in Annexure A-3 which we quote:-

"No.35034/1/97-Estt(D)
Government of India
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel and Training)

North Block, New Delhi 110001
August 9, 1999

OFFICE MEMORANDUM

Subject:- THE ASSURED CAREER PROGRESSION SCHEME FOR THE CENTRAL GOVERNMENT CIVILIAN EMPLOYEES.

*The Fifth Central Pay Commission in its Report has made certain recommendations relating to the Assured Career Progression (ACP) Scheme for the Central Government civilian employees in all Ministries/Departments. The ACP Scheme needs to be viewed as a 'Safety Net' to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. Accordingly, after careful consideration it has been decided by the Government to introduce the ACP Scheme recommended by the Fifth Central Pay Commission with certain **modifications** as indicated hereunder:-*

2. GROUP 'A' CENTRAL SERVICES

2.1 In respect of Group 'A' Central services (Technical/Non-Technical), no financial upgradation under the Scheme is being proposed for the reason that promotion in their case must be earned. Hence, it has been decided that there shall be no benefits under the ACP Scheme for Group 'A' Central services (Technical/Non-Technical). Cadre Controlling Authorities in their case would, however, continue to improve the promotion prospects in organisations/cadres on functional grounds by way of organisational study, cadre review, etc. as per prescribed norms.

3. GROUP 'B', 'C' AND 'D' SERVICES/POSTS AND ISOLATED POSTS IN GROUP 'A', 'B', 'C' AND 'D' CATEGORIES

3.1 While in respect of these categories also promotion shall continue to be duly earned, it is proposed to adopt the ACP Scheme in a modified form to mitigate hardship in cases of acute stagnation either in a cadre or in an isolated post. Keeping in view all relevant factors, it has, therefore, been decided to grant two

financial upgradations [as recommended by the Fifth Central Pay Commission and also in accordance with the Agreed Settlement dated September 11, 1997 (in relation

to Group 'C' and 'D' employees) entered into with the Staff Side of the National Council (JCM)] under the ACP Scheme to Group 'B', 'C' and 'D' employees on completion of 12 years and 24 years (subject to condition no.4 in Annexure-I) of regular service respectively. Isolated posts in Group 'A', 'B', 'C' and 'D' categories which have no promotional avenues shall also qualify for similar benefits on the pattern indicated above. Certain categories of employees such as casual employees (including those with temporary status), ad-hoc and contract employees shall not qualify for benefits under

the aforesaid Scheme. Grant of financial upgradations under the ACP Scheme shall, however, be subject to the conditions mentioned in Annexure-I.

3.2 'Regular Service' for the purpose of the ACP Scheme shall be interpreted to mean the eligibility service counted for regular promotion in terms of relevant Recruitment/Service Rules.

4. Introduction of the ACP Scheme should, however, in no case affect the normal (regular) promotional avenues available on the basis of vacancies. Attempts needed to improve promotion prospects in organisations/cadres on functional grounds by way of organisational study, cadre reviews, etc as per prescribed norms should not be given up on the ground that the ACP Scheme has been introduced.

5. Vacancy based regular promotions, as distinct from financial upgradation under the ACP Scheme, shall continue to be granted after due screening by a regular Departmental Promotion Committee as per relevant rules/guidelines.

6. SCREENING COMMITTEE

6.1 A departmental Screening Committee shall be constituted for the purpose of processing the cases for grant of benefits under the ACP Scheme.

6.2 The composition of the Screening Committee shall be the same as that of the DPC prescribed under the relevant Recruitment/Service Rules for regular promotion to the higher grade to which financial upgradation is to be granted. However, in cases where DPC as per the prescribed rules is headed by the Chairman/Member of the UPSC, the Screening Committee under the ACP Scheme shall, instead, be headed by the Secretary or an officer of equivalent rank of the concerned Ministry/Department. In respect of isolated posts, the composition of the Screening Committee (with modification as noted above, if required) shall be the same as that of the DPC for promotion to analogous grade in that Ministry/Department.

6.3 In order to prevent operation of the ACP Scheme from resulting into undue strain on the administrative machinery, the Screening Committee shall follow a time-schedule and meet twice in a financial year – preferably in the first week of January and July for advance processing of the cases. Accordingly, cases maturing during the first-half (April-September) of a particular financial year for grant of benefits under the ACP Scheme shall be taken up for consideration by the Screening Committee meeting in the first week of January of the previous financial year. Similarly, the Screening Committee meeting in the first week of July of any financial year shall process the cases that would be maturing during the second-half (October-March) of the same financial year. For example, the Screening Committee meeting in the first week of January, 1999 would process the cases that would attain maturity during the period April 1, 1999 to September 30, 1999 and the Screening Committee meeting in the first week of July, 1999 would process the cases that would mature during the period October 1, 1999 to March 31, 2000.

6.4 *To make the Scheme operational, the Cadre Controlling Authorities shall constitute the first Screening Committee of the current financial year within a month from the date of issue of these instructions to consider the cases that have already matured or would be maturing upto March 31, 2000 for grant of benefits under the ACP Scheme. The next Screening Committee shall be constituted as per the time-schedule suggested above.*

7. *Ministries/Departments are advised to explore the possibility of effecting savings so as to minimise the additional financial commitment that introduction of the ACP Scheme may entail.*

8. *The ACP Scheme shall become operational from the date of issue of this Office Memorandum.*

9. *In so far as persons serving in the Indian Audit and Accounts Departments are concerned, these orders issue after consultation with the Comptroller and Auditor General of India.*

10. *The Fifth Central Pay Commission in paragraph 52.15 of its Report has also separately recommended a "Dynamic Assured Career Progression Mechanism" for different streams of doctors. It has been decided that the said recommendation may be considered separately by the administrative Ministry concerned in consultation with the Department of Personnel and Training and the Department of Expenditure.*

11. *Any interpretation/clarification of doubt as to the scope and meaning of the provisions of the ACP Scheme shall be given by the Department of Personnel and Training (Establishment-D).*

12. *All Ministries/Departments may give wide circulation to these instructions for guidance of all concerned and also take immediate steps to implement the Scheme keeping in view the ground situation obtaining in services/cadres/ posts within their administrative jurisdiction;*

13. *Hindi version would follow.*

(K.K. JHA)
Director(Establishment)

To

1. All Ministries/Departments of the Government of India
2. President's Secretariat/Vice President's Secretariat/Prime Minister's Office/Supreme Court/Rajya Sabha Secretariat/Lok Sabha Secretariat/Cabinet Secretariat/UPSC/CVC/C&AG/Central Administrative Tribunal(Principal Bench), New Delhi
3. All attached/subordinate offices of the Ministry of Personnel, Public Grievances and Pensions
4. Secretary, National Commission for Minorities
5. Secretary, National Commission for Scheduled Castes/Scheduled Tribes
6. Secretary, Staff Side, National Council (JCM), 13-C, Ferozeshah Road, New Delhi

7. All Staff Side Members of the National Council (JCM)
8. Establishment (D) Section - 1000 copies

ANNEXURE-I

CONDITIONS FOR GRANT OF BENEFITS UNDER THE ACP SCHEME

1. *The ACP Scheme envisages merely placement in the higher pay-scale/grant of financial benefits (through financial upgradation) only to the Government servant concerned on personal basis and shall, therefore, neither amount to functional/regular promotion nor would require creation of new posts for the purpose;*
2. *The highest pay-scale upto which the financial upgradation under the Scheme shall be available will be Rs.14,300-18,300. Beyond this level, there shall be no financial upgradation and higher posts shall be filled strictly on vacancy based promotions;*
3. *The financial benefits under the ACP Scheme shall be granted from the date of completion of the eligibility period prescribed under the ACP Scheme or from the date of issue of these instructions whichever is later;*
4. *The first financial upgradation under the ACP Scheme shall be allowed after 12 years of regular service and the second upgradation after 12 years of regular service from the date of the first financial upgradation subject to fulfillment of prescribed conditions. In other words, if the first upgradation gets postponed on account of the employee not found fit or due to departmental proceedings, etc this would have consequential effect on the second upgradation which would also get deferred accordingly;*
- 5.1 *Two financial upgradations under the ACP Scheme in the entire Government service career of an employee shall be counted against regular promotions (including in-situ promotion and fast-track promotion availed through limited departmental competitive examination) availed from the grade in which an employee was appointed as a direct recruit. This shall mean that two financial upgradations under the ACP Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee. If an employee has already got one regular promotion, he shall qualify for the second financial upgradation only on completion of 24 years of regular service under the ACP Scheme. In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him;*
- 5.2 *Residency periods (regular service) for grant of benefits under the ACP Scheme shall be counted from the grade in which an employee was appointed as a direct recruit;*
6. *Fulfillment of normal promotion norms (bench-mark, departmental examination, seniority-cum-fitness in the case of Group 'D' employees, etc.) for grant of financial upgradations, performance of such duties as are entrusted to the employees together with retention of old designations, financial upgradations as personal to the incumbent for the stated purposes*

and restriction of the ACP Scheme for financial and certain other benefits (House Building Advance, allotment of Government accommodation, advances, etc) only without conferring any privileges related to higher status (e.g. invitation to ceremonial functions, deputation to higher posts, etc) shall be ensured for grant of benefits under the ACP Scheme;

7. Financial upgradation 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. However, in case of isolated posts, in the absence of defined hierarchical grades, financial upgradation shall be given by the Ministries/Departments concerned in the immediately next higher (standard/common) pay-scales as indicated in Annexure-II which is in keeping with Part-A of the First Schedule annexed to the Notification dated September 30, 1997 of the Ministry of Finance (Department of Expenditure). For instance, incumbents of isolated posts in the pay-scale S-4, as indicated in Annexure-II, will be eligible for the proposed two financial upgradations only to the pay-scales S-5 and S-6. Financial upgradation on a dynamic basis (i.e. without having to create posts in the relevant scales of pay) has been recommended by the Fifth Central Pay Commission only for the incumbents of isolated posts which have no avenues of promotion at all. Since financial upgradations under the Scheme shall be personal to the incumbent of the isolated post, the same shall be filled at its original level (pay-scale) when vacated. Posts which are part of a well-defined cadre shall not qualify for the ACP Scheme on 'dynamic' basis. The ACP benefits in their case shall be granted conforming to the existing hierarchical structure only;

8. The financial upgradation under the ACP Scheme shall be purely personal to the employee and shall have no relevance to his seniority position. As such, there shall be no additional financial upgradation for the senior employee on the ground that the junior employee in the grade has got higher pay-scale under the ACP Scheme;

9. On upgradation under the ACP Scheme, pay of an employee shall be fixed under the provisions of FR 22(l) a(1) subject to a minimum financial benefit of Rs.100/- as per the Department of Personnel and Training Office Memorandum No.1/6/97-Pay.I dated July 5, 1999. The financial benefit allowed under the ACP Scheme shall be final and no pay-fixation benefit shall accrue at the time of regular promotion i.e. posting against a functional post in the higher grade;

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. However, as and when he accepts regular promotion thereafter, he shall become eligible for the second upgradation under the ACP Scheme only after he completes the required eligibility service/period under the ACP Scheme in that higher grade subject to the condition that the period for which he was debarred for regular promotion shall not count for the purpose. For example, if a person has got one financial upgradation after rendering

12 years of regular service and after 2 years therefrom if he refuses regular promotion and is consequently debarred for one year and subsequently he is promoted to the higher grade on regular basis after completion of 15 years (12+2+1) of regular service, he shall be eligible for consideration for the second upgradation under the ACP Scheme only after rendering ten more years in addition to two years of service already rendered by him after the first financial upgradation (2+10) in that higher grade i.e. after 25 years (12+2+1+10) of regular service because the debarment period of one year cannot be taken into account towards the required 12 years of regular service in that higher grade;

11. In the matter of disciplinary/penalty proceedings, grant of benefits under the ACP Scheme shall be subject to rules governing normal promotion. Such cases shall, therefore, be regulated under the provisions of relevant CCS(CCA) Rules, 1965 and instructions thereunder;

12. The proposed ACP Scheme contemplates merely placement on personal basis in the higher pay-scale/grant of financial benefits only and shall not amount to actual/functional promotion of the employees concerned. Since orders regarding reservation in promotion are applicable only in the case of regular promotion, reservation orders/roster shall not apply to the ACP Scheme which shall extend its benefits uniformly to all eligible SC/ST employees also. However, at the time of regular/functional (actual) promotion, the Cadre Controlling Authorities shall ensure that all reservation orders are applied strictly;

13. Existing time-bound promotion schemes, including in-situ promotion scheme, in various Ministries/Departments may, as per choice, continue to be operational for the concerned categories of employees. However, these schemes, shall not run concurrently with the ACP Scheme. The Administrative Ministry/Department -- not the employees -- shall have the option in the matter to choose between the two schemes, i.e. existing time-bound promotion scheme or the ACP Scheme, for various categories of employees. However, in case of switch-over from the existing time-bound promotion scheme to the ACP Scheme, all stipulations (viz. for promotion, redistribution of posts, upgradation involving higher functional duties, etc) made under the former (existing) scheme would cease to be operative. The ACP Scheme shall have to be adopted in its totality;

14. In case of an employee declared surplus in his/her organisation and in case of transfers including unilateral transfer on request, the regular service rendered by him/her in the previous organisation shall be counted along with his/her regular service in his/her new organisation for the purpose of giving financial upgradation under the Scheme; and

15. Subject to Condition No. 4 above, in cases where the employees have already completed 24 years of regular service, with or without a promotion, the second financial upgradation under the scheme shall be granted directly. Further, in order to rationalise unequal level of stagnation, benefit of surplus regular service (not taken into account for the first upgradation under the scheme) shall be given at the subsequent stage (second) of financial upgradation under the ACP Scheme as a one time measure. In other words, in respect of employees who have already rendered more than 12 years but

less than 24 years of regular service, while the first financial upgradation shall be granted immediately, the surplus regular service beyond the first 12 years shall also be counted towards the next 12 years of regular service required for grant of the second financial upgradation and, consequently, they shall be considered for the second financial upgradation also as and when they complete 24 years of regular service without waiting for completion of 12 more years of regular service after the first financial upgradation already granted under the Scheme.

(K.K. JHA)

Director(Establishment)"

3. Apparently, by the rules of non-stagnation the applicant ought to have received 1st ACP on 9.8.1999 which apparently has not been given to him. This is clearly against the rules.

4. On 11.12.2003 the applicant was promoted as Programme Executive. But then since earlier ACP has not been settled this payment issue was also held up. This we hold that on fundamental rules on getting a promotion the applicant is eligible to have his pay refixed in accordance with rules in a beneficial manner as provided.

5. Thereafter since he continued in service he is eligible for the 2nd ACP also on 6.2.2008.

6. A similar situation arose in Delhi which is covered by Annexure A-18(OA.763/2019) of Hon'ble High Court of Delhi which we quote:-

"IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P.(C) 4151/2003

Uoi & Ors. vs Programme Staff Association & Ors on 13 July, 2017

UOI & ORS.

..... Petitioner

*Through : Ms. Radha Lakshmi, proxy counsel for
Mr. Rajeev Sharma, Advocate with
Mr. Surjit Singh, UDC
versus*

PROGRAMME STAFF ASSOCIATION & ORS Respondents

*Through : Mr. Sudesh Verma with
Ms. Nikita Parmar, Advocate for R-1.
Dr. Ashwani Bhardwaj, Advocate for R-2.
Mr. Amandeep Joshi, Advocate for R-3.*

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER
13.07.2017

1. *Proxy counsel appearing for Mr. Rajeev Sharma, counsel for the petitioners states that pursuant to the order dated 13.4.2017, learned counsel has received a communication from Prasar Bharti, Directorate General, All India Radio dated 12.7.2017 to the effect that two ACPs have to be granted to the Programme Executives, as per the instructions of the DOPT. Copies of the two letters dated 12.7.2017 and a letter dated 12.11.2015 are handed over by the counsel for the petitioners and are taken on record, with copies furnished to the counsels for the respondents.*
2. *Learned counsel for the petitioners further clarifies that Condition No.13 annexed to OM dated 9.8.1999 and Clarification No.35 issued in respect of OM dated 18.7.2000, as mentioned in the impugned judgment, shall be given effect to qua the respondents.*
3. *Counsels for the respondents states that they are satisfied with the aforesaid submission. They however request that the payments towards the grant of ACPs may be released in favour of the respondents in a time-bound manner.*
4. *Counsel for the petitioners states that it shall take six months for the payments towards grant of ACPs to be released to the respondents.*

5. On an undertaking given by the petitioners that they shall abide by the timeline noted above for release of the payments due and payable to the respondents towards grant of ACPs in terms of the impugned judgment the present petition is disposed of. File be consigned to the record room.

HIMA KOHLI, J

DEEPA SHARMA, J

JULY 13, 2017"

7. Apparently, this was implemented for those persons by rules of equity and equality, the same benefit would and should avail the applicant also.

8. The applicant claims that on 6.2.2014 he should have been given the 3rd MACP also. In the mean while he retired on 30.4.2018.

9. He has to receive his first ACP benefit on 9.8.1999, the promotion and higher scale of pay on 11.12.2003 and the 2nd benefit of ACP on 6.2.2008. He has got the promotion with higher scale of pay on 11.12.2003 but the other two are yet to be given to him. The anti stagnation measures propounded by the Hon'ble Apex Court relates to only 3 upgradations and the 3 upgradations are covered by it. Therefore, these upgradations now will be visiting the applicant within one month next without interest and thereafter with an interest of 15% as stipulated by the Hon'ble High Court of Karnataka.

10. But then the benefit he seeks for 3rd MACP will not visit him for the simple reason that he had already exhausted

the 3 attempts at career equalization. Therefore, this we will not grant him. Therefore, OA is allowed to the limited extent of granting the benefit on 9.8.1999, 11.12.2003 and 6.2.2008 and rejecting the 3rd MACP claim on 6.2.2014. OA allowed as above. No orders as costs.

(CV.SANKAR)
MEMBER (A)

(DR. K.B. SURESH)
MEMBER (J)

bk

Annexures referred to by the applicant in OA.No.763/2019

Ann-A-1	The pay scales of 4 th CPC to 6 th CPC.
---------	---

Ann-A-2	The 1 st Respondent vide O.M.No310/173/97-B(D) dated:25.02.1999 granting the upgraded scales, (impugned order)
Ann-A-3	DOPT .O.M.No.35034/3/2008-Estt (D) dated 09.08.1999 ACP for 12/24 years of service.
Ann-A-4	DOPT O.M. F No. 35034/1/97-Estt(D) (Vol.IV) dated:10-02-2000.
Ann-A-5	The DOPT clarification No.F-35034/1/97/Estt- D/Vol-IV, dated:18-07-2001 for ACP's after merger of pay scales point No.52
Ann-A-6	The applicant was promoted vide DD Doordarshan Order No.108/2003/S-III dated:29-08-2003. (impugned order)
Ann-A-7	DOPT .O.M.No.35034/3/2008-Estt (D) dated 19.05.2009 MACP for 10/20/30 years of service.
Ann-A-8	Min. of Finance O.M.No.F/1/1/2008-IC dated 13.11.2009 merger of pay scales.
Ann-A-9	DOPT clarification on FAQ dated:09.09.2010
Ann-A-10	Order No.14(3)2010-A (Prog) dated 23.12.2010 granting the 2 nd MACP w.e.f. 01.09.2008. (Impugned order)
Ann-A-11	DOPT ID Note dated:10-07-2013 and 1 st respondent communication dated:03-09-2014, for adjusting the upgraded pay scale.
Ann-A-12	OrderNo.04/04/2012-S-I(B)Vol.01/1278,dated:28-11-13, promotion of PEX regularized. (impugned order)
Ann-A-13	The communication No.05/09/2013-SI(B)/47 dated: 08-01-2015, reply to the Director General Audit.
Ann-A-14	The applicants representation dated:30-11-2016 requesting for 3 rd MACP.
Ann-A-15	Pension calculated Sheet of PPO

Annexure referred to in the reply by the Respondents

Annexure R1: Copy of letter dated 31.5.2018

Annexure R2:Copy of order dated 1.8.2019 CAT, PB, OA. No.2449/2018

Annexure R3: Copy of order dated 13.9.2019 in WP.No.9890/2019 in High Court of Delhi.

Annexure R4: Copy of order dated 1.3.2019 in WP.No.56294-56295/2018 (S-CAT) High Court of Karnataka

Annexure R5: Copy of order dated 1.3.2019 in WP.No.56288-56289/2018 (S-CAT) High Court of Karnataka

Annexure R6: Copy of order dated 13.7.2017 in WP.No.4151/2003 High Court of Delhi.

Ann-A-16	The 3 rd respondent .Order dated:12-10-2017 granting 1 st & 2 nd ACPs .
Ann-A-17	Extract of 5 th CPC recommended pay scales for Programme Executives and Transmission Executives etc.,
Ann-A-18	Order dated:13-07-2017 in WPC 4151/2003 passed by the Hon'ble High Court of New Delhi,
Ann-A-19	This Hon'ble Tribunal Order dated:17-09-2018 in O.A. No.54/2018 in respect of Sri. S.H.Anjanappa, granting 3 rd MACP.

.....

bk.