

**CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH: BANGALORE  
ORIGINAL APPLICATION NO.170/00457/2019  
DATED THIS THE 12<sup>th</sup> DAY OF FEBRUARY, 2020  
HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER  
HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER**

Sreenivasa Murthy N.  
S/o Late T.Narasimha Murthy  
Aged 59 years, working as  
Senior Project Assistant  
ISRO Satellite Centre  
Old Airport Road  
Bengaluru-560 017.  
Residing at No.C-35, C-Block-5  
DOS Housing Colony (Newland)  
8<sup>th</sup> Main Road, Domlur 2<sup>nd</sup> Stage  
Bengaluru-560 071.

....Applicant

(By Advocate Shri A.R.Holla)

Vs.

1. Union of India  
By Secretary  
Department of Space  
Antariksh Bhavan  
New BEL Road  
Bengaluru-560 231.
2. The Secretary  
Department of Personnel & Training  
Central Secretariat  
North Block  
New Delhi-110 001.
3. The Director  
ISRO Satellite Centre  
Old Airport Road  
Vimanapura P.O.  
Bengaluru-560 017.
4. The Senior Administrative Officer (E)  
U R Rao Satellite Centre  
Old Airport Road  
Vimanapura P.O.  
Bengaluru-560 017.

...Respondents

(By Advocate Sri Vishnu Bhat, Sr.PC for CG)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The facts of the case are that the applicant was appointed as Office Clerk 'A' in ISRO Satellite Centre, Bengaluru on 20.12.1982 by order dtd.21.12.1982(Annexure-A1). By order dtd.16.10.2012(Annexure-A2), he was promoted to the post of Assistant on 24.4.2006 and as Senior Assistant on 28.11.2006. Thereafter, he was given the benefit of 2<sup>nd</sup> ACP w.e.f. 20.12.2006 with the Grade Pay of Rs.4800. In the mean time, the Government issued an OM dtd.24/26.12.2009(Annexure-A3) according to which an employee in the Grade Pay of Rs.4800 is eligible to be in the Grade Pay of Rs.5400 after four years from the date of assignment of GP Rs.4800. Accordingly, it was decided to assign the GP Rs.5400 in PB-3 to the Personal Secretary, Project Personal Secretary, Sr.Project Assistant, Asst.Catering Manager & Asst. Security Officer categories who were assigned with GP 5400 on completion of 4 years from the date of assignment to the GP 4800. But the applicant was not given the benefit of GP 5400 on completion of 4 years in GP 4800 i.e. w.e.f. 20.12.2010. In a similar situation, one Sri A.Shivakumar has approached this Tribunal in OA.308/2013 which was allowed on 27.10.2015(Annexure-A4) granting the benefit of GP 5400 after completion of 4 years in GP 4800. The said order was upheld by the Hon'ble High Court of Karnataka by order dtd.2.9.2016 in WP.No.32501/2016(Annexure-A5). The SLP(C).No.34238/2016 filed against the High Court order has been dismissed by the Hon'ble Supreme Court by order dtd.23.2.2017(Annexure-A6). Then the applicant submitted representation on 8.5.2017(Annexure-A7) to the 3<sup>rd</sup> respondent requesting to grant him GP 5400 on completion of 4 years from the date assigning the GP 4800 i.e. from 20.12.2010

in the light of the above orders of the Tribunal, High Court and the Supreme Court. In response to the same, the applicant has been informed by order dtd.5.6.2017(Annexure-A8) that the order of the Tribunal as confirmed by the High Court and Apex Court would be restricted to concerned employees only. Challenging the said order dtd.5.6.2017, the applicant has filed the OA.No.349/2017 which is disposed of on 15.2.2018(Annexure-A9) directing the respondents to examine the validity of relevant OMs as to whether the promotion from the post of Office Clerk-A to Office Clerk-B can be ignored for granting benefits under ACP/MACP schemes. Then the 4<sup>th</sup> respondent has issued an order dtd.1.4.2019(Annexure-A11) not only denying the benefit of pay in PB-3 + GP 5400 w.e.f. 20.12.2010 but holding that the applicant is not eligible for the 2<sup>nd</sup> ACP benefit granted in PB-2 +GP 4800 w.e.f. 20.12.2006 based on the opinion given by the DoPT(2<sup>nd</sup> respondent) that 'since all the posts of Office Clerk-A were not abolished by Dept. of Space(DOS) and these are very much in the hierarchy, the decision of DOS to ignore such promotion made as per the provision of statutory rules does not seem to be in accordance with the provisions of ACP/MACP Scheme'. The applicant submits that the same benefits as were given to the applicant in OA.308/2013 cannot be denied to the applicant based on the view taken by the 2<sup>nd</sup> respondent which is contrary to the law declared by this Tribunal in OA.No.308/2013. On the other hand, the vested right of the applicant to receive the benefits as per the order dtd.26.9.2009 of the Dept. of Space and also in terms of the Court orders cannot be taken away by subsequent clarification issued by the 2<sup>nd</sup> respondent. If the view taken by the 2<sup>nd</sup> respondent is allowed to sustain, then it will have the effect of overruling the decisions of the Court. As such he is entitled to the benefits of ACP/MACP

ignoring his promotion from the post of Office Clerk-A to Office Clerk-B.

Therefore, the applicant has filed the present OA seeking the following relief:

- i. *To quash the Office Order No.020/1(1)/Estt-1/2019/1563 dated 01.04.2019, issued by the respondent No.4, Annexure-A11*
- ii. *Direct the respondents to grant the applicant the benefit of NFSG at PB-3 + Grade Pay of Rs.5400/- w.e.f. 20.12.2010 with all consequential benefits.*

2. The respondents, on the other hand, have submitted in their reply statement that the Dept. of Space vide OM dtd.12.9.2008(Annexure-R2) had revised the scales of pay of its employees. Accordingly, the pre-revised scale of Rs.6500-10500 in respect of Personal Secretary/Sr.Project Assistant was revised to PB-2 with Grade Pay Rs.4800 w.e.f. 1.1.2006. It further stipulates that on completion of 4 years of regular service in the above posts, the employee will be granted the Non-Functional Selection Grade(NFSG) of Grade Pay Rs.5400 in PB-3. Subsequently, the 1<sup>st</sup> respondent issued OM dtd.24/26.12.2009(Annexure-R3) stating that the categories of Personal Secretary, Project Personal Secretary, Sr.Project Assistant, Asst.Catering Manager & Asst.Security Officer have been granted GP 5400 on completion of 4 years from the date of assigning GP 4800 from 1.1.2010. The respondents submit that when one employee Smt.Satyabhama of Vikram Sarabhai Space Centre, DOS, Thiruvananthapuram who had attained the GP 4800 under ACP scheme filed OA.759/2010 before the Ernakulam Bench of this Tribunal for grant of GP 5400 on completion of 4 years in GP 4800 as NFSG, the Tribunal held that completion of 4 years from the date of assigning the GP 4800 makes a Personal Secretary/Project Personal Secretary and so on, eligible for GP 5400 and quashed the OM dtd.24/26.12.2009 wherein it was inadvertently mentioned that GP 5400 may be sanctioned 'on completion of 4 years service from the date of assigning the GP

4800 instead of completion of 4 years service in the particular post. When the respondents filed OP(CAT)No.2171/2012 before the Hon'ble High Court of Kerala against the said order of the Tribunal, the High Court had dismissed the same vide order dtd.9.7.2012. When the Min. of Law & Justice was consulted, it was advised at that time that it is not a fit case to file an appeal before the Hon'ble Supreme Court. Therefore, the department decided to comply with the Tribunal's order and it was implemented as a case specific to the employee and not to be quoted as precedence. The OM dtd.24/26.12.2009 was issued based on the resolution of Govt. of India for granting NFSG of Rs.5400 in PB-3. Grant of GP 4800 by ACP/MACP is a mere placement and financial upgradation and not promotion. Hence, claim for GP 5400(PB3) after completion of 4 years of assigning the GP 4800 under ACP/MACP is against the recommendation of the 6<sup>th</sup> CPC and also contradictory to the ACP/MACP scheme of GOI. As per the provisions of CCS(Revised Pay) Rules 2008, in case of any ambiguity arises concerning the rules, the same must be clarified by the Nodal Department of GOI and thus the OM dtd.13.12.2012 was issued by the Department in full conformity with the provisions contained in the CCS(RP) Rules, 2008 wherein as per Sl.No.II(2) of Section-II of Part-B to the First Schedule to CCS(RP) Rules, 2008, for grant of GP 5400, employees have to complete four years regular service in specific posts with GP 4800 after appointment/promotion thereto. It is nowhere linked with the date of acquiring the GP 4800 through financial upgradation under ACP/MACP scheme.

3. The respondents submit that when two of the retired employees of the 3<sup>rd</sup> respondent's office viz. Sri P.Mallachari and Sri A.Shivakumar have filed OAs.No.136/2014 & 308/2013 before this Tribunal by quoting the case of

Smt.Satyabhama praying to assign GP 5400 and to quash clarificatory OM dtd.13.12.2012 issued by the Department, the Tribunal fully dwelling upon the case of Smt.Satyabhama allowed the OA vide order dtd.27.10.2015(Annexure-R5) directing that 'the applicant is declared as being eligible to being granted the GP 5400 as on the relevant date in 2012 onwards. The WP.No.32524/2016 & 32501/2016 filed before the Hon'ble High Court of Karnataka challenging the orders of this Tribunal were also dismissed by the High Court vide its judgment dtd.12.7.2016 & 2.9.2016(Annexure-R6 & R7). Subsequently, the SLP No.27687/2016 & 34238/2016 filed before the Hon'ble Apex Court were also dismissed vide common order dtd.23.2.2017(Annexure-R8) by the Apex Court. Consequent upon the dismissal of the SLPs by the Apex Court, the Department examined the issue in consultation with the DoPT, Min. of Law & Justice & Dept. of Expenditure and observed that the Tribunal ignored the fact that the matter of NFSG has its origin in Sl.No.II(2) of Section II of Part-B to the First Schedule to CCS(Revised) Pay Rules 2008 which stipulates that for grant of GP 5400, the employees have to complete four years regular service in specific posts with GP 4800 after appointment/promotion thereto and on this basis Dept. of Space issued clarificatory OM dtd.13.12.2012 to the OM dtd.24/26.12.2009 on NFSG. But since there were no further legal remedies available, it was decided to comply with the order dtd.23.2.2017 of the Hon'ble Apex Court by implementing the order of this Tribunal in OAs.No.308/2013 & 136/2014 dtd.27.10.2015 stating that it is specific to Sri A.Shivakumar and Sri P.Mallachari and the same is not to be quoted as precedence for others(Annexure-R9). Subsequently, the applicant submitted a representation dtd.8.5.2017 requesting to grant him GP 5400 on completion of 4 years from the date of assignment of GP 4800 as his case is also

identical to Smt.Satyabhama's case and also Sri A.Shivakumar & Sri P.Mallachari's case. But the respondents have rejected the same on the ground that the decisions in their cases by this Tribunal are case specific and cannot be treated as precedence. Aggrieved by the same, the applicant filed OA.No.349/2017 before this Tribunal. This Tribunal disposed of the OA.349/2017 by passing common order dtd.15.2.2018(Annexure-R10) directing the respondents to examine the matter as to whether the promotion from the post of Office Clerk-A to Office Clerk-B can be ignored for the purpose of grant of financial upgradation under ACP scheme and also the validity of OMs dtd.9.11.2011, 3.4.2012 & 7.8.2012 in the light of the guidelines issued for grant of ACP & MACP schemes in consultation with DoPT & Dept. of Expenditure. Accordingly, the 1<sup>st</sup> respondent has referred the matter to DoPT which in consultation with Dept. of Expenditure have submitted their opinion/clarification dtd.7.12.2018(Annexure-R13) communicating that since all the posts of Office Clerk-A were not abolished and these are very much in the hierarchy, the decision of Dept. of Space to ignore such promotion made as per the provision of statutory recruitment rules does not seem to be in accordance with the provisions of ACP/MACP scheme. It also observed that all the posts of Office Clerk-A were not upgraded as Office Clerk-B, as 15% of sanctioned strength of OC-A are earmarked for promotion of internal erstwhile Group D staff and the same is still existing. Thereafter, the 1<sup>st</sup> respondent issued an order dtd.22/23.1.2019(Annexure-R14) directing the 3<sup>rd</sup> respondent to comply with the Tribunal's order by issuing appropriate speaking order in the light of the DoPT clarification. In the meantime, the applicant after getting common order in OA.No.349/2017 has submitted a letter dtd.13.2.2019(Annexure-R15) to the 3<sup>rd</sup>

respondent with a prayer to restore the status-quo in his matter. However, the 3<sup>rd</sup> respondent has issued an office order dtd.1.4.2019(Annexure-R16) communicating that in terms of clarification of the DoPT dtd.7.12.2018, the applicant is not eligible for the 2<sup>nd</sup> ACP granted in PB-2 with GP 4800 w.e.f. 20.12.2006. The applicant was not promoted to the post of Senior Project Assistant with GP.4800 on regular basis to get GP.5400 after 4 years. However, he was promoted to the said post only on 1.4.2014 and is eligible for grant of GP 5400 in PB-3 w.e.f. 1.4.2018 but not from the date of 20.12.2010 as prayed by him. But the applicant is presently drawing GP 5400 which he got through 3<sup>rd</sup> MACP erroneously w.e.f. 20.12.2012. Hence, the prayer of the applicant in this OA is devoid of any merit and the OA is liable to be dismissed.

5. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. The applicant has filed written arguments note. There are two streams of decisions in relation to the facts of this application. The first one relates to the fact whether the persons who have been given the Grade Pay of Rs.4800 based on their eligibility under ACP/MACP can be given the NFSG of Rs.5400 after completion of 4 years from the date of assigning of Grade Pay of Rs.4800 or not. As evidenced by this Tribunal's order in OA.No.308/2013 dtd.27.10.2015 which was upheld by the Hon'ble High Court of Karnataka in WP.No.32501/2016(S-CAT) dtd.2.9.2016 and finally concretized by the Hon'ble Apex Court order in SLP(C).No.34238/2016 dtd.23.2.2017, there is no dispute relating to the fact that whether a person is promoted to the Grade Pay of Rs.4800 by way of regular promotion or by way of ACP/MACP, he will be eligible to get NFSG in GP 5400 after 4 years of getting the Grade Pay of



Rs.4800. This issue is no longer in dispute and in any number of other cases also the same position has been accepted.

6. However, the issue in this application is different because of the earlier order passed by this Tribunal in OA.No.349/2017 wherein taking note of various promotions given to the applicant herein, this Tribunal ordered for confirmation whether the Dept. of Space OM dtd.9.11.2011 in which the promotions from the post of Office Clerk-A to Office Clerk-B was ordered to be ignored for the purpose of granting financial upgradation under ACP/MACP was in line with the guidelines issued for granting of ACP/MACP schemes. This Tribunal in that case has ordered the Department of Personnel & Training(DoPT) in consultation with the Department of Expenditure to examine the validity of the OMs issued by the Dept. of Space dtd.9.11.2011, 3.4.2012 & 7.8.2012. This Tribunal has also ordered that based on the decision taken by the DoP&T on the grant of financial upgradation allowed to the applicant under the ACP, the applicant shall be entitled for the GP 5400 in PB-3 on completion of 4 years of the regular service from the date of assignment of GP 4800. Based on which, the respondents have obtained the clarification from the DoPT and passed Annexure-A11 order wherein the applicant has been found to be not eligible for the 2<sup>nd</sup> ACP granted w.e.f. 20.12.2006. In other words, instead of going by the earlier decision in OA.No.308/2013 etc., and granting him the GP 5400 w.e.f. 2010 even the 2<sup>nd</sup> ACP granted w.e.f. 20.12.2006 is sought to be cancelled now. Even though we do appreciate the fact that the issue relating to the grant of GP 5400 after 4 years of service in the GP 4800 is a settled issue, based on the facts of this particular application and the decisions of this Tribunal in OA.No.349/2017 which has been strictly followed by the respondents, we find no ground to accept the contentions

of the applicant. The applicant himself seems to have requested the respondents to at least maintain the status-quo vide his letter at Annexure-R15. However, since the above benefits have already been extended to the applicant since 2006 and the said orders have been passed without any misrepresentation or involvement of the applicant, it will not be fair to deny him upgradations already granted even though erroneously. In fact the Dept. of Space itself had interpreted the issue in a particular manner which led the people in the cadre of the applicant to believe that they are entitled for certain upgradations ignoring certain mergers and promotions. This is not due to the fault of the applicant and therefore to punish by revising whatever has already been granted to him for more than five years is also impermissible as per the Hon'ble Apex Court judgment in *Rafiq Masih(White Washer)*'s case. Therefore, the respondents are directed not to disturb the orders already issued in this regard with respect to the upgradations granted to the applicant.

7. The OA is disposed of with the above. No costs.

(C.V.SANKAR)  
MEMBER (A)

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

/ps/

**Annexures referred to by the applicant in OA.No.170/00457/2019**

Annexure-A1: Order dtd.21.12.1982  
Annexure-A2: Order dtd.16.10.2012  
Annexure-A3: Order dtd.26.12.2009  
Annexure-A4: Order dtd.27.10.2015

Annexure-A5: Order dtd.2.9.2016 in WP.32501/2016  
Annexure-A6: Order dtd.23.2.2017 in SLP(C ).No.34238/2016  
Annexure-A7: Representation dtd.8.5.2017  
Annexure-A8: Order dtd.5.6.2017  
Annexure-A9: Order dtd.15.2.2018 in OA.349/2017 & connected cases  
Annexure-A10: Order in MA.514/2018 & connected cases  
Annexure-A11: Order dtd.1.4.2019

**Annexures with reply statement:**

Annexure-R1: ACP Scheme vide OM dtd.9.8.1999  
Annexure-R2: Revised pay scale of employees vide DOS OM dtd.12.9.2008  
Annexure-R3: DOS OM dtd.24/26.12.2009  
Annexure-R4: DOS clarificatory OM dtd.13.12.2012  
Annexure-R5: OA.No.136/14 & 308/13 vide its order 27.10.2015  
Annexure-R6: WP No.32524/16 vide its order dtd.12.7.2016  
Annexure-R7: WP No.32501/16 vide its order dtd.2.9.2016  
Annexure-R8: SLP (C ).27687/2016 vide its order dtd.23.2.2017  
Annexure-R9: OM dtd.24.4.2017 issued by respondent organisation  
Annexure-R10: Hon'ble CAT common order dtd.15.2.2018 in OA No.334/17 a/w 335/17,  
340/17, 342/17 & 349/2017  
Annexure-R11: DOS letter dtd.18.6.2018 to DoPT  
Annexure-R12: DOS letter dtd.12.9.2018 to DoPT  
Annexure-R13: DoPT clarification diary dtd.7.12.2018  
Annexure-R14: DOS order dtd.22/23.1.2019  
Annexure-R15: Applicant letter dtd.13.2.2019  
Annexure-R16: Office order dtd.1.4.2019

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