



**CENTRAL ADMINISTRATIVE TRIBUNAL
Chandigarh BENCH**

OA No. 060/716/2017

Page | 1

Reserved on: 16.01.2020
Pronounced on: 11.03.2020

Hon'ble Mr. Sanjeev Kaushik, Member (J)
Hon'ble Mr. Mohd. Jamshed, Member (A)

1. Subhkaran Singh, Aged 64 years, S/o S. Teja Singh, Assistant Artist (Retired), Central Ground Water Board, Sector 27, Chandigarh R/o House No. 56, College Colony, Sector 11, Ward No. 9, Dera Bassi, District SAS Nagar, Mohali, Punjab.
2. K.M. Meena, Aged 65 years S/o S. Kazor Mal Meena, Assistant Artist (Retired), Central Ground Water Board, Faridabad, R/o Village and Post Office Kukas, Tehsil Amber, District Jaipur – 302028 (Rajasthan).

...Applicants

(By Advocate: Mr. R. K. Sharma)

Versus

1. Union of India through Secretary to the Government of India, Ministry of Water Resources, River Development & Ganga Rejuvenation, Shram Shakti Bhawan, Rafi Marg, New Delhi.
2. The Chairman, Central Ground Water Board, Government of India, Ministry of Water Resources, River Department & Ganga Rejuvenation, Central Ground Water Board, NH-IV, Faridabad.
3. Director, Administration, Government of India, Ministry of Water Resources, River Department & Ganga Rejuvenation, Central Ground Water Board, NH-IV, Faridabad.



4. Regional Director, Government of India, Ministry of Water Resources, River Department & Ganga Rejuvenation, Central Ground Water Board, NWR Bhujal Bhawan, Plot No. 3B, Sector 27A, Chandigarh.

Page | 2

5. Regional Director, Western Region, Western Region, 6-A, Jhalana Doongri, Jaipur-302004. 6-A, Jhalana Doongri, Jaipur-302004.

...Respondents

(By Advocate: Mr. Vinod K. Arya)

ORDER

Mohd. Jamshed, Member (A):-

The applicant No. 01 and applicant No. 02 joined Central Ground Water Board (CGWB) as Draftsman Grade-II on 30.10.1975 and 21.09.1974, respectively. Subsequently they got their promotion as Draftsmen Grade-I, Chief Draftsman, Assistant Artist and retired from service on 31.12.2012 and 31.10.2011 respectively. The applicants are aggrieved by the fact that they were granted 3rd MACP in grade pay of Rs. 4800 w.e.f. 01.09.2008 in the pay band of Rs. 9300-34800 whereas they were entitled to 2nd ACP in the grade pay of Rs. 5400 and 3rd MACP in the Grade pay of Rs. 6600. The facts of the case as indicated in the OA are that the applicants joined



as Draftsmen Grade-II and subsequently were promoted to Grade-I. Both the applicants were promoted as Chief Draftsmen on 12.01.1996 and 30.06.1986 in the pay scale of Rs. 1600-2660. Later on in view of the judgment passed by this Tribunal in OA No. 441/2006 filed by All India Central Ground Water Board Employees Association, the benefit of revision of pay scale was made effective to the entire Draftsman category. As a result of this upgradation, the pay scale of Draftsmen Grade-I and Chief Draftsman became identical. With the implementation of the 5th CPC, the pay scales of Draftsman Grade-III, Grade -II and Grade-I were further upgraded. With this upgradation, promotional post of Chief Draftsmen was placed in Rs. 5000-8000, whereas feeder post of Draftsman Grade-I got upgraded to the pay scale of Rs. 5500-9000. With these changes and upgradation the pay scale of promotional post of Chief Draftsman i.e. Assistant Artist became identical to the feeder post in the pay scale of Rs. 6500-10500.

2. Applicant No. 02 was promoted to the post of Assistant Artist in the pay scale of Rs. 6500-



10500 w.e.f. 13.11.2003 and applicant No. 01 was promoted to Assistant Artist w.e.f. 04.06.2008. The applicants continued to make representation for revision of pay scale of the post of Assistant Artist but no action was taken by the respondents till their retirement. The applicants have also submitted that the respondents vide their letter dated 19/24.09.2001 had indicated that the proposal of the Board for upgradation of the pay scale of the post of Chief Draftsman in Central Ground Water Board has been considered in consultation with the Ministry of Finance and it has been agreed to upgrade the pay of the post of Chief Draftsman from the existing scale of pay of Rs. 5000-8000 to Rs. 6500-10500 w.e.f. 01.01.1996. The Central Ground Water Board was advised by the same letter to make amendment in the Recruitment Rules urgently. However, no action seems to have been taken by the Board in this connection. In the meanwhile both the applicants got promoted from Draftsman Grade-II to Draftsman Grade-I. Both the applicants further got promotion from Draftsman Grade-I to Chief Draftsman and subsequently promoted to



Assistant Artist. However, according to the applicants, they got three promotions but in the same or lower scale due to merger. The ACP scheme was introduced by the Government w.e.f. 09.08.1999 but no benefit of ACP was granted to the applicants as according to the respondents they had got two promotions. However, they were granted 3rd upgradation in PB-2 with grade pay of Rs. 4800 after revision of the pay scale w.e.f. 01.01.2006 under MACP w.e.f. 01.09.2008. The grievance of the applicants is that the persons junior to the applicants got 3rd MACP in PB-2 with grade pay of Rs. 5400 w.e.f. 01.09.2008 whereas the applicants got the 3rd MACP in PB-2 with grade pay of Rs. 4800 and subsequently retired.

3. The respondent No. 02 recommended this anomaly to the appropriate forum. In view of the recommendation made by the respondent No. 02 vide letter dated 30.09.2013 and 22.10.2014 respondent No. 01 vide letter dated 19.03.2015 merged the post of Assistant Artist and Chief Draftsman in the revised scale of PB-2 Rs. 9300-34800 with grade pay of Rs. 4600 with immediate effect with the approval of the Government. The



applicants submit that instead of implementing it with immediate effect i.e. from 19.03.2015 this should have been done retrospectively w.e.f. 01.01.1996. Subsequent representations made by the applicants dated 20.01.2017 have been considered and rejected by the respondent No. 02 vide letter dated 24.03.2017. Aggrieved by this action, the applicant has sought the following relief(s):-

“(i) Quash office order No. 187 of 2015 dated 19 March, 2015, Copy Annexure A-1, whereby instead of merging/re-designating the post of Assistant Artist and Chief Draftsman w.e.f. 01.01.1996 from the date of the pay scales of both the posts became identical it has been re-designated with effect from 19.03.2015 depriving the applicants, who are only two incumbents effected by this prospective merger in the matter of ACP/MACP.

(ii) Quash Order No. 3-1501/2005-Sci.Estt. Vol. II/1963 dated 24.03.2017 qua applicant No. 1, copy Annexure A-2, and Order No. 3-1501/2005-Sci.Estt. Vol. II/1964 dated 24.03.2017 qua applicant No. 2, copy Annexure A-3, whereby their representations dated 20.01.2017 and 31.12.2016 against order dated 19.03.2015 challenging the merger of cadre of chief Draughtsman and Assistant Artist from retrospective date as required vide DOPT Office Memorandum No. AB-14017/61/2008 Estt. ® dated 23.03.2009 have been rejected.

(iii) Issue directions to the respondents to reconsider the claim of the applicants for restoration of re-designation/merger of the post of Assistant Artist and Chief Draughtsman and placing them in the grade pay of Rs. 4600/- in terms of instructions as contained in office letter dated 19.09.2001 and to reconsider claim



of the applicants for grant of financial upgradations in the Grade Pay of Rs. 5400/- as second ACP and Rs. 6600/- as third MACP with all consequential benefits including arrears of pay and allowances and revised retiral benefits.”

Page | 7

4. The relief sought is for quashing of the office order dated 19.03.2015 as the same is effective from 19.03.2015 and not from 01.01.1996 as per the applicants. They also seek setting aside of rejection of their representations. It has been prayed that direction should be issued for restoration of re-designation/merger of the post of Assistant Artist and Chief Draftsman and placing them in the grade pay of Rs. 4600.

5. The respondents in their counter affidavit opposed the OA stating that both the applicants have been rightly promoted as per the Recruitment Rules. The eligibility of both the applicants has been examined from the date of their induction in the regular service. The post of Draftsman-Grade-II and Draftsman Grade-I have been merged and re-designated as Draftsman in the grade pay of Rs. 4200. The promotions of both the applicants from Draftsman Grade-II to Draftsman Grade-I have been ignored for the purpose of grant of MACP. Further, the promotion of the applicants to the



post of Chief Draftsman in the grade pay of Rs. 4600/- have been counted as their first financial upgradation for the purpose of MACP. In terms of DOP&T's OM No. 20020/4/2010-Estt. (D) dated 13.09.2012, merger of pay scales of the post has been made effective w.e.f. 13.09.2006 and promotions in the merged grade took place till 29.08.2008 and thus the promotions earned between 01.01.2006 to 29.08.2008 were to be protected as appointment/promotions are made as per the provisions of statutory Recruitment Rules applicable to the post/grade. In case of the applicants, their promotion in the same grade pay took place prior to 29.08.2008. Their promotion will be counted for the purpose of MACP. Thus, their promotions to the post of Assistant Artist has been counted as second financial upgradation and on completion of 30 years service they have been granted 3rd financial upgradation under MACP in PB-2 with grade pay of Rs. 4800/- w.e.f. 01.09.2008. As far as the financial upgradation granted to the juniors of the applicants is concerned, it is stated by the respondents that the applicants cannot be granted the same due to the



reason that the applicants were promoted from the post of Chief Draftsmen to Assistant Artist and the benefit of pay fixation was granted in the post of Assistant Artist whereas their juniors were not promoted to the post of Assistant Artist but they have completed 20 years and 30 years service on 01.09.2008, in the regular grade at the time of MACP consideration and, therefore, they were granted 2nd and 3rd financial upgradation as per provisions. The respondents submit that the representation made by the applicants have been duly considered and their claim has been rejected vide order dated 24.03.2017.

6. We heard Mr. R. K. Sharma, learned counsel for the applicant and Mr. Vinod K. Arya, learned counsel for the respondents.

7. Vide order dated 11.04.2019, the Tribunal made certain observations and learned counsel for the respondents sought time to seek instructions in this regard from the Department. These instructions dated 21.05.2019 have also been submitted. The applicant No. 01 and applicant No. 02 joined Central Ground Water Board as



Draftsman Grade-II w.e.f. 30.10.1975 and 21.09.1974, respectively. Subsequently, they got their promotion as Draftsmen Grade-I in the pay scale of Rs. 5500-9000/- on 05.08.1981 and 09.06.1981. Thereafter, they were promoted to the post of Chief Draftsman in the pay scale of Rs. 6500-10500 on 12.06.1996 and Assistant Artist in the same pay scale i.e. Rs. 6500-10500 on 04.06.2008 and 14.11.2003 and retired from service on 31.12.2012 and 31.10.2011 respectively. The Central Ground Water Board sent the proposal for upgradation of the pay scale of the post of Chief Draftsmen in the Board. Vide letter dated 19/24.09.2001 it was agreed to upgrade the pay scale of the post of Chief Draftsman from the existing pay scale of 5000-8000 to Rs. 6500-10500 w.e.f. 01.01.1996. the letter dated 19/24.09.2001, reads as under:-

“Sub: Upgradation of the pay scales of Chief Draftsman and Assistant Artist in Central Ground Water Board.

Sir,

I am directed to refer to the Board's letter No. 14-108/97-Sci (Estt) dated 29.3.2001 on the subject mentioned above and to say that the proposal of the Board for upgradation of the pay scale of the post of Chief Draftsman in the Central Ground Water Board has been considered in consultation with the Ministry of Finance (Department of Expenditure) and it has been agreed to upgrade the scale of pay of the post of chief Draftsman in CGWB from the



existing scale of pay of Rs. 5000-8000 to Rs. 6500-10500 with effect from 1st January, 1996. The post of Chief Draftsman and Assistant Artist will form feeder grades for promotion to the post of Artist in the pay scale of Rs. 8000-13500.

The Board is accordingly advised to send proposal for amendment of Recruitment Rules for these posts urgently."

Page | 11

8. This was not the order but vide this letter it was agreed to upgrade the scale of pay and the Board was advised to send proposal for amendment of Recruitment Rules for these posts urgently. However, it appears that no further action was taken for amending the rules and implementing this proposal. After implementation of the 6th CPC, the pay scales i.e. Rs. 5000-8000 and Rs. 5500-9000 were merged in PB-2 in corresponding pay scale or Rs. 9300-34800 with grade pay of Rs. 4200/-. In terms of DOP&T OM dated 23.03.2009, the post of Assistant Artist and Chief Draftsman which were in the same grade in Central Ground Water Board were merged and placed in the revised scale of PB-2 Rs. 9300-34800 with grade pay of Rs. 4600/-. These were re-designated as Chief Draftsman. It has also been confirmed by the respondents that both the applicants have prayed for grant of ACP in grade



pay of Rs. 5400 and 3rd MACP in Pay Band of Rs. 6600/-. However, since both the applicants had already been granted two promotions before ACP, the benefit of this claim was not granted to them. The merger of Draftsman Grade – I and Draftsman Grade–II w.e.f. 01.01.2006 cannot be taken as eligibility for second ACP in the grade pay of Rs. 5400/-. The benefit of 3rd MACP which was applicable to both the applicants has been granted to them. The respondents have taken action in terms of the DOP&T's OM dated 19.05.2009, specifically clause – 8, which reads as under:-

“Promotions earned in the post carrying same grade pay in the promotional hierarchy as per Recruitment Rules shall be counted for the purpose of MACPs. On completion of 30 years service they have been granted 3rd financial up-gradation under MACP in PB-2 with Grade Pay 4800/- w.e.f. 1.9.2008.”

9. Another plea of the applicant is with regard to their juniors who were granted financial upgradation. The applicants were promoted from the post of Chief Draftsmen to Assistant Artist and the benefit of pay fixation was granted in the post of Assistant Artist whereas their juniors were not promoted to the post of Assistant Artist but as they have completed 20 and 30 years on 01.09.2008 in the regular grade and as such they were granted



2nd and 3rd financial upgradation as per MACP provisions. Thus, the contention of the applicants is not comparable with that of their juniors. Based on their representation, however, the respondents refereed their matter to the Ministry seeking clarification not only with regard to the applicants plea for upgraded grade pay but also seeking clarification for the juniors who have been granted grade pay of Rs. 5400/-. Thus this anomaly was also referred to the Ministry. The Ministry in turn vide their letter No. 25/19/2013-CGWB dated 25.11.2014 was informed that the DOP&T has opined as under:-

Page | 13

“In terms of this Department’s OM No. 20020/4/2010-Estt. (D) dated 13.09.2012, merger of pay scale(s) of the post has been made effective w.e.f. 13.09.2006 and promotions in the merged grade took place till 29.08.2008. it was also prescribed in OM ibid that the promotion earned between 01.01.2006 to 29.08.2008 will be protected as appointment/promotions are made as per the provisions of statutory Recruitment Rules applicable to the post/grade. Therefore, financial up-gradations under ACP/MACP Schemes cannot be granted in the pay scale higher than what is admissible on promotion.

Further, para 5 of MACPs provides for ignoring of promotions earned/up gradations granted under ACP Scheme in the past to those grades which now carry the same grade pay due to merger to pay scales/up-gradations of post as a part of this 6th CPC recommendations. Guidelines with regards to grant of financial up-gradations under MACPs, including that of para 5 of Annexure-I of MACPs with regards to ignoring of post



promotions/ACPs granted in the pre-revised scales which are now merged in the same GP are effective from 01.09.2008 only.”

10. In view of the above mentioned, it is obvious that the applicants who retired way back in the year 2011 and 2012 had been granted the benefit of 3rd MACP. They cannot be compared with their juniors in view of the promotions that took place over a period of time. Their representations regarding this anomaly were duly referred and clarifications have been obtained. The relief sought by the applicants is in terms of quashing of order dated 19.03.2015, which is a policy letter issued by the respondents for implementation of the policy w.e.f. 19.03.2015. This issuance of policy directives after due diligence is entirely the prerogative of the administrative department and the executives. These matters are best left to the administrators and the executives and the role of the Tribunal and Courts is limited for their review and intervention. This has also been clarified in the Judgment of Hon'ble Apex Court in **Union of India & Anr. Vs. P.V. Hariharan & Anr.** decided on 12.03.1997, the operative portion of which

reads as under:-



“Before parting with appeal, we feel impelled to make a few observations. Over the past few weeks, we have come across several matters decided by Administrative Tribunals on the question of pay scales. We have noticed that quite often the Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government which normally acts on the recommendations of a pay Commission. Change of Pay scale of a category has cascading effect. Several other categories similarly situated, as well as those situated above the below, put forward their claims on the basis of such change. The Tribunal should realise that interfering with the prescribed pay scales is a serious matter. the pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of "equal pay for equal work" is all being mis- understood and mis-applied, freely revising and enhancing the pay scales across the board. We hope and trust that the Tribunals will exercise due restraint in the matter.”

Page | 15

11. In view of the above, we do not find any merit in the OA and the same is, accordingly, dismissed. Pending MAs, if any, shall stand disposed of. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Sanjeev Kaushik)
Member (J)

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