

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

RA No. 03 of 2019 (Arises out of OA No. 898/2015 – disposed of on 18.12.2018)

Present: **Hon'ble Mr. Gokul Chandra Pati, Member (A)**
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

1. Shri Godabarish Sahoo, aged about 70 years, S.o Lae Purusottam Sahoo, Retired Asst. Meteorologist, Grade-I, presently residing At.P/O Haja, (Jankia), Dist. Khurda, Odisha.

.....Review Applicant.

VERSUS

1. The Secretary, Department of Earth Science, Govt. of India, Prithvi Bhawan, Lodhi Road, New Delhi – 110003.
2. Director General of Meteorology, Mousam Bhawan, Lodhi Road, New Delhi – 110003.
3. Deputy Director General of Meteorology, (Admn. And Stores), Mousam Bhawan, Lodhi Road, New Delhi – 110 003.
4. Ministry of Finance, Govt. of India, New Delhi – 110003.

.....Review Respondents.

For the applicant : Mr. C. A. Rao, Advocate

For the respondents: Mr. S. B. Mohanty, Advocate

Heard & reserved on : 17.03.2020

Order on :04.06.2020

O R D E R

Per Mr. Swarup Kumar Mishra, Member (J)

In this Review Application, order dated 18.12.2018 passed by this Tribunal in O.A. No. 898 of 2015 is sought to be reviewed by the applicant in O.A.

2. This Tribunal, after hearing both the sides, vide order dated 18.12.2018 dismissed the O.A. with the following observation:

“11. Admittedly, applicant had initially been appointed as Senior Observer in the scale of Rs.5000-8000 (pre-revised) in the year 1973. He was promoted as Scientific Assistant in the scale of Rs.5500-9000/- in the year 1982. He was further promoted as Professional Assistant (now Assistant Meteorologist) 2015 Gr.II (AM.II) in the scale of Rs.6500-10500 in the year 1995. While working as such, scale of Rs.6500-10500 was revised to Rs.7450-11500/- carrying Grade Pay Rs.4600/-. The applicant thereafter was promoted as Assistant Meteorologist, Gr.I(AM-I) in the scale of Rs.7500-12000/-(pre-revised) carrying Grade Pay of Rs.4800 in the year 2004 and subsequently retired from service on 31.03.2008 on attaining the age of superannuation. From above, it is clear that while the scale of Rs. 5500-8000/- of Senior Observer stood merged with the scale of Rs.5500-9000 of Scientific Assistant forming a common Grade Pay of Rs. 4200 as per 6th CPC recommendations, the post of Professional Assistant (Assistant Meteorologist) Gr.II (AM.II) carrying the scale of Rs.6500-10500/- was upgraded to Rs.7450-11500/- PB-2 (Rs.9300- 34800) with Grade Pay of Rs.4600/- as per the Gazette of India (Part-B) Section-I read with Part-C (Section-I) (A/2 series). Be that as it may, it is an admitted fact that the applicant was promoted as Assistant Meteorologist, Gr.I(AM-I) in the scale of Rs.7500-12000/- in the year 2004. Rule-1 of the MACP Scheme stipulates that there shall be three financial upgradations under the MACPS counted from the direct entry grade on completion of 10, 20, 30 years service respectively. Financial upgradation under the Scheme will be admissible whenever a person has spent 10 years continuously in the same grade. It is an admitted position that before completing 10 years service in the Grade Pay of Rs.4800/- the applicant has retired from service on superannuation. Therefore, by any stretch of imagination he could not be entitled to get the benefit of financial upgradation under the MACP Scheme. Secondly, as regards the benefit of merger of the post of Senior Observer in the scale of Rs.5000-8000 with that of Scientific Assistant carrying the scale of Rs.5500-9000/-, as indicated above, MACP Scheme provides merger of three pay scales, i.e., Rs.5000-8000, Rs.5500-9000 and Rs.6500/10500/- to a common Grade Pay of Rs.4200/- and that too grant of the next higher grade pay in such a situation is to be considered only after the implementation of MACP Scheme. But in the instant case,

whereas scale of Rs.5000-8000 and Rs.5500-9000 stood merged together, scale of Rs.6500-10500 was upgraded to Rs.7450-11500/- as per the recommendation of the 6th CPC whereafter applicant was promoted to Assistant Meteorologist, Gr.I(AM-I) in the scale of Rs.7500-12000/- (pre-revised) carrying Grade Pay of Rs.4800 in the year 2004. Thus, the applicant having not completed 10 years service in GP Rs.4800/- is not entitled to any financial benefit under the MACP Scheme or for that by the time the Scheme came into force, he had already retired from service.”

3. The applicant further averred that the applicant had joined service as Senior observer under the Respondent-Department with effect from 18.05.1973 and was promoted as Scientific Assistant in the scale of Rs. 5500-9000/- w.e.f 26.04.1982 and he was again promoted as Professional Assistant/Assistant Meteorologist, Gr.II (AM.II) in the scale of Rs. 6500-10500/- w.e.f. 17.02.1995 and as Assistant Meteorologist in the scale of Rs. 7500-12000/- w.e.f. 27.04.2004 and while working as such, the applicant retired on 31.03.2008 on attaining the age of superannuation. After 6th CPC came into force w.e.f. 01.01.2006 vide notification dated 18.06.2009 (Annexure A/1) the post of Senior observer was merged with Scientific Assistant w.e.f. 01.01.2006 carrying the revised pay scale of Rs. 9300-34800/- with Grade pay of Rs. 4200/-. According to applicant, vide Gazette Notification Part-B & C dated 29.08.2008, the post of Scientific Staff in the scale of Rs. 6500-10500/- with Post Graduate Degree was upgraded and placed in the scale of Rs. 7500-11500/- corresponding to the revised Pay Band (PB-2) of Rs. 9300/- - 34800/- with Grade Pay of Rs. 4600/-. Grievance of the applicant is that the Respondents without taking into consideration the relevant instructions provided in the Gazette Notification dated

20.08.2008 (A/2 series) in respect of the benefit of Scientific Service with Post Graduation Qualification in Science with effect from 01.01.2006, granted 1st and 2nd financial up gradation under the ACP Scheme in the scale of Rs. 7450-11500/- (pre revised) (revised to Rs. 9300-34800/- with GP of Rs. 4600/-) and Rs. 10000-15200/- (pre revised) (revised to Rs. 15,600-39,100/- with Grade Pay of Rs. 4800/-) with effect from 17.02.1995 and 27.04.2004 respectively). Hence the applicant has filed original application challenging the orders dt. 08.05.2014 (Annexure -3) and order dtd. 25.02.2015 (Annexure -5) rejecting the claim of the applicant, stating that applicant is not entitled to any up gradation under MACP Scheme which is not at all the grievance of applicant, rather the applicant's grievance was to fix his pay scale as per 6th CPC taking into account the Scientific Service, with higher post graduate qualification as per Gazette Notification (Annexure 2 Series). The applicant further averred that the respondents in their counter at paragraph 6 to 9 took a stand that, as the minimum qualification for the applicant's cadre is B.Sc. with Physics as one of the subject, the applicant claim is not correct for up gradation, in pay based on Part-B, Section-I, Item (i) to (v) of Gazette Notification Annexure -2, which clearly states that post of Scientific Staff in the scale of Rs. 6500-10500/- carrying minimum qualification of Engineering Degree or a Post Graduation should be up-graded and Respondents further stated that, as per part-B, Section-I, item (i) to (v) of Gazette Notification Annexure-2 series, the applicant has joined as Sr. Observer for which the minimum qualification is Graduation, B.Sc.

with Physics as one of the subject, and hence the same clause under item No. (iv) of the above said Gazette Notification is not applicable in this case and there is no guide line under ACP/MACP scheme for grant of financial up gradation on the basis of Post Graduate qualification in I.M.D., hence the applicant case holds no merit and is liable to be dismissed. It is further stated by the applicant that the Hon'ble Tribunal in the judgement at Para -3 and 4 while stating the applicant case and respondent case it has been mentioned "and therefore, he is entitled to 3rd financial up gradation under MACP Scheme" / and last sentence of para-4 "and as such he is not entitled to Financial up gradation under MACP Scheme, para -8 last sentence" he also submitted that applicant had not availed any further financial up gradation under MACP Scheme" and para -11 "Rule-1 of the MACP Scheme stipulates that there shall be three financial upgradations under the MACPS counted from the direct entry grade on completion of 10, 20, 30 years service respectively. Financial upgradation under the Scheme will be admissible whenever a person has spent 10 years continuously in the same grade. It is an admitted position that before completing 10 years service in the Grade Pay of Rs.4800/- the applicant has retired from service on superannuation. Therefore, by any stretch of imagination he could not be entitled to get the benefit of financial upgradation under the MACP Scheme. Secondly, as regards the benefit of merger of the post of Senior Observer in the scale of Rs.5000-8000 with that of Scientific Assistant carrying the scale of Rs.5500-9000/-, as indicated above, MACP Scheme provides merger of three pay scales, i.e., Rs.5000-8000, Rs.5500-9000 and Rs.6500/10500/- to a common Grade Pay of Rs.4200/- and that too grant of the next higher grade pay in such a situation is to be considered only after the implementation of MACP Scheme. But in the instant case, whereas scale of

Rs.5000-8000 and Rs.5500-9000 stood merged together, scale of Rs.6500-10500 was upgraded to Rs.7450-11500/- as per the recommendation of the 6th CPC whereafter applicant was promoted to Assistant Meteorologist, Gr.I(AM-I) in the scale of Rs.7500-12000/-(pre-revised) carrying Grade Pay of Rs.4800 in the year 2004. Thus, the applicant having not completed 10 years service in GP Rs.4800/- is not entitled to any financial benefit under the MACP Scheme or for that by the time the Scheme came into force, he had already retired from service.” By filing the present R.A., the applicant has brought to the notice of this Tribunal that the said observations was neither the case of the applicant nor the respondents nor it was based on the pleadings.

4. The respondents in their objection inter alia averred that the applicant was initially appointed as Senior Observer on 18.05.1973 in the pay scale of Rs. 330-560/-. He was further promoted to the post of Scientific Assistant on 26.04.1982 in the scale of pay Rs. 425-700/-. While the matter stood thus keeping in view his seniority he was again promoted as Professional Assistant (Assistant Meteorologist-II) on 17.02.1995 in the scale of pay Rs. 1640-2900/-. The said scale of Rs. 1640-2900/- was further upgraded to Rs. 6500-200-10500/- with effect from 1st January 1996 by the 5th CPC. He earned 3rd vacancy based regular promotion as Assistant Meteorologist – I on 27.04.2004 in the pay scale of Rs. 1500-250-12000/-. Due to the implementation of 6th CPC recommendation the post of Senior Observer & Scientific Assistant have been merged, carrying the common Grade Pay (GP) of Rs. 4200/- in PB-2 and Professional Assistant (Assistant Meteorologist-II) carrying the scale of pay Rs. 6500-10500/- was

placed in PB-2; Rs. 9300-34800/- with a grade pay of Rs. 4600/-. The scale of pay of Rs. 7500-250-12000/- was placed in a Grade Pay of 4800/- with effect from 01.01.2006. It was further averred that the qualification in entry grade to the post of senior observer was although B.Sc with Physics as one of the subject and the said base level post though subsequently merged with the post of Scientific Assistant but the qualification remained same without any changes so far. Hence the person having higher qualification doesn't carry any extra benefits or promotion avenue and no employee under the respondents have never given promotion or after benefits keeping in view the higher educational qualification and on the basis the applicant cannot get any financial benefits nor promotional avenue basing upon the higher qualification. The minimum qualification for the applicant's cadre i.e. Senior Observer is B.Sc with physics as one of the subject, the applicant's claim is not correct for up gradation in pay based on part-B Section-1 item (i) to (v) of Gazette Notification (Annexure 2 of OA), which clearly states that post of Scientific Staff in the scale of Rs. 6500-10500/- carrying minimum qualification of engineering degree or a post graduate degree should be upgraded. Therefore, the case of the applicant does not fall within the ambit of this provision and hence the Review Application filed on the ground stated herein are not maintainable and deserves no consideration.

5. This Tribunal is aware of limited scope of review of its own order. It has been held by the **Hon'ble Supreme Court in case**

Kamlesh Verma v. Mayawati and others, 2013(4) RCR (Civil) 75

that the review application is maintainable on the following grounds:

- i. Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
- ii. Mistake or error apparent on the face of the record;
- iii. Any other sufficient reason.

Further, in the above said ruling, various situations have been described where review will not be maintainable and the said situations are enumerated as under;

- i. A repetition of old and overruled argument is not enough to reopen concluded adjudications;
- ii. Minor mistakes of inconsequential import;
- iii. Review proceedings cannot be equated with the original hearing of the case;
- iv. Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice;
- v. A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error;
- vi. The mere possibility of two views on the subject cannot be a ground for review;
- vii. The error apparent on the face of the record should not be an error which has to be fished out and searched;
- viii. The appreciation of evidence on record is fully within the domain of the appellate Court, it cannot be permitted to be advanced in the review petition;
- ix. Review is not maintainable when the same relief sought at the time of arguing the main matter had been negative.

6. In the present case as per the discussion already made this Tribunal is satisfied that this Tribunal is mistaken by considering the scope of granting ACP/MACP in favour of applicant although it was not specifically prayed for by the applicant in the Original Application. On the other hand the applicant in Original Application had prayed for the following reliefs:

- I. The application be admitted and call for the records and after hearing the parties be pleased to quash the order dt. 8.5.2014 in (Annexure-3) and dt. 25.2.2015 (Annexure-5), declaring they are contrary to the 6th C.P.C. recommendation ACP Scheme, as in (Annexures-1 and 20 passed without taking into consideration the applicant's Higher qualification of Post Graduation, in Scientific Service with further direction that applicant is eligible to be fixed at revised pay scale A.M.II (1st ACP) at 7450-11500/- PB 2 with grade pay Rs. 4600/- and 2nd ACP (AM-1) PB-3, revised pay scale Rs. 15,600-39,100/-, with grade pay Rs. 6600/- in view of Annexure-1 and 2).
- II. Respondents to be directed to act on the basis of Annexure-1 & 2 in consultation with Dept. of Expenditure, Ministry of Finance by removing anomaly and regularize/revise the pension and give all such benefits accrued from such action with interest.
- III. Any other appropriate reliefs as may be deemed fit and proper be issued.

7. This Tribunal had dismissed the OA No. 898 of 2015 vide order dated 18.12.2018 with observation about eligibility for MACP as stated in para 2 above, which is not included in the reliefs sought for in the OA.

8. In view of the above the order dated 18.12.2018 passed by this Tribunal dismissing the Original Application No. 898/2015, there is mistake or error which is apparent on the face of record.

Therefore, it is necessary in the interest of justice to allow this Review Application by setting aside the earlier order dated 18.12.2018 passed by this Tribunal in OA No. 898/2015.

8. Accordingly this review application is allowed. The OA No. 898 of 2015 is restored to file but in the circumstances with no order as to cost.

9. In view of the order passed in Review Application the OA is restored back to file.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

(csk)