

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/20/1352/2014

HYDERABAD, this the 7th day of December, 2020



Hon'ble Mr. Ashish Kalia, Judl. Member

Hon'ble Mr. B.V. Sudhakar, Admn. Member

1. R. Venkata Rao (Retd.),
S/o. Late Rama Rao,
Aged about 65 years,
Occ: Retd. Telephone Supervisor,
R/o. D.No.4-62, BRT Colony,
Anakapalle – 531 001.
2. R. Lakshmi, W/o. R. K.V. Ramana,
Aged about 56 years,
D.No.58-20-33/2, APSEB Colony,
Butchirajupalem, Visakhapatnam – 530 027.
3. K. Suryanarayana, S/o. Late Swaminaidu,
Aged about 64 years,
D.No.7-31, Gonnavanipalem Near EM Pale,
Aganampudi Post Visakhapatnam – 530 046.
4. NNR. Reddy, S/o. Late Ramulu,
Aged about 63 years,
R/o.D.No.8-30-8/1, Tamil Street,
C.W. Visakhapatnam – 530 017.
5. P. Ananda Kumar, S/o. Late Mutyala Rao,
Aged about 65 years,
R/o.D.No.14-7-5/A, Maharanipecta Post,
Anthony Nagar, Visakhapatnam – 530 002.
6. K. Benjamin Prasad, S/o. Late KA Devadattam,
Aged about 61 years,
R/o. NIMISH EMROLD APARTMENTS
Plot No.401, 4th floor near Mary Stella High School,
Behind PF Office, Visakhapatnam.
7. V. Atchutalingam,
Aged about 64 years, R/o. D.No.38-31-71,
Sriharsha Nagar, Green Gardens,
Marripalem, Visakhapatnam – 530 018.



8. V. Jayamary, W/o. Late Ramulu,
Aged about 61 years,
D.No.57-28-16/7, Bhavani Gardens ITI Junction,
Visakhapatnam – 530 008.
9. SV Naidu, S/o. Late Bangarayya,
Aged about 60 years,
R/o.D.No.37-10-148,Iyyappa Nagar,
Muralinagar East, Visakhapatnam – 530 007.
10. P. Rama Rao, S/o. Late Naratayanappadu,
Aged about 62 years,
R/o.D.No.65-3-266/C, Ex-Servicemen Colony,
Near Venkateswara Temple, Malkapuram Post,
Visakhapatnam – 530 011.
11. AV Lakshmi, W/o. Babji Rao,
Aged about 59 years,
R/o. Plot No.5, 1st floor Marridian Towers,
NAD Kotha Road, Opp. Santhinagar,
Visakhapatnam – 530 009.
12. M. Chinnalu, W/o. Late Prabhakara Rao,
Aged about 64 years,
D.No.9-1-19, Ganeshnagar,
Hindustan Zinc Main Gate,
Visakhapatnam – 530 026.
13. NJJ. Prabhakara Rao, S/o. Late Sudarsana Raju,
Aged about 65 years,
R/o.D.No.43-18-4/1, Venkataraju Nagar,
TSN Colony, Dondaparthi,
Visakhapatnam – 530 016.
14. D. Prasada Rao, S/o. Late Bayanna,
Aged about 63 years,
R/o.D.No.32-12-192, Sheela Nagar,
BHPV Post, Visakhapatnam – 530 012.
15. VW Vijaya, S/o. Late Cornelius,
Aged about 65 years, R/o. 4-3-19-4/1,
Venkataraju Nagar, TSN Colony,
Dondaparthi, Visakhapatnam – 530 016.

...Applicants

(By Advocate : Smt. Anita Swain)

Vs.

1. The Union of India rep. by its
Secretary, Min of Defence, South Block,
New Delhi – 110 011.
2. The Chief of the Naval Staff,
Integrated Headquarters, Ministry of Defence,
Sena Bhavan, PO DHQ, New Delhi – 110 011.
3. The Flag Officer- Commanding –in-Chief,
Headquarters Eastern Naval Command,
Naval Base, Visakhapatnam – 530 014.
4. The Command Civilian Personnel Officer,
Eastern Naval Command ,
Visakhapatnam – 530 014.
5. The Officer-in-Charge,
Communication Network Centre,
Naval Base, Visakhapatnam – 530 014.



....Respondents

(By Advocate : Sri A. Surender Reddy, Addl. CGSC)

ORAL ORDER
(As per Hon'ble Mr. B.V. Sudhakar, Administrative Member)

Through Video Conferencing:



2. The OA has been filed challenging the rejection order of the 3rd respondent dt. 12.06.2014 rejecting the claim of the applicants in regard to implementation of MACP Scheme w.e.f. 01.09.2008 on par with other employees of Navy.

3. Brief facts of the case are that the applicant were appointed as Telephone Operators of the respondents organization and they retired from service during the period 2008 to 2014. Applicants were not accorded MACP benefit and they retired with GP of Rs.4200/- instead of Rs.4600/-. The grievances of the applicants is that the respondents have introduced Time Bound Promotion Scheme (for short "TBPS") on 05.10.2006 w.e.f. 01.01.1996. As the TBPS was implemented for the applicants, ACP Scheme implemented by the Government of India was not made applicable keeping in view Clause 13 of the ACP Scheme. Clause 13 states that in respect of the applicants, the respondents have to take a decision whether to implement the ACP Scheme or otherwise. Respondents have not taken any decision in the matter. After VI CPC, the three tier structure of Tele Staff was restructured into two tier structure. Even the MACP was not extended to the applicants and they were continued in TBP Scheme framed by the respondents. The applicants made a representation on 27.01.2014 which was rejected on 12.06.2014.

4. The contentions of the applicants are that upto 1978, there was one grade of Telephone Operator. Later, it was organized into 3 Tier structure i.e. Telephone Operator Gr. II, Telephone Operator Gr. I and Telephone Supervisor. ACP scheme was introduced w.e.f. 09.08.1999 and the respondents introduced TBP Scheme w.e.f. 01.01.1996 vide letter dt. 05.10.2006, as per the directions of the Hon'ble Kolkata Bench of this Tribunal in OA 380/2014, which envisages promotion on completion of 16/26 years of service. Respondents have not complied with the condition No. 13 of the ACP Scheme. Time Bound Promotion Scheme is useful to those who had been recruited up to 1999 and ACP Scheme is beneficial to those recruited after 1999. Respondents withdrew the benefits granted w.e.f. 09.08.1999 under ACP scheme when the TBP Scheme was brought into operation vide letter dated 05.10.2006 w.e.f. 01.01.1996, for the simple reason that both the schemes cannot run concurrently. As on 09.08.1999, there were two sets of telephone Operators, one set belonging to Seniors, those who completed 16 or 26 years of services and juniors, who has not completed 16 years of services. TBP Scheme was beneficial to seniors and disadvantageous to the juniors. Two schemes were not running concurrently between 01.01.1996 and 08.08.1999. In contrast, ACP scheme is beneficial to seniors and juniors. The respondents were not taking any decision as per clause 13 of the MACP Scheme. The applicants should not suffer for the failure of the respondents in taking a decision in the matter. As per para 13 of the MACP Scheme circulated vide letter dt. 19.05.2009, respondents were expected to take a decision which they did not. For the respondents not taking a decision, applicants should not suffer. Consequent to the VI CPC recommendations, the scales namely Rs.5000-8000 and



Rs.5500-9000 were merged into the scale of Rs.5500-9000, resulting in only one financial upgradation under TBP Scheme. MACP envisages 3 financial upgradations, whereas the applicants would get only one financial upgradation because of the merger of the pay scales. The applicants retired with GP of Rs.4200/-, even after 30 years of service under TBP Scheme, whereas they would have got the GP of Rs.4800/- under MACP Scheme like similarly situated employees. This has caused lot of loss in terms of pensionary benefits. The applicants filed representations on 27.12.2010 – 27.1.2014, which were rejected by the respondents on 30.01.2011, 16.10.2012 and 12.06.2014. The action of the respondents in not taking a decision in terms of para 13 of the ACP/ MACP Scheme as a result of which the respondents have not extended the benefits of ACP/MACP, is illegal. Articles 14, 16 and 21 of the Constitution of India and principles of natural justice have been violated by the respondents in denying the benefits to the applicants on par with others.



5. The respondents filed a reply statement wherein they state that the ACP Scheme was made applicable to the applicants w.e.f. 09.08.1999. Some Telephone operators filed OA 380/2004 in Hon'ble Kolkata Bench wherein it was directed to grant TBP Scheme on par with Switch Board Operators of the GS Branch of Army. Therefore, TBPS was implemented w.e.f. 01.01.1996 vide order dt. 28.02.2006 in respect of the Telephone Staff of the Indian Navy on par with the Civil Switch Board Operators of the GS Branch of Army. However, Ministry of Defence issued letter dt. 05.10.2006 wherein it was clearly stated that that TBP Scheme and ACP Scheme should not run concurrently and all stipulations under ACP Scheme

would cease. The applicants availed time bound promotions under TBP Scheme w.e.f. 01.01.1996 and they gave a declaration stating that they are willing for withdrawal of the benefits granted under ACP scheme and they would refund the overpayment made under the said Scheme. Having given declaration, the applicants cannot now ask for benefits under ACP/ MACP Scheme. The respondents claim that the applicants can either opt for APC/MAPC or TBP Scheme. The choice of selecting either ACP/ MACP Scheme or TBP scheme shall have to be taken by the entire cadre of Telephone Operators as a whole and not as individuals. The respondents further claim that the TBP Scheme is beneficial to all Telephone Operators where they get higher grade pay in shorter period of time when compared to ACP/ MACP Scheme. The main contention of the respondents is that the applicants cannot seek benefits under TBP Scheme as well as ACP/ MACP Scheme.



6. Heard both the counsel and perused the pleadings on record.

7(I) It is clear from the details of the case that the respondents have introduced TBP Scheme in response to the order of the Hon'ble Kolkata Bench of this Tribunal in OA 380/2004 wherein it was directed to implement TBP Scheme on par with Switch Board Operators of the of the GS Branch of Army. Accordingly, the respondents complied with the said order of the Tribunal by implementing TBP Scheme for the applicants. Under the said Scheme, promotions are granted after 16/26 years of service. The Ministry of Defence issued a letter dt. 05.10.2006 wherein it was stated that TBP Scheme and ACP scheme shall not run concurrently; the benefits extended under ACP Scheme would cease once the employees opt for TBP

Scheme; employees have to give a declaration that once they opt for TBP Scheme they are willing for withdrawal of the benefits given under ACP Scheme and any overpayment made shall be refunded. The applicants have given the declaration confirming their willingness for withdrawal of benefits as well as for refund of overpayment, if any, made under ACP Scheme, introduced w.e.f. 01.09.2008. The TBP Scheme was introduced vide order dt. 28.02.2006 w.e.f. 01.01.1996 and the applicants gave declaration expressing willingness for withdrawal of benefits granted under ACP Scheme. The MACP Scheme was implemented w.e.f. 01.09.2008. However, when the TBP Scheme was introduced w.e.f. 01.01.1996 vide order dt. 28.02.2006, the APC benefits were withdrawn. The TBP scheme appears to be beneficial as per details given by the respondents, as under:



As per existing pay scales, the Time Bound Promotion Scheme is still beneficial to Telephone Operators Gr. II (PB-I with Grade Pay Rs.2000/-) as under:-

<i>Time Bound Promotion Scheme</i>	<i>Modified Assured Career Progress</i>
<i>1st Time Bound promotion on completion of 16 years - Grade Pay 4200/-</i>	<i>1st MACP on completion of 10 yrs – Grade Pay 2400/-</i>
<i>2nd Time Bound Promotion on completion of 26 yrs - Nil</i>	<i>2nd MACP on completion of 20 yrs – Grade Pay 2800/-</i>
	<i>3rd MACP on completion of 30 yrs – Grade Pay 4200/-</i>
<i>Note:- The Post of Telephone Operator Gr. I in the pay scale of 5500-9000 and Telephone Operator Gr. II in the pay scale of 5000-8000 were merged. Hence, no 2nd Time Bound Promotion is available.</i>	

From the above Table, it is evident that the applicants would benefit by the the TBP Scheme. However, the plea of the applicants is that TBP Scheme is beneficial to the seniors and disadvantageous to the juniors.

II. The applicants by way of written submissions submitted that, similar case fell for consideration before the Ernakulam Bench of this Tribunal in OA No. 485/2014 which was allowed. The same was upheld by the Hon'ble High Court of Kerala at Ernakulam in OP (CAT) No. 134/2018 on 17.11.2019. Further, similar case was decided by the Hon'ble Principal Bench and the same was upheld by the Hon'ble Delhi High Court in WP (C) No. 3974/2017 vide order dt. 09.05.2017 and when the matter was carried to the Hon'ble Supreme Court in SLP No. 32963/2017, the SLP was dismissed on 15.11.2019.



III. In view of the above orders of the Hon'ble High Courts and Hon'ble Supreme Court, the respondents are directed to examine the relief sought by the applicants and take a decision in regard to the relief sought by the applicants. With the above directions, the OA is disposed of, with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

/evr/