

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/020/01542/2014

HYDERABAD, this the 15th day of February, 2021

Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member



B.S.Prakash Rao S/o late Ramaswamy Naidu,
Aged about 62 years, Retd. Telephone Supervisor,
R/o D.No.3-119/1, Sujatha Nagar, Pendurthy
Mandalam, Visakhapatnam – 531173.

...Applicant

(By Advocate : Dr. P. B. Vijay Kumar)

Vs.

- 1.The Union of India, represented by its Secretary,
Ministry of Defence, South Block, New Delhi – 110011.
- 2.The Chief of Naval Staff, Integrated Headquarters of
Ministry of Defence (Navy), South Block, New Delhi – 110011.
- 3.The Directorate of Civil Personnel, Integrated Headquarters,
Ministry of Defence (Navy), South Block, New Delhi – 110011.
- 4.The Flag Officer, Commanding-in-Chief, Eastern Naval Command,
Naval Base, Visakhapatnam – 14.
- 5.The Officer-in-Charge, Communication Network Centre,
Telephone Exchange, Naval Base, Visakhapatnam.Respondents

(By Advocate : Mrs. K. Rajitha, Sr. CGSC)

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

Through Video Conferencing:



2. The OA has been filed by the applicant challenging the order of the respondents dt. 8.9.2014 rejecting his claim in regard to implementation of MACP Scheme w.e.f. 01.09.2008 on par with Army Tele Staff.

3. Brief facts of the case are that the applicant joined as Telephone Operator Gr. II in the respondents organization and retired from service on 31.10.2012. He was not accorded MACP benefit and he retired with GP of Rs.4200/- instead of Rs.4600/-. 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 applicant, 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 applicant, 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 applicant and he was continued in TBP Scheme framed by the respondents. He made a representation on 13.08.2014 which was rejected on 8.9.2014.

4. The contentions of the applicant are that earlier 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 applicant 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. 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 applicant would get only one financial upgradation because of the merger of the pay scales. The applicant retired with GP of Rs.4200/-, even after 30 years of service under

TBP Scheme, whereas he would have got the GP of Rs.4600/- under MACP Scheme like similarly situated employees. This has caused lot of loss in terms of pensionary benefits. The applicant filed representations on 13.08.2014 & 18.08.2014, which were rejected by the respondents on 08.09.2014. 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 applicant on par with others.



5. The respondents filed a reply statement wherein they state that the ACP Scheme was made applicable to the applicant 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 TBP Scheme and ACP Scheme should not run concurrently and all stipulations under ACP Scheme would cease. The applicant availed time bound promotions under TBP Scheme w.e.f. 01.01.1996 and he gave a declaration stating that he is willing for withdrawal of the benefits granted under ACP scheme and he would refund the overpayment made under the said Scheme. Having given declaration, the applicant cannot now ask for benefits under ACP/ MACP

Scheme. The respondents claim that the applicant 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 applicant 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 applicant. 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 applicant has given the declaration confirming willingness for withdrawal of benefits as well as for refund of overpayment, if any, made under ACP Scheme,

introduced w.e.f. 09.08.1999. 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-1 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 applicant would benefit by the TBP Scheme. However, the plea of the applicant is that TBP Scheme is beneficial to the seniors and disadvantageous to the juniors.

II. 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. The matter was carried to the Hon'ble Supreme Court in SLP No. 32963/2017, which was dismissed on 15.09.2019.

III. In view of the observations of the Hon'ble Kerala High Court, the respondents are directed to examine and take a decision in regard to the relief sought by the applicant.

With the above directions, the OA is disposed of, with no order as to



costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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