

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/021/00304/2020

HYDERABAD, this the 3rd day of November, 2020

Hon'ble Mr. Ashish Kalia, Judl. Member

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



1.D.V.Mahidhar S/o D.Guruswamy (late),
(Group.B), Age 63 years, Occ : Manager NSH., Retd.,
R/o Flat No.511, Shubhamgreens Apartments,
Puppalaguda, Manikonda Post, Hyderabad-500089.

2.S.Prasad Rao S/o Pullaiah (late),
(Group.B), Age 59 years, Occ : Assistant Director,
O/o Chief Post Master General, Telangana Circle,
Abids, Hyderabad-500001.

...Applicants

(By Advocate : Mr.N.Vijay)

Vs.

1.The Union of India, Ministry of Communications and IT,
Department of Posts, DAK Bhavan, New Delhi,
Represented by its Secretary.

2.The Chief Post Master General, Telangana Circle,
Abids, Hyderabad-500001.

3.The Director of Accounts, Postal Department,
Telangana Circle, Hyderabad-500001.

....Respondents

(By Advocate : Mrs.M.Swarna, Addl.CGSC)

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

Through Video Conferencing:



2. The O.A is filed against the action of the respondents in unilaterally revising the pay of the applicants vide proceedings dated 26.5.2020, without issuing any prior notice.

3. The brief facts of the case are that the applicants rose in the respondents organization from the post of Postal Assistant as Assistant Supdt. of post offices and thereon as Postal Superintendents in Group-B cadre. They were granted Grade Pay of Rs.4800/- as per CCS Revised Pay Rules, 2008, while working in the cadre of Assistant Superintendent of Post Offices. Applicants claim that as per CCS Revised Pay Rules 2008, they are entitled for a higher grade pay of Rs.5400/- on non-functional basis, after four years of service in the grade pay of Rs.4800/-. When the said benefit was not granted, applicants filed O.A. No.296/2014 which was allowed on 14.9.2015 anchoring on the judgment of the Hon'ble Madras High Court. Tribunal order was challenged in Writ Petition No.31576/2016 with no success on 6.11.2018 and thereby applicants were granted higher grade pay of Rs.5400/- on 21.10.2019 and pay re-fixed. Shockingly, respondents on 26.5.2020 without issuing notice, reduced the pay entitlements of the applicants retrospectively. Aggrieved, O.A. has been filed.

4. The contentions of the applicants are that they are eligible for the higher grade pay of Rs 5400 in terms of the circulars issued by the 1st

respondent on 7.10.2009 / 18.1.2010 and Min. of Personnel, Public Grievances & Pensions OM dated 19.11.2009. Respondents reversing the decision of grant of higher grade pay without issuing notice, is in violation of principles of natural justice. Moreover, in view of lockdown and Corona Virus, Dearness Allowance/ Dearness Pay has been reduced by three installments. In addition, Ld. Counsel for the applicant submits that decreasing the pay illegally will cause untold financial hardships in the evening of their career.



5. Respondents in their reply statement have submitted that grade pay of Rs 5400 was granted as per orders dated 14.9.2015 in O.A. No.296/2014. However, respondents state that as per MACP guidelines issued by DOPT on 4.7.2017, the benefit of pay fixation available at the time of regular promotion shall also be allowed at the time of financial upgradation under MACPS. Therefore, there shall be no further fixation of pay at the time of regular promotion/ grant of non-functional scale, if it is in the same grade pay. However, if it happens to be a post carrying higher grade pay than what is available in MACPS, no pay fixation would be available and only difference of grade pay would be granted, for which the employee shall have the option to draw the difference of grade pay w.e.f. the date of such regular promotion/ grant of non-functional scale or from the date of next increment in the pay allowed under MACP. Thus, keeping the MACP revised guidelines stated above in view, the difference of grade pay was allowed and no pay fixation was considered. The grade pay of Assistant Superintendent of Post Offices is Rs.4600/- and under MACP, financial upgradation to the grade pay of Rs.4800/- with pay fixation of 3% on grade

pay is allowed. The Assistant Superintendent of Post Offices when promoted to Group 'B' cadre, they are granted the grade pay of Rs.4800/- along with pay fixation. If the officers get promotion in the same grade pay, then there shall be no pay fixation. For NFSG up gradation after regular promotion, there is no restriction of increment in pay fixation as per rules and these cases are not covered under MACP guide lines. Pay fixation on subsequent promotion or NFSG has to be necessarily based on MACP guidelines. The Tribunal in its order dated 14.9.2015 ordered grant of G.P. of Rs.5400/- but did not issue any order in respect of 3% pay fixation nor did it say anything about incremental benefits. Pensionary benefits of the applicants have not been revised and that only pay revision was effected.



Applicants filed a rejoinder, wherein they reiterate that the grade pay of Rs.5400/- was granted due to a court order and as per CCS (RP) Rules 2008 but not because of the MACP guidelines. Honøble Jabalpur bench of this Tribunal in O.A. No.849/2016 held that the grade of pay of Rs.5400/- is granted because of CCS (RP) Rules 2008 and such revision does not come under MACP guidelines. The order of the Jabalpur Bench was upheld even by the Honøble High Court of Madhya Pradesh. Applicants were granted Grade Pay of Rs.5400/- w.e.f. 1.9.2012 & 8.1.2014 and the respondents are relying on the later revised MACP guidelines issued on 4.7.2017, which will not have retrospective effect. Respondents have not referred to the circulars dated 7.10.2009 & 18.1.2010 (Annex.1& 3) which were the basis for grant of higher grade pay to the applicants. The 1st applicant was promoted to the Group 'B' cadre on 1.9.2015 & the 2nd applicant was promoted on 27.6.2015. Though the Tribunal delivered the order in OA

No.296/2014 on 14.9.2015, the respondents delayed the implementation of the order of the Tribunal. In the meanwhile, the MACP rules were amended. Hence, such an amendment should not be the basis for the respondents to deny the benefit already granted.



Respondents filed an additional reply wherein they reiterated more or less the same contentions as contained in the reply statement. Nevertheless, albeit repetitive, they stuck to the stand that as per revised MACP guidelines, applicants would not be eligible for any pay fixation. The revised MACP guidelines on 4.7.2017 were issued in order to implement the recommendations of VII CPC. In fact, the original orders of MACP dated 19.5.2009 have been reiterated in 4.7.2017 and hence the contention of the applicants that the order dated 4.7.2017 cannot be applied retrospectively to the applicants is incorrect. When the promotion is effected to a higher grade pay that is allowed in MACP, the rule is only to pay the difference of grade pay but not pay fixation. The Postal Directorate has also clarified accordingly vide letter dated 11.9.2020.

6. Heard Sri N. Vijay, learned counsel for the applicant and Smt. M. Swarna, learned counsel for the respondents, and perused the pleadings on record.

7. It is not under dispute that the applicants, who are working as Assistant Superintendent of Post Offices were granted higher grade pay of Rs.5400/- on non-functional basis after rendering 4 years of service with grade pay of Rs.4800/- in pursuance of the order of the Tribunal in O.A. No.296/2014 delivered on 14.9.2015 which was based on the verdict delivered by the Honorable High Court of Madras granting grade pay of Rs.

5400/-. Respondents challenged the order of this Tribunal in W.P. No.31576/2016, which was dismissed by the Honøble High Court of Telangana on 6.11.2018, which was also challenged before the Honøble Supreme Court but was not interfered with on 10.10.2017. . Hence, the issue has attained finality in the legal domain.



Respondents issued proceedings dated 21.10.2019, granting the higher grade pay to the applicants w.e.f. 2012 & 2014 respectively. The revised salary slip and arrears were also paid to the applicants on 11.6.2019. After doing so, respondents have no locus standi to revise the a decision contrary to the legal verdict on the issue. Consequently, their decision to deny the benefit of grant of eligible grade pay of Rs 5400 to the applicants in contravention of the legal axiom laid down by the superior judicial is forthrightly illegal.

Yet respondents, on 7.5.2020, the salaries of the applicants have been revised downwardly without issuing any notice. Principles of Natural Justice demand that when any such adverse revision of pay is to be effected, respondents are duty bound to issue notice and thereafter applicants after being heard, a decision has to be taken. Without issuing a notice, any action taken by the respondents is legally invalid as observed by Honøble Allahabad High Court, in **Jai Ram Yadav v. State of U.P., Writ – C No. – 18437 of 2020**, decided on 18-11-2020, as under:

“In administrative law the principle of audi alteram partem has been held to be a fundamental principle of the rules of natural justice. This requires the maker of a decision to give prior notice of the proposed decision to the persons affected and an opportunity to make a representation. The exercise of a power which affects the rights of an individual must be exercised in a manner which is fair and just and not

arbitrarily or capriciously. An administrative order involving civil consequences must necessarily be made in conformity with rules of natural justice. Any decision which has been made without compliance of the aforementioned fundamental principle of natural justice i.e. the rule of audi alteram partem, cannot be sustained.”



Applying the above legal principle primarily to the case on hand, respondents revising the pay of the applicants without notice is not sustainable in law.

Moreover, it is seen from the facts of the case that the relief has to be granted to the applicants based on the CCS (RP) Rules, 2008. In fact, 1st respondent had issued a Circular on 7.10.2009 in regard to fixation of pay of Postal Service Group -B officers at the time of placement in the Grade Pay of Rs.5400/- in PB-2 on non-functional scale. It was mentioned therein that the Ministry of Finance had clarified that the officers are entitled for the benefit of one increment as laid down in Rule 13(1) of CCS (Revised Pay) Rules, 2008 for fixation of pay at the time of allowing non-functional higher grade pay of Rs.5400/-. This issue was reiterated by the Ministry of Personnel, Public Grievances & Pensions vide O.M. dated 19.11.2009. The 1st respondent again issued another Circular on 18.1.2010 referring to the clarification issued by Ministry of Finance that Group-B officers of department of Posts are allowed to exercise the option to get their pay fixed under F.R. 22(1)(a)(1) at the time of grant of higher grade pay of Rs.5400/- on non-functional basis. Therefore, when the instructions are lucid from the 1st respondent and the Min. of Personnel, Public grievances & Pensions, it is not understood as to why the lower formations have acted contrary to the directions issued in granting the grade pay of Rs 5400.



We find that in the reply statement, respondents have only been harping on the application of revised MACP guidelines issued on 4.7.2017, without making any averment in regard to the letters 7.10.2009, 19.11.2009 & 18.1.2010. These letters are the crux of the issue and are in favour of the applicants in granting the higher grade pay. Respondents, instead of referring to these letters, have time and again cited the revision of MACP guidelines dated 4.7.2017, which is actually not relevant and further in the context of the judicial orders of the Honøble Madras High Court, have not been interfered with by the Honøble Supreme Court on 10.10.2017. We also observe that the respondents have been self-contradicting themselves by stating in the Additional Reply at para 10 that the grade pay of Rs.5400/- was not granted under MACP whereas in para 14 they claim that it has to be granted based on the revised MACP guidelines. Hence they appear not to be having a clear idea on the issue. Even the Honøble Jabalpur Bench of this Tribunal in O.A. No.849/2016, has categorically held that the grant of higher grade pay of Rs.5400/- is to be given under the provisions of CCS (RP) Rules 2008 and not as per the revised MACP guidelines. The said order of the Jablapur Bench was upheld by the Honøble High Court of Madhya Pradesh. The relevant CCS (RP) rule is extracted hereunder:

õ13. Fixation of pay on promotion on or after 1.1.2006

In the case of promotion from one grade pay to another in the revised pay structure, the fixation will be done as follows:-

- (i) One increment equal to 3% of the sum of the pay in the pay band and the existing grade pay will be computed and

rounded off to the next multiple of 10. This will be added to the existing pay in the pay band. The grade pay corresponding to the promotion post will thereafter be granted in addition to this pay in the pay band. In cases where promotion involves change in the pay band also, the same methodology will be followed. However, if the pay in the pay band after, adding the increment is less than the minimum of the higher pay band to which promotion is taking place, pay in the pay band will be stepped to such minimum.ö



Thus, as per the above rule, the respondents cannot deny the relief sought.

Respondents, we are sure, would appreciate the fact that the Tribunal, after going into the issue at length in O.A. No.296/2014 on 14.9.2015, held that the grade pay of Rs.5400/- has to be granted to the applicants with consequential benefits. When the word consequential benefits is used, it implies that pay fixation has also to be done at the rate of 3% on the grade pay allowed. Hence, the contention of the respondents that the Tribunal had not ordered for pay fixation is not tenable. These facts were not rationally rebutted by the respondents in their Additional Reply. The respondents did also contend that there is no provision in the rules to grant Rs.5400/- grade pay. This is surprising to note when the higher grade pay was granted, as per CCS (RP) Rules, 2008 cited. It appears that the respondents have been only looking at the issue from the angle of revised MACP revised guidelines without delving into their relevance and in particular when there are clear cut orders from superior offices to grant the benefit as cited supra, as well as per the CCS (RP) Rules which are statutory in nature. Besides, were eligible for the benefit in 2012/2014 and therefore rules prevalent at that time has to be applied. It is also seen that there was delay in implementing the order of the Tribunal order and in the

mean time, revised MACP guidelines have come into vogue, which though not relevant have been applied by the respondents to the case of the applicants. Delay in implementing the order of the Tribunal was the mistake of the respondents and therefore they cannot rub of their mistake on to the applicants, as observed by the Honøble Apex Court in a catena of judgments as under:



“The Apex Court in a recent case decided on 14.12.2007 (*Union of India vs. Sadhana Khanna*, C.A. No. 8208/01) held that the mistake of the department cannot recoil on employees. In yet another recent case of *M.V. Thimmaiah vs. UPSC*, C.A. No. 5883-5991 of 2007 decided on 13.12.2007, it has been observed that if there is a failure on the part of the officers to discharge their duties the incumbent should not be allowed to suffer. (iii) It has been held in the case of *Nirmal Chandra Bhattacharjee v. Union of India, 1991 Supp (2) SCC 363* wherein the Apex Court has held “The mistake or delay on the part of the department should not be permitted to recoil on the appellants.”

It is also pertinent to observe that the eligible benefit extendable to an employee cannot be denied by issuing a circular on a later date, as per Honøble Apex Court observations in **High Court of Delhi v. A.K. Mahajan, (2009) 12 SCC 62** as under:

“45. In short, law regarding the retrospectivity or retroactive operation regarding the rules of selection is that where such amended rules affect the benefit already given, then alone such rules would not be permissible to the extent of retrospectivity.”

Therefore, the applicants the higher grade pay of Rs 5400 for which the applicants were eligible in 2012/2014 cannot be denied by applying a revised MACP guidelines issued on 4.7.2017 and that too which were irrelevant to the case of the applicant.

Thus, based on the aforesaid, it is crystal clear that the respondents have violated the rules and law in revising the pay of the applicants and denying the pay fixation, after granting higher grade pay of Rs.5400/-. Therefore, the impugned order 26.5.2020 is liable to be quashed and hence

quashed and set aside. Consequently, respondents are directed to consider pay fixation @ 3% on the Grade Pay of Rs.5400/- from the date due to the applicants. Arrears of pay and other consequential benefits shall be paid to the applicants. Time period allowed the judgment is three months from the date of receipt of the order. .



With the above direction, the O.A. is allowed with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER
/pv/

(ASHISH KALIA)
JUDICIAL MEMBER