

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/01382/2018

DATED THIS THE 28TH DAY OF JUNE, 2019

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V. SANKAR, MEMBER (A)

C. Ramakrishna
(Retired Assistant Director,
Directorate of Enforcement)
S/o Late C.V. Sarma, Age 67 years,
Flat No. 3229,
Janapriya Sai Darshan Apartments, 3rd Block,
Kadugodi-Hoskote Main Road,
Bangalore 560 067 Applicant

(By Advocates Smt. Aniyam Joseph and Smt. Sanchita Sinha)

Vs.

1. Union of India,
Represented by the Secretary to the Government,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi 110 001

2. The Director
Directorate of Enforcement
Government of India
6th Floor, Lok Nayak Bhavan
Khan Market
New Delhi 110 003

3. The Deputy Director
Directorate of Enforcement
6th Floor, Lok Nayak Bhavan,
Khan Market,
New Delhi 110 003

4. The Pay & Accounts Officer
 Pay & Accounts Office
 Department of Revenue, Government of India
 Church Road
 Central Secretariat Departments
 New Delhi 110 001

5. The Joint Director
 Directorate of Enforcement
 3rd Floor, Shakkar Bhavan
 Basheer Bagh
 Hyderabad 500 004

....Respondents

(By Shri N.B. Patil, Counsel for Respondent No. 1 to 5)

O R D E R (ORAL)
(HON'BLE DR. K.B. SURESH, MEMBER (J))

We heard Smt. Sanchita Sinha, learned counsel for the applicant, in great detail. The matter seems to be covered by order of the Tribunal in Chennai in OA No. 280/2012 dated 22.07.2013 which we quote:

"O R D E R
(Pronounced by The Hon'ble Mr. K. Elango, Judicial Member)

Three applicants have joined together in filing the OA under Section 19 of the Administrative Tribunals Act, 1985 for the following relief:

"i. to call for the records pertaining to the impugned corrigendum orders in File No.G-2/1/2011 dated 5.9.2011 and File No.A.36/1/2009 dated 27.12.2011 of the 2nd and 3rd respondent and quash the same;

ii. to set aside the 2nd respondent's order dated 5.9.2011 in File No.G.-2/1/2011 and order dated 27.12.2011 in File No.A-36/1/2009 ordering recovery of overpayment made to the applicants due to the earlier fixation of pay vide orders No.22/2009 dated 17.11.2009 and No.51/2010 dated 21.1.2010 respectively;

iii. to direct the respondents to restore the earlier orders No.22/2009 dated 17.11.2009 and No.51/2010 dated 21.1.2010 issued vide F.No.A-36/1/2009 granting 3rd financial upgradation under MACP Scheme with Grade pay of Rs.6600/- in PB-3((Rs.15600-39100) to the applicants and consequently refix

their pension on the basis of the said order and release all other terminal benefits with interest and costs"

2. The facts of the case are that the applicants herein joined the services in the second respondent department as direct recruit Asst. Enforcement Officers during 1975-76 and they have retired in the cadre of Asst. Directors during 2011 and 2012. The first applicant was granted second financial upgradation under Assured Career Progression (ACP) Scheme w.e.f.29.11.2000 after completion of 24 years of service under the scale of Rs.7500-200-12000 which was later on revised. He was granted the third Modified Assured Career Progression (MACP) Scheme in the Grade Pay of Rs.6600/- under Pay Band 3 (PB 3) w.e.f. 01.09.2008. Similarly, the second applicant was given the second financial upgradation under Assured Career Progression (ACP) Scheme w.e.f. 02.08.2000 after completion of 24 years of service and he was granted the third Modified Assured Career Progression (MACP) Scheme in the Grade Pay of Rs.6600/- under Pay Band 3 (PB 3) w.e.f. 01.09.2008 wide order dt.17.11.2009. The third applicant was also granted the second financial upgradation under Assured Career Progression (ACP) Scheme w.e.f. 05.12.1999 after completion of 24 years of service and later on he was granted the third financial upgradation under Modified Assured Career Progression (MACP) Scheme in the Grade Pay of Rs.6600/- under Pay Band 3 (PB 3) w.e.f. 01.09.2008 wide order dt.17.11.2009. The above orders were rescinded by the second respondent vide order dt.27.12.2011 and a corrigendum was issued fixing in the Grade Pay of Rs.5400/- under Pay Band 3 pursuant to objections of the fifth respondent. Since all the applicants have retired and under the threat of non-process of their terminal benefits and pension papers, the applicants have refunded the alleged arrears viz., Rs.79826/- Rs.73996/- and Rs.47656/- under protest. On such refund, the first and second applicants were able to receive the terminal benefits whereas neither the terminal benefits nor the pension was sanctioned in respect of the third applicant. The impugned orders are passed without considering the DOPT instructions as well as the subsequent clarifications issued by the Government. The MACP scheme envisages three promotions in the span of 10, 20 and 30 years of service. A person who joins as Asst. Enforcement Officer would at the end of 30 years after three promotions becomes a Deputy Director with Grade Pay of Rs.6600/- under PB 3. However, the applicants have been given the Grade Pay of Rs.5400/- under PB 3 on the third Modified Assured Career Progression (MACP) Scheme by the respondents, which is not correct in law. Hence, the application is filed seeking the aforementioned relief.

3. The respondents have filed a reply which proceeds to the effect that even though the applicants were given the third Modified Assured Career Progression (MACP) Scheme in the Grade Pay of Rs.6600/- in the Pay Band 3, the said orders were withdrawn based on the

objections raised by the P & AO in terms of para 8.1 of Annexure I of OM dt.19.05.2009 of DOPT. The matter was referred to the Department of Revenue, Ministry of Finance and in the meanwhile, in view of the objections raised by the P & A.O., it was decided to issue a corrigendum dt.05.09.2011 and another corrigendum dt.27.12.2011 to fix their Pay and to make recoveries. The pay of the applicants is fixed only in terms of para 8.1 of Annexure I of OM dt.19.05.2009. As per the Sixth Pay Commission recommendations, MACP Scheme was introduced by the Government w.e.f. 01.09.2008 allowing three financial upgradations on completion of 10, 20 and 30 years of continuous service. The DOPT in OM dt.19.05.2009 made it clear that the promotion earned in the post carrying the same Grade Pay in the promotional hierarchy as per Recruitment Rules, shall be counted for the purpose of MACPs. It is only under the said circumstances, the pay in respect of the applicants was fixed and accordingly prayed for the dismissal of the application.

4. We have heard the learned counsel appearing on either side and perused the entire materials available on record.

5. From the records as well as the contentions urged on behalf of the respondents, it is seen that the pay was revised in terms of para 8.1 of Annexure I of OM dt.19.05.2009. In this connection, it is useful to refer paras 8 and 8.1 of the above OM which is extracted as hereunder.

“8. 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.

8.1 Consequent upon the implementation of Sixth CPCs recommendations, grade pay of Rs.5400 is now in two pay bands viz., PB-2 and PB-3. The grade pay of Rs.5400 in PB2 and Rs.5400 in PB-3 shall be treated as separate grade pays for the purpose of grant of upgradations under MACP Scheme.”

A perusal of the above makes it clear that para 8.1 of the DOPT instructions is a corollary to para 8 and thus applicable only to the departments where the Recruitment Rules provides for promotion to the post carrying the same Grade Pay. In the Department of Directorate of Enforcement, officers drawing grade pay of Rs.5400/- can be promoted to the post carrying the grade pay of Rs.6600/- If that is so, when the 3rd financial upgradation is given under MACP, unless the applicants are granted Grade Pay of Rs.6600/- in PB 3 it cannot be construed that they were given financial upgradation. It is only under the said circumstances, on earlier occasion, the applicants were granted 3rd MACP, in the grade pay of Rs.6600/- in PB 3. In fact, the DOPT instructions vide OM dt.12.4.2010 in the case of Direct Recruit Assistants/Direct Recruit Grade C Stenographers proceeds as follows:

"In supersession of this Dept.'s OM of even number dt.12.01.2010 the undersigned is directed to say that it has been further clarified by Establishment 'D' section of this Dept. That Direct Recruit Assistants/Direct Recruit Grade 'C' Stenographers who have got non-functional grade in the grade pay of Rs.5400/- would only be entitled for 3rd financial upgradation in the immediate higher grade pay of Rs.6600/- on completion of 30 years of continuous service or on completion of 10 years stagnation in a single grade pay whichever is earlier."

6. *As per the above OM, the said categories of officials are entitled to get higher grade pay of Rs.6600/- under MACP. If the same analogy applies to Direct Recruit Enforcement Officer like the applicants, they would also likely to get 3rd grade pay of Rs.6600/- in PB3 which in fact was rightly granted by the third respondent and later on withdrawn due to the objections raised by the 4th and 5th respondents.*

7. *The posts of Asst. Enforcement Officer, Enforcement Officer and Asst. Director are analogous to that of Inspector of Central Excise, Superintendent of Central Excise and Asst. Commissioner Central Excise. The pay of Enforcement Officer is equivalent to the post of Superintendent of Central Excise under Group 'B' i.e. Rs.7500-12000. The pay scales of Asst. Directors (then Chief Enforcement Officer) was a Group 'A' scale of Rs.8000-275-13500 equivalent to the scale of Asst. Commissioner of Central Excise/Customs. When the recommendation of 6th Central Pay Commission were implemented there were 2 scales of pay carrying Grade Pay of Rs.5400/- one in Group 'B' and another in Group 'A'. Since the Asst. Directors (then Chief Enforcement Officer) were already getting Group 'A' scale, they ought to have been placed in Grade Pay of Rs.5400/- under PB 3 but were placed under Grade Pay of Rs.5400/- under PB2 which is Group 'B' scale.*

8. *In a similar case, this Tribunal in a batch of applications in OAs 821, 930, 931 and 1098 of 2010 held with regard to the officials working in the Central Excise Department as Superintendents that while granting the second ACP their pay have to be fixed under grade pay of Rs.5400/- in PB3. Hence, the next upgradation i.e. 3rd MACP would be automatically in grade pay of Rs.6600/- in PB3. In as much as the applicants who were holding the analogous posts of Enforcement Officers with that of Superintendent of Central Excise, they ought to be granted the said grade pay.*

9. *For the reasons stated above, the impugned orders dt.05.09.2011 and 27.12.2011 of the second and third respondents are quashed and there will be a consequential direction to the respondents to restore the earlier orders dt.17.11.2009 and 21.01.2010 granting the 3rd*

financial upgradation under MACP with grade pay of Rs.6600/- in PB3 (Rs.15600-39100) to the applicants and consequently their pension should be re-fixed and to disburse all the terminal benefits arising there-from in addition to the repayment of the amount already recovered.

10. The above exercise shall be completed within a period of four weeks from the date of receipt of copy of this order. The application is allowed in the above terms. However, there will be no order as to costs."

2. Thereafter the matter was taken up to the Hon'ble High Court of Madras vide Writ Petition No. 11535/2014 dated 16.10.2014 which we quote:

"O R D E R

This writ petition is directed against the order dated 22 July 2013 in Original Application No.280 of 2012, whereby and whereunder, the Madras Bench of the Central Administrative Tribunal ("Tribunal" in short) was pleased to quash the orders dated 05 September 2011 and 27 December 2011 on the file of the Director, Directorate of Enforcement and the Joint Director, Directorate of Enforcement, New Delhi, respectively and issued a consequential direction to restore the earlier orders dated 17 November 2009 and 21 January 2010 granting third financial upgradation under the Modified Assured Career Progression Scheme ("MACPS" in short) with Grade pay of Rs.6600/- in Pay Band-3 (PB-3 in short) and to re-fix the pension amount appropriately.

Background Facts:

2. *The respondent Nos.1 to 3 herein, joined the Directorate of Enforcement as Assistant Enforcement Officers. The first respondent was granted second financial upgradation under Assured Career Progression Scheme ("ACPS" in short) with effect from 29 November 2000 on completion of 24 years of service. He was granted third financial upgradation in the scale of pay under PB-3 with effect from 01 September 2008. The second respondent was given second financial upgradation under ACPS after completion of 24 years of service. He was granted third financial upgradation under MACPS in the grade pay of Rs.6600/- under PB-3 vide order dated 17 November 2009. Similarly, the third respondent was also granted second financial upgradation under ACPS after completion of 24 years of service. Later, he was granted third financial upgradation under*

MACPS under the Grade pay of Rs.6600/- by order dated 17 November 2009.

3. The Directorate of Enforcement, by order dated 27 December 2011, cancelled the orders granting third financial upgradation under MACPS. The respondent Nos.1 to 3 challenged the orders dated 05 September 2011 and 27 December 2011, before the Tribunal in O.A.No.280 of 2012.

4. Before the Tribunal, the respondents 1 to 3 contended that the Enforcement Department has earlier fixed their pay correctly by granting third financial upgradation under MACPS at PB-3 in the pay-scale of Rs.15600-13100 with grade pay of Rs.6600/-. The grant of third financial upgradation under MACPS at PB-3 was cancelled on account of the alleged audit objection. It was their contention that they were given two promotions as Enforcement Officer and Assistant Director and got their second financial upgradation under ACPS with effect from 29 November 2000, 02 August 2000 and 05 December 1999 respectively. It was further contended that the third financial upgradation under MACPS on completion of 30 years was correctly given in PB-3 along with Grade Pay of Rs.6600/-. However, the Grade Pay was revised on a misinterpretation of Clause 8(1) of Annexure II of MACPS.

5. The Enforcement Department, in its reply statement filed before the Tribunal, contended that consequent upon the implementation of VI Pay Commission recommendations, Grade Pay of Rs.5400/- was given in two pay bands viz., PB-2 and PB-3. According to the Enforcement Department, the Grade pay of Rs.5400/- in PB-2 and Rs.5400/- in PB-3, shall be treated as separate Grade Pays for the purpose of financial upgradation under MACPS. The Directorate of Enforcement, accordingly, justified the orders impugned in the Original Application.

6. The Tribunal was of the view that Clause 8(1) of the Office Memorandum should be treated as a corollary to Clause 8. According to the Tribunal, Clause 8(1) would be applicable only to those Departments, which provide for promotion to the post carrying the same Grade Pay. The Tribunal held that unless the respondent Nos.1 to 3 are granted Grade Pay of Rs.6600/- in PB-3, it cannot be construed that they have been given the third financial upgradation. The Tribunal allowed the Original Application and quashed the impugned orders and issued consequential directions. Feeling aggrieved by the said order, the petitioners who were the respondents before the Tribunal, are before this Court.

7. We have heard the learned Senior Panel Counsel for the Central Government and the learned counsel for respondents 1 to 3.

Discussion:

8. The respondents 1 to 3 were given financial upgradation under ACPS. They were also granted third financial upgradation under MACPS in the Grade Pay of Rs.6600/- under PB-3. The order granting them third financial upgradation under MACPS in the Grade Pay of Rs.6600/- under PB-3 was later withdrawn, presumably, on account of audit objection.

9. The Government of India framed the MACPS, pursuant to the recommendations made by the VI Central Pay Commission. As per the recommendation, financial upgradation will be available in the next higher Grade Pay, whenever an employee has completed 12 years of service in the same Grade. However, it was stipulated that not more than two financial upgradations shall be given in the entire career. The MACPS, which is the subject matter of this writ petition, provides that there shall be three financial upgradations counted from the Direct Entry Grade on completion of 10, 20, 30 years of service, respectively. The MACPS envisages placement in the immediate next higher Grade Pay in the hierarchy of the recommended revised pay bands and Grade Pay. Therefore it is clear that financial upgradation under the scheme will be available whenever an employee has spent ten years in the same Grade Pay.

10. Financial upgradation given to respondents 1 to 3 in the subject case was revised solely on the ground that Grade Pay of Rs.5400/- in PB-2 and Rs.5400/- in PB-3 shall be treated as separate Grade Pays for the purpose of financial upgradation under MACPS. Such a view was taken by taking a literal interpretation of Clause 8(1) of MACPS without taking into account the purpose for which the very scheme was evolved.

11. Enforcement Officers were given Grade Pay of Rs.5,400/- in PB-2 on non-functional basis after completion of four years of regular service. The officer is eligible for MACPS, which carries the Grade Pay of Rs.5,400/- in PB-3. The immediate next higher Grade of Pay to the Grade Pay of Rs.5,400/- is Rs.6,600/-. Therefore, respondent Nos.1 to 3 were correctly granted Grade Pay of Rs.6,600/- in PB-3 on completion of thirty years of continuous service. The petitioners proceeded as if Grade Pay of Rs.5,400/- in PB-3 is higher Grade Pay to the Grade Pay of Rs.5,400/- in PB-3.

12. The following table with regard to promotion in the Directorate of Enforcement would make the position clear:

S.No.	Stage	Grade Pay
1	Grade Pay of Assistant Enforcement Officer (Entry Grade) In	Rs.4600/-

2	Grade Pay of AEO on promotion to Enforcement Officer	Rs.4800/-
3	GP of EO after completing 4 years service in the grade pay of Rs.4800/-	Rs.5400/- in PB-2
4	GP of EO after promotion/ACP to the post/Cadre of CEO (re-designated as AD-II	Rs.5400/- in PB-3
5	GP after rendering 30 years of service counting from the entry grade of AEO	Rs.6600/-

13. While interpreting the Scheme introduced for the purpose of giving financial upgradation to the employees on account of stagnation, the authorities are expected to consider the factors which actually contributed for evolving such a beneficial scheme. The scheme should be interpreted in a meaningful manner. The provisions should be given a workable interpretation. When it is made out that the intention was to give financial upgradation, the attempt should be to grant the benefit rather than to restrict it by taking a too technical view of the matter.

14. The preamble to the Scheme contained the intention of the Government to give financial upgradation to the employees pursuant to the recommendations made by VI Pay Commission. While considering a scheme like this, the preamble also should be taken note of by the Courts.

15. The Supreme Court in *Prabhudas Damodar Kotecha v. Manhabala Jeram Damodar* (2013) 10 Scale 242 observed that while interpreting the provisions of a Statute, the statements of objects and reasons are also relevant.

16. Since the MACP Scheme was framed in the larger interest of employees, Court should give a liberal construction. The primary attempt in such cases should be to achieve the purpose and object of the policy and not to frustrate it.

17. The Grade Pay in this case was initially granted on non-functional basis. The Grade Pay of Rs.5400/- in PB-2 being non-functional scale, the same cannot be a functional Grade to Assistant Director-II, who got promotion from the post of Enforcement Officer.

Conclusion:

18. The Central Administrative Tribunal correctly interpreted clauses 8 and 8(1) of the MACPS and quashed the impugned orders and restored the earlier orders granting benefit to respondents 1 to 3.

Similar view was taken by the Central Administrative Tribunal, Chandigarh Bench in O.A.No.1038 of 2010 and it was upheld by the High Court of Punjab and Haryana by judgment dated 19 October 2011 in CWP No.19387 of 2011. We are therefore of the considered view that the impugned order does not call for interference by exercising the power of judicial review.

19. In the upshot, we dismiss the writ petition. Consequently, the connected MP is closed. No costs."

3. Thereafter the matter was taken up to the Hon'ble Supreme Court in SLP No. 15396/2015 which was dismissed by the Hon'ble Apex Court vide order dated 31.08.2015. Therefore, the matter is now concretized.

4. The OA is, therefore, allowed to the same extent. Benefits, if any, to be made available within the next two months. No order as to costs.

(C.V. SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/01382/2018

- Annexure-A1: Copy of the appointment letter dated 24.02.1976
Annexure-A2: Copy of the Est. Order dated 30.12.1988
Annexure-A3: Copy of the E.O dated 17.04.2000
Annexure-A4: Copy of the Order dated 09.06.2000
Annexure-A5: Copy of the E.O No. 7 dated 11.05.2007
Annexure-A6: Copy of the E.O No. 22 dated 17.11.2009
Annexure-A7: Copy of the letter dated 21.03.2011
Annexure-A8: Copy of the representation dated 11.04.2011
Annexure-A9: Copy of the representation dated 25.04.2011
Annexure-A10: Copy of the order dated 13.10.2011
Annexure-A11: Copy of the corrigendum dated 05.09.2011
Annexure-A12: Copy of the order dated 22.07.2013 passed by Central Administrative Tribunal, Madras Bench
Annexure-A13: Copy of the order dated 16.10.2014 passed by Hon'ble High Court of Madras
Annexure-A14: Copy of the order dated 31.08.2015 passed by Hon'ble Supreme Court in SLP No. 15396/2015
Annexure-A15: Copy of the order dated 19.09.2017 passed by the Hon'ble Supreme Court in Review Petition No. R.P. (C) 802/2017
Annexure-A16: Copy of the representation dated 10.05.2017
Annexure-A17: Copy of the representation dated 25.07.2017
Annexure-A18: Copy of the representation dated 12.10.2017

* * * * *