

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 180/00854/2016

Wednesday, this the 17th day of March, 2021.

CORAM:

HON'BLE Mr. P. MADHAVAN, JUDICIAL MEMBER

HON'BLE Mr. K.V. EAPEN, ADMINISTRATIVE MEMBER

K. Ganesan, 62 years,
S/o. Kumaran,
Retired Painter Grade-I, Mail Motor Service,
Thiruvananthapuram.
Residing at : Kottadiyil House,
T.C. 7/2361, Edavode Aiswarya Nagar,
Sreekaryam, Thiruvananthapuram – 695 017. - Applicant

[By Advocate : Mr. T.A. Rajan]

Versus

1. Union of India represented by Secretary,
Ministry of Communication, Department of Posts,
New Delhi – 110 001.
2. The Chief Post Master General,
Kerala Circle, Thiruvananthapuram – 695 033.
3. The Assistant Director (Staff),
Office of the Post Master General,
Kerala Circle, Thiruvananthapuram – 695 033. - Respondents

[By Advocate : Mr. Brijesh A.S, ACGSC]

The application having been heard on 23.02.2021, the Tribunal on 17.03.2021 delivered the following:

ORDER

Per: Mr. P. Madhavan, Judicial Member

The applicant filed this O.A seeking the following reliefs:-

- “i. Declare that the applicant is entitled to get second financial upgradation under ACP Scheme with effect from 24.06.2006 and the third financial upgradation under the MACP Scheme with effect from 24.06.2012 with all consequential benefits.*
- ii. direct the respondents to grant the second financial upgradation under ACP Scheme with effect from 24.06.2006 and the third financial upgradation under MACP Scheme with effect from 24.06.2012 with all consequential benefits.*
- iii. Direct the respondents to revise the pension and pensionary benefits of the applicant on the basis.”*

2. The applicant is a retired Postal employee. He retired from service on 30.09.2013. He is aggrieved by the non-granting of the second financial upgradation benefit under the Assured Career Progression Scheme (ACP Scheme) and also the denial of 3rd financial upgradation benefit under the MACP Scheme to him.

3. The applicant joined service as a Painter on 24.06.1982. He was promoted to the post of Painter Grade-II (Grade II Skilled Artisan) in the pay scale of Rs. 4000-100-6000 with effect from 01.12.1997 as per order dated 16.02.2000 of the 3rd respondent. The said promotion order is produced as Annexure A-1. Later, consequent on the categorization of trades of Skilled Artizans in Mail Motor Service, the applicant was posted as Highly Skilled Artizan Grade-I in the scale of pay of Rs. 4000-100-6000 with effect from 01.01.2003. The order of Respondent No. 3 is produced as Annexure A-2. According to him, the respondents had posted him as Skilled Artizan Grade-I in the same scale of pay of Rs. 4000-100-6000 of Skilled Artizan Grade-II, in which post he was working prior to the above posting. The applicant was holding the same scale of pay when he was posted as Skilled Artizan Grade-I. According to him, Skilled Artizan Grade-I was not a promotion. In the meanwhile, the 5th Pay Commission introduced an Assured Career Progression Scheme (ACP Scheme) as per order dated 09.08.1999. According to the said Scheme, the employees are entitled to get two financial upgradations on completion of 12 years and 24 years, if they have not got regular promotions in the meanwhile. The applicant in this case had got promotion to the post of Painter Highly Skilled Grade-II with effect from 01.12.1997. His promotion to the post of Painter Highly Skilled Grade-II and was taken as first ACP and when he completed his 24 years of service on 24.06.2006 he is entitled to get

the 2nd financial upgradation, but the respondents arbitrarily denied the same.

4. The Government of India had introduced Modified Assured Career Progression Scheme (MACP Scheme) for Central Government Civilian Employees replacing the ACP Scheme on 19.05.2009. According to the said Scheme, an employee will get three financial upgradations on completion of 10, 20 and 30 years of service. As the applicant completed 30 years of service on 24.06.2012, he is entitled to get the 3rd financial upgradation benefit under the MACP Scheme. But the respondents did not give the said benefit to him. The applicant submitted a representation on 27.07.2013 to the 2nd respondent, which is produced as Annexure A-3. But the 2nd respondent did not consider the same even though he sent many reminders. At last he submitted another representation to the Ministry of Communication & IT with copies to the Secretary, Department of Posts, New Delhi (Annexure A-4 dated 20.01.2016). The said representation has also not been considered till now. Hence, he filed the present O.A.

5. The respondents filed a reply, additional reply and 2nd additional reply against the claim made by the applicant. The applicant also filed rejoinder to the additional reply.

6. On going through the reply filed by the respondents, we find that the respondents had not seriously challenged the applicant's service and regarding the various postings he got till his retirement. According to the respondents, the applicant was granted first promotion as Skilled Artizan Grade II and this has to be treated as first ACP. The respondents further contend that the 2nd posting as Highly Skilled Artizan Grade-I with effect from 01.12.1997 has to be treated as promotion. There was no provision in giving fixation to the applicant in the said posting and accordingly he was posted in the same scale

of Rs. 4000-100-6000, which he was holding as Painter Grade- II. According to them, the applicant is entitled to get the 2nd ACP after 24 years only, if he has not got any promotions in between. The posting of the applicant as Highly Skilled Artizan Grade-I is a promotion. The VI CPC had granted a new scale to Skilled Artizan Grade-I and upgraded the scale to Rs. 4500-125-7000 and placed in the Pay Band of Rs. 5200-20200 with Grade Pay of Rs. 2800/-. As per the said recommendation, the applicant was given all benefits with grade pay with effect from 01.01.2006 and hence he is not eligible for getting the 2nd ACP. But the respondents admitted that under the re-categorization, the Highly Skilled Artizan Grade-I/amalgamated and created Highly Skilled Artisan Grade-I with the pay scale of Rs. 4000-100-6000. The applicant was not eligible to get his 3rd MACP and he was not granted the same. His grading was only “*average*” and not “*good*”. As per the MACP Scheme, the grading of “*good*” is the benchmark for considering the grant of MACP benefit. So, the DPC did not recommend the applicant for granting the 3rd MACP to which he would have been entitled on completion of 30 years.

7. We have heard Advocate Mr. T.A. Rajan, learned counsel appearing for the applicant and Mr. Brijesh A.S, learned ACGSC appearing for the respondents. We have also gone through the pleadings made by the applicant and respondents in this case.

8. On perusal of records, we find that the applicant joined the service on 24.06.1982 and as per the ACP Scheme, he is entitled to get financial upgradations on completion of 12 years and 24 years respectively, if he has not received any promotion in between. The applicant in this case was granted a promotion as Painter (Skilled Artizan Grade-II) with the scale of pay of Rs. 4000-100-6000 with effect from 01.12.1997. So, his first ACP has to be

written off against the promotion he got in the meanwhile. Subsequently, as per re-categorization, the Skilled Artizan Grade-I and Grade-II was amalgamated and both were placed in the scale of Rs. 4000-100-6000. The applicant was also posted as Highly Skilled Artizan Grade-I in the pay scale of Rs. 4000-100-6000.

9. The point to be decided is whether the said posting of the applicant as Highly Skilled Artisan Grade I is a promotion or not? Counsel for the applicant in this case mainly relies on the clarification issued by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training in its letter No. 35034/1/97-Estt (D) (Vol. IV) dated 04.01.2000. It is clarified as follows:-

“Two posts carrying different pay scales constituting two rungs in a hierarchy have now been placed in the same pay scale as a result of rationalization of pay scales. This has resulted into change in the hierarchy in as much as two posts which constituted feeder and promotion grades in the pre-merged scenario have become one grade. The position may be clarified further by way of the following illustration. Prior to the implementation of the Fifth Central Pay Commission recommendation, two categories of posts were in the pay scales of Rs. 1200-1800 and Rs. 1320-2040 respectively the latter being promotional post for the former. Both the posts have now been placed in the pay scale of Rs. 4000-6000. How the benefits of the ACP Scheme is to be allowed in such cases.

Clarification

Since the benefits of upgradation under ACP Scheme (ACPs) are to be allowed in the existing hierarchy, the mobility under ACPs shall be in the hierarchy existing after merger of pay scales by ignoring the promotion. An employee who got promoted from lower pay scale as a result of promotion before merger of pay scales shall be entitled for upgradation under ACPs ignoring the said promotion as otherwise he would be placed in a disadvantageous position vis-a-vis the fresh entrant in the entry grade.”

10. So, according to the applicant, on the basis of above clarification, the post of High Skilled Artisan Grade-I cannot be treated as promotion for the purpose of granting ACP benefits. According to him, since there is no change of scale of pay, the said promotion of Highly Skilled Artizan Grade-I cannot be treated as promotion for the purpose of ACP and so he is entitled to get

promotion after 24 years. Counsel for the respondents mainly contented that the 6th CPC had enhanced the pay scale of Artizan Grade-I to 4500-125-7000 and placed them in the Pay Band of Rs. 5200-20200 with Grade Pay of Rs. 2800/-. The applicant was granted the benefits arising out of the above upgradation separately with effect from 01.01.2006. According to the respondents, the applicant is not entitled to get 2nd ACP.

11. On going through the records and pleadings, we find that the applicant in this case was promoted to the post of Highly Skilled Artizan Grade-I with effect from 01.01.2003 as per order dated 29.03.2004 (Annexure A-4). It is even admitted by the respondents that he was not given any financial benefits as the scale was same i.e., 4000-100-6000. They also admitted that there was no re-fixation granted to him when he was posted as Artizan Grade-I. However, the contention of the respondents is that the applicant's scale of pay was upgraded and placed in the PB-I i.e., 5000-20200 with Grade Pay of Rs. 2800/- as applicable for Highly Skilled Artisan Grade-I with effect from 01.01.2006 i.e., before the 2nd ACP fell due to the applicant. So, the argument that applicant continued in the same scale of pay is not correct. The VI CPC has upgraded the scale to Rs. 5000-20200 with Grade Pay of Rs. 2800/- and hence the placement of applicant in a higher scale w.e.f. 01.06.2006 writes off his claim for 2nd ACP. Otherwise, he would have been placed in the Pay Band of Rs. 5000-20200 with Grade Pay of Rs. 2400/- which was applicable for Artizan Grade-II. Thus, he got a higher Grade Pay and it is to be treated as promotion.

12. We have carefully gone through the matter and find that the applicant was granted higher Grade Pay in PB-I due to his promotion with effect from 01.06.2006 and it was granted before his right for getting 2nd ACP crystalised.

So, we are of the opinion that the applicant is not entitled to get the 2nd ACP as claimed by him.

13. The applicant in this case is claiming 3rd MACP benefit since he has completed 30 years of service. According to him, he completed 30 years of service on 24.06.2012. The MACP Scheme came in operation under the O.M dated 15.05.2009 and as per the said Scheme, 3rd financial upgradation is available for employees on completion of 10, 20 and 30 years respectively. The applicant in this case had completed 30 years on 24.06.2012 and he is entitled to get the 3rd MACP as contended by him even though the respondents have denied granting of 3rd MACP. On going through the reply filed by the respondents, the 3rd MACP was not granted since he could not obtain the required grading in his ACR. According to them, the ACR grading of the applicant are as follows:-

*“01.02.2004 to 31.03.2005 :- Good
07.11.2007 to 31.03.2008 :- Average
01.04.2008 to 28.09.2008 :- Average
29.09.2008 to 31.03.2008 :- Good”*

14. The respondents contend that the ACR grading of the applicant for the period from 01.04.2006 to 06.11.2007 was not available. There were two charges pending against him and he was punished with reduction of pay for the period from 01.02.2007 to 31.02.2008. His increment was also suspended during this period. It is further contended that there was another charge under the CCS (CCA) Rules in the year 2006 and reduction of pay was also awarded to the applicant. The granting of ACP and 2nd MACP was also considered by the DPS HQ vide Annexure A-11. Even though the applicant completed 30 years of service on 20.02.2013 and retired on superannuation, the MACP benefit was not granted as he was having below benchmark in the ACR

grading. The grading of “*average*” was reviewed by the Reviewing Authority and they found that there is no reason to change the above grading and so the applicant could not be considered for the 3rd financial upgradation. The above reply of the respondents would come to show that the third MACP was denied only because the applicant could not get the required grading.

15. We are of the opinion that as per the MACP Scheme, the applicant ought to have been graded “*good*” in the ACR for getting the benefit under the MACP Scheme. Since the applicant has failed to get the required grading, the respondents have denied the MACP to the applicant. In view of the above, the applicant is not entitled to get the 3rd MACP as claimed by him on completion of 30 years of service.

16. There is no arbitrariness or illegality in the above decision of the respondents regarding the denying 2nd ACP and 3rd MACP to the applicant. The O.A is dismissed. No order as to costs.

(Dated, 17th March, 2021.)

(K.V. EAPEN)
ADMINISTRATIVE MEMBER

(P. MADHAVAN)
JUDICIAL MEMBER

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Applicant's Annexures

Annexure A-1	-	True copy of the order No. ST/25-1/99 dated 16.02.2000 of the third respondent.
Annexure A-2	-	True copy of order No. ST/25-1/99 dated 29.03.2004 of the third respondent.
Annexure A-3	-	True copy of the representation dated 27.07.2013 of the applicant.
Annexure A-4	-	True copy of the representation dated 20.01.2016 of the applicant.
Annexure A-5	-	True copy of the Confidential Report dated 07.11.2007 to 31.03.2008.
Annexure A-6	-	True copy of the Confidential Report dated 01.04.2008 to 28.09.2008.
Annexure A-7	-	True copy of the Confidential Report dated 29.09.2008 to 31.03.2009.
Annexure A-8	-	True copy of the Confidential Report dated 01.04.2009 to 31.03.2010.
Annexure A-9	-	True copy of the Confidential Report dated 01.04.2010 to 31.03.2011.
Annexure A-10	-	True copy of the Confidential Report dated 01.04.2011 to 31.12.2011.
Annexure A-11	-	True copy of the file note sheet No. ST/101-6/M/RS/2010 dated 25.08.2016.
Annexure A-12	-	True copy of the Memorandum No. 35034/3/2008-Estt(D) (Vol.II) dated 04.10.2012.

Annexures of Respondents

Annexure R-1	-	True copy of the Directorate order No. 17-4/88-PE.I/PE.II (Pt.I)(2) dated 29.06.1992.
Annexure R-2	-	True copy of the Directorate letter No. 22-2/2000 PEI (PCC) dated 11.05.2005.
Annexure R-3	-	True copy of the DoPT letter No. 35034/1/97-Estt. (D) dated 09.08.1999.

- Annexure R-4 - True copy of the Directorate letter No. 4-7/
(MACPS)/2009-PCC dated 01.09.2010.
- Annexure R-5 - True copy of the letter No. ST/101-6/M/125/2010
dated 24.07.2012.
- Annexure R-6 - True copy of the representation dated 02.03.2013.
- Annexure R-7 - True copy of the PMG Central Region letter No.
ST/13-9/2013 dated 03.04.2013.
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