

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

**OA/020/00612/2020 with MA/020/000159/2021 &
MA/020/00312/2021**

HYDERABAD, this the 1st day of April, 2021



Hon'ble Mr. Ashish Kalia, Judl. Member

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

B.V. Ramana S/o B.P. Narayanappa,
Aged about 59 years, Occ : Sr. Technical Assistant,
Southern Region Farm Machinery Training &
Testing Institute, Tractor Nagar, Garladinne-515 731,
Anantapur District.

...Applicant

(By Advocate : Mr. P. Bhaskar)

Vs.

1.Union of India, Rep by its Joint Secretary , (M&T Division),
Ministry of Agriculture and Farmers Welfare,
Krushi Bhavan, New Delhi – 110 001.

2.The Director, Southern Region Farm Machinery Training &
Testing Institute, Tractor Nagar, Garladinne-515 731,
Anantapur District.Respondents

(By Advocate : Mr. V.Vinod Kumar, Sr.CGSC)

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

Through Video Conferencing:

2. The OA is filed in regard to grant of 2nd MACP to the applicant and the order of recovery ordered on the basis of audit objection.



3. Brief facts of the case are that the applicant joined as Trainer operator (for short “**TO**”) on 14.9.1992 in the pay scale of Rs.1200 -2040 as a direct recruit and thereafter, promoted as Test Operator cum Mechanic (for short “**TOCM**”) in the same pay scale on 23.2.1996. In the 5th CPC, the posts of TO & TOCM were merged and the increment granted was withdrawn. Challenging the same, OA 423/2003 was filed wherein it was directed to treat applicant as promoted as TOCM and fix the salary as per FR 22(1)(a)(i). Thereafter, applicant was given the pay scale of Rs.4500-7000 on promotion as Technical Assistant (TA) after 14 years in 2006 instead of 2004 under ACP scheme. Applicant was promoted as Senior Technical Assistant with grade pay of Rs.4200 in 2016. An audit objection was raised in 2018 in regard to the financial up-gradation granted to the applicant and orders were issued to recover excess amount paid to the applicant. Aggrieved, the OA is filed.

4. The contentions of the applicant are that juniors to the applicant Sri Sk. Sheode, Sri Ishtiaq Khan and Sri J. Bhon Singh who joined later to the applicant in 1993 were given ACP in 2005 in pay scale of Rs.4500-7000 and MACP in grade pay of Rs.4200 in 2013. Juniors are therefore getting more pay than the applicant. The elevation of the applicant as TOCM cannot be treated as a promotion. Applicant is due to retire in April 2021.

Recovery ordered is against law. Representation submitted was disposed with a delay of 2 years.

This Tribunal passed an interim order on 06.10.2020 directing the respondents not to effect any recovery from the pay of the applicant till the disposal of the OA.



5. Respondents *per contra* state that the applicant joined as Mate Grade-II in 1984 and was promoted as a direct recruit to the post of TO in 1992 in the pay scale of Rs.1200-1800. Thereafter, he was promoted as TOCM in 1996 without any financial benefit as per their Ministry letter dated 26.4.2000. Challenging the non grant of financial benefit, applicant filed OA 423/2003 wherein it was directed to treat the elevation to TOCM as promotion and fix the salary as per FR 22(1)(a)(i) and the same was complied with. As per ACP/MACP (Assured/Modified Assured Career Progression Scheme), the financial up-gradations are to be regulated. Applicant was granted two promotions in 1996 & 2006 and 2nd / 3rd MACP were granted in 2012/ 2016. Audit raised an objection in regard to grant of 2nd MACP in 2012 and hence recovery was ordered. Due to administrative reasons there was delay in disposing the representation. Respondents also filed MA No. 159/2021 for vacating the interim order dt. 06.10.2020.

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

7. I. The issue is about the delayed grant of 2nd financial up-gradation vis-a-vis juniors and to top it, recovery of the same based on an audit objection. The contentions of the applicant are to be examined against the back ground of the ACP scheme evolved in 1999 which provides for

grant of financial up-gradation in the next hierarchical pay scale provided no promotions are granted in intervals of 12/24 years and in the next higher grade pay in intervals of 10/20/30 years under MACP scheme if no promotions are granted in the time intervals stated. The applicant joined as Trainer Operator in 1992 and was elevated as TOCM in 1996 without any financial benefit. On filing OA 423/2003, the respondents were directed to treat the elevation to TOCM as promotion and fix the pay of the applicant as per the relevant FR provision. The order of the Tribunal dt.24.06.2005 is extracted hereunder:

“8. Respondents have not shown us details of the exercise carried out as indicated in para 3 of the OM reproduced above nor have they indicated if the recruitment rules for the re-structured posts have been notified, if so, from which date. In any case, this much is clear from the pleadings that on the crucial date when the applicant promoted to the post of Test Operator-cum-Mechanic in February 1996, it was in accordance with the recruitment rules and pay scales as the then existed.

9. The case before us is different from the one referred to above in the Office Memorandum. Not only that nothing has been shown by the respondents how they examined the instant case in the light of the contents para 3 of the OM. The applicant here, the respondents admit, was promoted to the post of Test Operator-cum-Mechanic w.e.f. 23.02.1996 and allowed benefit of any fixation under FR 22(I)(a)(1) on 01.10.1996 much before the CPC recommendations got accepted. It is, therefore, not possible to accept the logic put forward by the respondents in withdrawing a benefit that the applicant was entitled to on the crucial date of his promotion.

10. In the result, the prayer is allowed in part – the impugned order contained in Annexure-A/1 is quashed. The respondents are directed to fix pay by treating applicant's placement in the scale of Test Operator-cum-Mechanic as promotion for the purpose of pay fixation under FR 22(I)(a)(1) and pay arrears within a period of 90 (ninety) days of receipt of copy of this order, along with a copy of calculation sheet. No costs.”

II. Thus, the applicant's elevation as TOCM was treated as promotion in terms of the orders of the Tribunal and was granted the financial benefit under relevant FR, as ordered. The applicant pleading that



it cannot be treated as a promotion is incorrect in the face of the Tribunal order. The applicant was thereafter promoted as Technical Assistant in 2006. Hence, applicant got 2 promotions - one in 1996 and the other in 2006 and therefore, he would not be eligible for the 2nd financial upgradation under MACP scheme. However, respondents went ahead and granted the 2nd MACP in 2012 (1992+20 = 2012), which was incorrect. Audit raised a valid objection in 2015, but when respondents failed to act on the objection, it was again raised in 2019, which resulted in the order of recovery vide order dated 14.09.2020.

III. The other contention of the applicant is that his 3 juniors named in para 4 supra, who joined in 1993, were granted correctly the 1st ACP in 2005 and the 2nd MACP in 2013 since they were not granted any promotions. The financial upgradation granted under ACP/MACP scheme are personal to the employees and therefore, as per the rules governing the schemes cited, pay of a senior cannot be stepped up vis-à-vis a junior whose pay has been fixed under the schemes referred to. Therefore, the contention of the applicant that as his juniors are getting more pay than him on account of ACP/MACP, he is eligible to draw pay on par with them, is invalid.

IV. In the instant case, the respondents granted the 2nd MACP in 2012 and the audit raised objection in 2015 avowing that the applicant is ineligible. The audit objection was as per rules and the rules cannot be infringed as observed by the Hon'ble Supreme Court in a series of judgments as under:

*The Hon'ble Supreme Court observation in **T.Kannan and ors vs S.K. Nayyar (1991) 1 SCC 544** held that “Action in respect of matters covered by rules should be regulated by rules”. Again in **Seighal's case (1992) (1) supp 1 SCC 304** the Hon'ble Supreme Court has stated that “Wanton or deliberate deviation in implementation of rules should be curbed and snubbed.” In another judgment reported in (2007) 7 SCJ 353 the Hon'ble Apex court held “ the court cannot de hors rules*



V. Further, when the applicant was not entitled for the benefit and he still insists that the same has to be allowed, would tantamount to unjust enrichment. The Principle of unjust enrichment has 3 elements namely i) receipt of a benefit i.e. the 2nd MACP benefit; ii) at the cost of the respondents and iii) the retention of benefit unjustly would call for reimbursement of the unjust amount to the respondents. This is the law on the subject as observed by the Hon'ble Supreme Court of India in **Mahabir Kishore & Ors vs State Of Madhya Pradesh - 1990 AIR 313, 1989 SCR (3) 596**, as under:

“The principle of unjust enrichment requires: first, that the defendant has been 'enriched' by the receipt of a "benefit"; secondly, that this enrichment is "at the expense of the plaintiff"; and thirdly, that the retention of the enrichment be unjust. This justifies restitution.”

Therefore, the decision of the respondents to order the recovery in question is in accordance with the above legal principle. The respondents acted promptly before the retirement of the applicant.

VI. The applicant has also made a contention that he should have been given the pay scale due under ACP in 2004 (1992 +12 years = 2004) instead of 2006, which too is incorrect since he was granted promotion in 1996 and therefore, ineligible for financial up-gradation. The applicant was

granted promotion as TA in 2006 in the pay scale sought and it is not financial up-gradation as is understood by him. The processing time in accepting the representation of the applicant on 17.9.2018 and rejecting it on 14.9.2020 was explained stage by stage by the respondents, which we found to be reasonable, given the different stages at which it has been processed.



VII. In view of the aforesaid circumstances, the OA is devoid of merit and hence, is dismissed with no order as to costs. The interim order passed by the Tribunal on 6.10.2020 is vacated and MA 159/2021 is accordingly disposed. MA 312/2021 stands closed.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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