

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

OA/020/15/2015

Reserved on : 24.03.2021

Pronounced on: 16.04.2021



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

1. Joint Action Committee,
Akashvani Announcers Association rep. by its
Convener E.V.S.R.K. Sastry
Occ: Senior Grade Announcer,
All India Radio, Vijayawada.
2. A. Sarada, Occ:Senior Grade Announcer,
All India Radio, Vijayawada.

...Applicants

(By Advocate : Sri K. Sudhakar Reddy)

Vs.

1. Union of India rep. by its
Secretary,
Ministry of Information & Broadcasting,
Sastry Bhavan, New Delhi – 110 001.
2. The Chief Executive Officer,
Prasar Bharathi, II floor,
PTI Building,
Parliament Street, New Delhi – 110 001.
3. The Director General,
All India Radio, Akashvani Bhavan,
Parliament Street, New Delhi – 110 001.

... Respondents

(By Advocate: Sri A. Radha Krishna, Sr. PC for CG)

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

2. The OA is filed in regard to grant of 2nd ACP (Assured Career Progression Scheme) in the grade pay of Rs.6600 to the applicants, after completion of 24 years of service.



3. Brief facts of the case are that applicants are working as Announcers in the respondents organization. The Announcer posts are graded as under:

Grade	Pay scale (Rs.) (As per V CPC)
Grade IV	5,000-8,000
Grade III	5,500-9,000
Grade II	6,500-10,500
Grade I	10,000- 15,200

As per the ACP scheme, the grade pay of Rs 4600 has to be granted after completing 12 years of service between 1.1.2006 & 31.8.2008 and the grade pay of Rs.6600 on completion of 24 years of service during the said period. However, Smt. Saradha, Sr. Announcer along with 23 others were granted grade pay of Rs.4800 instead of Rs.6600 after completing 24 years of service and eligible for next promotion. Aggrieved, the OA is filed.

4. The contentions of the applicants are that the clarification given to several representations made by the applicants had an irrelevant clause stating that the 2nd ACP would be granted on satisfying the promotional norms and after the framing of the Recruitment Rules post merger of the scales. The clause of merger of scales would apply to the pay scales of



Rs.6,500 - 10,500 & Rs.7,450 – 11,500 as per Dept. of Expenditure letter dated 13.11.2009. For Announcers, the scale of Rs.7450-11500 does not exist and hence, their next promotional scale is Rs.10,000-15,200 with Grade Pay of Rs.6600. The OM dated 9.8.1999 envisages placement in higher pay scale on a personal basis and does not amount to functional/regular promotion nor would require creation of new posts. Hence, the ACP scheme has nothing to do with the post but speaks about next hierarchical pay scale. Respondents are misinterpreting this clause and holding the implementation of grade pay of Rs.6600 vide AIR Directorate letter issued in Dec. 2013, to all the Announcers who have completed 24 years service before 31.08.2008 and granted several months ago. Respondents have failed to merge the Announces Grades IV, III, II despite 6th CPC recommendations. Grade IV & Grade III have been merged which has no impact in respect of Grade II Announcers who are in the pay scale of Rs.6500- 10,500. The Directorate of AIR (All India Radio) vide letter F.No. 6/21/2013-SVIII at para 5 has stated that the merger of Grade II posts in the pay scale of Rs.6500- 10,500 with pay scale of Rs.7500-11,500 does not arise. Therefore, the framing of Recruitment Rules is no way concerned with the grant of Grade Pay of Rs.6600 in the next hierarchical pay scale.

5. Respondents in the reply statement state that the Akashvani Announcers Association, which is one of the applicants, is not a recognized Association. Respondents affirm that the applicants are not eligible for the 2nd ACP, as per para 2 of AIR directorate letter dated 4.9.2013, which was issued in accordance with the MACP guidelines of DOPT dated 19.5.2019 and as per clarification No.27 of FAQs dated 1.4.2011 (Annexure R-V).



This was followed by another letter dated 5.12.2013 where in it was made clear that the 2nd ACP benefits to eligible Announcers in the Grade Pay of Rs.6600 would be issued after the post merger of cadre structure of the Announcers. Further, as per Dept. of Expenditure OM dated 13.11.2009, the grade pay of Rs 4200 was enhanced to Rs 4600 for the pay scale of Rs.6500-10,500. Thus, as per OMs dated 29.8.2008 & 13.11.2009, the replacement Grade Pay for pay scale of Rs.6500 – 10,500 is Rs.4600 in PB-2 and for the merged scales of Rs.5000-8000 & 5500- 9000, the Grade Pay is Rs.4200. Accordingly, the Grade Pay of Rs.4600 was granted to Announcer Grade II and the posts of Grade III & Grade IV were merged granting the pay scale of Rs.4200 vide Memo dated 21.5.2014. However, the merger of scales was not approved by the competent authority and hence, withdrawn on 12.5.2016 and when proposal were sent for merger on 5.4.2018 it was returned with observations relating to deemed abolition of posts, man power audit and reduction in promotional avenues to the Announcers. The matter is now under examination and therefore, as on date, the 4 tier structure continues. The applicants have been granted 2nd financial up-gradation as per eligibility. Similar issue fell for consideration in OA Nos. 389/2017, 518/2017, 629/2017 & 630 of 2017 before the Hon'ble Bangalore Bench of this Tribunal and the relief sought was rejected. Applicants are similarly placed and hence are not eligible for 2nd ACP under ACP scheme introduced vide memo dated 9.8.1999. However, with the introduction of the MACP (Modified Assured career Progression Scheme) w.e.f. 1.9.2008, the Announcers are entitled for 2nd MACP of grade pay of Rs.4800 and the 3rd MACP in the grade pay of Rs.5400, which is being granted.



Applicants have filed a rejoinder where in it is affirmed that since no merger has been effected and there is no scale of Rs.7450-11500, the question of framing new RR would not arise. The RRs of 1986 would be adequate to deal with the issue. Respondents have granted the 2nd ACP with grade pay of Rs.6600 in the Instrumentalist cadre to those appointed in 1983 along with the 2nd applicant. Applicants cited the judgment of the Hon'ble Karnataka High Court in WP Nos.24894-24908 of 2016 (S-CAT) to support their contentions for grant of 2nd ACP with grade pay of Rs.6600.

Respondents filed written instructions on 31.3.2021 wherein they state that the as per existing recruitment rules, the applicants need to render 8 years service in the pay scale of Rs.6500- 10,500 (R-IV of sur rejoinder) to be granted the grade pay of Rs.6600 and therefore, the claim of the applicants is untenable. The Convener of the Association is a habitual litigant, who approaches the Tribunal with different issues which have been settled by the respondents or under consideration. The applicants have been accorded the 2 financial up-gradations from Grade IV to Grade III and from Grade III to Grade II. Merger of grades has not been effected. Regarding grade pay of Rs.6600, unless the RRs are framed, the question of higher grade pay would not arise. The Instrumentalist cadre is different cadre with different Recruitment Rules. The judgment of Hon'ble Karnataka High Court is not applicable to the case of the applicants.

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

7. I. The issue is in regard to grant of 2nd ACP in the grade pay of Rs.6600 to the applicants. The applicants are working as Announcers which has a 4 tier structure as under:



S. No.	Name of the Post	Pre-revised (5 th CPC) scale of pay	6 th CPC scale of pay	Sanctioned strength
1	Announcer Grade I	Rs.10000-15200	PB-3, GP Rs.6600/-	20
2	Announcer Grade II	Rs.6500-10500	* PB-2, GP Rs.4600/-	65
3	Announcer Grade III	Rs.5500-9000	PB-2, GP Rs.4200/-	589
4	Announcer Grade IV	Rs.5000-8000	PB-2, GP Rs.4200/-	435
			Total	1109

** Scale of pay upgraded from PB-2 Grade Pay Rs.4200/- to PB-2 Grade Pay Rs.4600/- on the recommendations of 6th Central Pay Commission, as approved by the Government.*

The respondents claim that the applicants have been granted 2 financial up-gradations under ACP in the next hierarchical pay scale, from Grade IV to Grade III with grade pay of Rs.4200 and Grade III to Grade II with grade pay of Rs.4600 relying on clarification given at point No.27 of Frequently Asked Questions (FAQs) vide letter dt 1.4.2011 (Annexure R-V). Therefore, the grant of grade pay of Rs.6600 under ACP would not arise. In this regard, the conditions of ACP Scheme promulgated vide OM dt. 09.08.1999 when referred to, in particular condition No.6 under Annexure I appended to the OM, would usher in clarity in respect of the issue.

“6. Fulfillment of normal promotion norms (bench-mark, departmental examination, seniority-cum-fitness in the case of Group ‘D’ employees, etc.) for grant of financial upgradations, performance of such duties as are entrusted to the employees together with retention of old designations, financial upgradations as personal to the incumbent for the stated purposes and restriction of the ACP Scheme for financial and certain other benefits (House Building Advance, allotment of Government accommodation, advance, etc.) only without conferring any privileges related to higher status (e.g. invitation to ceremonial functions, deputation to higher posts, etc) shall be ensured for grant of benefits under the ACP Scheme;”

From the above, it is evident that to be granted the 2nd financial up-gradation under ACP, applicants have to fulfill promotional norms like Benchmark, service to be rendered etc. The respondents have contended that even as per the existing Service Regulations for the Announcer Posts (page 44 of written instructions), 8 years of service has to be rendered as Announcer Gr. II to be eligible to be considered for the promotion to the next higher post i.e. Announcer Gr.I, which the applicants do not possess and hence, the question of grant of 2nd ACP on this count would not arise. The applicants have been silent on this aspect and have not refuted the respondents claim, though given an opportunity to file counter instructions as per docket order dated 31.3.2021.



II. The other aspect which requires mention is that the respondents are examining the merger of grades and certain information has been called for, to take a decision in the matter. In this regard, the Directorate of AIR has issued letter dated 4.9.2013 as under:

“as regards for grant of 2nd financial upgradation for Announcers recruited in the pre-revised pay scale of Rs.5000-8000 who have completed 24 years of service on a date between 01.01.2006 and 31.08.2008, it is clarified that 2nd financial upgradation would be allowed in the grade pay of Rs.6600/- subject to fulfillment of promotional norms (after framing of RRs post merger) as stipulated in condition No.6 of Annexure I, ACP Scheme dated 09.08.1999, in terms of clarification given on point of doubt No.1 of ACP Scheme date 10.02.2000, as the pre-revised pay scales Rs.6500-10500 & Rs.7450-11500 have been merged and placed in PB-2 with grade pay of Rs.4600/- “

Respondents decision to merge the posts and frame the Recruitment Rules (RRs) is a policy matter and it is settled law that the Tribunal has little scope to intervene in matters of policy. Hence without the framing of the RRs post merger, the question of eligibility for promotion cannot be

decided and hence even on this count granting the relief sought would be difficult.

III. The Hon'ble Bangalore Bench of this Tribunal has dealt with a similar matter in OA 389/2017 and rejected the relief sought on 25.1.2019

as under:



“..The facts in this case are similar to OA.518/2017 wherein we had dismissed the OA holding that the applicant has not fulfilled the conditions relating to entitlement of further grant of 2nd ACP with Grade Pay of Rs.6600 on the basis of the respondents’ letter dtd.4.9.2013 (Annexure-A17) that such entitlement would be allowed subject to fulfilment of promotional norms after framing of RRs post-merger as prescribed therein. We have held that since the recruitment rules have not been framed and there has been no merger of posts as mandated by the respondents’ letter dtd.4.9.2013, the applicant would not be eligible for the benefit. The case of the applicant in this OA also needs to be considered on the same lines and therefore we hold that the applicant is not entitled for the Grade Pay of Rs.6600 as claimed by her..”

Applicants are similarly placed and hence would be ineligible for the relief sought.

IV. The applicants relied on the judgment of Karnataka High Court in WP No.24894 – 24908 of 2016 dated 5.6.2017 wherein the application of MACP benefit granted vide 19.5.2009 with retrospective effect from 1.9.2008 was rejected. The said judgment would not be applicable for the applicants since primarily the condition of being eligible for promotion as per existing RRs to the next higher grade has not been satisfied. Further, the RRs post merger have not been finalised to decide the eligibility for promotion on a later date. In addition, Honble Supreme Court in ***U.O.I v Balbir Singh Turn***, (2018) 11 SCC 99 : 2017 SCC OnLine SC 1434 : (2018) 1 SCC (L&S) 866 on 8.12.2017 has held that the MACP scheme would be effective from 1.1.2006 as under:

“6. The question that arises for decision is whether the benefit of MACP is applicable from 01.01.2006 or from 01.09.2008.

7. The answer to this question will lie in the interpretation given to the Government Resolution, relevant portion of which has been quoted hereinabove. A bare perusal of Clause(i) of the Resolution clearly indicates that the Central Government decided to implement the revised pay structure of pay bands and grade pay, as well as pension with effect from 01.01.2006. The second part of the Clause lays down that all allowances except the Dearness Allowance/relief will be effective from 01.09.2008. The AFT held, and in our opinion rightly so, that the benefit of MACP is part of the pay structure and will affect the grade pay of the employees and, therefore, it cannot be said that it is a part of allowances. The benefit of MACP if given to the respondents would affect their pension also.



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10. As already held by us above, there can be no dispute that grant of ACP is part of the pay structure. It affects the pay of the employee and he gets a higher grade pay even though it may be in the same pay band. It has been strenuously urged by Col. R. Balasubramanian, learned counsel for the UOI that the Government took the decision to make the Scheme applicable from 01.09.2008 because many employees would have lost out in case the MACP was made applicable from 01.01.2006 and they would have had to refund the excess amount, if any, paid to them. His argument is that under the old Scheme if somebody got the benefit of the ACP he was put in the higher scale of pay. After merger of pay scales into pay bands an employee is only entitled to higher grade pay which may be lower than the next pay band. Therefore, there may be many employees who may suffer.

11. We are only concerned with the interpretation of the Resolution of the Government which clearly states that the recommendations of 6th CPC as modified and accepted by the Central Government in so far as they relate to pay structure, pay scales, grade pay etc. will apply from 01.01.2006. There may be some gainers and some losers but the intention of the Government was clear that this Scheme which is part of the pay structure would apply from 01.01.2006. We may also point out that the Resolution dated 30.08.2008 whereby the recommendation of the Pay Commission has been accepted with modifications and recommendations with regard to pay structure, pay scales, grade pay etc. have been made applicable from 01.01.2006. This is a decision of the Cabinet. This decision could not have been modified by issuing executive instruction. The letter dated 30.05.2011 flies in the face of the Cabinet decision reflected in the Resolution dated 30.08.2008. Thus, administrative instruction dated 30.05.2011 is totally ultra vires the Resolution of the Government.”

The above judgment of the Hon'ble Apex Court dated 8.12.2017, being later to the Hon'ble Karnataka High Court judgment dated 5.6.2017, holds the ground. Hence, grant of 2nd ACP benefit from 1.1.2006 would not arise. On the contrary, the applicants would be eligible for MACP benefits from 1.1.2006. The respondents affirm that they are granting MACP benefits to those eligible. Lastly, the Instrumentalist cadre cited by the applicants is a different cadre with different Recruitment Rules (RRs) and therefore, any comparison with the said cadre, is inappropriate and not useful for the applicants to seek the relief sought.



Other contentions of the parties have also been gone through and found them not to be relevant enough to mention.

V. In view of the above, viewed from any angle the applicants are ineligible for 2nd ACP benefit with Grade Pay of Rs.6600/-. Therefore, finding no merit in the OA we dismiss the same with no order as to costs.

(B.V. SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

/evr/