

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACKORIGINAL APPLICATION NO.260/461/ 2016Cuttack this the 11th day of December, 2017

CORAM:

THE HON'BLE SHRI S.K.PATTNAIK, MEMBER(J)
THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

Abhimanyu Sahani, aged about 59 years, S/o. Sri Upendra Sahani, Resident of Quarter No.Ty-2/2, Central Organization (ER), Nayapalli, Bhubaneswar-751 012, District-Khurda, odisha, At present working as Jr.Hindi Translator, Central Poultry Dev. Organization (ER), Nayapalli, Bhubaneswar.

...Applicant

By the Advocate(s)-Mr.B.Parida

-VERSUS-

Union of India represented through:

1. The Secretary to the Govt. of India, Ministry of Agriculture, Department of A.H., Dairying & Fisheries, Krishi Bhawan, New Delhi-110 001
2. The Dy. Secretary to the Government of India (Admn.III), Ministry of Agriculture, Department of A.H., Dairying & Fisheries, Krishi Bhawan, New Delhi-110 001
3. The Director, Central Poultry Dev. Organization (ER), Nayapalli, Bhubaneswar-751 012

...Respondents

By the Advocate(s)-Mr.D.K.Mallick

ORDERDR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant was working as Junior Hindi Translator in the O/o. the Director, Central Poultry Development Organization, Bhubaneswar at the time of filing of the Original Application. He joined as Junior Hindi Translator on 29.11.1989 in the scale of Rs.1400-2300/- . After the recommendations of

the 5th CPC, the scale of pay of Junior Hindi Translator stood revised to Rs.4500-7000/- with effect from 1.1.1996 which was subsequently revised to Rs.5000-8000/-. The applicant was granted 1st financial upgradation under the Assured Career Progression (ACP) Scheme on 29.11.2001 and was placed in the scale of Rs.5500-9000/-. After the 6th CPC, the pay scale of Rs.5500-9000/- was enhanced to Rs.7450-11500 with effect from 1.1.2006. However, the three pay scales of Rs.5000-8000, 5500-900 and 6500-10500 were merged and replaced by the revised PB-2 of Rs.9300-34800 with Grade Pay of Rs.4600/- with effect from 1.1.2006. Vide order dated 17.12.2008 the pay of the applicant was fixed in PB-II(Rs.9300-34800) with Grade Pay of Rs.4200/-. The applicant claims that this was a wrong fixation of pay since by the Memorandum dated 24.11.2008, the pay scale of Rs.5500-9000/- was replaced by Rs.7450-11500/- and the corresponding Grade Pay for that scale should have been Rs.4600/-. The applicant completed 20 years of service on 29.11.2009 and claims to have become eligible for 2nd financial upgradation under the Modified Assured Career Progression (MACP) Scheme. On 28.9.2010, he was granted 2nd financial upgradation in PB-II (Rs.9300-34800) with Grade Pay of Rs.4800/-. The applicant submitted a representation on 20.2.2015 for re-fixation of his pay and revision of Grade Pay to the Deputy Secretary to Government of India (Admn-III), Ministry of Agriculture (Respondent No.2). This was followed

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by reminders dated 5.6.2015 and again on 13.7.2015. Since he did not get any relief, he had filed O.A.No.833 of 2015 before this Tribunal which was disposed of on 15.12.2015 with a direction to Respondent No.2 to consider the applicant's representation. The Respondent No.2 vide order dated 5.5.2016 rejected the prayer of the applicant. Aggrieved by this, he has filed the present O.A. praying for the following reliefs:

- i) To quash and/or set aside the impugned office order (speaking order) No.25-1/2016-Admn.VI (P) dated 05.05.2016 being Annexure-A/7 of this original application.
- ii) To quash and/or set aside the office orders in respect of wrong pay fixation under MACP Scheme dated 17.12.2008 & 28.09.2010 by violation of the Memorandum of Ministry of Finance dated 24.11.2008 being Annexure-A-1 & A-3 of this original application.
- iii) Directing the Respondents to fix the appropriate Grade Pay of Rs.4600/- in place of Rs.4200/- in the pay scale of Rs.9300-34800 w.e.f. dt. 01.01.2006 in favour of the Applicant.
- iv) Further directing the respondents to grant Rs.4800/- as 1st MACP w.e.f dt. 01.09.2008 (from the date of MACP scheme became operative) & Rs.5400/- as 2nd MACP in PB-3 in the pay scale of Rs.15600-39100 (the pay scale of Assistant Director (OL) w.e.f. dt. 29.11.2009 (from the date of completion of 20 years of regular service) by ignoring 1st financial upgradation under ACP.
- iv) Direct the respondents to make the differential arrear payment with pendent lite interest along with cost of litigation in favour of the Applicant.
- v) Any other appropriate order/orders may be passed to give complete relief to the applicant as it would deem fit & proper.

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2. The applicant has based his prayer mainly on the ground that many of the Departments in the Government of India have allowed enhanced Grade Pay of Rs.4600/- to their Junior Hindi Translators with effect from 01.01.2006. On the principle of equal pay for equal work, he is entitled to Grade Pay of Rs.4600 from 01.01.2006 and denial of the same is an act of discrimination and violation of Articles 14 and 16 of the Constitution of India. Applicant has also cited the order dated 14.10.2013 in O.A.NO.636 & 953 of 2012 of CAT, Ernakulam Bench to support his case.

3. The Respondents in their reply filed on 8.11.2016 have contested the claim of the applicant. It is their contention that the applicant has been granted 1st financial upgradation under the ACP Scheme on 29.11.2001 in the pay scale of Rs.5500-9000 which was revised to Rs.9300-34800 with Grade Pay of Rs.4200/- with effect from 01.01.2006. He was granted the 2nd financial upgradation under the MACP Scheme with effect from 29.11.2009 ignoring the first financial upgradation granted under ACP and was given two financial upgradations in PB-II(Rs.9300-34800 with Grade Pay of Rs.4600/- and Grade Pay of Rs.4800/- as first and second upgradation. There is no specific order to consider him for Grade Pay of Rs.4600/- with effect from 1.1.2006. They have also refuted the claim of the applicant that he is similarly placed as P.R.Anandvally Amma vs. Union of

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India before the CAT, Ernakula Bench in O.A.No.656 of 2012.

The respondents have also enclosed the DOP&T Note dated 12.4.2016 in Diary No.1163862/16/CR wherein the prayer of the applicant has been analyzed in detail and it has been advised by the DOP&T that grant of two financial upgradations under the MACP Scheme in GP Rs.4600 and Rs.4800 to the applicant is in order.

4. In the rejoinder filed on 16.12.2016, the applicant has reiterated his stand that on the merger of the pay scales after the 6th CPC's recommendations, he was entitled to Grade Pay of Rs.4600/- and he was wrongly given Grade Pay of Rs.4200/- with effect from 1.1.2006. Therefore, he is entitled to Grade Pay of Rs.4800/- as the 1st ACP and Rs.5400/- as the 2nd MACP with effect from 1.9.2008 and 29.11.2009 as prayed for by him. It is his contention that the order of the CAT to the respondents was not to seek advice of the DOP&T, but to pass a reasoned order on their own. The interference of the DOP&T in this matter is therefore unwarranted and ultra vires. The applicant has cited the judgment of CAT, Ernakulam Bench of 14.10.2013 in O.A.No.656 of 2012 (P.R.Anandvally Amma vs. Union of India & Ors.) stating that the order in that case was not a situation specific but issue specific. In the said O.A. it has been decided that the Junior Hindi Translator in the Subordinate Offices of the Central Government are entitled to Grade Pay of Rs.4600

from 01.01.2006 on the basis of Office Memorandum dated 13.11.2009.

5. We have heard the learned counsels from both the sides and perused the documents submitted by them.

6. The issue on granting appropriate Grade Pay to Junior Hindi Translator has been dealt with in the order dated 14.10.2013 passed by the CAT, Ernakulam Bench in O.A.No.656 & 953 of 2012. The relevant Paragraph of the order of the Three Member Bench is extracted herein below:

“22. In the circumstances, the reference as to whether JHTs in the Subordinate Offices of the Central Government are entitled to Grade Pay of Rs.4600/- from 01.01.2006 on the basis of O.M. Dated 13.11.2009 or not has to be held to be in favour of the applicants and in the circumstances of the case there is no necessity of again referring the matter to the Division Bench for deciding the matter on facts. We hold that both the OAs are liable to be allowed and the same are accordingly allowed”.

7. The applicant's pay scale was initially fixed at Rs.4500-7000/- which was subsequently revised to Rs.5500-8000/- with retrospective effect from 1.1.1996. Since he had not got any promotion since his date of joining, he was eligible for the 1st financial upgradation under the ACP Scheme on completion of 12 years of regular service on 29.11.2001. Accordingly, he was granted 1st financial upgradation under the ACP Scheme in the scale of Rs.5500-9000/-, equivalent scale of Senior Hindi Translator with effect from 29.11.2001. This was as per the provision of the ACP Scheme. Vide O.M. Fr.No.1/1/2008 - IC

dated 24.11.2008 and the Corrigendum dated 27.11.2008, the pay scale of Rs.5500-9000/- was revised to Rs.7450-11500/- with effect from 1.1.2006. The pay scale of Rs.7450-11500 was eligible for Grade Pay of Rs.4600/- with effect from 1.1.2006. The applicant had already been granted the 1st ACP with effect from 29.11.2001 and therefore his Grade Pay should have been fixed at Rs.4600 with effect from 01.01.2006. In the impugned order dated 28.9.2010, the respondents have not given any reason for ignoring the 1st financial benefit under the ACP, granted to the applicant on completion of 12 years of service, to which he was legally entitled. For no valid reason, the 1st financial upgradation under ACP had been ignored and the applicant has been given two financial upgradations simultaneously under the MACP Scheme. This action of the respondents is not legally sustainable. Consequent to the grant of first financial upgradation under the ACP Scheme with effect from 29.11.2001, his GP should have been fixed at Rs.4600/- with effect from 1.1.2006. The applicant is entitled to the 2nd financial upgradation under the MACP on completion of 20 years of service. He will therefore, be entitled to Grade Pay of Rs.4800 with effect from 29.11.2009.

8. In view of the above, the O.A. is partly allowed. The respondents are directed to pass necessary orders refixing the pay of the applicant in PB-II (Rs.9300-34800) with Grade Pay of Rs.4600/- taking into account the 1st financial upgradation

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granted to him under the ACP Scheme, with effect from 01.01.2006 and the 2nd financial upgradation under the MACP Scheme with Grade Pay of Rs.4800 from 28.11.2009 within a period of eight weeks from the date of receipt of this order. No costs.

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

(S.K.PATTNAIK)
MEMBER(J)

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