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CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.730 OF 2012

CUTTACK THIS THE 3RD DAY OF JAN., 2017

Sri Golaka Chandra Sahoo...Applicant

-Vs.-

Union of India & Ors...Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? Yes
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not ? Yes


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.730 OF 2012
THIS THE 3RD DAY OF JANUARY 2017

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HON'BLE SHRI A.K.PATNAIK, MEMBER(J)

HON'BLE SHRI R.C.MISRA, MEMBER(A)

Sri Golaka Chandra Sahoo, aged about 58 years, S/o.Ganesh Chandra Sahoo, resident of Village/Post-Kanikapada, PS-Mangalpur, Dist-Jajpur, Odisha - at present working as Senior Audit Officer, Office of the Accountant General (General and Social Sector Audit) [erstwhile office of the Accountant General (Civil Audit), Odisha], Odisha, Bhubaneswar-751001, Dist-Khurda, Odisha.

...Applicant

By the Advocates-M/s.K.C.Kanungo

H.V.B.R.K.Dora

-Vs.-

Union of India represented through:

- 1.Comptroller and Auditor General of India, Pocket-9, Deendayal Upadhyay Marg, New Delhi-4.
- 2.Deputy Comptroller and Auditor General of India, Pocket-9, Deendayal Upadhyay Marg, New Delhi-110 124.
- 3.Accountant General, General And Social Sector Audit(G&SSA), Odisha, Bhubaneswar, Dist-Khurda, Odisha.

...Respondents

By the Advocates-Mr.S.Behera

O R D E R

R.C.MISRA, MEMBER(A) :

Applicant, presently working as Senior Audit Officer in the Office of Accountant General, Odisha, has approached this Tribunal in this O.A. in which he has sought for the following reliefs:

"To quash Annexure-A/3 to the extent it contains the grade Pay of Rs.5400/- as the entitled Grade Pay of the applicant, (ii) to quash Annexure-A/5, (iii) to quash Annexure-A/8, (iv) to quash A/10 and A/10(A), (v) to hold that applicant is entitled to the Grade Pay of Rs.6600/- on his 3rd financial upgradation under MACPS w.e.f. 22.12.2009 and (vi) to direct the Respondents to pass appropriate order for payment of arrears arising out of fixation of the Grade Pay of Rs.6600/- of the applicant w.e.f. 22.12.2009 with interest till the date of actual payment made to the applicant".

2. The sum and substance of the facts leading to filing of this Original Application runs thus:

R. Misra

Applicant had joined as Auditor under the respondent-organization in the year 1979. Thereafter, he was promoted to the grade of Section Officer in the year 1988. Subsequently, applicant was promoted to the grade of Assistant Audit Officer (in short AAO) in the year 1992, followed by another promotion to the grade of Audit Officer in the year 2008. The post of Audit Officer, as stated, carries the Pay Band-2 (Rs.9300-34800) with Grade Pay Rs.5400/-. In the meantime, clarification dated 7.7.2009(A/2) was issued by the office of the Comptroller & Auditor General of India in the matter of Modified Assured Career Progression Scheme(MACPS) for the Central Government Civilian Employees, in which it is stated at Para-5 of MACP Scheme that any promotion from SO to AAO shall be ignored for the purpose of granting upgradation, provided the official was in AAO cadre as on 01.01.2006. While the matter stood thus, applicant was conferred with the benefit of 3rd financial upgradation under the MACP Scheme in Pay Band-3(Rs.15600-39100) with Grade Pay Rs.5400/- with effect from 22.12.2009 vide A/3 dated 17.06.2010. According to applicant, in view of the guidelines issued by the DOP&T, he ought to have been granted the next higher Grade Pay Rs.6600/- in the hierarchy and in the above background, he submitted a representation dated 14.7.2010 to the Principal Accountant General (Civil Audit), Odisha, Bhubaneswar (who is not a party-respondent). In response to this, office of the Principal Accountant General (Civil Audit), Orissa, Bhubaneswar vide communication dated 17.08.2010 (A/5) turned down his representation. Aggrieved with this, applicant submitted a further representation dated 25.8.2010 (A/6) to the Deputy Comptroller & Auditor General of India (respondent no.2), followed by another representation dated 3.3.2011 (A/7). In response to this, office of the Comptroller & Auditor General of India vide communication dated 14.9.2011 (A/8) intimated the Accountant General (Civil Audit), Orissa, Bhubaneswar that applicant having joined as Auditor had already availed of three financial upgradations by means of

promotions to higher grades and therefore, he was not entitled to further financial upgradation to the Grade Pay of Rs.6600/- on completion of 30 years of service. On receipt of this, applicant again submitted a representation dated 5.12.2011 (A/9) to the Deputy Comptroller & Auditor General of India (respondent no.2) by citing some extract of DOP&T order dated 9.9.2010 for reconsideration of the matter. This request of the applicant was rejected vide communication dated 11.05.2012 (A/10-A) on the ground that his promotion from SO to AAO could not be treated as null and void and therefore, he was not entitled to 3rd financial upgradation to the Grade Pay of Rs.6600/- under MACPS. Since the applicant failed to get relief in the hands of the respondents, he has invoked the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, seeking reliefs as already mentioned above.

3. Relief sought for by the applicant is primarily and basically grounded upon the clarification issued DOP&T vide Office Memorandum dated 09.09.2010. Based on this, applicant has contended that since the above said Office Memorandum stipulates that the upgradation under MACP is to be granted in the immediate next higher ^{grade} pay in the hierarchy of the recommended revised Pay Band and Grade Pay as prescribed in CCS(RP) Rules, 2008, there was no justification on the part of the respondents to deny the benefit as claimed by the applicant.

4. Repudiating the contentions of the applicant, respondents have filed their counter. To buttress their standpoint, they have brought to the notice of the Tribunal Paragraph 8.1 of the MACP Scheme, which reads as under.

"8.1. Consequent upon the implementation of Sixth CPC's 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 PB-2 and Rs.5400 in PB-3 shall be treated as separate grade pays for the purpose of grant of upgradations under the MACP Scheme".



5. Laying emphasis on the above provisions of the Scheme, respondents have stated that applicant is not entitled to any relief sought in this O.A. and therefore, the same is liable to be dismissed.

6. We upon perusal of records, have heard the learned counsel of both the sides at considerable length. We have also gone through the rejoinder filed by the applicant as well as written note of submissions submitted by both the sides.

7. From the pleadings of the parties, the point to be considered is whether applicant is entitled to next Grade Pay Rs.6600/- in PB-3(Rs.15600-39100) towards 3rd financial upgradation under the MACP Scheme, instead of Grade Pay Rs.5400/- in PB-3 (Rs.15600-39100) on the ground that before conferment of such financial upgradations, he was in receipt of Grade Pay Rs.5400/- in PB-2(Rs.9300-34800/-).

8. To make the matter more conspicuous, we would like to quote hereunder, Paragraph-2 of the Scheme, as relied on by the applicant.

"The MACPS envisages merely placement in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay as given in Section 1, Part-A of the first schedule of the CCS(Revised Pay) Rules, 2008. Thus, the grade pay at the time of financial upgradation under the MACP can, in certain cases where regular promotion is not between two successive grades, be different than what is available at the time of regular promotion. In such cases, the higher grade pay attached to the next promotion post in the hierarchy of the concerned cadre/organization will be given only at the time of regular promotion"

9. In furtherance of the above, applicant has also laid emphasis on Office Memorandum No.35034/2008-Estt.(D) dated 09.09.2010, in which it has been clarified as under.

Sl.No.	Point of Doubt	Clarification
1.	Whether the Pay Band would change in the hierarchy of Pay Bands & Grade Pay on grant of the benefits under MACPS ?	Yes. The upgradations under MACPS is to be granted in the immediate next higher grade pay in the hierarchy of recommended revised pay band and grade pay as prescribed in the CCS (RP) Rules, 2008.

10. In addition to the above, applicant has also assailed the manner of interpretation of provisions specified in Paragraph-8.1 of the Scheme by the Respondents as has been quoted above.

11. Indisputably, applicant prior to conferment of 3rd financial upgradation under the MACP Scheme, was in PB-2 (Rs.9300-34800/-) with Grade Pay Rs.5400/-. His grievance is that in the event of he being conferred with 3rd MACP in PB-3(Rs.15600-39100),, he ought to have been granted Grade Pay ^{of Rs.6600/-} inasmuch as he had already received the same Grade Pay Rs.5400/- in PB-2 and in case he is not granted Grade Pay Rs.6600 in PB-3, it would frustrate the basic intent of the Scheme which lays down that ^{on} account of grant of MACP, placement should be in the immediate next higher grade pay in the hierarchy.

12. The proposition advanced by the applicant, prima facie, appears to be wholesome. But, if the provisions as envisaged in Paragraph-2 of the Scheme, as already quoted above, is read as a whole, it brings forth a different connotation. Paragraph-2, no doubt lays down that "the MACPS envisages merely placement in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay as given in Section 1, Part-A of the first schedule of the CCS(Revised Pay) Rules, 2008. But at the same time, the provision stipulates that in view of the recommended revised pay bands and grade pay, the grade pay at the time of financial upgradation under the MACP can, in certain cases where regular promotion is not between two successive grades, be different from what is available at the time of regular promotion and in such cases, the higher grade pay attached to the next promotion post in the hierarchy of the concerned cadre/organization will be given only at the time of regular promotion".



13. On giving our anxious consideration to the case, we find two prominent features with regard to the facts that would guide us to a reasonable decision in the matter. The first is paragraph 8.1 of the Scheme of MACP that was circulated by OM dated 19.05.2009, of the Department of Personnel and Training which is quoted below :

"Consequent upon the implementation of sixth CPC's 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 PB-2 and Grade Pay of Rs. 5400/- in PB-3 shall be treated as separate grade pays for the purpose of grant of upgradations under MACP Scheme".

The applicant was granted the benefit of 3rd financial upgradation w.e.f. 22.12.2009 vide an office order dated 17.06.2010. By this upgradation, the Pay Band of the applicant was changed from PB-2 to PB-3 (Rs.15,600-39,100) with Grade Pay of Rs. 5400/-. The applicant's claim is that MACP Scheme envisages placement in the immediate higher grade pay, and therefore, the grade pay should have been Rs. 6600/-. However, the case made out by the applicant cannot be supported in the light of the clarification that the grade pay Rs. 5400/- appearing in both PB-2 and PB-3 is to be treated separately for the purpose of granting financial upgradation. It is further to be noted that applicant was placed in PB-3 as a result of his financial upgradation and he was earlier in PB-2, though with the same grade pay. We find that para 2 of the Scheme has clarified that the grade pay at the time of financial upgradation under MACP can in certain cases be different than what is available at the time of regular promotion. In such cases, the higher grade pay attached to the next promotion post in the hierarchy of the concerned cadre will be given only at the time of regular promotion. When the applicant has been placed in PB-3 as a result of grant of third financial upgradation with grade pay of Rs. 5400/-, which is



there in both PB-2 and PB-3 to be treated separately, as clarified, the further claim for grant of Rs. 6600/- as grade pay appears to have no justification.

14. The second clinching issue is as follows. The applicant was at entry point as an Auditor. In course of time, he was promoted as Section Officer, then Assistant Audit Officer, and further as Audit Officer. By the time, third financial upgradation was granted, in the year 2010, the applicant had availed of three promotions. As per the MACP Scheme, there would be three financial upgradations at the end of 10, 20 and 30 years of regular service from the point of entry. The question necessarily arises as to how third financial upgradation was granted, when three regular promotions were already accorded. The clarification in this regard is available in the letter dated 07.07.2009 (Annex.A/2) which conveys that promotion from Section Officer to Assistant Audit Officer shall be ignored for the purpose of granting upgradation provided the official was in Assistant Audit Officer cadre as on 1.1.2006. We have to next go to letter dated 1.6.2012 of the Accountant General, Odisha, addressed to applicant, which clarifies that he was not eligible for 3rd financial upgradation in the Grade Pay of Rs. 6600/- because his promotion from Section Officer to Assistant Audit Officer cannot be treated as null and void. This position is further elaborated in letter dated 22.05.2012 which clarifies that the posts of Section Officer and Assistant Audit Officer stood merged from 1.1.2006, prior to which both were separate entities and Section Officer was the feeder cadre for Assistant Audit Officer. Applicant was promoted as Section Officer in 1988 and as Assistant Audit Officer in 1992. Therefore, in his case promotion from Section Officer to Assistant Audit Officer cannot be treated as null and void, and applicant was not eligible for 3rd financial upgradation to the grade of Rs. 6600/- under MACP Scheme. The sum and substance of the matter is that applicant was not even eligible for 3rd MACP, in view of the fact that he had availed of three promotions. A holistic interpretation has



to be given to the provisions of MACP Scheme, which intends to grant three financial upgradations at the end of ten, twenty and thirty years. Admittedly, the applicant has also been given one more promotion as Senior Audit Officer in the year 2011. Considering the overall scenario, we are of the view that the instant prayer of the applicant for Grade Pay of RS. 6600/- along with his 3rd MACP does not have justification.

15. In view of the aforesaid discussions, we are of the opinion that the applicant's prayer does not deserve any consideration. The O.A. being devoid of merit is dismissed with no order as to costs.

(R.C.MISRA)
MEMBER(A)

(A.K.PATNAIK)
MEMBER(J)

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