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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/000079 of 2014
Cuttack this the 23rd day of June, 2017

Sri Bichitrananda Jena...Applicant

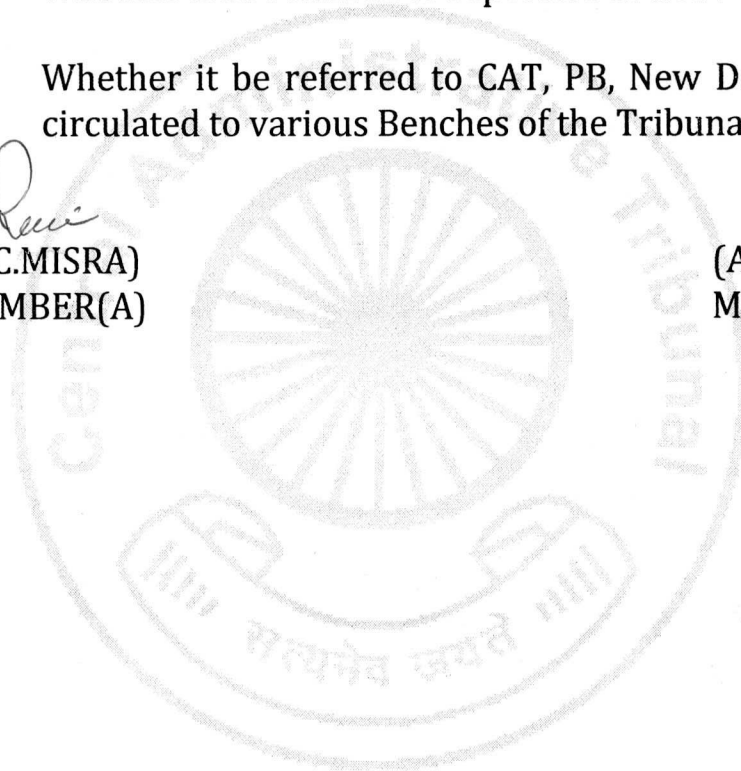
-Versus-

Union of India & Ors.
FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? No
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not No


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)



CENTRAL ADMINISTRATIVE TRIBUNAL
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CORAM:

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

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

Sri Bichitrananda Jena,
Aged about 59 years,
S/o.late Bhagabat Jena,
Resident of Plot No.3624/5507,
Palasuni,
PO-G.G.P.Colony,
Bhubaneswar - 751 025,
District-Khurda,
State-Odisha,
Presently working as Draftsman,
Division-I
Odisha Geospatial Data Centre,
Survey of India,
Survey Bhawan,
Bhubaneswar-751 013,
Dist-Khurda,
State-Odisha

...Applicant

By the Advocate(s)-M/s.K.C.Kanungo
S.Pradhan

-VERSUS-

Union of India represented through:

1. The Secretary to Government of India
Ministry/Department of Science & Technology
Technology Bhawan
New Mehrauli Road
New Delhi-110 016
2. The Surveyor General of India
Survey of India
Hathibarkala Estate
Dehra Dun-248 001
Uttarakhand
3. The Additional Surveyor General
Eastern Zone
Survey of India
15, Wood Street

Kolkata-700 016
West Bengal

4. The Director
Odisha Geospatial Data Centre
Survey of India
02nd Floor
Survey Bhawan
Bhubaneswar-751 013
Odisha

...Respondents

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

ORDER

R.C.MISRA, MEMBER(A):

Applicant is presently working as Draughtsman, Division-I under the Respondent-Organization. He, in this Original Application under Section 19 of the A.T.Act, 1985, has approached this Tribunal seeking the following relief.

- i) ...to set aside the order at Annexure-A/5;
- ii) ...to quash the order at Annexure-A/6 and A/7;
- iii) ...to direct the Respondents to grant the Grade Pay of Rs.5400 in PB-3 with all consequential benefits and entitlements as due and admissible with effect from 01.01.2012 in terms of the order at Annexure-A/3;
- iv) ...to pay interest on the arrear that accrues till actual payment is made; and
- iv) ...to issue any other/further order(s) or direction(s) as deemed fit and proper in the circumstances of the case.

2. Factual matrix of this matter runs thus: Applicant entered into Central Civil Service as T.T.T. 'B' (Draftsman) with effect from 1.11.1974. In course of time, he advanced in his career and was re-designated as Draughtsman, Gr.V, Gr.IV, Gr.III, and Gr.II

Recd

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with effect from 1.1.1976, 1.7.1977, 1.1.1980 and 1.1.1982, respectively. He was, thereafter, promoted to the post of Draughtsman, Division-I with effect from 24.12.2004 and has been working as such.

3. Applicant was granted 1st financial upgradation under the ACP Scheme on 15.10.2004 in the scale of Rs.5500-9000 with effect from 9.8.1999 on completion of 12 years regular service having regard to his entry grade as Draughtsman, Gr.II from 01.01.1982. Subsequently, he was granted 2nd financial upgradation under the ACP Scheme on 2.4.2009 in the scale of Rs.6500-10,500/- with effect from 1.1.2006 on completion of 24 years regular service ^{from} ~~as on~~ 01.01.1982 in the same entry grade as Draughtsman-II.

4. Consequent upon implementation of the 6th CPC, applicant was placed in the revised pay structure in PB-2 with GP Rs.4200/- with effect from 1.1.2006 -. While the matter stood thus, GP Rs.4200/- stood revised to Rs.4600/- with effect from 1.1.2006 vide order dated 13.11.2009 issued by the Government of India.

5. Government of India in the Department of Personnel & Training vide O.M. dated 19.05.2009 introduced MACP Scheme for the Central Government Civilian Employees. According to applicant, his GP Rs.4600/- was further revised to Rs.4800/- with effect from 1.1.2011 in terms of Para-5 of MACPS vide order dated 3.10.2001 issued by res.no.2 in consequence of

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orders dated 24.01.2011 passed by this Tribunal in O.A.No.16 of 2011.

6. According to applicant, he completed 30 years regular service as on 01.01.2012 having regard to his entry grade as Draftsman, Gr.II with effect from 01.01.1982, without being promoted to the next higher grade in the hierarchy, and therefore, he is eligible for grant of 3rd MACP in terms of Para-28 'C' of Annexure-1 of MACPS. It has been submitted that regular service for the purpose of financial upgradation under the MACP Scheme commences from the grade in which applicant had been appointed as direct recruit.

7. It has been contended by the applicant that he had submitted a representation dated 2.1.2012 to res.no.2 for grant of 3rd financial upgradation in PB-3 with GP Rs.5400/- under the MACP Scheme with effect from 1.1.2012 in terms of Para-28 'C' of Annexure-1 of MACPS. Since he did not receive any response, he made another representation to res.no.1 on 30.1.2013. In the meantime, res.no.4, vide communication dated 17.5.2013 has rejected the claim of the applicant, relying on two earlier letters dated 20.04.2011 and 13.04.2012. It has been pointed out by the applicant that as he had no knowledge about these letters, he made an application to res.no.4 for supply of copies of those letters, which were also made available to him. Applicant further submits that Res.No.2 while rejecting his entitlement has relied on the following point.

Res

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"Consequent upon the merger of the pre-revised pay scale of Rs.5000-8000 and Rs.5500-9000 with a single Grade Pay of Rs.4200 on implementation of the recommendations of the VI Central Pay Commission, the financial upgradation under the MACP Scheme in respect of the Draftsman cadre is granted. Accordingly, regular service of 10, 20 and 30 years in the grade of Draftsman cadre is required to be reckoned from the date(s) of granting the pre-revised pay scales of Rs.5000-8000/5500-9000 on implementation of the Government of India, Ministry of Finance, Department of Expenditure, OM No.13(1)IC/91 Dt. 19.10.1994".

8. In support of his case, applicant has submitted that *"regular service for the purpose of MACPS shall commence from the date of joining of a post in direct entry grade on a regular basis either on direct recruitment basis or on absorption/re-employment basis"*. It is the case of the applicant that Respondents computed regular service from a date three years after the date of joining of the applicant in the post of Draftsman, Grade-I (the grade which is considered as the direct entry grade of the applicant) by putting emphasis on the date of revision of pay scales allowed on 01.01.1985 from Rs.425-600 to Rs.425-700 in terms of Government of India, Ministry of Finance, Department of Expenditure, OM dated 19.10.1994(A/8). Revision of pay scale from Rs.425-600 to Rs.425-700 on 01.01.1985, according to applicant, is a revision *per se* within the post of Draftsman, Grade.II and in no way can influence the date of regular service to be reckonable for the purpose of financial upgradation under the MACPS. In the

circumstances, it has been contended that respondents have confused themselves within the meaning of revision of pay scale and the provisions of MACPS. Applicant has also contended that merger of pre-revised scale of Rs.5000-8000 and Rs.5500-9000 in a single Grade Pay Rs.4200 on implementation of the recommendations of 6th CPC has nothing to do in so far as financial upgradation under the MACP is concerned.

9. However, the basic plea of the applicant is that in accordance with the provisions laid down in Para-28 'C' of Annexure-1 of MACPS, since he has been granted 2nd financial upgradation under the ACPS on completion of 24 years of regular service computed ^{from} ~~as on~~ 01.01.1982 and has now in the meantime, completed 30 years regular service, without earning any promotion in the hierarchy, he is entitled to 3rd financial upgradation under the MACP Scheme with effect from 01.01.2012.

10. Respondents have filed their counter resisting the claim of the applicant. It has been submitted that as per SG's letter dated 28.10.2003 read with letter dated 21.10.2003, first and second financial upgradation under ACP Scheme had been granted to the applicant in accordance with the conditions laid down therein. According to respondents, service rendered as Grade-V to Grade-II has been treated as training as a special case for Division II Grade II cadre of Survey of India. As regards

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the financial upgradation under the MACP Scheme, it has been submitted that applicant is entitled to the same in accordance with SG's letters dated 20.04.2011 and dated 13.04.2012.

11. It has been contended that as per the recommendations of the 6th CPC, MACP Scheme was introduced vide DOP&T OM dated 19.05.2009. The eligibility criteria of Division II Grade II of Draftsman cadre of Survey of India was reconsidered and the eligibility was decided as per direction issued SG's letter dated 20.04.2011 and dated 13.04.2012. In accordance with these orders, according to respondents, 1st, 2nd and 3rd financial upgradations under the MACP Scheme are being given in the Grade Pay of Rs.4600, Rs.4800 and Rs.5400 respectively to this cadre on completion of 10, 20 and 30 years of regular service reckoning from the date of grant of pre-revised pay scale of Rs.5000-8000/5000-9000 as per the request of the cadre. According to respondents, in case the date of eligibility is reckoned from the date of Grade II Division II as submitted by the applicant, this cadre was eligible for grant of 1st, 2nd and 3rd financial upgradations in the Grade of Rs.4200, Rs.4600, and Rs.4800 respectively. As such a decision was taken to grant them the financial upgradations under the MACP Scheme in the Grade Pay of Rs.4600, Rs.4800 and Rs.5400 for the whole cadre which are beneficial to them. However, it has been submitted that in case the eligibility of the applicant is reckoned as demanded by him, he will be eligible for grant of 3rd MACP in

the Grade Pay of Rs.4800, which he has already taken as a second financial upgradation.

12. However, the respondents have pointed out that applicant was granted second financial upgradation under the ACP Scheme in the pre-revised scale of Rs.6500-10500 w.e.f. 01.01.2006, even though he has further been granted second upgradation under MACP Scheme w.e.f. 01.01.2011, instead of 01.09.2008, since he had had below bench mark grading in his ACRs.

13. With these submissions, respondents have prayed that the O.A. being devoid of merit is liable to be dismissed.

14. Applicant has filed a rejoinder to the counter. In the rejoinder it has been pointed out that he had joined the post of Draughtsman, Gr.II on 01.01.1982 on regular basis and not on 01.01.1985 and therefore, for the purpose of 3rd financial upgradation under the MACPS, regular service has to be computed from 01.01.1982 and not from 01.01.1985, the date on which revision/rationalization of the scale of pay received by the applicant from Rs.425-600 to Rs.425-700/- had taken place. Applicant has submitted that the benefit of revision of scale of pay with effect from 01.01.1985 was granted on 29.08.2001, whereas the benefit of 1st financial upgradation was granted to him with effect from 09.08.1999 on 15.10.2004 and the 2nd financial upgradation under the ACPS with effect from 01.01.2006 was granted to him on 02.04.2009. Therefore,

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according to applicant, respondents having taken into account the revision of pay that had been allowed to him with effect from 01.01.1985 in terms of Office Memorandum (A/8) had granted two financial upgradations under the ACPS by computing regular service as Draftsman, Gr.II with effect from 01.01.1982.

15. We have perused the pleadings and heard Mr.K.C.Kanungo, learned counsel for the applicant and Mr.D.K.Mallick, learned ACGSC for the respondents. We have also gone through the written notes of submissions filed by both the sides.

16. For the purpose of determining the eligibility of an employee to financial upgradation under the MACP Scheme, commencement of regular service is of vital importance. Regular service as provided in Paragraph-9 of the MACP Scheme stipulates that "*Regular service*" for the purpose of the MACPS shall commence from the date of joining of a post in direct entry grade on a regular basis either on direct recruitment basis or on absorption/re-employment basis. In this connection, it is to be noted that questioning the determination of residency period (regular service) for the purpose of financial upgradation under the Assured Career Progression Scheme (ACPS), applicant along with others had earlier moved this Tribunal in O.A.No.277 of 2007 in which they had claimed that their entry grade should be reckoned from

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1.11.1974 instead of 1.1.1982 (date of placement as Draughtsman, Grade II). The point to be decided in that O.A. was as under

"What is the crucial date of reckoning regular service or residency period for the purpose of granting ACP in line with regular promotion ? In other words, whether the induction training period will be taken into account for counting the regular service or residency period for promotion or ACP, as the case may be ?

17. This Tribunal having elaborately discussed the points urged by both the sides disposed of the said O.A. vide order dated 23.12.2009 by holding that the induction training period will not be taken into account for counting the regular service or residency period for promotion or ACP, as the case may be and accordingly, it was held that the respondents have rightly reckoned the regular service of the applicants w.e.f. 1.1.1982 when they were placed as Draughtsman, Grade-II.

18. Indisputably, applicant was granted 1st financial upgradation under the ACP Scheme in the scale of Rs.5500-9000 with effect from 9.8.1999 on completion of 12 years regular service having regard to his entry grade as Draughtsman, Gr.II from 01.01.1982. Similarly, he was also granted 2nd financial upgradation under the ACP Scheme in the scale of Rs.6500-10,500/- with effect from 1.1.2006 on completion of 24 years regular service and, in view of implementation of the 6th CPC, applicant was placed in the

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revised pay structure in PB-2 with GP Rs.4200/- with effect from 1.1.2006 -.

19. It is the case of the respondents that the eligibility criteria of Division II Grade II of Draftsman cadre of Survey of India was reconsidered and it was decided as per direction issued SG's letter dated 20.04.2011 and dated 13.04.2012 that 1st, 2nd and 3rd financial upgradations under the MACP Scheme are to be given in the Grade Pay of Rs.4600, Rs.4800 and Rs.5400 respectively on completion of 10, 20 and 30 years of regular service to be reckoned from the date of grant of pre-revised pay scale of Rs.5000-8000/5000-9000 as per the request of the cadre. According to respondents, in case the date of eligibility is reckoned from the date of Grade II Division II as submitted by the applicant, this cadre was eligible for grant of 1st, 2nd and 3rd financial upgradations in the Grade of Rs.4200, Rs.4600, and Rs.4800 respectively. As such a decision was taken to grant them the financial upgradations under the MACP Scheme in the Grade Pay of Rs.4600, Rs.4800 and Rs.5400 for the whole cadre which are beneficial to them. In case the eligibility of the applicant is reckoned as urged by him, he will be eligible for grant of 3rd MACP in the Grade Pay of Rs.4800, which he has already taken as a second financial upgradation.

20. In the above backdrop, it is the case of the applicant that he has been granted the 1st and 2nd MACP in GP Rs.4600 and



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Rs.4800/- as per the provisions as stipulated in Paragraph-5 of the MACP Scheme. Paragraph-5 of the MACP Scheme reads as under.

- "5. Promotions earned/upgradations granted under the ACP Scheme in the past to those grades which now carry the same grade pay due to merger of pay scales/upgradations of posts recommended by the Sixth Pay Commission shall be ignored for the purpose of granting upgradations under Modified ACPS.

Illustration-1

The pre-revised hierarchy (in ascending order) in a particular organization was as under.

Rs.5000-8000, Rs.5500-9000 & Rs.6500-10500.

- (a) A Government servant who was recruited in the hierarchy in the pre-revised pay scale Rs.5000-8000 and who did not get a promotion even after 25 years of service prior to 1.1.2006, in his case as on 1.1.2006, he would have got two financial upgradations under ACP to the next grades in the hierarchy of his organization, i.e., to the pre-revised scales of Rs.5500-9000 and Rs.6500-10500.
- (b) Another Government servant recruited in the same hierarchy in the pre-revised scale of Rs.5000-8000 has also completed about 25 years of service, but he has got two promotions to the next higher grades of Rs.5500-900 & Rs.6500-10500 during this period

In the case of both (a) and (b) above, the promotions/financial upgradations granted under ACP to the pre-revised scale of Rs.5500-9000 and Rs.6500-10500 prior to 1.1.2006 will be ignored on account of merger of the pre-revised scale of Rs.5000-9000, Rs.5500-9000 and Rs.6500-10500

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recommended by the Sixth CPC. As per CCS (RP) Rules, both of them will be granted grade pay of Rs.4200 in the pay band PB-2 after implementation of MACPS, two financial upgradations will be granted both in the case of (a) and (b) above to the next higher grade pays of Rs.4600 and Rs.4800 in the pay band PB-2.

21. From the above, it is clear that due to merger of scale of Rs.5500-8000, 5500-9000 and Rs.6500-10500/-, financial upgradations ^{will be} granted to an employee under the ACP in the scale of Rs.5500-9000 and Rs.6500-10500 and as per CCS(RP) Rules, will be granted GP Rs.4200 in PB-2 and he/she will be granted two financial upgradations to the next higher GP Rs.4600 and Rs.4800 in PB-2. This is the background on which, applicant's pay having been fixed in PB-2 with GP Rs.4200/-, he was granted two financial upgradations to the next higher GP Rs.4600 and Rs.4800 in PB-2.

22. MACP Scheme lays down that there shall be three financial upgradations counted from the direct entry grade on completion of 10, 20 and 30 years' service respectively. Financial upgradation under the Scheme will be admissible whenever a person has spent 10 years continuously in the same grade-pay. Further the Scheme provides that if a Government has been granted either two regular promotions or 2nd financial upgradation under the ACP Scheme of August, 1999 after completion of 24 years of regular service, then only 3rd financial upgradation would be admissible to him under the MACPS on

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completion of 30 years of service provided that he has not earned third promotion in the hierarchy. and both the class prior to 1.1.2006 shall be ignored.

23. Admittedly, the direct entry grade or the commencement of regular service of the applicant is Draughtsman, Grade-II which is with effect from 1.1.1982 and the Respondents having reckoned this period have granted 1st and 2nd financial upgradations under the ACP Scheme with effect from 9.8.1999 and 1.1.2006 respectively. In the meantime, applicant has admittedly, not earned any promotion in the hierarchy. Therefore, by no stretch of imagination it could be said that on completion of 30 years' service from 1.1.1982 applicant is not entitled to 3rd financial upgradation under the MACP Scheme. The plea of the respondents that as per direction issued SG's letters dated 20.04.2011 and dated 13.04.2012 that 1st, 2nd and 3rd financial upgradations under the MACP Scheme are to be given in the Grade Pay of Rs.4600, Rs.4800 and Rs.5400 respectively on completion of 10, 20 and 30 years of regular service to be reckoned from the date of grant of pre-revised pay scale of Rs.5000-8000/5000-9000 as per the request of the cadre, is not sustainable in the forefront of the provisions of the MACP Scheme. In view of this, we hold that the applicant is entitled to 3rd financial ^{upgradation} benefits under the MACP Scheme when he completed 30 years' service from 1.1.1982 as Draughtsman Grade-II.


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24. For the reasons discussed above, we quash the impugned orders at A/5 dated 17.5.2013. However, we do not feel inclined to quash A/6 and A/7 to the O.A. as those are all inter-departmental communications by virtue of which applicant's claim has not been turned down. Consequently, we direct the respondents to grant GP Rs.5400 in PB-3 as 3rd financial upgradation under the MACP Scheme having regard to his 30 years' service from 1.1.1982 as Draughtsman Grade-II, subject to fulfillment of other conditions of the rules/Scheme and in such an eventuality, applicant shall be granted the consequential financial benefits as due and admissible. This exercise the respondents shall completed^d within a period of 120 days from the date of receipt of this order.

In the result, the O.A. is thus allowed. No costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

Mehta