

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 185/2010

Jodhpur, this the 10th day of March, 2014

CORAM

**Hon'ble Mr.Justice Kailash Chandra Joshi, Member (Judicial)
Hon'ble Ms. Meenakshi Hooja, Member (Administrative)**

S.R.Choudhary S/o Shri Balbir Singh, aged about 50 years, R/o 19 Customs Colony Ratanada, jodhpur. Working as STA (Sr. Technical Assistant) in the office of Additional Commissioner of Customs, Jodhpur.

.....Applicant
By Advocate: Mr. Kamal Dave.

Versus

1. Union of India, through the Ministry of Finance, Department of Revenue, Govt. of India, New Delhi.
2. The Commissioner, Directorate of Logistics, Custom and Central Excise, Lok Nayak Bhawan, 4th floor, 'A' Wing, Khan Market, New Delhi.
3. The Commissioner, Central Excise Commissionerate – 1st, NCR Building, Statue Circle, Jaipur.
4. Assistant Commissioner, Customs, customs Sub Commissionerate, Panchbati Circle, Airport Road, Jodhpur.

By Advocate : Mr. D.P.Dhaka, proxy counsel for Mr. V.K.Mathur.

ORDER (Oral)

The present OA is preferred challenging denial of ACP/MACP by the impugned fixation of pay order dated 2.6.2009 (Ann.A/1) and also the

2

order 12.3.2010 (Ann.A/2) by which the financial upgradation was allowed to the applicant.

2. Short facts, as averred by the applicant, are that he was initially appointed as Radio Technician in the pay scale of Rs.425-700 and he joined on 8.12.1982. Thereafter the applicant was allowed promotion to the post of Technical Assistant carrying pay scale of Rs.1400-2600 vide order dated 17.7.1987. After recommendations of the 5th Pay Commission, the pay scale of Rs.1400-2600 had been revised to Rs.5000-8000. The applicant was further promoted to the post of Senior Technical Assistant vide order dated 9.9.2003 in the pay scale of Rs.5500-9000 on which he joined on 10.9.2003. Subsequently, the respondents decided to merge the post of Technical Assistant (T.A.) and Senior Technical Assistant (S.T.A.) in view of letter dated 18.2.2009. It is alleged that this merger snatched the applicant's gained status and pay scale as a result of promotion from T.A. to S.T.A. vide order dated 9.9.2003. The applicant has averred that he got promotion from Radio Technician to T.A./S.T.A., the right of first financial upgradation on completion of 12 years of service ought to have been ignored as per the scheme but on completion of 24 years of regular service without promotion he became entitled for financial upgradation from the pay scale of Rs.5500-9000 to Rs.6500-10500 which is the pay scale available in the promotional hierarchy for the next higher grade post. It has also been averred that after recommendations of 6th Pay Commission, Modified Assured Carrier Progression (MACP) scheme is floated

extending right of financial upgradation on completion of 10, 20 and 30 years of regular service. The applicant is entitled firstly from the benefit of second financial upgradation in the pay scale of Rs.6500-10500 and after taking into account above benefit is entitled for the benefit floated out of MACP scheme and the order dated 12.3.2010 is in ignorance of applicant's right of second ACP hence, the grievance of the applicant is resulting in cumulating loss to the applicant. The department is under obligation to respond to the grievance raised by its employee, but despite having represented the department failed to respond. Therefore, aggrieved by the action of the respondents, the applicant has filed this OA praying for the following reliefs:-

- a) *That the order impugned Annexure-A/1 and A/2 dated 02.062009 and 12.03.2010 may kindly be quashed and set aside and respondents may further directed not to consider promotion from TA to Sr. T.A. 10.9.2003 for denial of benefit of ACP in view of merger of both into one pay scale 5500-9000.*
- b) *That the applicant may be allowed second ACP by granting benefit of financial upgradation for Rs. 6500-10,500 w.e.f. 08.12.2006 with actual consequential benefits.*
- c) *That respondents may be directed to allow increment as due to the applicant on 01.07.2003 with actual retrospective monetary benefits.*
- d) *That respondents may be directed to extend the benefit as admissible under the MACP scheme namely first and second MACP on 01.09.2008 in the grade pay of 4800 and 5400 respectively with actual retrospective monetary benefits.*
- e) *Any other appropriate order or direction, which may be considered just and proper in the light of above, may kindly be issued in favour of the applicant.*
- f) *Cost of the application may kindly be awarded in favour of the applicant.*

3. The respondents by way of filing reply have denied the right of the applicant and have submitted the applicant was granted two promotions to

the grade of T.A. and S.T.A. in terms of rules and regulations in the grade pay of Rs.4600 and Rs.4800 (in PB-2) w.e.f. 1.9.2008 after completion of 20 years regular service in terms of Modified ACP. The respondents in their reply have reproduced the chart of revision of pay scales of Radio Technician, T.A. and S.T.A. vide Ministry's letter dated 18.2.2008, which was further revised after the recommendation of 6th Pay Commission and submitted that the pay scale of Rs.5000-8000 and 5500-9000 of Radio Technician, T.A. and S.T.A. have been revised and merged as Rs.9300-34800 (PB-2) with grade pay of Rs.4200 w.e.f. 1.1.2006 whereas the cadre of T.A. is still feeder cadre of STA as per existing rules. The respondents have further submitted that the Ministry of Finance vide letter dated 12.5.2000 had forwarded amended Recruitment Rules of Telecommunication Staff Group-C and as per these rules, the post of Radio technician is filled by direct recruitment, the post of TA Group-C is filled up by promotion from the post of Radio Technician and the post of S.T.A. Group-C is to be filled by promotion from the T.A., hence the next higher grade (i.e. existing hierarchy of Radio technician was/is T.A. and the next higher grade of T.A. was/is S.T.A. Group-C as per the said recruitment rules. It has been further stated that the Radio Technician were granted first financial upgradation after 12 years or promotions to the higher grade (hierarchy at the material time) of T.A. and the T.A. were granted second promotion to the higher grade of STA. The Ministry vide letter dated 18.2.2009 has merged the pay scale of T.A. and S.T.A. in the pay scale of Rs.5500-9000 w.e.f.1.1.1996. The posts of T.A. and S.T.A. have not been

merged w.e.f. 1.1.1996. Further, as per para-11 of the MACP scheme, the past cases are not to be reopened. As such, the TAs are not entitled for grant of benefit under the old ACP scheme due to revision of pay scales w.e.f. 1.1.1996.

4. The applicant has filed rejoinder reiterating the averments made in the OA.

5. Heard both the parties. During the course of arguments, counsel for the applicant contended that a detailed representation filed by the applicant is still pending before the respondent authorities and the respondent department after filing of this OA has sanctioned the MACP to him but they have not responded to the representation filed by the applicant. Counsel for the applicant further contended that, though the representation filed by the applicant has not been responded to by the respondent department, the applicant has to file a fresh representation in the light of the further development which has taken place after filing of the OA regarding the sanction of financial upgradation to him after completion of 30 years of service.

6. Counsel for the respondents was also in agreement that in case the applicant has filed any representation, the respondent department shall consider the same in the light of the relevant rules, and further in the light of the fact that the MACP has been sanctioned to the applicant after

completion of 30 years of service and also they will examine the issue regarding merger of two posts in the light of the relevant rules.

7. Looking to the entire facts and circumstances of the case, we are proposing to dispose of this OA with certain directions.

8. Accordingly, the applicant is directed to file a fresh representation to the respondent department within one month from the date of receipt of a copy of this order, and the respondent department shall consider the same in the light of the relevant rules and regulation in force within three months from the date of receipt of such representation. If any grievance remains, after the decision of the representation, the applicant may approach this Tribunal by filing a fresh application.

9. The OA is thus disposed of with no order as to costs.


(MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER


(JUSTICE K.C. JOSHI)
JUDICIAL MEMBER

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for Frank Mathur