

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Applicaton No.442/2013

Monday..... this the *14th* day of December 2015

C O R A M :

**HON'BLE Mr.JUSTICE N.K.BALAKRISHNAN, JUDICIAL MEMBER
HON'BLE Mrs.P.GOPINATH, ADMINISTRATIVE MEMBER**

K.K.Girija,
D/o.K.K.Govindan,
Telephone Operator Gr.I,
Naval Telephone Exchange,
Head Quarters, Southern Naval Command, Kochi – 4.
Residing at Karthika, Cheruparambath Road,
Kadavanthara, Kochi – 20.

...Applicant

(By Advocate Mr.T.C.Govindaswamy)

V e r s u s

1. Union of India
represented by the Secretary to the Government of India,
Ministry of Defence, New Delhi – 110 001.
2. The Chief of the Naval Staff,
Naval Headquarters, Sena Bhavan,
New Delhi – 110 001.
3. The Flag Officer Commanding in Chief,
Headquarters, Southern Naval Command,
Kochi – 682 004.

...Respondents

(By Advocate Mr.N.Anilkumar,Sr.PCGC)

This application having been heard on 30th November 2015 this
Tribunal on *14th* December 2015 delivered the following :



ORDER

HON'BLE Mrs.P.GOPINATH, ADMINISTRATIVE MEMBER

The applicant who is presently working as a Telephone Operator Gr.I, Naval Telephone Exchange, Head Quarters, Southern Naval Command, Kochi – 682 004 in PB 2 + GP Rs.4200/- is aggrieved by the non feasance on the part of the respondents to grant the applicant, the benefit of the second financial upgradation in PB 2 plus GP Rs.4600/- under the MACP Scheme. The Time Bound One Promotion Scheme as it existed in the Department of Telecommunication was introduced in the Telephone Exchanges of the Naval Organization also and accordingly, the applicant was granted the 1st time bound promotion with effect from 31.3.2000. According to the applicant, she completed 20 years of service as on 4.4.2003. Going by the MACP Scheme she is entitled to be granted the 2nd financial upgradation under the MACP Scheme in PB 2 plus Grade Pay Rs.4600/- with effect from 1.9.2008. Biennial Cadre Review or the Time Bound One Promotion Scheme etc. which were available in the Postal/Telecom Departments have been replaced by MACP Scheme. The scheme now in vogue is only Annexure A-1 and therefore, is no reason why the respondents should deny grant of the benefit of Annexure A-1 (MACP Scheme) to the applicant. The relief sought for by the applicant is benefit of second financial upgradation in PB2 plus GP Rs.4600/- in terms of Annexure A-1 Modified Assured Career Progression Scheme (MACPS).



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2. Respondents in their reply aver that the applicant belongs to Telephone Operator cadre and for this cadre, the Government has adopted Time Bound Promotion Scheme with effect from 1.1.1996 vide Government of India, Ministry of Defence letter dated 5th October 2006 with financial upgradation on completion of 16 years and 26 years respectively. The applicant also was granted with 1st financial upgradation on completion of 16 years service and she will be eligible for next financial upgradation under TBOP Scheme on completion of 26 years service. The relief sought for in the present O.A by her is that she should be granted financial upgradation under MACP Scheme on completion of 20 years service. MACP Scheme clearly envisages in para 13 of Annexure A-1 that :

“existing time bound promotion scheme, including insitu promotion scheme, staff car driver scheme or any other kind of promotion scheme existing for particular category of employees in Ministry/Department or its offices may continue to be operational for the concerned category of employees if it is decided by the concerned administrative authorities to retain such Schemes, after necessary consultations or they may switch over to the MACPS. However, these schemes shall not run concurrently with the MACPS.”

3. The applicant was granted financial upgradation under TBOP Scheme on 31.3.2000 which was antedated to 4.4.1999 after regularizing her casual/temporary services. Thereafter she was promoted as Telephone Operator Grade-I on 2.11.2000. She is eligible for financial upgradation under TBOP Scheme on completion of 26 years service. Since the TBOP Scheme envisages granting hierarchical pay scale and she is already drawing the maximum pay scale of Telephone Supervisor which is the

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highest post in her cadre, consequent to merger of the posts of Telephone Supervisor and Telephone Operator Grade-I to Telephone Supervisor, the respondents could not grant the 2nd TBOP Scheme benefits in the absence of next hierarchical post. Therefore, a cadre review proposal of Telephone Operator staff has already been taken up by HQ, Southern Naval Command, Kochi vide letter No.CS 2755/CR/2011 dated 8.2.2011 for creation of a new hierarchical post of Chief Telephone Supervisor in PB-2 with Grade Pay of Rs.4600/- so that those Telephone Operator Grade-I due for 2nd financial upgradation under TBOP Scheme can be granted the benefits accordingly. The proposal has already been taken up with Ministry of Defence by Integrated Headquarters of MoD (Navy) and a decision is awaited as intimated vide Integrated Headquarters of MoD (Navy) letter No.CP(P)/7837/Report/Tele Staff dated 9.8.2012. Extension of MACP Scheme to Telephone Operators will have a discriminatory and far reaching effect to the new entrants who comprise 75% of the cadre with Grade Pay of Rs.2000/- as they will reach only upto the Grade Pay of Rs.4200/- on completion of 30 years of service under MACP Scheme whereas the existing staff who draw the Grade Pay of Rs.4200/- will be drawing Grade Pay of Rs.4800/- under 3rd MACP ignoring the 2nd financial upgradation under TBOP Scheme due to merger of pay scales of Telephone Operator Grade-I and Telephone Supervisor. The TBOP Scheme which has been evolved particularly for Telephone Operator cadre if continued will have a parity for all the Telephone Operator Staff irrespective of new entrants or



existing staff reaching the PB-2 with Grade Pay of Rs.4600/- of the proposed hierarchical post of Chief Telephone Supervisor on completion of 26 years of service.

4. Heard counsel for the parties and considered the written submissions made. An order of the Chandigarh Bench in O.A.No.450/HR/2002 was produced wherein the Bench had granted the prayer of applicants for the TBOP/BCR benefits to be made applicable to the Signals Wing Civilian employees of Defence Ministry, when the ACP Scheme was introduced by the 5th CPC. The respondents who were keen to introduce ACP went to the High Court and Apex Court wherein the Chandigarh Bench order became final. On the introduction of MACP applicants again approached the Bench. It was ruled that the Tribunal cannot enter the domain of the administration and decide on matters of policy as laid down by Supreme Court in **Union of India vs. T.P.Bombhate (1991) 3 SCC 11** and **State of Tamil Nadu and others vs. S.Arumugham and others (1998) 2 SCC 196**. The Bench, however, directed the respondents to reconsider the matter of policy of extending the parity of MACP Scheme to the Signal employees of Ministry of Defence also, at par with employees of Post and Telecommunications Department, when the latter have already been bought under the ambit of the MACP Scheme. The Bench held that beyond making these observations, they did not feel the matter is ripe enough for any judicial interference from the Tribunal. Para 13 of MACP Scheme

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introduced post VIth CPC, states that any existing time bound promotion scheme may (emphasis provided) continue to be operational for the category of employees concerned if it is decided by the administrative authorities concerned to retain such schemes after necessary consultations or they may switch over to MACP Scheme. The counsel for the respondents has produced an order of9.2006 (date not legible) wherein they had ordered TBOP to Telephone Operators on completion of 16 years subject to the outcome of the CAT case. However, thereafter the MACP Scheme was introduced on 19.5.2009. Hence above order of 2006 cannot be touted as a conscious decision of retention of TBOP Scheme as against the switch over to MACP as no evidence of the conscious decision or consultations was produced.

5. The Apex Court judgment in Union of India vs. T.P.Bombhate (1991) 3 SCC 11 makes it clear that the Tribunal should not enter into the domain of administration and decide on matters of policy. But there is no evidence to show whether any consultation or deliberation was held nor is there anything to show that any conscious decision was taken by the respondents. No order of the respondents, post introduction of MACP Scheme in September, 2009 is produced. Respondents aver that the extension of MACP Scheme to Telephone Operators will have a discriminatory and far reaching effect on the new entrants who comprise 75% of the cadre with GP Rs.2000/- and who will reach only upto GP Rs.4200/- on completion of 30

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years of service under MACP. Hence they have also to be brought on board so that their interests are also protected and not overlooked while taking a decision in the matter. It is not the mandate of the Tribunal to hold discussions with affected parties, who have not been impleaded to express their point of view before the Bench.

6. The respondents are, therefore, directed to hold consultations with the affected parties, new entrants and staff associations and thereafter take a conscious decision as to whether they should continue with the TBOP Scheme or move over to the MACP Scheme. The entire exercise as stated above shall be completed and the consequent orders shall be issued within a period of 90 days from the date of receipt of a copy of this order. The O.A is disposed of accordingly. No order as to costs.

(Dated this the 14th day of December 2015)



P.GOPINATH
ADMINISTRATIVE MEMBER



N.K.BALAKRISHNAN
JUDICIAL MEMBER

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