

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 522 of 2012

Tuesday, this the 1st day of January, 2013

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

1. S. Shyleswaran Nair, aged 63 years,
 S/o. P. Sreeraman Nair,
 (Retired Upper Division Clerk,
 Office of the Registrar of Company Affairs,
 Thrikkakkara PO, Cochin-682 021),
 Residing at : Kripa V.P. VIII/376,
 Vilavoorkal, Malayinkeezhu PO,
 Thiruvananthapuram-695 571.

2. M.B. Ramakrishnan, aged 61 years,
 S/o. M.R. Bhaskaran,
 (Retired Upper Division Clerk,
 Office of the Registrar of Company Affairs,
 Thrikkakkara PO, Cochin, 682 021),
 Residing at : H.No. 50/753-B, Devikripa,
 Kosseri Lane, Ponekkara Road,
 Edappally, Ernakulam, Cochin-682 024.

..... **Applicants**

(By Advocate – Mr. T.C.G. Swamy)

V e r s u s

1. Union of India, represented by the Secretary,
 to the Government of India, Ministry of Corporate Affairs,
 Shastri Bhavan, New Delhi-110 001.
2. The Regional Director, Southern Region,
 Ministry of Corporate Affairs, Shastri Bhavan,
 Block-I, V Floor, 26, Haddows Road, Chennai-600 006.
3. The Registrar of Companies, Kerala, Office of the
 Registrar of Companies, Company Law Bhavan,
 BMC Road, Near NPOL, Kakkanad,
 Cochin-682 021.
4. The Registrar of Companies, Karnataka
 Kendriya Sadan, II Floor, Koramangala,



Bangalore-560 001.

5. Senior & Accounts Officer,
Ministry of Corporate Affairs,
Shastri Bhavan, A-Wing, Block-VIII,
26, Haddows Road, Chennai-600 006.

..... Respondents

[By Advocate – Mr. Varghese P. Thomas, ACGSC (R1-4) &
Mr. Sunil Jacob Jose, SCGSC (R5)]

This application having been heard on 30.11.2012, the Tribunal on
1.1.2013 delivered the following:

ORDER

By Hon'ble Mr. K. George Joseph, Administrative Member-

The applicants were granted 2nd financial up-gradation with effect from 10.5.2007 and 7.5.2008 respectively in the scale of pay of Rs. 5000-8000/- which was granted the replacement PB of Rs. 9300-34800/- with grade pay of Rs. 4200/-. They had superannuated on 31.8.2008 and 31.7.2010 respectively. Their representations to get arrears of pay and allowances, revision of pension and other retirement benefits were of no avail. Aggrieved they have filed this OA for the following reliefs:-

“(i) Declare that the non-feasance on the part of the respondents to release the benefit of the 2nd financial upgradation granted in Annexure A4, including the revision of pension and other retirement benefits is arbitrary, discriminatory and hence, violative of the constitutional guarantees enshrined in Articles 14, 16 and 300-A;

(ii) Direct the respondents to forthwith release the consequential arrears of pay and allowances and also revision of pension and other retirement benefits;

(iii) Direct the respondents to disburse the arrears as above with 9% interest to be calculated from the date from which the arrears fell due month after month, up to the date of full and final settlement of the same;



(iv) Award costs of and incidental to this Application;

(v) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case."

2. The applicants contended that the refusal on the part of the respondents to grant the benefit of Annexure A4 order with effect from the date from which the financial up-gradations have been ordered is arbitrary, discriminatory and contrary to law. The applicants have already opted to come over to the 6th Central Pay Revision with effect from 1.1.2006 and also opted for the 2nd financial up-gradation with effect from the next date of increment in the lower grade. They ought to have been granted the 2nd financial up-gradation by fixing their pay and thereafter granting them the benefit of revision of pension and other retirement benefits. All over India in various Ministries, Departments, Subordinate Offices including public sector undertakings and even in other Regional Directorates the benefits of Annexure A2 order has been implemented by granting financial up-gradations which fell due between 1.1.2006 and 31.8.2008. The failure on the part of the respondents to grant the balance benefits due despite lapse of 4-5 years from the date from which the benefits fell due is willful, deliberate and a clear case of abuse of power.

3. The respondents 1-4 in their reply statement submitted that the 2nd respondent granted financial up-gradation on the due dates to the applicants. Further action regarding arrears of pay and allowances, pensionary benefits etc. has to be taken by the 5th respondent. Hence, the respondents 1-4 are in no way responsible. They further submitted that the applicants are entitled to.



the reliefs prayed for and the grounds urged in this OA are sustainable.

4. The 5th respondent in his reply statement submitted that there was no refusal on his part to release the benefits of 2nd financial up-gradation to the applicants. He had referred the matter for further clarifications as a matter of caution to DOP&T in order to ensure the correctness of the claims raised which involved huge anticipated expenditure and they were in conformity with the relevant rules. It was on the grounds of discharge of the responsibility governed by the provisions under Civil Accounts Manual regulating the expenditure from the consolidated/contingency fund of India, that he was unable to admit or release the benefits under the financial up-gradation as sought by the applicants.

5. We have heard the learned counsel for the parties and perused the records.

6. Paragraph 6.1 of the MACP Scheme reads as under:-

“6.1 In the case of ACP upgradations granted between 01.01.2006 and 31.08.2008, the Government servant has the option under the CCS (RP) Rules, 2008 to have his pay fixed in the revised pay structure either (a) w.e.f. 01.01.2006 with reference to his pre-revised scale as on 01.01.2006; or (b) w.e.f. the date of his financial upgradation under ACP with reference to the pre-revised scale granted under ACP. In case of option (b), he shall be entitled to draw his arrears of pay only from the date of his option i.e. the date of financial upgradation under ACP.”

Further clarification No. 3 in OM No. 35034/3/2008-Estt(D), dated 9.9.2010 of Department of Personnel & Training as at Annexure A3 is extracted below:-



<i>S. No.</i>	<i>Point of doubt</i>	<i>Clarification</i>
1.	How will the benefits of ACP be granted if due between 1.1.2006 and 31.8.2008?	<p>The new MACPS has come into existence with effect from 1.9.2008. However, the pay structure has been changed with effect from 1.1.2006. Therefore, the previous ACPs would be applicable in the new pay structure adopted with effect from 1.1.2006. Para 6.1 of Annexure-I of MACPS is only for exercising option for coming over to the revised pay structure and not for grant of benefits under MACPS. The following illustrations would explain the position:-</p> <p>(A) In the case of isolated post: Date of appointment in entry Grade in the pre-revised pay scale of Rs. 4,000-6,000: 1.10.1982</p> <p>1st ACP granted on 9.8.1999: Rs. 4,500-7,000 (pre-revised) 2nd ACP due on 1.10.2006 : Rs. 5,000-8,000 (pre-revised) [revised PB-2 Grade of Rs. 4,200]</p> <p>3rd financial upgradation under the MACPS would be due on 1.10.2012 (on completion of 30 years of continuous regular service) in the immediate next higher grade pay in the hierarchy of recommended revised Pay Band and Grade Pay i.e. Grade Pay of Rs. 4,600 in PB 2.</p> <p>(B) In the case of normal promotional hierarchy: Date of appointment in entry Grade in the pre-revised pay scale of Rs. 5,500-9,000 : 1.10.1982 1st ACP granted on 9.8.1999 : Rs. 6,500-10,500 (pre-revised) 2nd ACP due on 1.10.2006 (as per the existing hierarchy) : Rs. 10,000-15,200 (pre-revised). Therefore, 2nd ACP would be in PB-3 with Grade Pay of Rs. 6,600 (in terms of hierarchy available).</p> <p>3rd financial upgradation under MACPS would be due on 1.10.2012 in the immediate next higher grade pay in the hierarchy of recommended revised pay band and grade pay of Rs. 7,600.</p>

7. In view of the above it would take extraordinary ingenuity on the part of the 5th respondent to seek clarification as at Annexure A8. It is an abuse of power to delay the release of benefits due to the applicants as per Annexure A4 order with effect from the date from which the financial up-gradations have been granted to the applicants. The applicants should be granted the 2nd



financial up-gradation by fixing their pay and thereafter granting the benefit of revision of pension and other retirement benefits. Since there is a delay of 4-5 years from the date from which the benefits fell due it is appropriate that the applicants are paid interest on the delayed payment of arrears of pay and allowances and pension and other retirement benefits.

8. Accordingly, the OA is allowed as under:-

The 5th respondent is directed to release forthwith the arrears of pay and allowances and also revision of pension and other retirement benefits consequential to Annexure A4 order to the applicants with 9% interest per annum calculated from the date from which the arrears fell due up to the date of full and final settlement of the same, at any rate, within sixty days of receipt of a copy of this order.

9. No order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

“SA”