

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.205/10

...Friday this the 21st day of October 2011

C O R A M :

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER

Mrs.Lalithamma Subran,
W/o.late Mr.K.C.Subran,
LDC, Naval Aeronautical Quality Assurance Service,
(NAQAS), Naval Base, Kochi – 04.

...Applicant

(By Advocate Mr.S.Radhakrishnan)

V e r s u s

1. Union of India represented by the Secretary
to the Government of India, Ministry of Defence,
New Delhi.
2. Chief Controller,
Naval Aeronautical Quality Assurance Service,
Naval Base, Kochi – 04.
3. Deputy Controller, Defence Accounts,
Area Accounts Office, Navy, CDA Complex,
Perumanoor, Thevara, Kochi – 15.

...Respondents

(By Advocate Mr.Sunil Jacob Jose,SCGSC)

This application having been heard on 12th October 2011 this
Tribunal on 21st October 2011 delivered the following :-

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The chronological sequence of events in this case has neatly
brought out in the synopsis can be easily borrowed to have a hang of the
case. The same is as under :-



.2.

28/03/80	The applicant was appointed as a LDC at Records, the Grenadier, an Army establishment.
1988	The applicant was transferred to DSC Records Kannur.
01/11/97	Applicant was promoted as UDC in the scale of 4000-6000/-.
01/12/05	The applicant was granted the 2 nd financial upgradation under the ACPS in the scale of 5000-8000/- and her pay was fixed at Rs.5150/-.
01/01/06	The VI CPC report was implemented and the pay of the applicant was placed fixed at Rs.9580/-, the corresponding pay of Rs.5150/- with grade pay of Rs.4200/-.
18/01/07	The applicant's husband died.
21/10/08	The applicant was granted unilateral transfer on compassionate ground to HQSNC.
01/01/09	The applicant joined with HQSNC at NAQAS and as per clause 6 (a) (b) of the transfer order the salary she was drawing in the former post under the ACP scheme was protected and she continued to draw the same salary.
12/10/09	The NAQAS forwarded the pay fixation proforma of the applicant to the third respondent.
21/10/09	The DOPT issued an OM stating that in case of unilateral transfer the applicant will be granted the grade pay of the lower post. But where the transfer to a lower post is made subject to certain terms and conditions then the pay can be fixed according to such terms and conditions.
30/11/09	Based upon the subsequent OM dated 21.10.2009, the salary of the applicant was reduced w.e.f 1.1.2009, that too without taking into account the terms and conditions in the transfer order.
18/12/09	The second respondent issued the pay fixation order of the applicant in the reduced pay that too in PB-I with grade pay of Rs.1900/-.
08/01/10	The applicant submitted a representation against the illegal reduction of pay.
08/01/10	The second respondent recommended the representation of the applicant and forwarded to the third respondent.
20/02/10	The third respondent relying on OM dated 21.10.2009 refused to correct the mistake.
23/02/10	The second respondent ordered reduction of pay and recovery of an amount of Rs.31,068/- from the salary of the applicant from the month of March 2010 onwards.

2. The claim of the applicant is as contained in para 8 (a) to (e) and the same are as under :-

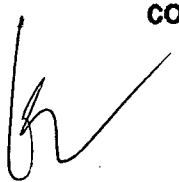


.3.

- (a) Call for the records connected with the case.
- (b) Declare that the pay fixation by the NAQAS as per Annexure A-3 dated 12.10.2009, w.e.f 1.1.2009 is perfectly legal and valid.
- (c) Declare that Annexure A-4, Annexure A-5, Annexure A-8 and Annexure A-9 are patently illegal and not sustainable in the eye of law.
- (d) To set aside Annexure A-4, Annexure A-5, Annexure A-8 and Annexure A-9 orders passed by the respondents.
- (e) Direct the respondents to continue to pay the salary of the applicant as fixed in Annexure A-3 with all consequential and future revisions.

3. At the time of initial admission hearing, an interim order was passed that Annexure A-5 and Annexure A-9 orders whereby the applicant's pay had been drastically reduced and recovery ordered had been stayed.

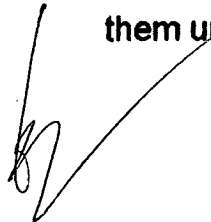
4. The contentions of the respondents as per the reply is that the applicant sought unilateral transfer and such unilateral transfer from a higher post to a lower post has to bring in its train the consequence of the applicant being paid the pay scale and grade pay meant for the lower post only, though pay protection as drawn in the higher post has been guaranteed. According to the respondents, the pay of the individual will be fixed by giving the benefits of completed years of service rendered in the previous post. During the service the applicant had been promoted to UDC on 1.11.2007 and was granted second financial upgradation under the ACP scheme on 1.12.2005. The pay of the applicant has been protected in the lower grade with grade pay of LDC as she has been reverted to LDC on compassionate transfer on her own request.



.4.

5. 3rd respondent has filed his separate reply in which he has referred to the terms and conditions as mentioned by Additional Directorate General of Manpower, in the Adjutant General's Branch of Ministry of Defence vide letter No.15984/Oct/2008/MP-4 (Civ) (b) dated 21.10.2008 which clearly states that in cases where posting/transfer involve reduction in the grade/trade, the pay of the individual will be fixed by giving the benefits of completed years of service rendered in the previous post. According to the 3rd respondent, the applicant's pay was fixed at Rs.10870/- with grade pay of Rs.1900/- which is in consonance with the aforesaid letter of Adjutant General's Branch.

6. The applicant has filed her rejoinder emphasizing that the grade pay of Rs.4200/- paid to the applicant prior to her transfer was under the ACP Scheme taking into account the total services rendered by her and the same is not as a result of her promotion as UDC or Assistant. In addition, as regards transfer to a lower post, where such transfer is made subject to certain terms and conditions, it may be fixed according to such terms and conditions. Further, in the rejoinder, the applicant has contended that the erstwhile ACP Scheme now stands replaced by MACP Scheme which states vide para 6 thereof that in the cases of all the employees granted financial upgradation under ACP Scheme till 1.1.2006 their revised pay will be fixed with reference to the pay scale granted to them under the ACP Scheme.



.5.

7. Counsel for the applicant after narrating the brief facts of the case straightway referred to the terms and conditions of transfer vide order dated 21.10.2008 (Annexure A-1). The terms and conditions of transfer as contained in this annexure are as under :-

6. The pay of the individual will be fixed in accordance with the following provisions of CPRO 82/80 :-

(a) In cases where posting/transfer involve no change in trade/grade, the service rendered prior to such posting/transfer will be treated as continuous and the individuals may be allowed to draw the last pay drawn. The date of increment will remain unaltered.

(b) In cases where posting/transfer involve change in trade/grade, the service rendered in the previous post will be treated as continuous. In such cases the pay of the individual will be fixed in the new pay scale at the stage equal to the pay drawn in the old pay scales or if there is no such stage, at the stage next below that pay, the difference will be treated as personal pay to be absorbed in the next increment. The service rendered on the pay last drawn in the old pay scale will count towards the next increment in the new pay scale.

(c) In cases where posting/transfer involve reduction in the grade/trade the pay of the individual will be fixed by giving the benefit of completed years of service rendered in the previous post.

(d) When the appointment is made to a new post and the maximum pay in the time scale of that post is less than his quasi-permanent/substantive pay in respect of the old post, the individual will draw that maximum as initial pay.

8. Counsel argued that vide condition at (c) above, the benefit of completed years of service rendered in the previous post shall be taken into account. This then means that the applicant's total service in the previous post when taken into account, would make her entitled to the grant of ACP Scheme prior to 1.9.2008 and the benefits of MACP Scheme posterior to 1.9.2008. As such, the grade pay of the applicant cannot be static at Rs.1900/- meant for LDC. It has to be presumed that the applicant

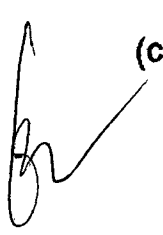


.6.

is deemed to have been in the present Department from her initial date of appointment and the benefits under the ACP Scheme should percolate to her. This would render the pay fixation exactly at par with Annexure A-2 which stipulates the pay at Rs.10870/- in the pay scale of Rs.9300-34800 plus grade pay of Rs.4200/-. Counsel for the applicant further submitted that in all other cases of transfer as contained vide Annexure A-1, the pay scale and the grade pay as originally fixed had not been disturbed and the applicant alone has been singled out in whose case the pay fixation was deferred substantially for a long time and taking into account the orders that were passed on 21.10.2009, the applicant's pay has been wrongly fixed. The counsel also relied upon the decision of the Jabalpur Bench in O.A.859/07 vide order dated 9.2.2009 wherein the Tribunal has held that in unilateral transfer the applicant's pay could not be reduced and refixed to his disadvantage.

9. Counsel for the respondents fairly submitted that there is no dispute to the rule position. That in respect of unilateral transfer, the terms and conditions attached to such transfer should follow.

10. Arguments were heard and documents perused. There is absolutely no doubt in our mind that when the terms and conditions of transfer include that where posting involves reduction in the grade, the pay of the individual will be fixed by giving the benefit of completed years of service rendered in the previous post. In the instant case, the applicant was appointed as LDC in 1980 and she was awarded the second financial upgradation in 2005 (completion of 24 years of service). The pay scale of Rs.5000-8000 in



.7.

which her pay was fixed in 2005 afforded the applicant the grade pay of Rs.4200/- with effect from 1.1.2006. On the day when the applicant joined the Headquarters, Southern Naval Command, in 2009, she was drawing the aforesaid grade pay. The scale of pay in the Pay Band coincided and the same is Rs.9300-34800. The applicant has been rightly placed in so far as pay scale is concerned. If the 24 years of service of the applicant is taken into consideration certainly her entitlement to second ACP cannot be denied. Thus, notwithstanding the fact that the applicant today is holding the post of LDC she is entitled to the aforesaid grade pay of Rs.4200/- by virtue of the clause stipulated as a part of the terms and conditions of her transfer.

11. Thus, the O.A is allowed. The respondents are directed not to truncate the pay or grade pay of the applicant which shall continue to be paid in accordance with Annexure A-2/Annexure A-3 orders. Annexure A-5 and Annexure A-9 impugned in the O.A stand quashed and set aside. Under the circumstances, there shall be no order as to costs.

(Dated this the 21st day of October 2011)


K.NOORJEHAN
ADMINISTRATIVE MEMBER

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Dr.K.B.S.RAJAN
JUDICIAL MEMBER