

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION NO.219/2013

DATED THIS THE 27th DAY OF MARCH, 2015

HON'BLE SHRI P.K.PRADHAN

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MEMBER (A)

B. Ambili, aged 46 years, @/o Subhash A.P., Company Prosecutor, O/o the Registrar of Companies, Company Law Bhavan, Kochi – 682 020, R/at Flat No.12-C, ÖAK WOOD", SKY LINE CITY Park Apartments, Jawahar Nagar, Kadavanthra, Cochin – 682 020.

Applicant

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(By Advocate Shri T.C. Govindaswamy)

Vs.

1. Union of India, represented by the Secretary to the Government of India, Ministry of Company Affairs, Shastri Bhavan, new Delhi – 110 001.

2. The Regional Director, Ministry of Corporate Affairs, Shastri Bhavan, Chennai – 6.

3. The Registrar of Companies, Company Law Bhavan, Kadavanthra, Cochin-20.

Respondents

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(By Advocate Shri Rajesh for Shri Sunil Jacob Jose, Sr. Central Govt. Stg. Counsel)

ORDER

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:

- (i) Call for the records leading to the issue of Annexure-A/1 and quash the same to the extent it relates to the applicant;
- (ii) Declare that the applicant is entitled to be granted the 1st financial up-gradation in PB-3 + GP Rs.5,400/- with effect from 01.08.2007 under the ACPS (Annexure-A3) and direct the respondents to grant the same accordingly;
- (iii) Direct the respondents to consider and grant the applicant the 1st financial up-gradation under the ACPS in PB-3 + GP of Rs.5,400/- with effect from 01.08.2007, with all its consequential arrears of pay and allowances and other benefits emanating therefrom;
- (iv) Direct the respondents to pay interest @ 9% per annum on the arrears of pay and allowances to be calculated with effect from the date from which the arrears fell due month after month up to the date of full and final settlement of the same;
- (v) Award costs of and incidental to the applicant and
- (vi) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

The facts of the case in brief are as follows:

2. The applicant was initially appointed as a Legal Assistant/Company Prosecutor Gr.III with effect from 01.08.1995 in the then scale of pay of Rs.1400-2300 which was replaced by a scale of pay of Rs.5500-9000 with effect from 01.01.1996. The



promotional hierarchy at that time was the post of Company Prosecutor Gr.II in the then scale of pay of Rs.6500-10500. With effect from 01.01.1996, the posts in the categories of Company Prosecutor Gr.II in scale Rs.6500-10500 and those in the Company Prosecutor/Legal Assistant Gr.III in scale Rs.5500-9000 stood upgraded to the scale of pay of Rs.7450-11500 and merged with a common replacement Pay Band of PB 2 plus GP Rs.4600. As such, the earlier post of Company Prosecutor Gr.II in scale ~~Rs.6500-~~² 10500 ceased to be an independent post in the promotional hierarchy with effect from 01.01.2006. The applicant was granted PB-2 + GP Rs.4600/-, the replacement Pay Band of the scale of pay of Rs.7450-11500. The next post in the promotional hierarchy is that of Assistant Registrar in Group 'A' Junior Time Scale, i.e., Rs.800⁰₁-13500 (Revised PB-3 + GP Rs.5400/-).

3. According to the applicant, the terms of the Assured Career Progression Scheme (ACPS) introduced under Office Memorandum No.35034/1/97-Estt(D) dated 09.08.1999, on completion of 12 years from 01.08.1995, she is entitled to the 1st financial up-gradation in the scale of pay attached to the next higher post in the promotional hierarchy, i.e., in PB-3 + GP of Rs.5,400 on and after 01.01.2006. Vide DoPT Office Memorandum No.35034/3/2008-Estt(D) dated 19.05.2009, the Modified Assured Career Progression Scheme (MACPS) was introduced with effect from 01.09.2008. In MACPS, it was made clear that ACP scheme would continue to be followed up to the date of 01.09.2008. The applicant submits that in accordance with the Recruitment Rules, as it existed, the Company Prosecutors in scale Rs.6500-10500 were entitled to be considered for promotion as Assistant Registrar. Since the applicant was a Company Prosecutor in the up-graded pay scale of Rs.7450-11500 with effect from 01.01.2006, the applicant was entitled to be granted the 1st financial up-gradation under the ACP scheme with effect from 01.08.2007 in the scale of pay of Rs.8000-13500, i.e., PB-3 + GP Rs.5,400/-. Since no benefit of ACP was being granted to the applicant, the applicant submitted a representation dated 01.11.2010, addressed to the 2nd respondent (Annexure-A/5). It was followed by another representation dated nil May 2011. After further representations, order at Annexure/A1, dated 09.11.2012 was issued and the applicant is being granted the 1st financial up-gradation in the scale of pay of Rs.6500-10500, though such a scale of pay was not in existence on that date

and though the applicant had been in scale Rs.7450-11500/- at that point of time. In the circumstances, the applicant submitted a very detailed representation dated 15.11.2012 against Annexure-A/1. This was followed by another representation dated 07.01.2013 (Annexure-A/8) to which there was no response. Hence, she sought relief mentioned earlier.

4. The respondents in their reply submitted that on completion of 12 years of service, the applicant has been granted the 1st Assured Career Progression Scheme (ACP) with effect from 01.08.2007 in the pay scale of Rs.6500-10500 along with 20 other officials by the Office Memorandum No.12011/9/2011-Ad.II dated 09.11.2012. The applicant was drawing the pay in the scale of Rs.5500-9000 until the new pay structure was put in place by the VI CPC. The pre-revised scale of ~~Rs.~~ Rs.6500-10500 granted under ACP by the above Office Memorandum No.32011-9/2011-Ad.II dated 09.11.2012 cannot ^{be} stated as lower than the pre-revised scale of Rs.5500-9000 drawn by her as Company Prosecutor Grade III in the pre-revised scale. The statement that the Company Prosecutor Gr.II in the scale Rs.6500-10500 ceased to be an independent post in the promotional hierarchy with effect from 01.01.2006 is against facts and not supported by any orders. The Company Prosecutor II and Company Prosecutor II worked in different grades namely Group C Non-Gazetted and Company Prosecutor II Gazetted till the notification of Central Civil Service (Revised Pay) Rules, 2008, dated 29.08.2008. The 1st respondent vide its letter No.A-23011/08/2010-Ad.II dated 19.04.2011 has clearly stated that the post of Company Prosecutor III/Legal Assistant/Inspector have been merged with Company Prosecutor II and the pay scale has been up-graded by the VI Pay Commission and re-designated as Company Prosecutor. Hence the Company Prosecutor III/Legal Assistant/Inspector in position as on the date of issue of notification have been placed en-bloc at the bottom of Company Prosecutor II. It has been categorically stated in the same letter that the benefits is for up-grading the pay and not for the purpose of seniority. Though pay benefits have been given to Company Prosecutor III from 01.01.2006, the merger of two posts worked in two different positions ~~had~~ taken place only from 29.08.2008. Though the applicant has joined the service on 01.08.1995 in a post equivalent to Company Prosecutor III, she



was not given any promotion/up-gradation other than merger of scale/post. She has completed 12 years of service as on 01.08.2007 and therefore, entitled for ACP as per Para 9 of the DoPT OM dated 19.05.2009. The applicant is entitled and eligible to her next promotion post of Company Prosecutor II in the pay scale of Rs.6500-10500 only.

5. The respondents further submitted that the claim made by the applicant that she is eligible for the next promotional post of Assistant Registrar in the Ministry solely because of the merger of the post of Company Prosecutor III/legal Assistant/Inspector with that of Company Prosecutor II is not based on any material and not tenable in law. It is a reality that company Prosecutor III and Company Prosecutor II (Gazetted) worked in two different capacities even after the pay fixation done effective from 01.01.2006 till the notification dated 29.08.2008 by which the merger of the posts of Company Prosecutor III, etc. and Company Prosecutor II took place. Had there been a promotion on or before the ACP due date 01.08.2007, she should have been promoted only to the post of Company Prosecutor II and not to the post of Assistant Registrar of Company, in Junior Time Scale grade. Had there been an ACP in time, she should have been given the scale of Rs.6500-10500 being the scale of post in the next promotion hierarchy. Merely because of delay in issuing ACP orders, she cannot claim that she is entitled to the next promotional post after the merger took place on 29.08.2008. If at all, a case of no financial benefit happens due to implementation of ACP taken place between 01.01.2006 and 29.08.2008, it is DoPT which should provide remedy which shall be applicable to all such cases.

6. The respondents submit that it is an admitted fact the applicant has not got any up-gradation on the basis of the Annexure-A/1 order which granted ACP to 21 persons including the applicant, as there was a merger of scale Rs.5500-9000 and Rs.6500-10500 scale and further up-gradation to Rs.7450-11500 scale in her case, which was made effective from 01.01.2006. This is a case where an ACP order did not result in financial benefit owing to pay revision benefits granted with retrospective effect by Central Civil Service (Revised Pay) Rules, 2008. Her case can be considered only by Ministry of Finance, Dept. of Expenditure and by DoPT as the 1st respondent is not competent to consider the present case in isolation to the other similarly placed cases.



It is submitted that if the ACP has been processed in time, she would have got only the pay scale of Rs.6500-10500. Thereafter, she would have got the pay fixation benefit after notification dated 01.01.2006 of VI Pay Commission. She cannot use the developments happened between the years 2007 and 2012 to her advantage and demand for revised ACP benefits since her case is a case of delayed ACP.

7. In the rejoinder, the applicant has submitted that the cadre of Company Prosecutor Gr. III and company Prosecutor Gr. II have now been amalgamated for form a common cadre with the designation as Company Prosecutor. The Company Prosecutor is only a re-designation and the scale of Rs.7450-11500 (PB-2 + GP Rs.4600) is only a scale revision. Therefore, on and with effect from 01.01.2006, there was no post carrying a scale of pay of Rs.6500-10500 in the promotional hierarchy. The cadre of Company Prosecutor having been up-graded to the scale of pay of Rs.7450-11500, the next post in the promotional hierarchy was that of Assistant Registrar in the scale of pay of Rs.8000-13500 (PB-3 + GP Rs.5400/-). Therefore, the applicant is entitled to be granted the 1st financial up-gradation under the ACP Scheme with effect from 01.08.2007 in PB-3 + GP Rs.5400/-. Annexure-A/1 provides only a much lower non-existent scale of pay of Rs.6500-10500 is arbitrary, discriminatory, ultra-vires the ACP Scheme. DoPT is neither a necessary nor a formal party for adjudication of the issues involved in this Original Application.

8. In their additional reply, the respondents submit that had the ACP orders been issued on the due date, it would have been granted only to the pay in the old scale of Rs.6500-10500. An order on any date on a matter of previous period can be issued only on the basis of facts and Rules which was in force on the date of event. Any benefit derived from subsequent law can only be made available to all such persons who were similarly placed as per DoPT instructions and not to a single person by a particular Ministry ignoring all similarly placed officials merely because there was a delay in issue of ACP orders in respect of one person. They submit that this is a case of delayed processing of ACP benefit for the applicant who was entitled for the same on 01.08.2007. On the said date, there was no such Pay Commission notification merging the grades. Had the ACP been processed in time, she would have got only the pay



scale of Rs.6500-10500. Had the promotion taken place on the due date of ACP, she would have been promoted to the post of Company Prosecutor II in the pay scale of Rs.6500-10500. Thereafter, she would have got the pay fixation benefit after notification dated 29.8.2008.

9. Heard learned counsel for both the parties.

10. Learned counsel for the applicant gave a brief synopsis of the case and submitted that the applicant was initially appointed in the pay scale of Rs.1400-2300, the replacement scale of which was Rs.5500-9000 as per the 5th Pay Commission. The applicant completed 12 years of service on 01-08-2007. Subsequent to the 6th Pay Commission recommendation the Company Secretary Grade II & Grade III were got merged into a new scale of Rs.7450-11500 w.e.f. 01.01.2006 and which corresponds to PB-2 with Grade Pay of Rs.4600/-. Since the merger of the two scales was effected from 01.01.2006, as on that date the scale of Rs.6500-10500 ceased to exist. Para 9 of the OM dated 19.5.2009 on the guidelines on MACP clearly says that financial up-gradation as per earlier ACP Scheme would be granted till 31.08.2008 and according to Para 7 of the ACP scheme, financial up-gradation shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/ category of posts without creating new posts for the purpose. Since the scales of Company Prosecutors Grade-II and Grade III were merged w.e.f. 1.1.2006, then the only grade that was available in the hierarchy was at the grade of Assistant Registrar. However the respondents vide their OM dated 09.11.2012 (Annexure A/1) granted ACP to the applicant w.e.f. 1.8.2007 in the pay scale of Rs.6500-10500 which had ceased to exist. He also submitted that the order granting ACP did not provide any financial benefit to the applicant since she has already been enjoying a higher pay scale by virtue of the merger of the two pay scales consequent to the 6th Pay Commission recommendation. She submitted that several representations were made vide Annexures A/5, A/6, A/7 & A/8 but they were not even responded to. At this juncture, counsel for the respondent referred to the reply given by the respondents at Annexure (R/3) B. Learned counsel for the applicant submitted that the said reply at Annexure (R/3) B pertains to final seniority list of



Company Prosecutors and has no relevance to grant of financial benefit under ACP. Learned counsel for the applicant also referred to Civil Appeal of 4498 of 13 with Civil Appeal No. 4492 of 2013 reported in 728 (2013) 2 SCC (L&S) wherein the Court had held that 'Merger of different cadres/ streams amounting to complete integration of the cadres/ streams – posts in integrated cadre equal for all practical purposes -Birthmark of original cadres obliterated after integration of officers coming from different sources into a common cadre/ category, would be wholly unjustified and discriminatory. The learned counsel submitted that the applicant is entitled to the reliefs sought for.

11. Learned counsel for the respondent referred to Para 8 to 10 of the reply statement and Para 10 of the additional reply statement and submitted that merger of the two grades was made only from 29.8.2008 much after the date when the applicant is entitled to get benefit of ACP on 1.8.2007. On that date the applicant was holding the scale of Rs.5500-9000 and therefore is entitled to have the next scale of pay of Rs.6500-10500. He further submitted that the statement of the applicant that she is eligible for the next post of Assistant Registrar in the scale of Rs.8000-13500 solely because of the merger of the posts CP II & CP II is not tenable. In this case, only the processing of ACP benefit was delayed. The applicant was entitled for the 1st ACP w.e.f. 1.8.2007 and had the ACP been processed in time or a promotion accorded to the applicant when date of the ACP fell due, she should have been given the scale of Rs.6500-10500 being the scale of post in the next promotion hierarchy. Thereafter she would have got the pay fixation benefit after notification dated 01.01.2006 of 6th Pay Commission. Therefore, the applicant is not eligible for any further benefit.

12. He also submitted that since the issue relating to ACP comes under the purview of DoPT and Ministry of Finance they should also have been made parties. As to whether the respondents had sought any clarifications from DoPT or Ministry of Finance and whether considered their clarifications, learned counsel for the respondents stated that no reference was made to DoPT or Ministry of Finance. The decision has been taken based on the existing rules and hence there was no express reference to DoPT or Ministry of Finance in this regard. The counsel for the respondent submitted that DoPT



or Ministry of Finance should have been made parties in this case. The learned counsel for applicant stated that this issue should have been raised much earlier and not at this stage. Moreover, the respondents themselves have not made any reference to DoPT or Ministry of Finance.

13. On the points highlighted by the learned counsel for the respondent, learned counsel for the applicant further submitted that if the ACP have been granted or promotion granted in the earlier scale prior to 1.8.2008, then as consequent to merger of the two scales, that should have been ignored as per the guidelines under MACP and in terms of the clarifications issued by DoPT vide their OM dated 19.5.2009.

14. I have carefully considered the facts of the case and the submissions made by either side.

15. It is an admitted fact that the applicant was working as Company Prosecutor Gr.III in the scale of Rs.5500-9000/-. Since she did not get any promotion, she was entitled for financial up-gradation under the ACP Scheme on completion of 12 years of service on 01.08.2007 in the next higher grade of Company Prosecutor Gr.II in the scale of Rs.6500-10500/-. Though the applicant was due for financial up-gradation under the ACP Scheme on 01.08.2007, she was not granted the same till the Central Civil Services (Revised Pay) Rules, 2008 came into force vide Office Memorandum dated 29.08.2008 following the recommendations of the VI Central Pay Commission. Vide the same O.M., the Company Prosecutor Gr.II and Gr.III were merged and given a new grade of Rs.7450-11500/- which was equivalent to PB-2 with Grade Pay of Rs.4600/-. This scale was granted from 01.01.2006 and accordingly, the applicant was placed in the replacement scale of PB-2 + GP Rs.4600/- with effect from 01.01.2006. On claiming for ACP benefits which was due to her with effect from 01.08.2007, the respondents issued an order dated 09.11.2012 granting the applicant 1st ACP with effect from 01.08.2007 in the pay scale of Rs.6500-10500/-. The respondents have admitted in their reply that no financial benefits had accrued on account of the order granting ACP by them. If the respondents were of the view that the order granting ACP does not provide for any financial benefit, even though the ACP Scheme or even the



MACP Scheme itself envisages grant of financial benefit, if no promotion is availed by an employee. The respondents have also mentioned that DoPT and the Ministry of Finance should have been made party in this case even though they did not consider it necessary to make any reference to DoPT or Ministry of Finance in case they are of the view that the order issued by them granting ACP does not confer any financial benefit to an individual.

16. The applicant submits that following the VI Pay Commission recommendations, the two scales of Rs.5500-9000 and 6500-10500 were merged and further up-graded to Rs.7450-11500/-. Therefore, as on 01.08.2007 when the ACP was due, the scale of Rs.6500-10500/- was not in existence and hence, the next higher grade, i.e., the scale of Assistant Registrar should be granted in this case. Applicant's counsel referred to the ACP Scheme which states that the financial up-gradation under the ACP shall be given to the next higher grade in accordance with the existing hierarchy in the cadre/category of posts without creating new posts for the purpose. Also reference has been made to the MACP Scheme wherein it is stated that the financial up-gradation as per the provisions of the earlier ACP Scheme will be granted till 31.08.2008.

17. It is a fact that the order granting ACP should have been issued when the same was due, i.e., on completion of 12 years of regular service. This has not happened in this case and the order was issued much later when the entire pay structure has been revised following the recommendations of the VI Pay Commission. The applicant seeks to take advantage of this delay and obtain the benefit of the revised pay structure granted under the VI Pay Commission in 29.08.2008 though with effect from 01.01.2006 for the purpose of ACP benefits. As contended by the respondents, the position should be considered in a manner by which it is to be seen what benefit the applicant is entitled to had the ACP been granted in due time and after which the revised pay structure came into existence. In that event, the applicant would have got the pay scale of Rs.6500-10500/- in normal course under the ACP Scheme as it was the next grade she was entitled to. Thereafter, when the pay scales were revised under the CCS (Revised



Pay) Rules, 2008, the principle enunciated under MACP Scheme under Para 5 should have been made applicable. Para 5 of the MACP Scheme reads as follows.

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

Illustration-I

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

Rs.5,000-8000, Rs.5,500-9,000 and Rs.6,500-10,500

- (a) A Government servant who was recruited in the hierarchy in the pre-revised pay scale Rs.5,000-8000 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 up-gradations under ACP to the next higher grades in the hierarchy of his organization, i.e., to the pre-revised scales of Rs.5,500-9000 and Rs.6,500-10,500/-.
- (b) Another Government servant recruited in the same hierarchy in the pre-revised scale of Rs.5,000-8,000 has also completed 25 years of service, but he got two promotions to the next higher grades of Rs.5,500-9,000 and Rs.6,500-10,500 during this period.

In the case of both (a) and (b) above, the promotions/ financial up-gradations granted under ACP to the pre-revised scale of Rs.5,500-9,000 and Rs.6,500-10,500 prior to 1-1-2006 will be ignored on account of merger of the pre-revised scales of Rs.5,000-8,000, Rs.5,500-9,000 and Rs.6,500-10,500 recommended by the Sixth CPC. As per CCS (RP) Rules, both of them will be granted grade pay of Rs.4,200 in the pay band PB-2. After the implementation of MACPS, two financial up-gradations will be granted both in the case of (a) and (b) above to the next higher grade pays of Rs.4,600 and Rs.4,800 in the pay band PB-2.”

In this particular case, the scenario explained under Para 5 of the MACP Scheme as mentioned above should have been made applicable by the respondents. Therefore, since the applicant has got replacement scale of PB-2 + GP Rs.4600/-, she should have been awarded the next Grade Pay in the same PB, i.e., Rs.4800/- in terms of her entitlement. But, the respondents issued an order which according to them is only meaningless as it did not confer any financial benefit.

18. The respondents have also tried to raise the issue of seniority. However, the case of seniority is not under question here. The only issue that has been under contention is the financial up-gradation that should have been made available to the applicant under the ACP/MACPS.



19. Therefore, after careful consideration of the entire matter, I hold that the order dated 09.11.2012 at Annexure-A/1 in so far as it pertains to the applicant, which does not confer any financial benefit to the applicant, cannot be sustained and is therefore, set aside. The respondents are directed to re-consider the grant of financial up-gradation under the ACP/MACP Schemes in terms of the principle enunciated under Para 5 of the MACP Scheme. This should be done within a period of three months from the date of receipt of a copy of this order.

20. The OA is accordingly allowed in terms of the above directions. No order as to costs.



(P.K. PRADHAN)
MEMBER (A)

psp.