

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.27/13

Friday this the 2nd day of August 2013

C O R A M :

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

N.J.Joseph,
S/o.late N.T.Joseph,
Principal Private Secretary,
Central Administrative Tribunal,
Ernakulam Bench, Ernakulam.
Permanently residing at Naduvileparambil House,
Kootharappally B.O., Karukachal P.O.,
Kottayam District.Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Union of India,
represented by its Secretary to the Government of India,
Ministry of Personnel, Public Grievances and Pensions,
(Department of Personnel & Training), New Delhi – 110 001.
2. The Principal Registrar,
Central Administrative Tribunal, Principal Bench,
Copernicus Marg, New Delhi – 110 001.
3. The Registrar,
Central Administrative Tribunal, Emakulam Bench,
Ernakulam – 17.
4. The Deputy Registrar,
Central Administrative Tribunal, Emakulam Bench,
Ernakulam – 17.Respondents

(By Advocate Mr.S.Jamal,ACGSC)

This application having been heard on 2nd August 2013 this Tribunal
on the same day delivered the following :-

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ORDER

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

The applicant joined the Central Administrative Tribunal on deputation basis as Senior Personal Assistant in April, 1987 and later on was absorbed in November, 1989. He got his promotion as Private Secretary in October, 1993. On the introduction of financial upgradation under the ACP Scheme, the applicant claimed the same and since no response was there he filed OA No.499 of 2005 and the same was disposed of with a direction to the respondents to consider his representation. Consequently, by order dated 29th January, 2007, the respondents conveyed the approval of the authority for grant of first financial upgradation in the scale of Rs.10000 – 15200/. The ACP scheme was substituted by Modified ACP Scheme, effective from 01-09-2008 which provided for financial upgradation after 10/20/30 years of initial appointment subject to certain attendant conditions. The applicant claimed the second financial upgradation which would fetch him the next higher grade pay i.e. from Rs.6600/- to Rs.7600/-. This was, however, rejected by the respondents stating that earlier the applicant had been afforded the Non Functional Selection Grade of Rs.8000 – 13500/- on completion of four years of service as Private Secretary but the same was not availed of by him since it was not advantageous (as the applicant had already crossed the pay stage of Rs.8000/- at that time). The applicant was, however, granted the third financial upgradation on completion of 30 years and his grade pay was enhanced to

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Rs.7600/- w.e.f. 09-08-2009, i.e. 10 years after the drawal of the earlier financial upgradation. Annexure A-2 and A-3 refer. The applicant has challenged the aforesaid orders seeking the following grounds :-

1. Call for the records leading to the issue of Annexure A-1, Annexure A-2 and Annexure A-4 and quash the same.
2. Call for the records leading to Annexure A-3 and quash the same to the limited extent that the financial upgradation granted therein is termed as third financial upgradation instead of second upgradation and also to the extent that the benefit is given only with effect from 09.08.2009 as against the requirement of granting the benefit with effect from 01.09.2008.
3. Declare that the applicant is entitled to be granted the second financial upgradation in PB 3 + GP Rs.7600/- with effect from 01.09.2008 with all consequential benefit arising therefrom and direct the respondents to grant the same accordingly.
4. Award costs and incidental thereto.
5. Pass such other orders or directions as deemed just and fit by this Hon'ble Tribunal.

2. Respondents have contested the O.A. They have relied upon the Ministry of Personnel communication dated 30th September, 2010 in respect of an identical matter of one A.K. Jha, Section Officer of the C.A.T. wherein it was stated that as regards ACP under MACP is concerned, it is clarified that every financial up-gradation would be offset against the financial upgradation under the MACPS in terms of para 8.1 of Annexure 1 of the scheme. Since Non-Functional Grade (NFG) grade of Rs.5,400/- is an upgradation, such PSs/SOs who have got the

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benefits under the NFG in the pre-revised pay scale of Rs.8000 – 13500/- (Grade pay of Rs.5400/-) would only be entitled to the third financial upgradation in the intermediate higher grade pay i.e. pay of Rs.6600/- on completion of 30 years of continuous service or completion of 10 years, whichever is earlier, from the date of grant of NFG. The respondents have also relied upon another order dated 01-04-2009 which provides for grant of NFG at Rs.8000 – 13500/- effective from 01-01-1996.

3. Counsel for the applicant argued that this Tribunal in an earlier common order dated 06th September, 2012 case in OA No.870 of 2011 and OA No.873 of 2011 had clearly held that NFG cannot be a substitute for ACP or MACP. This order was challenged before the High Court in CWP No.OP(CAT) No.4400 of 2012 and the order of this Tribunal has been upheld by the High Court vide judgment dated 4th July, 2013.

4. Counsel for the respondents argued that in view of Annexure R-2 clarification, no relief is available to the applicant.

5. Arguments were heard and documents perused. Grant of NFG was introduced w.e.f. 01-01-1996, though financial benefits accrued therefrom was to be given from a later date. Nevertheless, the same having been introduced in 1996, the NFG scale was only Rs.8000 – 13500/- and there is no element of grade pay at that relevant point of time. The financial

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upgradation in the scale of Rs.10,000 – 15,200/- granted to the applicant vide order dated 29-01-2007 had been shown as the first financial upgradation there is no question of treating the NFG scale of Rs.8000 – 13500 as second financial upgradation.

6. In any event, in the case of the applicant he had not availed of the said NFG scale at all. In any event, the order of this Tribunal in OA No.870 of 2011 and OA No.873 of 2011 clearly holds that NFG cannot be treated as a financial upgradation. In this regard the paragraphs 2 and 8 to 12 of Annexure A-10 order read as under :-

"2. The applicant in OA No.870 of 2011 commenced service as Personal Assistant (Stenographer Grade-II) under the respondents on 15.3.1971. He was promoted as Section Officer on 7.12.1988. He was granted 2nd financial up-gradation w.e.f. 9.8.1999 in the pay scale of Rs. 10,000-15,200/. He was promoted as Assistant Director (NP) in the pay scale of Rs. 10,000-15,200/- in October, 2006. He was granted non-functional pay scale of Rs. 8000-13,500/- w.e.f. 1.1.1996 notionally and on actual basis from 3.10.2003 vide order dated 31.12.2009. The 3rd financial up-gradation from the grade pay of Rs. 6,600/- to Rs. 7,600/- in PB-3 15600-39,100/- w.e.f. 1.9.2008 was granted vide order dated 14.1.2010. Further he was promoted as Joint Director on 15.4.2010. The order of the 3rd financial up-gradation was kept in abeyance vide order dated 21.4.2010. Hence, no pay fixation was granted. He retired on 31.5.2010. His representation for benefits of 3rd financial up-gradation was replied to vide Annexure A6 dated 15.6.2011 stating that the desired clarification is still awaited from the respondents 2 & 3. Aggrieved he has filed this OA for the following reliefs :-

"a. Quash Annexure A4 order issued by the 5th respondent keeping in abeyance the Annexure A3 order granting the third financial upgradation to the applicant.

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b. Declare that the applicant is entitled to get the benefits of the third financial upgradation under the MACP Scheme granted to him as per Annexure A3 and to get his pay and pension refixed accordingly.

c. Direct the respondents to grant the applicant the benefits of the third financial upgradation under the MACP Scheme sanctioned as per Annexure A3 order and revise and refix his pay and pensionary benefits accordingly and to disburse him the arrears thereof.

d. To grant such other reliefs as may be prayed for and the court may deem fit to grant, and

e. Grant the cost of this Original Application."

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8. The non-functional pay of Rs. 8,000-13,500/- was granted to the applicants w.e.f 1.1.1996. They were granted the 2nd financial up-gradation under the ACP scheme in the pay scale of Rs. 10,000-15,200/- w.e.f. 9.8.1999. The pay scale of Rs. 10,000-15,200/- was replaced with PB-III Rs. 15,600-39,100/- with grade pay of Rs. 6,600/- w.e.f. 1.1.2006. Therefore, the respondents granted them the 3rd financial up-gradation under the MACP scheme from the grade pay of Rs. 6,600/- to Rs. 7,600/- in the pay band of Rs. 15,600-39,100/- w.e.f. 1.9.2008. The order of 3rd financial up-gradation was kept in abeyance on the basis of clarifications dated 12.1.2010 and 12.4.2010 at Annexures R3 and R4 respectively. They clarify that in terms of paragraph 8.1 of the MACP scheme direct recruit Assistants/Stenographers Grade-C who got non-functional grade pay of Rs. 5400/- would be entitled to 3rd financial up-gradation in the immediate higher grade pay of Rs. 6,600/- on completion of 30 years of service or on completion of 10 years of stagnation service in a single grade pay whichever is earlier. Paragraph 8.1 of the MACP scheme dated 19.5.2009 is reproduced as under :-

"8.1 Consequent upon the implementation of Sixth CPC's recommendations, grade pay of Rs. 5400 is now in two pay bands viz. PB-2 and PB-3. The grade pay of Rs. 5400 in PB-2 and Rs. 5400 in PB-3 shall be treated as separate grade pays for the purpose of grant of upgradations under MACP Scheme."

As per paragraph 8.1 above the grade pay of Rs. 5400/- in PB-II and PB-III should be treated as separate grade pays for the purpose of up-gradation under the MACP. Paragraph 8.1 and clarification dated 12.4.2010 pertain to grade pay of Rs. 5400/-. The respondents have admitted that the applicants never got the grade pay of Rs. 5400/-. Therefore, Annexures R3 & R4 dated 12.1.2010 and 12.4.2010 respectively do not have application to the cases of the applicants in granting the 3rd financial up-gradation. Thus, there is no factual or legal basis for keeping the order of 14.1.2010 in abeyance granting the 3rd financial up-gradation to the applicants.

9. As per the statement of the respondents orders granting 3rd financial up-gradation with grade pay of Rs. 7,600/- to Assistant Directors (Staff Officer) was issued in respect of four officers and their pay and allowances were also fixed before the issuance of Annexure R3. The clarification is effective not from the date of its issue but from the date of the order it clarifies. The clarification elucidates the position that existed earlier. Seen from this angle the clarification at Annexures R3 and R4 whether right or wrong should apply to all including the Assistant Directors (Staff Officer). The clarifications cannot be restricted in application to Assistant Directors (NP) alone, as is the case here which is discrimination.

10. The non-functional scale of Rs. 8000-13,500/- (revised pay scale Rs. 13,600-39,100/- with grade pay of Rs. 5400/-) granted with effect from 1.1.1996 was neither by way of promotion nor ACP/MACP. Therefore, the consequent financial up-gradation of the applicants w.e.f. 9.8.1999 was in the equivalent Grade Pay of Rs. 6,600/- in PB-III. Therefore, the 3rd financial up-gradation of the applicant in the grade pay of Rs. 7,600/- in PB-III was rightly given vide order dated 14.1.2010. Paragraph 6 of the MACP scheme reads as under :-

"6. In the case of all the employees granted financial upgradations under ACPS till 01.01.2006, their revised pay will be fixed with reference to the pay scale granted to them under the ACPS."

11. As rightly stated by the applicants their case is covered by paragraph 6 of the MACP scheme and not by paragraph 8.1 of the MACP scheme. Paragraph 8.1 does not come into play in the instant cases. The non-functional pay was granted by order dated 31.12.2009 with retrospective effect from 1.1.1996. Since 2010, the clarifications sought by the respondents are pending consideration in the Ministry. The



impugned orders do not state any reason whatsoever for keeping in abeyance the order of granting 3rd financial up-gradation to the applicant along with others. The reply statement of the respondents do not give any reasons as to the inordinate delay in getting the clarifications sought by them. The lethargy on the part of the respondents in getting the desired clarification, in the light of the submissions made by the respondents themselves should not be allowed to cause delay in granting justice to the applicants.

12. In the light of the discussions above the Original Applications are allowed. The impugned order dated 21.4.2010 is set aside. It is declared that the applicants are entitled to get the benefits of 3rd financial up-gradation under the MACP scheme granted to them as per Annexure A3 in OA 870/11 and Annexure A4 in OA 873/11 and to get their pay and pension re-fixed accordingly. The respondents are directed to grant the applicants the benefits of 3rd financial up-gradation and to revise and re-fix their pay and pensionary benefits accordingly and disburse them the arrears thereof and to refund the withheld amount of Rs. 56,364/- to the applicant in OA No. 873/11 within a period of sixty days from the date of receipt of a copy of this order. No order as to costs."

7. When the above order was challenged, vide judgment dated 4th July, 2013 in O.P. (CAT) No. 4400 of 2012, the High Court has held as under :-

"7. The respondent in O.P.(CAT) No.4400 of 2012 was granted non functional scale of pay of Rs.8000-13500/- with effect from 01.01.1996. The Tribunal rightly found that the respondent in O.P.(CAT) No.919 of 2013 was also entitled to the said non functional scale with effect from 01.01.1996. The consequential financial upgradation of the respondents with effect from 09.08.1999 was in the equivalent grade pay of Rs.6600/- in Pay Band-III. Therefore, the Tribunal found that the third financial upgradation of the respondents in the grade pay of Rs.7600/- in Pay Band-III was rightly given to them as per order dated 14.01.2010. The Tribunal found that the case of the respondents were not covered by paragraph 8.1 of the MACP Scheme but by its paragraph 6, which stipulates that in the case of all the employees who were granted financial upgradations 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. It was also found that the non-

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functional scale granted to the respondents was neither by way of promotion nor under the ACP/MACP Schemes. Learned counsel for the petitioners contended that the non-functional scale granted to the respondents should be treated as financial upgradation and then, they were not entitled to financial upgradation from the grade pay of Rs.6600/- to Rs.7600/. At the same time, the learned counsel admitted that the non-functional scale was applicable to all the employees covered by the orders in respect of the same and it was not financial upgradation coming under the ACP/MACP Schemes. Therefore, such an argument advanced by the learned counsel has no legs to stand.

8. The Tribunal has considered the questions in their right perspective and arrived at right conclusions. We find no infirmity or jurisdictional error with the orders passed by the Tribunal. We do not find any reason to interfere with the impugned orders passed by the Tribunal invoking the visitatorial jurisdiction of this Court under Article 227 of the Constitution of India. These Original Petitions fail and hence, they are dismissed."

8. The above decision of the Tribunal as upheld by the High Court fully supports the case of the applicant. Rejection of his case on the ground that NFG has been offered/granted to the applicant cannot be held legally valid. The applicant is entitled to the next financial upgradation on completion of 20 years years of service reckoned from 08-04-1987 and since the MACP is admissible from 01-09-2008, he is entitled to the financial upgradation with grade pay of Rs.7600/- from 01-09-2008 instead of from 09-08-2009 already granted. It is accordingly declared.

9. Reference to Rs.5400/- as grade pay for NFG has been made by the respondents. There is no question of any grade pay prior to 01-01-2006 and the applicant became entitled to NFG much earlier than 01-01-2006. May be, if a private secretary with 4 years of service



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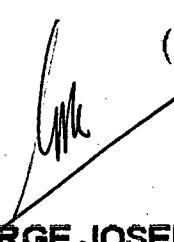
is granted the NFG on or after 01-01-2006, possibly the question of offsetting the same against MACP may arise in such cases. Since in the instant case that situation does not exist, the said question is left open.

10. In view of the above, the OA is allowed. Impugned Annexure A-2 and A-3 order are quashed and set aside. Respondents are directed to advance the Financial upgradation granted to the applicant from 09-08-2009 to 01-09-2008 and arrears arising out of the same be worked out and paid to the applicant.

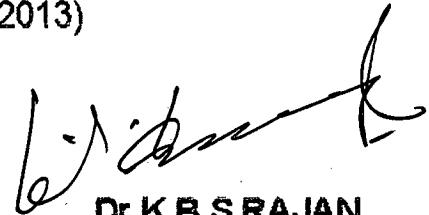
11. This order shall be complied with, within a period of four months from the date of communication.

12. No cost.

(Dated this the 2nd day of August 2013)


K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER

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Dr.K.B.S.RAJAN
JUDICIAL MEMBER