

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 304 OF 2012

Wednesday, this the 25th day of July, 2012

CORAM:

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

M. Vijayan,
Superintendent of Central Excise,
Taliparambu Range, Court road,
Taliparambu - 670 341, Kannur District.

... Applicant

(By Advocate Mr. C.S.G. Nair)

versus

1. Union of India, represented by its Secretary,
Department of Revenue, North Block,
New Delhi-110 001.
2. Chairman, Central Board of Excise & Customs,
North Block, New Delhi – 110 001.
3. Chief Commissioner of Central Excise & Customs,
Central Revenue Buildings, I.S. Press Road,
Cochin-628 018.
4. Commissioner of Central Excise & Customs,
Central Revenue Buildings, I.S. Press Road,
Cochin-628 018.
5. Commissioner of Central Excise & Customs,
Central Revenue Buildings, Mananchira,
Calicut-673 001. ... Respondents

(By Advocate Mr. S. Jamal)

The application having been heard on 18.07.2012, the Tribunal on
25-07-12 delivered the following:

ORDER

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicant in this O.A. is aggrieved by the denial of 3rd financial
upgradation under the Modified Assured Career Progression Scheme

✓

(MACPS) on the ground that he was given the Grade Pay of Rs. 5400/- in PB-2 on non functional basis after completion of 4 years of regular service in the cadre of Superintendent with effect from 01.01.2006, which is counted for the purpose of granting financial upgradation under the MACPS.

2. The applicant has sought for the following reliefs :

- (i) To call for the records leading to the issue of Annexure A-3 and quash the same to the extent that it denies MACPS benefits to the applicant;
- (ii) To declare that the applicant is entitled for financial upgradation to the grade pay of Rs. 6600/- with effect from 01.09.2008;
- (iii) To grant such other relief or reliefs which this Hon'ble Tribunal may deem fit and necessary in the circumstances of the case.

2. The applicant contended that he is entitled for the 3rd financial upgradation under the MACPS with effect from 01.09.2008 to the grade pay of Rs. 6600/- on completion of 30 years of service as he got only two promotions. In the Mumbai-I Central Excise Commissionerate, the 3rd financial upgradation under the MACPS was given to an officer who joined the service as Stenographer and subsequently promoted as Inspector and Superintendent. The applicant is similarly placed. He relied on the decision of the Madras Bench of this Tribunal in O.A. No. 821/2010 and connected cases (Annexure A-8) in support of his case. Further it was submitted that there was no reply to his representation dated 28.03.2011.

3. Per contra, the respondents submitted that even assuming that in some Commissionerates, similarly placed officers like the applicant had been granted the 3rd financial upgradation under the MACPS with grade pay of Rs. 6600/- in PB-3, it does not mean that an erroneous fixation granted should be



blindly followed. They relied on Para 8.1 of the Annexure of MACPS dated 01.09.2008 and the clarificatory letter of the Central Board of Excise and Customs dated 16.05.2011 (Annexure R-6). The applicants before the Madras Bench of this Tribunal joined the Central Excise Department as Inspector while the applicant joined as Stenographer (OG) and the facts of that case are different from the case of the applicant, who already got the 3rd financial upgradation in his career and, therefore, he is not eligible for any further financial upgradation under the MACPS.

4. In the rejoinder statement, the applicant cited the judgement of Hon'ble High Court of Madras in W.P. No. 13225/2010 wherein the department was directed to grant grade pay of Rs. 5400/- in PB-2 on non-functional basis to the applicant therein.

5. We have heard Mr. C.S.G. Nair, learned counsel for the applicant and Mr. S. Jamal, ACGSC, learned counsel for the respondents and perused the records.

6. For the sake of convenience, Para 8.1 of the MACPS is extracted as under :

"8.1. Consequent upon the implementation of Sixth Central Pay Commission'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."

7. It is clearly stated that the grade pay of Rs. 5400/- in PB-2 and Rs. 5400/- in PB-3 should be treated as separate grade pays for the purpose of grant of upgradation under the MACPS. Further, in Annexure A-7 dated



25.02.2011, the stand of the Department of Revenue, Ministry of Finance, is reproduced as under :

"As per the recommendations of 6th CPC, Superintendents Department of Revenue with 4 years of regular service in that grade are eligible for Non-functional Grade in the grade pay of Rs. 5400 in PB-2 in the corresponding pay band w.e.f. 1.1.2006.

The benefits of ACPS of August, 1999 have been allowed till 31.8.2008 and only functional promotions(s) is/are counted for the purpose of Scheme. Besides, there is no provision for counting of Non-functional scale' for the purpose of ACPS.

In view of the above facts and circumstances, there would be no effect on grant of 'Non-functional scale' in the PB-2 with grade pay of Rs. 5400 during the period between 1.1.2006 to 31.8.2008, as the same is not counted under ACPS and it would not be offset against financial upgradation under the Scheme. However, in terms of para 8.1 of Annexure of MACPS, financial upgradation, granted in the grade pay of Rs. 5400 in PB-2 and PB-3 would be counted separate upgradation and would be offset against financial upgradation under the Scheme."

8. It is made absolutely clear that in terms of para 8.1 of Annexure of MACPS, financial upgradation granted in the grade pay of Rs. 5400/- in PB-2 would be offset against financial upgradation under the Scheme. Under the ACP Scheme, only functional promotions were counted for the purpose of the scheme, but under the MACPS upgradation to non-functional scale will be counted for the purpose of the scheme. Further, in the letter dated 16.05.2011 at Annexure R-6, the Department of Expenditure has observed that in the case of CSS, the provision of non-functional scale in the pay scale of Rs. 8000-13500 (pre-revised) existed even prior to 6th CPC, which is not so in the case of Department of Revenue. Therefore, the request of the applicant in his representation dated 28.03.2011 relying on clarification order O.M. No. 22/22/2009-CS.I(CR) dated 12.04.2010, is not acceded to.

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9. The decision of the Madras Bench of this Tribunal at Annexure A-8 is not about financial upgradation under the MACPS, but whether the applicants therein were entitled to be paid PB-2 with grade pay of Rs. 5400/- or PB-3 with grade pay of Rs. 5400/-. Therefore, the said order of this Tribunal annexed as A-8 does not have any application to the present case.

10. Similarly, in the judgement dated 06.09.2010 in W.P. No. 13225/10 (Annexure A-9) the Hon'ble High Court of Madras declared that the petitioner therein is entitled to the grade pay of Rs. 5400/- on completion of 4 years period in the pay scale of Rs. 7500-12000 as on 01.01.2008. Again, this has no application to the case under consideration.

11. As per Annexure A-7, there is no provision for counting of non-functional scale for the purpose of ACPS. But under the MACPS, the financial upgradation granted in the grade pay of Rs. 5400/- in PB-2 would be offset against financial upgradation under the Scheme. Para 8.1 of MACPS is quite clear on the matter.

12. In view of the above, there is no good ground for granting the 3rd financial upgradation under the MACPS to the applicant in this O.A. Hence the O.A. fails and is dismissed. No order as to costs.

(Dated, the 25th July, 2012)



K GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R.RAMAN
JUDICIAL MEMBER

cvr.

**Central Administrative Tribunal
Ernakulam Bench**

OA No.304/2012

Thursday, this the 5th day of September, 2013.

CORAM

Hon'ble Dr.K.B.S.Rajan, Member (Judicial)

Hon'ble Mr.K.George Joseph, Member (Administrative)

M.Vijayan
Superintendent of Central Excise
Taliparambu Range, Court Road
Taliparambu-670 341.
Kannur District.

Applicant

(By Advocate: Mr.C.S.G.Nair)

Versus

1. Union of India represented by
its Secretary
Department of Revenue
North Block, New Delhi-110 001.
 2. Chairman
Central Board of Excise & Customs
North Block, New Delhi-110 001.
 3. Chief Commissioner of Central Excise & Customs
Central Revenue Buildings
I.S.Press Road, Cochin-682 018.
 4. Commissioner of Central Excise & Customs
Central Revenue Buildings
I.S.Press Road, Cochin-682 018.
 5. Commissioner of Central Excise & Customs
Central Revenue Buildings
Mananchira, Calicut-673 001.
- / Respondents

(By Advocate: Mr.S.Jamal, ACGSC)

This application having been heard on 28th August, 2013, the Tribunal
on 05.09.13 delivered the following order:-

[Handwritten signature]

ORDER

Hon'ble Dr.K.B.S.Rajan, Member (J)

This OA was initially decided vide order dated 25-07-2012, wherein the following order was passed:-

"The applicant in this O.A. is aggrieved by the denial of 3rd financial upgradation under the Modified Assured Career Progression Scheme (MACPS) on the ground that he was given the Grade Pay of Rs. 5400/- in PB-2 on non functional basis after completion of 4 years of regular service in the cadre of Superintendent with effect from 01.01.2006, which is counted for the purpose of granting financial upgradation under the MACPS.

2. *The applicant has sought for the following reliefs :*

(i) *To call for the records leading to the issue of Annexure A-3 and quash the same to the extent that it denies MACPS benefits to the applicant;*

(ii) *To declare that the applicant is entitled for financial upgradation to the grade pay of Rs. 6600/- with effect from 01.09.2008;*

(iii) *To grant such other relief or reliefs which this Hon'ble Tribunal may deem fit and necessary in the circumstances of the case.*

3. *The applicant contended that he is entitled for the 3rd financial upgradation under the MACPS with effect from 01.09.2008 to the grade pay of Rs. 6600/- on completion of 30 years of service as he got only two promotions. In the Mumbai-I Central Excise Commissionerate, the 3rd financial upgradation under the MACPS was given to an officer who joined the service as Stenographer and subsequently promoted as Inspector and Superintendent. The applicant is similarly placed. He relied on the decision of the Madras Bench of this Tribunal in O.A. No. 821/2010 and connected cases (Annexure A-8) in support of his case. Further it was submitted that there was no reply to his representation dated 28.03.2011.*

4. *Per contra, the respondents submitted that even assuming that in some Commissionerates, similarly placed officers like the applicant had been granted the 3rd financial upgradation under the MACPS with grade pay of Rs. 6600/- in PB-3, it does not mean that an erroneous fixation granted should be blindly followed. They relied on Para 8.1 of the Annexure of MACPS dated 01.09.2008 and the clarificatory letter of the Central Board of Excise and Customs dated 16.05.2011 (Annexure R-6). The applicants before the Madras Bench of this Tribunal joined the Central Excise Department as Inspector while the applicant joined as Stenographer (OG) and the facts of that case are different from the case of the applicant, who already got the 3rd financial upgradation in his career and, therefore, he is not eligible*

for any further financial upgradation under the MACPS.

5. In the rejoinder statement, the applicant cited the judgment of Hon'ble High Court of Madras in W.P. No. 13225/2010 wherein the department was directed to grant grade pay of Rs. 5400/- in PB-2 on non-functional basis to the applicant therein.

6. We have heard Mr. C.S.G. Nair, learned counsel for the applicant and Mr. S. Jamal, ACGSC, learned counsel for the respondents and perused the records.

7. For the sake of convenience, Para 8.1 of the MACPS is extracted as under :

"8.1. Consequent upon the implementation of Sixth Central Pay Commission'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."

8. It is clearly stated that the grade pay of Rs. 5400/- in PB-2 and Rs. 5400/- in PB-3 should be treated as separate grade pays for the purpose of grant of upgradation under the MACPS. Further, in Annexure A-7 dated 25.02.2011, the stand of the Department of Revenue, Ministry of Finance, is reproduced as under :

"As per the recommendations of 6th CPC, Superintendents Department of Revenue with 4 years of regular service in that grade are eligible for Non-functional Grade in the grade pay of Rs. 5400 in PB-2 in the corresponding pay band w.e.f. 1.1.2006.

The benefits of ACPS of August, 1999 have been allowed till 31.8.2008 and only functional promotions(s) is/are counted for the purpose of Scheme. Besides, there is no provision for counting of Non-functional scale' for the purpose of ACPS.

In view of the above facts and circumstances, there would be no effect on grant of 'Non-functional scale' in the PB-2 with grade pay of Rs. 5400 during the period between 1.1.2006 to 31.8.2008, as the same is not counted under ACPS and it would not be offset against financial upgradation under the Scheme. However, in terms of para 8.1 of Annexure of MACPS, financial upgradation granted in the grade pay of Rs. 5400 in PB-2 and PB-3 would be counted separate upgradation and would be offset against financial upgradation under the Scheme."

9. It is made absolutely clear that in terms of para 8.1 of Annexure of MACPS, financial upgradation granted in the grade pay of Rs. 5400/- in PB-2 would be offset against financial upgradation under the Scheme. Under the ACP Scheme, only functional promotions were counted for the purpose of the scheme, but under the MACPS upgradation to non-functional scale will be counted for the purpose of the scheme. Further, in the letter dated 16.05.2011 at Annexure R-6, the Department of Expenditure has observed that in the case of CSS, the provision of non-functional scale in the pay scale of Rs. 8000-13500 (pre-revised) existed even prior to 6th CPC, which is not so in the case of Department of Revenue. Therefore, the request of the applicant in his representation dated 28.03.2011 relying clarification

order O.M. No. 22/22/2009-CS.I(CR) dated 12.04.2010, is not acceded to.

10. The decision of the Madras Bench of this Tribunal at Annexure A-8 is not about financial upgradation under the MACPS, but whether the applicants therein were entitled to be paid PB-2 with grade pay of Rs. 5400/- or PB-3 with grade pay of Rs. 5400/-. Therefore, the said order of this Tribunal annexed as A-8 does not have any application to the present case.

11. Similarly, in the judgment dated 06.09.2010 in W.P. No. 13225/10 (Annexure A-9) the Hon'ble High Court of Madras declared that the petitioner therein is entitled to the grade pay of Rs. 5400/- on completion of 4 years period in the pay scale of Rs. 7500-12000 as on 01.01.2008. Again, this has no application to the case under consideration.

12. As per Annexure A-7, there is no provision for counting of non-functional scale for the purpose of ACPS. But under the MACPS, the financial upgradation granted in the grade pay of Rs. 5400/- in PB-2 would be offset against financial upgradation under the Scheme. Para 8.1 of MACPS is quite clear on the matter.

13. In view of the above, there is no good ground for granting the 3rd financial upgradation under the MACPS to the applicant in this O.A. Hence the O.A. fails and is dismissed. No order as to costs."

2. The applicant having challenged the same before the Hon'ble High Court in OP (CAT) 3867 of 2012, the High Court had referred to an order dated 20-05-2011 of the Respondent, which was not before the Tribunal and the High Court had remitted the matter to the Tribunal for consideration of the OA taking into account the contents of the aforesaid order dated 20-05-2011.

3. The counsel for the applicant argued that the clarification given in the aforesaid order dated 20-05-2011 is to the effect that officers working in the offices under the Central Board of Excise and Customs who have been granted the pre-revised scale of pay of Rs 8000 – 275-13500 as financial upgradation in the promotional hierarchy under the ACP Scheme on or before 31-08-2008 may be granted the pay scale in Pay Band 3 i.e. Rs 15600 – 39100 with grade pay of Rs 5400 as per the 6th CPC replacement scale. The counsel has further referred to another OM dated 12-04-2010 wherein it has been provided that DR Assistants/DR Grade-C Stenographers who have got Non Functional Selection Grade (NFG) in the Grade Pay of

Rs 5,400 would only be entitled for 3rd Financial upgradation in the immediate higher grade pay of Rs 6,600/- on completion of 30 years of continuous service or on completion of 10 years stagnation in a single grade pay, whichever is earlier. In the case of the applicant, he had joined the Department as Steno on 18-04-1974 (the corresponding Grade Pay as per the VIth CPC in the pay band was Rs 2,400/- (PB-1). He got regular promotion as inspector on 25-10-1980 with corresponding GP of Rs 4600/- (PB-2). Subsequently, he got regular promotion as Superintendent on 29-08-1997 with corresponding GP of Rs. 4,800/- (PB-2). He was given the grade pay of Rs 5400/- in PB-2 on non functional basis after completion of four years of regular service in the cadre of Superintendent w.e.f. 01-01-2006. The combined result of the aforesaid two orders would mean that the pay of Superintendent would be with the Grade pay of Rs. 5,400/- and since the applicant had obtained only two promotions one as Inspector and the other as Superintendent with grade pay of Rs 5,400/-, he is entitled to the third financial upgradation with the grade pay of Rs 6,600/-. The decision of Madras Bench already referred to in the OA and another decision of the Punjab and Haryana High Court in CWP 12894 of 2010 dated 23-07-2010 also support the case of the applicant.

4. Counsel for the respondents relied upon the provisions of para 8.1 of the Scheme and contended that the grade pay of Rs. 5,400/- granted to the applicant off sets the third financial upgradation.

5. Arguments were heard and documents perused.

6. The following aspects are to be kept in mind in deciding the issue in question here.

7. The applicant relies upon the fact that one P.V. Ramachandran, initially inducted as Stenographer had been afforded Rs 6,600 as Grade Pay on the grant of third Financial Upgradation under the MACPS by the Mumbai Commissionerate. However, the respondents contend that the same is in violation of para 8.1 of the Scheme. Again, the applicant relies

upon the decision of the Madras Bench wherein the Bench had directed that the Superintendents in the C.E. be afforded Grade Pay of Rs 5,400/- on the grant of Non Functional Selection Grade. Here again, the respondents sought to distinguish the case stating that the applicants therein were direct recruit inspectors unlike the applicant who had joined only as Stenographer. These have all been taken into account when the case was earlier decided, vide paragraphs 3 to 6 of the said O.A.

8. What is to be seen is whether the provisions of order dated 20-05-2011 vide Annexure MA 2 to M.A. No. 665 of 2013 would be applicable to the case of the applicant. The said order, of course, keeps in tact the provisions of para 8.1 of the Scheme, which provides that Rs 5,400 as Grade Pay in PB 2 and the same grade Pay in PB 3 are treated separate for the purpose of grant of MACP. However, non functional selection grade by virtue of Annexure A-7 order dated 25th February, 2011 cannot be treated as one of promotion for the purpose of grant of MACP.

9. As per the said order of 20-05-2011, the pay of Superintendent of Central Excise and Customs who had been in the pay scale of Rs 8000-275-13500 on or before 31-08-2008 (i.e. prior to introduction of MACP), would be placed in the PB 3 of Rs 15,600 – 39,100 with the Grade pay of Rs 5,400/- as per the Sixth Pay Commission replacement pay. In the instant case, the applicant got his promotion as Superintendent in August, 1997. His pay at that time would have been in a scale as per the Vth CPC replacement scale. He is granted non functional selection grade with the next Grade pay as on 01-01-2006. If his pay scale as on the date he was granted the NFSC was Rs 8000 – 13500, he was to be fixed in PB 3 in the scale of Rs 15,600 – 39,100 with GP of 5,400/-. In that event, his non functional selection grade cannot be treated as third MACP and he would be entitled to Rs 6,600/- as 3rd MACP.

10. Records do not reflect the exact pay scale drawn by the applicant as on 01-01-2006 when the applicant was granted the Non Functional Selection Grade by way of grant of the next Grade Pay. If his pay was in

the scale of Rs 8000-13500 at the time of grant of NFSG, he is entitled to the benefit of the provisions of paragraph 7 of order dated 20-05-2011. Respondents shall verify the same from the service book of the applicant and afford the 3rd MACP if the pay scale of the applicant at the time of grant of NFSG was Rs 8000 – 13500 (instead of Rs 7450 – 11500).

11. With the above direction, the OA is disposed of. No cost.



(K. George Joseph)
Member (A)



(Dr. K. B. S. Rajan)
Member (J)

aa.

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BE NCH

R.A.No.44/2012
in
O.A.No.304/2012

Tuesday this the 4th day of September, 2012

CORAM:

HON'BLE MR.JUSTICE P.R.RAMAN,JUDICIAL MEMBER
HON'BLE MR.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

M.Vijayaan,
Superintendent of Central Excise,
Taliparambu Range, Court road,
Taliparambu, Kannur- 670 341.

.. Applicant

(By Advocate Mr.C.S.G. Nair)

vs.

1. Union of India,
Represented by the Secretary,
Department of Revenue,
North Block, New Delhi-110001.

2. Chairman,
Central Board of Excise & Customs,
North Block, New Delhi-110001.

3. Chief Commissioner of Central Excise & Customs,
Central Revenue Buildings,
I.S.Press Road, Cochin-18.

4. Commissioner of Central Excise & Customs,
Central Revenue Buildings,
I.S.Press Road, Cochin-18.

5. Commissioner of Central Excise & Customs,
Central Revenue Buildings,
Mananchira, Calicut- 673 001. .. Respondents

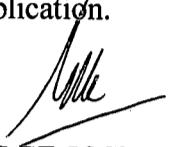
ORDER

HON'BLE MR.JUSTICE P.R.RAMAN,JUDICIAL MEMBER:

This Review Application has been filed seeking a review of the order passed in



O.A.No.304/12. We have gone through the Review Application. We find that this has been filed practically for a rehearing of the matter, which is not the purpose for filing the review. There is no error apparent on the face of record nor are there any sufficient grounds for reviewing the order passed in O.A.No.304/12. Lack of merit, we dismiss this Review Application.



(K.GEORGE JOSEPH)
MEMBER(A)



(JUSTICE P.R.RAMAN)
MEMBER(J)

/njj/