

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 374 OF 2010

Wednesday, this the 2nd day of November, 2011

CORAM:

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

Dennis Joseph Mathew
Lecture-cum-Instructor
IHMCT, Kovalam, Trivandrum
Residing at 982, Royal Court
VCANTI Home, Kavadiyar P.O

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Applicant

(By Advocate Mr.P.V.Mohanan)

versus

1. Union of India represented by
the Secretary
Ministry of Tourism
C-I Hutment, Dalhousie Road
New Delhi
2. The Principal
Institute of Hotel Management and Catering Technology
Ministry of Tourism, Government of India
G.V.Raja Road, Kovalam
Thiruvananthapuram, - 695 527

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Respondents

(By Advocate Mr.Sunil Jacob Jose, SCGSC)

The application having been heard on 02.11.2011, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

The applicant is an employee of the Institute of Hotel Management and Catering Technology, an autonomous institution under Ministry of Tourism, Government of India. In this OA the applicant has sought the following reliefs:-

- a, *To direct the respondents to fix the pay of the applicant in the revised scale of pay of ₹ 15600-39100/-*

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with grade pay of ₹ 5400/- with effect from 10.10.2007 and to pay the arrears flowing therefrom.

b, To direct the second respondent to consider and dispose of Annexure A-5 representation and to refix the scale of pay of ₹ 15600-39100/- with grade pay of ₹ 5400/- with effect from 10.10.2007.

2. According to the applicant, as per Annexure A-3, Government of India issued O.M.dated 19.05.2009 which is a Modified Assured Career Progression Scheme and the same has been implemented to all the attached offices of the Government of India including Offices of IHM at Ahmedabad and Bhuvaneswar in the scale of pay of ₹ 15600-39100/- with grade pay of ₹ 5400/-. He refers to Clause 6 and 6.1 of Annexure A-3.

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

"6.1 In the case of ACP upgradation 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) with effect from 01.01.2006 with reference to his pre revised scale as on 01.01.2006, or (b) with effect from the date of his financial upgradation under ACP with reference to the pre revised scale granted under ACP. In the 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."

3. It is the contention of the applicant that the 2nd respondent, who is the Principal of the Institute of Hotel Management and Catering Technology ought to have implemented Annexure A-3 but nothing transpired. After Annexure A-3, the applicant claimed the scale of ₹ 15600-39100/- with grade pay of ₹ 5400/- with effect from 10.10.2007 by submitting a representation, Annexure A-4. The 2nd respondent by letter dated 23.12.2009, Annexure A-5 informed the applicant that clarification is sought for from the 1st respondent and the pay fixation will be reviewed



after getting proper clarification. According to the applicant, similar institutions have already implemented the revised scale based on option as contemplated in Annexure A-3. In this connection, it is pointed out that IHM, Ahmedabad had already implemented Annexure A-3 and one Shri Vinod Gupta, Vinod Prakash and Mrs. Susan Malatjhi Borgia whose pay has been fixed in the scale of ₹ 15600-39100/- with grade pay of ₹ 5400/-. This is not in dispute. Hence a fresh representation, Annexure A-6 was made. It is contended that Annexure A-3 benefit ought to be extended to the 2nd respondent establishment as well and there cannot be any discrimination to similarly placed employees as IHM, Ahmedabad has already implemented Annexure A-3.

4. In the reply statement filed on behalf of the respondents they have stated that implementation of Modified Assured Career Progression Scheme Annexure A-3 is subject Clause 14 of Annexure 1 attached to the O.M. As per the O.M MACPS is directly applicable only to Central Government Civilian Employees and it will not get automatically extended to employees of Central Autonomous / Statutory Bodies under the administrative control of a Ministry / Department. Keeping in view the financial implications involved, a conscious decision in this regard shall have to be taken by the respective governing body / Board of Directors and the administrative Ministry concerned and where it is proposed to adopt the MACPS, prior concurrence of Ministry of Finance shall be obtained.

5. The 2nd respondent Institution is a central autonomous body under the Ministry of Tourism, Government of India and the Ministry of Tourism has not issued any order so far for implementation of the MACP



Scheme in the central IHMS and hence the scheme has not been implemented in the institution of the answering respondent. The said scheme is yet to be implemented by this institute for want of necessary orders from the ministry of Tourism, Government of India. The 2nd respondent has informed that implementation of Modified Assured Career Progression Scheme Annexure A-3 is subject Clause 14 of Annexure 1 attached to the O.M. As per the O.M MACPS is directly applicable only to Central Government Civilian Employees and it will not get automatically extended to employees of Central Autonomous / Statutory Bodies under the administrative control of a Ministry / Department keeping in view the financial implications involved.

6. We have heard the counsel on both sides. Para 14 of Annexure A-3 is as under:-

“ The MACPS is directly applicable only to Central Government Civilian employees. It will not get automatically extended to employees of Central Autonomous/Statutory Bodies under the administrative control of a Ministry / Department. Keeping in view the financial implications involved, a conscious decision in this regard shall have to be taken by the respective Governing Body/Board of Directors and the administrative Ministry concerned and where it is proposed to adopt the MACPS, prior concurrence of Ministry of Finance shall be obtained. ”

7. The learned counsel for applicant placed an O.M dated 03.08.2010 issued by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training) clarifying Para 14, which is as follows:-

OFFICE MEMORANDUM

Subject: Modified Assured Career Progression Scheme for the central Government civilian employees - Clarification regarding.



The undersigned is directed to invite reference to the Department of Personnel & Training (DOP&T)'s Office Memorandum of even number dated the 19th May, 2009 on the subject cited above. Consequent upon introduction of the Modified Assured Career Progression Scheme (MACPS), in view of para 14 of the Annexure-I of the Scheme, a number of proposals/references seeking extension of the Scheme to Central Autonomous/Statutory Bodies under various Ministries/Departments have been received by the Department of Expenditure. The Department of Expenditure has felt that keeping the large number of Central Autonomous/Statutory Bodies in view, it would be appropriate to delegate the power the approving such proposals to the administrative Ministries/Departments concerned. The Department of Expenditure has accordingly approved for extending the benefits of the MACPS to the Central Autonomous/Statutory Bodies under various Ministries/Departments subject to them satisfying the following four conditions:

- (i) The earlier ACP Scheme was also implemented/adopted by the said Autonomous/Statutory Body.
- (ii) The proposal to adopt MACP Scheme has been a approved by the Governing Body/ Board of Directors.
- (iii) The Administrative Ministry/Financial Adviser of the Ministry has concurred with the proposal.
- (iv) The financial implications of adoption of MACP Scheme have been taken into account by the Organisation/Body and the additional financial implications can be met by it within the existing Budget Grants.

2. As per the revised arrangement, the proposal shall be processed by the Financial Advisor concerned in the first instance and subject to it meeting the requirements spelt out at (i), (ii) and (iv) above, he would obtain the orders of the administrative Head/Secretary concerned for approving the extension of MACPS to such a body.

3. Above is brought to the notice of all concerned Ministry / Department in continuation of para 14 of Annexure-I of MACPS dated 19.05.2009.

4. Hindi version will follow.

(A.K. Srivastava)
Under Secretary to the Government of India

8. Thus a conscious decision has been taken by the Department of Expenditure keeping the large number of Central Autonomous/Statutory Bodies in view, it would be appropriate to delegate the power the approving such proposals to the administrative Ministries/Departments

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concerned. The Department of Expenditure has accordingly approved for extending the benefits of the MACPS to the Central Autonomous/ Statutory Bodies under various Ministries/Departments subject to them satisfying the following four conditions. All the four conditions have already extracted above. There is no dispute in this case that earlier ACPS was implemented in the 2nd respondent – establishment. Thus Condition No.1 is satisfied. Condition No.2 says that the proposal to adopt MACP Scheme has been approved by the Governing Body / Board of Directors. Nothing is placed on record regarding the same either by the applicant or by the respondents. Condition No.3 says that the Administrative Ministry/Financial Adviser of the Ministry has concurred with the proposal and Condition No. 4 says that the financial implications of adoption of MACP Scheme have been taken into account by the Organisation/Body and the additional financial implications can be met by it within the existing Budget Grants. Therefore, Condition No. 2 to 4 is a matter where no decision seems to have been taken. Therefore, the appropriate course open to us is to direct the 2nd respondent to place the matter before the Board of Directors or the Governing Body for approval as the case may be, and once they approve the same, the same may be forwarded to the administrative ministry / Financial Adviser for concurrence. They will also consider the financial implications can be met within the existing Budget Grants as per para 2 of the above O.M, the proposal is to be processed by the Financial adviser concerned, and subject to conditions 1,2 & 4, he would obtain the approval for MACP to such autonomous body. Hence if a representation is made by the applicant, the 2nd respondent shall forward the same to the Financial Adviser for necessary action in this behalf. At the time of placing the matter, the 2nd respondent may enclose the approval of the Governing

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Body / Board of Directors of the Autonomous Institution so that F.A could take a decision as to whether condition 2 to 4 have already been satisfied. The applicant has also placed reliance on a decision of the Madras Bench of the CAT who have already taken a decision in the case of the employees of Central Excise. The applicant while making representation can also enclose a copy of the Madras Bench's decision for necessary information of the respondents. The representation shall be considered by the 2nd respondent in line with the Conditions 2 to 4 of the O.M dated 03.08.2010 as expeditiously as possible, at any rate, within three months from the date of receipt of a copy of this order.

9. OA is allowed as above. No costs.

Dated, the 2nd November, 2011.



**K GEORGE JOSEPH
ADMINISTRATIVE MEMBER**



**JUSTICE P.R.RAMAN
JUDICIAL MEMBER**

vs