

**Central Administrative Tribunal
Principal Bench**

OA 13/2013

this the 14th day of August, 2015

Hon'ble Mr. V.Ajay Kumar, Member (J)

Hon'ble Mr. P.K.Basu, Member (A)

Mrs. Archana Bhatnagar
W/o Shri Tarun Bhatnagar
TGT, Employee No.19810165
Govt Girls Middel School
Dhaka, Delhi – 110 009

..... Applicant

(By Advocate:Shri S.B.Goel)

Versus

1. Director of Education
Directorate of Education
Govt. of NCT Delhi
Old Secretariate, Delhi
2. Mrs. Manju Rani Gupta
Ex. Vice Principal
Govt. Girls Middel School
Dhaka, Delhi – 110 009
3. Govt. of NCT of Delhi
Through its Chief Secretary
Delhi Govt. Secretariate
I.P.Estate
New Delhi -110 002

.... Respondents

(By Advocate:Shri N.K.Singh for Ms. Avnish Ahlawat)

ORDER

By Hon'ble Mr. P.K.Basu,

The applicant joined as TGT on 24.01.1981 in the pay scale of Rs.440-750/-. She was granted Senior Scale/first ACP in the pay scale of Rs.1640-2900/- in 1993. She was granted second ACP/Selection Scale of Rs.5400/-

on 01.09.2008 but grade pay of Rs.6,600/- was not granted due to requirement of Post Graduation degree for the said scale. It is stated by the applicant that vide Office Order dated 11.11.2009 the condition of Post Graduation was dispensed with for grant of second ACP.

2. It was pointed out by the learned counsel for the applicant that as per OM dated 09.09.2010 of DOP&T, the following clarification has been issued :-

Sl. No.	Point of doubt	Clarification
1.	Whether the Pay Band would change in the hierarchy of Pay Bands & Grade Pay on grant of the benefits under MACPS?	Yes. The upgradations under MACPS is to be granted in the immediate next higher grade pay in the hierarchy of recommended revised pay band and grade pay as prescribed in the CCS (RP) Rules, 2008.

3. Our attention was drawn to Office Order dated 5.12.2011, whereby 3rd Financial Upgradation in terms of MACP was granted to the applicant and several others and this has been granted in the same pay band, which is Rs.5400/-.

4. The learned counsel for the applicant referred to the part 'B' of Notification dated 29.08.2008, specifically to that portion which is quoted below, regarding Trained Graduate Teacher (TGT) and Post Graduate Teacher (PGT) :-

2.	Trained Graduate Teacher	Grade III 5500-9000	Grade III 7450-11500	PB-2	4600	3.8.22
		Grade II 6500-10500	Grade II 7500-12000	PB-2	4800	
		Grade I 7500-12000	Grade I 8000-13500	PB-2	5400	
3	Post Graduate Teacher	Grade III 6500-10500	Grade III 7500-12000	PB-3	4800	
		Grade II 7500-12000	Grade II 8000-13500	PB-3	5400	
				PB-3	6600	

		Grade I 8000-13500	Grade I 10000-15200			
--	--	-----------------------	------------------------	--	--	--

5. It is stated that while the Department has extended PB-III with Rs.5400/- the upgradation should actually be done as per the instructions pointed out above. It should be Rs.6600/- that is the next higher grade pay in the hierarchy. According to the applicant, since he had completed 28 years of service on 20.04.2005, he should have been granted the 2nd upgradation under ACP which effect from said date and not from 01.09.2008.

6. In this background, the following reliefs have been sought :-

“(a).....

(b).....

(c) to direct the respondent to initially re-fix the salary of the applicant while fixing the pay scale of Rs.7500-12000/- w.e.f.24.01.2005 as per second ACP and in the pay scale of Rs.8000-13500/- as on 01.01.2006 as per notification No.GSR 622(E) dated 29.08.2008 and No.GRR.161(E) dated 12.03.2009 and further revise her pay w.e.f.01.01.2006 under PB-3 with Grade Pay of Rs.6600/-, further revise her pay w.e.f.24.01.2011 in grade pay of Rs.7600/- as per Circular dated 06.10.2010 and to release all financial benefits accruing on account of re-fixation of the applicant alongwith interest since the date of raising demand by the applicant till its realization, in the interest of justice.”

7. The case of the respondents is that the applicant was not entitled to financial upgradation in 2005 under ACP on account of pre condition of post graduate degree for such pay scale, which was not fulfilled by the applicant as she is only a graduate. The MACP was made effective w.e.f.01.09.2008 and as such she was granted 2nd upgradation under MACP w.e.f.01.09.2008 with grade pay of Rs.5400/- in PB-II upon completion of requisite period of 20 years of service. On completion of 30

years of service, she has been granted 3rd upgradation under MACP w.e.f.01.09.2008 with grade pay of Rs.6600/- in pay band III.

8. The learned counsel for the respondents relied on judgment of the Hon'ble Supreme Court in **Bhakra Beas Management Board v. Krishan Kumar Vij & Anr.** JT 2010 (8) SC 497, which was against the judgment of the High Court granting the benefit of time bound higher pay scale or upgradation in salary though the applicant did not possess the requisite qualification for promotion. The Hon'ble Supreme Court, setting aside the order has held in para 25 of its judgment that the intention is to remove the stagnation but this would not give blanket or absolute right to any employee to be entitled to higher pay scale even if he does not fulfil pre-requisite qualifications for holding the higher post. He, therefore, argued that the applicant has no legal right to grant financial upgradation, as prayed for.

9. The applicant has also cited judgment of this Tribunal in OA No.864/2014 in which vide order dated 12.03.2014 the Tribunal had directed respondent-NCERT to pass a reasoned order indicating its reasons for denying the pay scale claimed by the applicant. However, we do not find the order relevant in the particular case as the OA was disposed of in that case only with a direction to pass a reasoned order. There was no direction to grant any pay scale.

10. Clearly in 2005, he was not eligible and in view of the order of the Hon'ble High Court, cited above, the claim of the applicant is not entertainable and, therefore, rejected.

11. The next issue raised is whether on 3rd upgradation he is entitled to pay scale of Rs.5400/- or 6600/- or next. The applicant has relied on sub

paras (a) (b) & (c) of the letter dated 11.11.2009 to claim grade pay of Rs.6600/-. The relevant para reads as follows :-

“(a) The requirement of fulfillment of normal promotional norms has been dispensed with as the financial upgradations under MACPS is now being granted in the immediate next higher Grade Pay in the Hierarchy of the recommended revised pay bands and grade pay as prescribed in the CCS(RP) Rules, 2008.

(b) Regarding grant of grade pay under 1st, 2nd, 3rd financial upgradations under MACPS to a Principal who has directly recruited, it has been clarified that 1st, 2nd 3rd financial upgradations on completion of 10/20/30 years of regular service would be granted in the immediate next higher Grade Pay in the hierarchy as contained in the CCS(RP) Rules, 2008 in terms of point no.2 of Annexure-1.

(c) Regarding grade pay under 3rd financial upgradation to directly recruited TGT who have been granted 2nd financial upgradation under ACP Scheme in the PB-3 (15600-39100) in grade pay of 5400 upto 31.08.2008, it has been clarified that in such cases the financial upgradation would be granted in the Grade Pay of Rs.6600 w.e.f.31.08.2008 or on completion of 30 years of regular service, whichever is latter.

In view of above clarifications/Proforma issued, the Directorate of Education has agreed to grant MACPS benefits to eligible teachers/officials immediately.”

12. It would be clear that the above applies only to those who had got the 2nd financial upgradation under ACP PB-III with pay scale of Rs.5400/- upto 31.08.2008 but in the case of the applicant she did not get the 2nd financial upgradation under ACP for the reasons that she was not holding the Post Graduation degree. Therefore, these sub-paras did not apply in her case. Therefore, her case does not get covered under this clarification at all.

13. Thus, we find no merit in this OA and the same is dismissed. No costs.

(P.K.BASU)
MEMBER(A)

(V.Ajay Kumar)
MEMBER (J)

‘uma’

