

**Central Administrative Tribunal
Principal Bench**

OA No. 4390/2013

New Delhi this the 28th day of January, 2016

**Hon'ble Mr. Justice Syed Rafat Alam, Chairman
Hon'ble Dr. B.K. Sinha, Member (A)**

1. Gopal Prasad S/o Late Sahab Singh,
Technical Officer (S&R), Deptt. of Food & PD,
Krishi Bhawan, New Delhi
2. Kiran Singh S/o Late Ballu Singh,
Technical Officer (S&R), Deptt. of Food & PD,
Krishi Bhawan, New Delhi
3. Neelam Kalra W/o Dr. Girish Kalra,
Technical Officer (S&R), Deptt. of Food & PD,
Krishi Bhawan, New Delhi
4. Yatendra Jain S/o Late S.K. Jain,
Technical Officer (S&R), Deptt. of Food & PD,
Krishi Bhawan, New Delhi
5. Ramphal Singhal S/o Late Mauji Ram,
Technical Officer (S&R), Deptt. of Food & PD,
Krishi Bhawan, New Delhi
6. J.J. Toppo S/o Sh. Chandan Toppo,
Technical Officer (S&R), Deptt. of Food & PD,
Krishi Bhawan, New Delhi
7. Pramod Kumar Singh S/o Sh. Badri Prasad Singh,
Technical Officer (S&R), Deptt. of Food & PD,
Krishi Bhawan, New Delhi

-Applicants

(By Advocate: Mr. Deepak Verma)

VERSUS

Union of India through

1. Secretary,
Dept. of Personnel & Training (DP&T)
North Block, New Delhi-110001

2. The Secretary,
 Dept. of Food & Distribution
 Ministry of Consumer Affairs, Food & PD
 Krishi Bhawan, New Delhi-110001 -Respondents

(By Advocate: Mr. Krishna Kumar)

O R D E R (Oral)

Justice Syed Rafat Alam, Chairman:

The short issue involved in this case is that whether the applicants are entitled to financial upgradation in the immediate next higher Grade Pay in the hierarchy of revised Pay Band & Grade Pay i.e. PB3+Grade Pay Rs. 5400/- from 1.1.2006, instead of Grade Pay 4600/-.

2. The facts of the case, in brief, are that the applicants were Technical Assistants/Analyser under the respondent no.2 in the scale of Rs. 5000-8000 (pre-revised), the next higher post in the hierarchy being Technical Officer (S&R) (Rs.5500-9000) and Assistant Director (Rs. 8000-13,500) (pre-revised). The applicants, who had been working as Technical Assistants/Analyser, were granted 1st financial upgradation to the rank of Technical Officer (S&RF) (Rs.5500-9000) with effect from due dates. After the recommendations of the 6th Central Pay Commission, the pre-revised scales of the posts of Technical Assitant/Analyser (Feeder Post Rs. 5000-8000) and Technical Officer (S&R) (Promotional post Rs. 5500-9000.)

were all merged into Pay Band 2 (Rs. 9,300-34,800)+Grade Pay (Rs.4200) w.e.f. 1.1.2006 vide order dated 28.03.2012. Modified Career Assured Career Progression Scheme (MACPS, for short) introduced w.e.f. 1.9.2008 provided three financial upgradations after 10, 20 and 30 years of continuous regular service. It was, however, held that since MACP was introduced w.e.f. 1.9.2008, benefits of ACP, which had been introduced w.e.f. 9.8.1999, were to continue till 31.08.2008. The applicants (Rs. 5000-8000), who got financial upgradation (Rs. 5500-9000) as per existing hierarchy under ACPS (9.8.1999) before 1.1.2006 and since both scales stand merged into PB2+Grade Pay Rs. 4200, they were wrongly given the immediate next Grade Pay Rs. 4600 w.e.f. 1.9.2008. Thus, the applicants contend that they are illegally deprived of the ACPS benefits already earned by them during the period 1.1.2006 till 31.8.2008. Instead, the applicants have prayed that their pay should have been fixed in the PB3+Grade Pay 5400/- and for that they seek quashing of the office orders dated 03.01.2013, 16.06.2010 and 25.04.2011. For this relief, the applicants have relied upon the decisions of this Tribunal in OA No. 904/2012 decided on 26.11.2012 and of the co-ordinate Bench of the Tribunal at Chandigarh in OA No. 1038/CH/2010 (**Rajpal Vs. UOI**). They have also relied upon the recent decision of

this Tribunal in OA No. 3626/2014 decided on 27.10.2015
(Om Prakash & Ors. Vs. Union of India & Ors.).

3. In the case of **Om Prakash & Ors. Vs. Union of India & Ors.** (supra), the applicants were appointed to the posts of Durwan/Female Searcher and the promotional hierarchy in the cadre of Durwan were as under:

“Durwan/Female Searcher (2550-3500) (PB-I+GP 1800)
 Jamadar Durwan (2610-4000) (PB-I+GP 1800)
 Subedar Durwan (2650-4000) (PB-I+GP 1800)
 Supervisor (4000-6000) (PB-II+GP 2400)
 Chargeman (5000-8000)(PB-II+GP 4200)”

The pay scale of Durwan/Female Searcher, Jamadar Durwan and Subedar Durwan were all merged into Pay Band-I with Grade Pay of Rs. 1800. The applicants were granted their first financial upgradation under the ACP Scheme w.e.f.01.01.2006 in Pay Band-I with Grade Pay of Rs. 2400 and 2nd financial upgradation from the same date with Grade Pay of Rs. 4200 and the 3rd financial upgradation under MACP Scheme from various dates, during the years 2008 to 2013 in the Grade Pay of Rs. 4600. However, subsequently, these were revised to Grade Pay of Rs. 1900 w.e.f. 1.1.2006 but the second financial upgradation was given in the GP of Rs. 2000 under MACP on completion of 20 years of service vide order dated 11.09.2014. The applicants challenged this order in the above OA stating that earlier fixation had been correctly

done and the same should be restored. The respondents in OA 3626/2014 had taken the view that had the post of Durwan not been elevated to Group 'C', i.e., in the Grade Pay of Rs. 1800/- in PB-I (Rs. 5200-20200), they would have remained stuck in the Grade Pay of Rs. 1300/-, Rs. 1400/- and Rs. 1650/-. Clarification No.1, issued by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) vide OM No. 35034/1/97-Estt(D) (VI.IV) dated 10.02.2000, stipulates that if two posts carrying different pay scales constituting two rungs in a hierarchy have now been placed in the same pay scale on implementation of 6th CPC, the employee, who was promoted from lower pay scale to higher pay scale as a result of promotion before merger of pay scales shall be entitled for upgradation under the ACPS ignoring the said promotion, as the upgradation of Group 'D' employees to Group 'C' may not be equated with merger of both posts. For the sake of greater clarity, we reproduce Clarification No.1 as under:-

S.No.	Point of doubt	Clarification
1	Two posts carrying different pay scales constituting two rungs in a hierarchy have now been placed in the same pay scale as a result of rationalisation of pay-scales. This has resulted into change in the hierarchy in as much as	Since the benefits of upgradation under ACP Scheme (ACPS) are to be allowed in the existing hierarchy, the mobility under

	<p>two posts which constituted feeder and promotion grades in the pre-merged scenario have become one grade. The position may be clarified further by way of the following illustration: prior to the implementation of the Fifth Central Pay Commission recommendation, two categories of posts were in the pay-scales of Rs. 1200-1800 and Rs. 1320-2040 respectively; the latter being promotion post for the former. Both the posts have now been placed in the pay-scale of Rs. 4000-6000. How the benefits of the ACP Scheme is to be allowed in such cases?</p>	<p>ACPS shall be in the hierarchy existing after merger of pay-scales by ignoring the promotion. An employee who got promoted from low pay-scale to higher pay-scale as a result of promotion before merger of pay-scales shall be entitled for upgradation under ACPS ignoring the said promotion as otherwise he would be placed in a disadvantageous position vis-à-vis the fresh entrant in the merged grade.</p>
--	--	---

Accordingly, this Tribunal held in para 16 as under:-

“16. We do not accept the contention of the respondents denying the applicants on the ground that this involved upgradation from Group ‘D’ to Group ‘C’ for two reasons. Firstly, this is nowhere mentioned in the guidelines of ACP. Moreover, the clarification as pointed by the applicants regarding Group ‘D’ also clearly does not support the contention of the respondents. Therefore, we dispose of this OA with a direction to the respondents to consider the first and second financial upgradations under the ACP Scheme in the case of applicants in the hierarchy of posts. However, while doing so, they will follow the condition as laid down in para 6 of the ACP Scheme guidelines, which has already been cited above. The time frame for a final decision in this regard is fixed as three months from the date of

receipt of a copy of this order. There shall be no order as to costs.”

4. In view of the afore discussion, we find that the controversy involved in the instant OA is squarely covered by the aforesaid order dated 27.10.2015 passed in OA No. 3626/2014. The OA is accordingly allowed on similar terms and directions. No order as to costs.

(Dr. B.K. Sinha)
Member (A)

(Syed Rafat Alam)
Chairman

/1g/