

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No.4576/2015

**Reserved On:19.05.2017
Pronounced On:22.05.2017**

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. P.K. Basu, Member (A)**

Dr. Atul Kumar Gupta, aged 56 years
S/o Shri Y.V. Gupta
Working as Research Officer (Training),
Homoeopathic Pharmacopoeia Laboratory,
Ghaziabad (UP).
R/o 233, Arya Nagar, Ghaziabad.Applicant

(By Advocate: Shri Yogesh Sharma)

Versus

1. Union of India through the Secretary,
Ministry of AYUSH,
AYUSH Bhawan, 'B' Block,
GPO Complex, INA, New Delhi.
2. The Director,
Homoeopathic Pharmacopoeia Laboratory,
Kamla Nehru Nagar, Ghaziabad (UP).Respondents

(By Advocate: Ms. Avinash Kaur)

ORDER

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

The applicant was initially appointed as Scientific Assistant (SI) with effect from March 30, 1983 on regular basis with a pay scale of Rs.425-700 which was consequently revised on the implementation of the 4th CPC to Rs.1400-2300. He was promoted to the post of Sr. Scientific Assistant (SSA) with effect from 04.01.1993 in the pay scale of Rs.1640-2900. Later, on implementation of 5th CPC, it had been

revised to Rs.5500-9000. The applicant was given second up-gradation under the Assured Career Progression (ACP) after completion of 24 years of service on 30.03.2007 and placed in the pay scale of Rs.6500-10500. On implementation of 6th CPC, it has been revised to PB-2 + GP of Rs.4200. The applicant was promoted to the post of Research Officer (Training) with effect from 15.01.2010 and placed in the pay grade of PB-2 + GP of Rs.4600/-. According to the respondents, since the applicant had got two promotions and one up-gradation under the ACP Scheme, he was not entitled for the third up-gradation under the Modified Assured Career Progression Scheme (MACP Scheme).

2. The applicant represented which was rejected vide letter dated 14/30.07.2014 and the respondents communicated through this letter that the matter has been examined in terms of relevant provisions of DoP&T's OM dated 19.05.2009 and held that the applicant is not entitled for third up-gradation under the MACP Scheme on completion of 30 years of service. This was followed by Office Memorandum dated 13.03.2015 of Respondent No.2 informing the applicant that he is not entitled for third up-gradation under MACP on completion of 30 years of service based on the letter dated 30.07.2014 of Respondent No.1.

3. Learned counsel for the applicant submitted as follows:-

(i) After implementation of this 6th CPC, while granting the second financial up-gradation under ACP Scheme, the pay

of the applicant should be fixed in the Grade Pay of Rs.4600/- which is the revised Grade Pay associated with the pre-revised pay scale of Rs.6500-10500. Instead, the respondents have fixed the pay of the applicant in the Grade Pay of Rs.4200/- with effect from 30.03.2007, i.e., the date of granting the second financial up-gradation under ACP Scheme;

(ii) The respondents have wrongly treated the promotion of the applicant as Research Officer (Training) as a third up-gradation. This is so, because according to para 5 of Annexure I of MACP Scheme, the pay scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 have been merged and granted the revised pay grade of Rs.9300-34800 plus Grade Pay of Rs.4200. But subsequently, those who were in the pay scale of Rs.6500-10500 were granted the Grade Pay of Rs.4600/-.

4. Learned counsel also referred to para 5 of Annexure-I of MACP, which provides as follows:-

“5. Promotions earned/upgradations granted under the ACP Scheme in the past to those grades which now carry the same grade pay due to merger of pay scales/up-gradations of posts recommended by the Sixth Pay Commission shall be ignored for the purpose of granting up-gradations under Modified ACPS.

Illustration-I

The pre-revised hierarchy (in ascending order) in a particular organization was as under:

Rs.6500-8000, Rs.5500-9000 and Rs.6500-10500

(a) A Government servant who was recruited in the hierarchy in the pre-revised pay scale Rs. 5000-8000 and who did not get a promotion even after 25 years of service prior to 1.1.2006, in his case as on 1.1.2006, he would have got two financial up-gradations under ACP to the next grades in the hierarchy of his organization, i.e. to the pre-revised scales of Rs. 5500-9000 and Rs. 6500-10500.

(b) Another Government servant recruited in the same hierarchy in the pre-revised scale of Rs. 5000-8000 has also completed about 25 years of service, but he got two promotions to the next higher grades of Rs. 5500-9000 & Rs. 6500-10500 during this period.

In the case of both (a) and (b) above, the promotions/financial up-gradations granted under ACP to the pre-revised scales of Rs. 5500-9000 and Rs. 6500-10500 prior to 1.1.2006 will be ignored on account of merger of the pre-revised scales of Rs. 5000-8000, Rs. 5500-9000 and Rs. 6500-10500 recommended by the Sixth CPC. As per CCS (RP) Rules, both of them will be granted grade pay of Rs. 4200 in the pay band PB-2. After the implementation of MACPS, two financial up-gradations will be granted both in the case of (a) and (b) above to the next higher grade pays of Rs. 4600 and Rs. 4800 in the pay band PB-2".

In this regard, learned counsel also relied on Clarification No.27(iii) in 2012 issued by Government of India, which is as follows:-

“Doubts

Clarification

27(iii) If a Government servant recruited in the pre-revised pay scales of Rs.5000-8000 has been promoted in the promotional hierarchy in the pre revised pay scale of Rs.5500-9000 prior to 1.1.2006 and he has put in 12 years of regular service, then would there be any claim for financial upgradation	The pre-revised pay scales Rs.5000-8000 and Rs.5500-9000 have been merged and placed in PB-2 with grade pay of Rs.4200/- with effect from 1.1.2006. Hence the promotion would be ignored as he has completed his 12 years of regular service and the benefits of 1st ACP would accordingly be allowed in the promotional hierarchy in the grade pay of Rs.4600/- w.e.f. 1.1.2006.
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under ACPS?	
(iv) If the above Government servant has put in 22 years as on 31.08.2008, then what would be the entitlement in MACP?	(iv) As given above, the 1 st ACP would be in PB-2 grade pay of Rs.4600/- after ignoring the previous promotion. Thereafter, since employee has completed more than 20 years of regular service on 01.09.2008, he would be entitled for 2 nd financial upgradation under the MACPS in the immediate next higher grade pay of Rs.4800/- in PB-2 subject to fulfilment of conditions as stipulated in Para 17 of Annexure.-1 of MACPS dated 19.5.2009.

5. Learned counsel for the applicant argued that the above para clearly shows that since the scale of SSA of Rs.5500-9000 was merged with the scale of Rs.6500-10500, therefore, treating the second promotion as Research Officer (Training) as the third financial upgradation is illegal.

6. The respondents stated that the applicant was appointed as SA in the scale of Rs.425-700 on 30.03.1983 which was consequently revised to Rs.1400-2300 after the 4th CPC recommendations. The revised pay scale of SA after the 6th CPC recommendation is Rs.5200-20200 plus Grade Pay of Rs.2800/-. The applicant was promoted to the post of SSA with effect from 04.01.1993 in the erstwhile pay scale of Rs.1640-2900, which was revised to Rs.5500-9000, after the 5th CPC recommendations. Therefore, this was clearly a promotion.

7. After completion of 24 years of service on 30.03.2007, since the applicant became due for second up-gradation under the ACP Scheme (as he had already got a promotion), his pay scale was up-graded to Rs.6500-10500. On implementation of 6th CPC, this scale was revised Rs.9300-34800 plus Grade Pay of Rs.4200/-. It must be remembered that though 6th CPC scales were made applicable with effect from 01.01.2006, they were actually notified on 01.09.2008. Therefore, as on 30.03.2007, the next scale in the hierarchy was that of Rs.6500-10500 which was the scale of the Research Officer (Training). On 15.01.2010, the applicant was promoted substantively to the post of Research Officer (Training), which carried the revised Pay Grade and Grade Pay of Rs.9300-34800 and Rs.4600. The respondents claim that from these facts, it would be clear that applicant received promotion from SA to the post of SSA, thereafter up-gradation in the pay scale of Rs.6500-10500 which carried the revised pay grade of PB-2, i.e., Rs.9300-34800 and GP of Rs.4200/- and later got promoted as Research Officer (Training) with effect from 15.01.2010 in PB-2 i.e., Rs.9300-34800 plus Grade Pay of Rs.4600/-. It is argued that since he has received three up-gradations and is, therefore, not entitled to any further up-gradation, as an employee can be granted a maximum of three up-gradations under MACP Scheme.

8. Heard the learned counsels and perused the relevant rules.
9. There is no dispute regarding the first promotion from SA to the post of SSA. On 30.03.2007, on completion of 24 years of service the applicant was rightly granted the second up-gradation under ACP

Scheme in the pay scale of Rs.6500-10500, which was the pay scale attached to the next post in the hierarchy, i.e., Research Officer (Training). The normal replacement scale of Rs.6500-10500 is no doubt in PB-2 i.e., Rs.9300-34800 plus Grade Pay of Rs.4200/- and the respondents granted him that Pay Grade and Grade Pay with effect from 30.03.2007. On 15.01.2010, on promotion as Research Officer (Training), his Grade Pay was increased to Rs.4600/-. After the 6th CPC recommendations, what happened was that the **pay scales** of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 were merged and granted the revised Pay Grade and Grade Pay of Rs.9300-34800 plus Grade Pay of Rs.4200 and the **posts** in the revised scale of Rs.6500-10500 were initially granted Grade Pay of Rs.4200/- but later this was increased to Grade Rs.4600/-. Posts in Rs.5000-8000 and Rs.5500-9000 were not merged with Rs.6500-10500. It is only the scales which were merged. Therefore, since up-gradation to a **pay scale** under ACP Scheme, is not equivalent to revised scale to the **post** of Research Officer (Training), para 5 of Annexure-I of MACP guidelines and clarification No.27 (iii) will not apply.

8. In view of above, the OA lacks merit and is, therefore, dismissed. No costs.

(P.K. BASU)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

Rakesh