

**Central Administrative Tribunal
Ernakulam Bench**

OA/180/00022/2017

Thursday, this the 26th day of July, 2018.

CORAM

Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member

Hon'ble Mr.Ashish Kalia, Judicial Member

Sreekumar Y., aged 42 years
Pipe Fitter (SK), INS Garuda
Southern Naval Command
Naval Base P.O.
Kochi-682 004.

Applicant

(By Advocate: Mr.S.Radhakrishnan)

versus

1. Union of India represented by
the Secretary to the Govt. of India
Ministry of Defence, New Delhi.
2. The Admiral Superintendent
Naval Dockyard, Mumbai-400 023.
3. The Flag Officer Commanding in Chief
Headquarters, Southern Naval Command
Kochi-682 004.
4. The Commanding Officer
INS Garuda, Southern Naval Command
Naval Base, Kochi-04

Respondents

(By Advocate: Mr. Thomas Mathew Nellimoottil, Sr.PCGC)

This OA having been heard on 23rd July, 2018, the Tribunal delivered the following order on 26th July, 2018:

ORDER

By E.K.Bharat Bhushan, Administrative Member

In this OA, the applicant is aggrieved that the 1st financial benefit granted to him under the Assured Career Progression (ACP) Scheme by the 2nd respondent - Naval Dockyard, Mumbai has been withdrawn by the 4th respondent

– INS Garuda, Southern Naval Command, Kochi for the reason that the applicant was transferred from Mumbai to Kochi at his own request, which entailed reversion to lower post as well as loss of seniority. The applicant seeks a declaration that he is entitled to get the protection of his pay which was fixed by way of 1st financial gradation under Assured Career Progression (ACP) Scheme i.e., pay in PB2 with Grade Pay of Rs.4200/- with all consequential benefits. He further seeks a declaration that Annexure A1 communication is illegal and not sustainable in the eye of law.

2. The admitted facts in brief are that the applicant was initially appointed as Pipe Fitter (HSK-II) in the Naval Dockyard, Bombay in the pay scale of Rs.1200-1800 (revised to Rs.4000-6000 with effect from 1.1.1996) with effect from 1.7.1996 (Annexure A2). On completion of 12 years of service, the benefit of 1st financial upgradation under the ACP Scheme was granted to the applicant with effect from 1.7.2008. Subsequently, his substantive pay was fixed in PB-2 at Rs.11050/- with GP of Rs.4200/- with effect from 1.7.2008 (Annexure A5). While continuing to draw the aforesaid pay with GP of Rs.4200/- the applicant sought a transfer on compassionate grounds to Kochi vide Annexure A6. As per Annexure A7, the applicant was transferred to INS Garuda, Kochi as Pipe Fitter. According to the applicant, his Grade Pay was reduced from Rs.4200/- of PB-2 to Rs.1900/- in PB-1 on compassionate transfer. This is under challenge here.

3. Per contra, the respondents in their reply statement contend that the applicant was promoted to the post of HS-I on 31.12.2001 in the pay scale of Rs.4000-6000. Since the grades of HS-II and HS-I were merged as HS with effect from 1.1.1996, the pay of the applicant was revised from Rs.4600/- to Rs.4800/- in the scale of Rs.4000-6000 reckoning his promotion to the post of

HS-I. The applicant had been granted the pay of the promotional grade of HS-I with effect from 1.1.2006. The benefit of 1st ACP was granted to the applicant erroneously without reckoning the promotion earned by him. Annexure R3 has been produced by the respondents to contend that on transfer, the applicant was willing to accept the appointment as Pipe Fitter (SK) in pay band of Rs.5200-20200 with GP of Rs.1900/-. Since the applicant had accepted the terms and conditions attached to the transfer on compassionate grounds, he is not eligible for protection of the grade pay drawn by way of ACP benefit.

4. Learned counsel for the applicant submitted that the present case is covered by the following decisions, appended as Annexure A11 to A15 in the OA:

- (i) *Judgment in OA No.205/2010 dated 21st October, 2011 [Ernakulam Bench]*
- (ii) *Judgment in OA No.859/2007 dated 9.2.2009 [Jabalpur Bench]*
- (iii) *Judgment in OA No.461/2011 dated 25.11.2011 [Ernakulam Bench]*
- (iv) *Judgment in OA No.1094/2012 dated 19.6.2015 [Ernakulam Bench]*

5. It was argued on behalf of the respondents that the applicant was promoted to the post of HS-I on 31.12.2001 in the pay scale of Rs.4000-6000. Since the grades of HS-II and HS-I were merged as HS with effect from 2.2.1996, the pay of the applicant was revised from Rs.4600/- to Rs.4800/- in the scale of Rs.4000-6000 reckoning his promotion to the post of HS-I. This contention is resisted by the learned counsel for the applicant by placing on record a decision of the Principal Bench of CAT in OA 4101/2012 and another decision rendered by this Bench in OA 9/2013 wherein it was held that mere placement cannot be treated as promotion. Promotional post of HS-II & HS-I will be to the grade of Master Craftsman only.

6. Learned counsel for the respondents would submit that the applicant had already availed of the benefit of 1st promotion as HS-I w.e.f. 31.12.2001 in the scale of Rs.4000-6000. The applicant would be eligible for 2nd financial upgradation under MACP in PB-2 with GP of Rs.4200 on 1.7.2016. The applicant was erroneously granted the benefit of 1st ACP by the 2nd respondent without reckoning the promotion earned by him.

7. We have heard Sri S.Radhakrishnan, learned counsel appearing for the applicant and Sri Thomas Mathew Nellimoottil, Sr.PCGC on behalf of the respondents and perused the pleadings and records. The core issue to be considered here is whether the revision of the applicant's pay consequent to merger of HS-II & HS-I constitutes a promotion. It has been considered so by the respondents leading to the conclusion that the 1st ACP benefit granted to the applicant was an error. However, it is seen that the very same question has been considered at length by this Tribunal in OA No.9/2013 which followed the order in OA No.4101 of 2012 of the Principal Bench of this Tribunal. This Bench has decided as follows:

*“5. Heard the counsel for the applicant and respondents. The issue under consideration is whether placement in Highly Skilled Grade I due to bifurcation of Highly Skilled Grade into Highly Skilled Grade I and Highly Skilled Grade II is a promotion for the purpose of grant of MACP or not? This matter is no more res-integra as in the additional rejoinder filed by the applicants it has been stated that the matter has been dealt with by the Principal Bench of this Tribunal in **F.C.Jain's** case (O.A.No.818/2000) in applicant's favour, which was upheld by the High Court of Delhi in Civil Writ Petition No.4664/2001 and the S.L.P (Civil) No.289/2003 was also dismissed by the Hon'ble Supreme Court. In **F.C.Jain** (supra) after granting financial upgradation under ACP scheme of 9.8.1999 to A.Es of CPWD where 50% A.Es were placed in the higher pay scale of Rs.7500-12000 and 50% in the pay scale of Rs.6500-10500, the placement in Rs.7500-12000 with effect from 1.1.2006 was denied to the applicants therein for the reason that they had already been given financial upgradation under the ACP. While allowing the O.A this Tribunal had ordered fixation of pay of the applicants in that case in the pay scale of Rs.7500-12000 with effect from 1.1.1996 on the ground that the placement in that scale could not be treated as a promotion. In*

another case the Principal Bench in O.A.No.4101/2012 decided on 13.11.2013 held that by reason of fitment in the scale of pay the applicants had not been promoted to a higher post or to a higher grade of pay. The scope and purport of the scheme is to revise pay scale for 50% of the cadre strength as they have stagnated in a particular post, and the particular scale of pay of the stagnating post is given a higher scale of pay. The placement in Highly Skilled Grade II and Grade I does not stipulate any residency period in the lower scale. Placement in the higher scale is dependent only on vacancies within the stipulated percentage ie. 50% in this case and on no other condition/qualification. Such a placement cannot be considered to be a promotion. The MACP Scheme prescribes grant of scale to which the Government servant would have been promoted as a part of 1st financial upgradation. Hence the promotion will be to the grade of Master Craftsman with grade pay of Rs.4200/-."

8. Based on the above reasoning, we set aside the order at Annexure A1 and allow the reliefs sought in the OA. This order will be given effect to within two months of the receipt of a copy of this order. OA stands disposed of. No order as to costs.

(Ashish Kalia)
Judicial Member

(E.K.Bharat Bhushan)
Administrative Member

aa.

Annexures appended in the OA by the applicant:

- Annexure A1: Copy of the communication No.CS 2779/7 dated 5.7.2016.
- Annexure A2: Copy of the appointment order No.DYP/P/9370 dated 27.6.1996.
- Annexure A3: Copy of the pay fixation proforma dated 25.8.2008.
- Annexure A4: Copy of the pay fixation order No.198/2011 dated 21.2.2011 issued by the Naval Dockyard, Mumbai.
- Annexure A5: Copy of the pay fixation order No.199/2011 dated 21.2.2011.
- Annexure A6: Copy of the application for transfer on compassionate grounds dated 12.12.2011.
- Annexure A7: Copy of the transfer order No.15984/Oct/2013/MP-4(Civ)(b) dated 9.10.2013.
- Annexure A8: Copy of the order No.CS 2764/1/83 dated 13.1.2014.
- Annexure A9: Copy of the last pay certificate dated 10.1.2014.
- Annexure A10: Copy of the pay slip issued to the applicant for the month of February, 2014.
- Annexure A11: Copy of the order passed by the Tribunal in OA No.205/2010.
- Annexure A12: Copy of the order passed by the Jabalpur Bench in OA No.859/2007.
- Annexure A13: Copy of the order passed by the Tribunal in OA No.461/2011.
- Annexure A14: Copy of the order passed by the Tribunal in OA No.440/2012.
- Annexure A15: Copy of the order passed by the Tribunal in OA No.1094/2012.
- Annexure A16: Copy of the representation dated 1.2.2016.

Annexures filed along with reply statement:

- Annexure R1: Copy of MOD letter No.11(5)/2009-D(Civ.I) dated 14 June 2010.
- Annexure R2: Copy of HQ SNC letter CS 2695/43/1748 dated 31 Jan 2018.
- Annexure R3: Copy of undertaking submitted by the applicant.
- Annexure R4: Copy of DOPT OM F No.13/9/2009-Estt (Pay-I) dated 21 October, 2009.