

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00167/2015

Friday, this the 13th day of April, 2018

CORAM:

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

T. Radhakrishnan, S/o. Shri T. Ravunny,
I-6, Shriniwaspuri, New Delhi – 110 065. **Applicant**

(By Advocate : Mr. Martin G. Thottan)

V e r s u s

1. Controller General of Accounts,
Ministry of Finance, Deptt. of Expenditure,
Government of India, Lok Nayak Bhavan,
Khan Market, New Delhi-110 003.
2. Principal Chief Controller of Accounts,
Ministry of External Affairs, Government of India,
Jawahar Bhavan, Maulana Azad Road, New Delhi – 110 011.
3. Secretary, Department of Personnel & Training,
Government of India, New Delhi.
4. Secretary, Department of Expenditure,
Ministry of Finance, Government of India,
North Block, New Delhi – 110 001. **Respondents**

[By Advocate : Mr. N. Anilkumar, Sr. PCGC ®]

This application having been heard on 09.04.2018, the Tribunal on 13.04.2018 delivered the following:

O R D E R

Per Hon'ble Mr. U. Sarathchandran, Judicial Member –

This Original Application was initially filed before the Principal Bench of this Tribunal as OA No. 4205 of 2012. It was transferred to this

Tribunal for registration and disposal vide order dated 24.12.2016 of the Hon'ble Chairman of the Tribunal. On receiving the file the same was re-numbered by this Bench in the present number.

2. The applicant is a Senior Private Secretary working under respondents Nos. 1 & 2. His grievance is that the third financial upgradation granted to him under the Modified Assured Career Progression Scheme (for short MACPS) was withdrawn by respondent No. 2 vide Annexure A1 impugned order after he had been enjoying the benefits of the said upgradation for nearly three years as a part of his earnings. He is further aggrieved by the order to recover the amounts so granted to him and also, resultantly reducing his pay and allowances.

3. According to the applicant he started service under the office of the Accountant General (Central), Mumbai as a Stenographer from 9.8.1972. He was promoted to the grade of Stenographer Grade-II on 9.12.1978 in the pre-revised scale of Rs. 5,000-8,000/-. He was again promoted as Senior Personal Assistant (now Private Secretary) on 9.5.1991 in the pre-revised scale of pay of Rs. 6,500-10,500/-. Further he got the third promotion to the grade of Senior Private Secretary on 15.4.2008 in the scale of Rs. 7,500-13,000/-. As per Annexure A2 OM dated 10.6.2009 the cadre controlling authority i.e. respondent No. 1 notified the guidelines for implementing MACPS in the Central Civil Accounts Office wherein it is stated that promotions earned/upgradations granted under the ACP scheme in the past to those grades which now carry the same Grade Pay due to

merger/upgradation of posts recommended by the VIth CPC shall be ignored for the purpose of granting upgradations under MACPS. According to the applicant the pay scales of Stenographer Grade-II Rs. 5,000-8,000/-, Stenographer Grade-I Rs. 5,500-9,000/- and Private Secretary Rs. 6,500-10,500/- have been merged as recommended by the VIth CPC and they have been placed in the Grade Pay of Rs. 4,200/- in PB-2 and therefore, promotions/financial upgradations granted to Stenographers i.e. Stenographer Grade-II to Grade-I and Stenographer Grade-I to Private Secretary prior to 1.1.2006 are to be ignored and that after the implementation of the MACPS financial upgradations may be granted to them in the next higher Grade Pay of Rs. 4,600/- and 4,800/- as the case may be. According to him Annexure A2 OM issued by respondent No. 1 is in terms of Annexure A3 MACP scheme notified by respondent No. 3 DoP&T also has adopted the same provisions for grant of MACP ignoring the promotions/upgradations granted under the ACP in the past on account of the merger of the pay scales/upgradation of posts recommended by the VIth CPC. The applicant states that it is strictly in accordance with Annexures A2 and A3 scheme the respondent No. 2 granted third financial upgradation to him in PB-2 Rs. 9,300-34,800/- plus Grade Pay of Rs. 5,400/- with retrospective from 1.9.2008 and his pay was fixed at Rs. 20,240/- plus Grade Pay of Rs. 5,400/- vide Annexure A4. However, by way of reply to a reference made by respondent No. 2, respondent No. 1 clarified that applicant was not eligible for third financial upgradation. According to the applicant as the benefits of third financial upgradation was given with effect from 1.9.2008 to 31.12.2011 the applicant who is at the

verge of his retirement was suddenly ordered to have recovery of a huge amount of Rs. 1,64,112/- from his DCRG. To the Annexure A5 representation he sent respondent No. 1 vide Annexure A6 communication informed the applicant that reduction of pay/recovery of pay and allowances was done in accordance with office order dated 12/19.12.2011. In order to stop the recovery applicant filed OA No. 998 of 2012 before the Principal Bench (Annexure A7). The Tribunal vide Annexure A8 order dated 26.3.2012 directed respondent No. 1 to examine applicant's Annexure A5 representation. Respondent No. 1 vide Annexure A9 communication informed the applicant that he is not eligible for third financial upgradation. Yet another representation dated 7.5.2012 (Annexure A10) was submitted to respondent No. 1. It was again rejected by respondent No. 1 vide OM dated 22.5.2012. The applicant prays for relief as under:

“(i) Declare Office Order No. 89/2011-12 dated 12/19.12.2011 issued by respondent No. 2 & OM NO. 26011/20/MACPS/2009/MF.CGA/ NGE/241, dated 22.5.2012 issued to the applicant by respondent No. 1 withdrawing/denying the 3rd financial upgradation under MACPS illegal and order restoration of the said benefit to the applicant.

(ii) Order payment of full pay and allowances for the months of January 2012 onwards as if his pay was not reduced as a result of the illegal withdrawal of 3rd financial upgradation under MACPS.

(iii) Order payment of the amount illegally recovered from the Applicant from the salary for the month of January 2012 onwards and also from retirement gratuity along with interest.

(iv) costs in favour of the applicant and against the respondents.

(v) Pass any further order(s), direction(s) as be deemed just and proper to meet the ends of justice.”

4. In the reply statement filed by the respondents it is stated that the Ministry of Finance, Department of Expenditure vide OM dated 13.11.2009 (Annexure R1) it has been decided that all the posts which were in the pre-

revised scale of Rs. 6,500-10,500/- as on 1.1.2006 and which were granted normal replacement pay structure of Grade Pay of Rs. 4,200/- in PB-II will be granted Grade Pay of Rs. 4,600/- in PB-II corresponding to the pre-revised scale of Rs. 7,450-11,500/- with effect from 1.1.2006 and accordingly, respondent No. 1 vide Annexure R2 OM informed all CCAs/CAs that Private Secretaries of the organization who were in the pre-revised scale of Rs. 6,500-10,500/- and who are granted normal Grade Pay of Rs. 4,200/- will be granted Grade Pay of Rs. 4,600/- in PB-2 with effect from 1.1.2006. Referring to the case of Smt. Booma Sekaran, Private Secretary, who was granted third financial upgradation in the grade of Rs. 5,400/- was found not entitled for such upgradation because she had got two promotions as Stenographer Grade-I and Private Secretary and she was entitled to 3rd financial upgradation in the Grade Pay of Rs. 4,800/- only. In the circumstance respondent No.2 sought clarifications vide Annexure R6 letter regarding the grant of 3rd financial upgradation to the applicant and respondent No. 1 informed respondent No. 2 that applicant has already got three promotions in the grade of Stenographer Grade-I, Private Secretary and Senior Private Secretary and hence he is not entitled to any financial upgradation under MACPS. Referring to the service details and promotions earned by the applicant in a tabulated form as shown below the respondents state that as applicant has earned three promotions he is not entitled to the upgradation granted under MACPS:

Sl. No.	Date of joining/ promotion	Post held	Pay Scale before 6th CPC	Pay Band and Grade Pay
1	08/09/72	Stenographer Grade II	4000-6000	Rs. 5200-20200 (PB1) Grade Pay Rs. 2,400

2	12/09/78	Stenographer Grade II (promotion)	5000-8000	Rs. 9300-34800 (PB2) Grade Pay 4200
3	05/09/91	Private Secretary (promotion)	6500-10500	Rs. 9300-34800 (PB2) Grade Pay 4600
4	04/15/08	Senior Private Secretary (promotion)	7500-12000	Rs. 9300-34800 Grade Pay Rs. 4800 and Grade Pay of Rs. 5400 after 4 years

5. A rejoinder was filed by the applicant refuting the contentions in the reply statement and stating the financial difficulties he is facing on account of the recovery ordered. He also states that he is undergoing treatment which requires huge expenses.

6. An additional affidavit also was filed by the applicant reiterating his pleas in the rejoinder and also urging for an early disposal of the case.

7. Respondents filed additional reply affidavit stating that the recovery ordered was in terms of the OM dated 6.2.2014 of DoP&T and in the light of the apex court ruling in *Chandi Prasad Uniyal & Ors. v. State of Uttarakhand & Ors.* - (2012) 8 SCC 417. Respondents have also produced a copy of the OM dated 6.2.2014 in this regard.

8. Again a rejoinder was filed by the applicant citing the decision of this Tribunal in OA No. 335/2007 of the Madras Bench of the Tribunal wherein it was held that in cases where pay scale was revised due to restructuring there is no promotion but only revision of pay on account of the restructuring of posts.

9. We have heard Shri Martin G. Thottan, learned counsel appearing for the applicant and Shri N. Anilkumar, Sr. PCGC(R), learned counsel appearing for the respondents. We have also perused the argument notes filed by learned counsel for the respondents.

10. The contentions of the respondents seem to be founded on the premise that the applicant had got three financial upgradations/promotions within 30 years and hence a further upgradation to Grade Pay of Rs. 5,400/- was wrong.

11. It is not in dispute that as per the VIth CPC recommendations the pay scales of Stenographer Grade-II Rs. 5000-8000/-, Stenographer Grade-I Rs. 5,500-9,000/- and Private Secretary Rs. 6,500-10,500/- have been merged and were placed in the Grade Pay of Rs. 4,200/- in PB-2. Therefore, the promotions/financial upgradations granted to Stenographers i.e. Stenographer Grade-II to Grade-I and from Grade-I to P.S. prior to 1.1.2006 are to be ignored for the purpose of financial upgradations under the MACPS and financial upgradations are to be granted to them in the next higher Grade Pay of Rs. 4,600/- to Rs. 4,800/- as the case may be. This merger and placing the afore said posts in PB-2 with a Grade Pay of Rs. 4,200/- Effecting of such upgradation is reflected in the case of the employees under respondents 1 and 2 also, as can be seen in Annexure A2.

12. Vide order dated 24.1.2011 the applicant was granted 3rd financial upgradation in the post of Senior Private Secretary from the pre-revised

scale of Rs. 6,500-10,500/- = PB-2 Rs. 9,300-34,800/- plus Grade Pay of Rs. 4,800/- to a placement in the next higher Grade Pay of Rs. 5,400/- with effect from 1.9.2008. It appears that the applicant was enjoying the aforesaid 3rd financial upgradation for some time till the respondent No. 2 made a reference to respondent No. 1 about the correctness of such financial upgradation granted to him. Respondent No. 1 in his reply pointed out that as the applicant had already got three promotions after he entered service on 9.8.1972 he is not entitled to the benefit of the 3rd financial upgradation.

13. The applicant on the other hand placed emphasis on Annexure A2 OM dated 10.6.2009 wherein it is mentioned that when merger of the pay scales of Stenographer Grade-II, Stenographer Grade-I and Private Secretary has occurred placing them in the Grade Pay of Rs. 4,200/- in PB-2 and hence for the purpose of next financial upgradation in terms of MACPs the earlier promotions will have to be ignored. Respondents contend that Annexure A2 OM was clarified vide Annexure R2 OM dated 23.11.2009 whereby it was ordered that the Private Secretaries under respondent No. 1 organization who were in the pre-revised scale of Rs. 6,500-10,500/- as on 1.1.2006 and were granted normal replacement Grade Pay of Rs. 4,200/- will be granted Grade Pay of Rs. 4,600/- from 1.1.2006. But the respondents reiterate that since the applicant had received three promotions during the span of his entire service he is not eligible for the 3rd financial upgradation.

14. We have considered the rival contentions of both sides. As per Annexure A3 MACP scheme when merger of posts carrying different pay

scales occurs the promotions/financial upgradation obtained under the ACPs will be ignored for the purpose of granting financial upgradation under the MACP. Going by this provision in the Annexure 3 MACP scheme, the three promotions earned by the applicant necessarily will have to be ignored. Nevertheless, it has to be borne in mind that the essence of the MACP scheme as narrated in paragraph 1 of the scheme reads as under:

“1. There shall be three financial upgradations under the MACPS, counted from the direct entry grade on completion of 10, 20 and 30 years service respectively. **Financial upgradation under the Scheme will be admissible whenever a person has spent 10 years continuously in the same grade-pay.**”

[emphasis supplied]

15. A reading of the above quoted introductory paragraph sheds light on the essence of MACP scheme. It states in unambiguous terms that the financial upgradations under the scheme are admissible **only when a person has spent 10 years continuously in the same Grade Pay**. In the instant case, after the merger of the three scales/posts of Stenographer Grade-II, Stenographer Grade-I and Private Secretary, the applicant was promoted to the grade of Senior Private Secretary on **15.4.2008** in the scale of pay of Rs. 7,500-12,000/- Even if the argument of the applicant that consequent to the merger of the aforesaid pay scales/posts promotions earned/ACPs obtained have to be ignored for the purpose of MACP benefits, still the need for spending of 10 years continuously in the same Grade Pay is a pre-requisite for financial upgradation under the MACP scheme. In the case on hand the applicant was granted 3rd MACP to the next higher Grade Pay of Rs. 5,400/- with effect from 1.9.2008 in the same year of he obtaining promotion to the grade of Senior Private Secretary on 15.4.2008. It appears to us that the

financial upgradation to Rs. 5,400/- was given to the applicant without he having spent 10 years after 15.4.2008. On that ground alone one can see that the grant of 3rd MACP as per Annexure A4 was wrong. No wonder that the respondents took a view that the applicant is not eligible for 3rd financial upgradation. However, the argument of the respondents that he had enjoyed all the three promotions may not find support in the light of the MACP scheme dealing with the merger of posts/pay scales. The fact that he has not remained in the promoted post of Senior Private Secretary for 10 years is a good ground for denying the 3rd MACP granted to him by Annexure A4. Therefore, we are of the opinion that the case set up by the applicant is incongruous with the object of the scheme as can be seen from the opening paragraph (*supra*) of the Annexure A3 MACPS. It is well settled that mistakes occurred in government transactions can be corrected. Hence, we hold that the stand taken by the respondents for effecting recovery of the MACP benefits and the consequent benefits the has received in the pay and emoluments is only justified.

16. In the result the OA fails. Nevertheless, in the interest of justice we direct the respondents to facilitate the applicant to pay the excess amount in installments reckoning the fact that he is now retired so that undue hardship will not occur to him. The monthly sum to be recovered may be decided by the respondents taking a lenient view of the fact that he is eking his livelihood out of the pension and the retirement benefits. We leave this matter to the respondents to decide the appropriate quantum for monthly recovery from the applicant provided that the applicant executes a bond in

favour of the department agreeing to repay such amount in monthly installments.

17. With the above directions the OA is disposed of without allowing the prayers in the OA. No order as to costs.

**(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

**(U. SARATHCHANDRAN)
JUDICIAL MEMBER**

“SA”

Original Application No. 180/00167/2015

APPLICANT'S ANNEXURES

Annexure A1 – Copy of the OM dated 22.5.2012.

Annexure A2 – Copy of the OM dated 10.6.2009.

Annexure A3 – Copy of the OM dated 19.5.2009.

Annexure A4 – Copy of the order dated 24.1.2011.

Annexure A5 – Copy of the letter dated 5.3.2012.

Annexure A6 – Copy of the letter dated 26.3.2012.

Annexure A7 – Copy of the previous OA.

Annexure A8 – Copy of the order dated 26.3.2012 in OA No. 998/2012.

Annexure A9 – Copy of the OM dated 26.04.2012.

Annexure A10 – Copy of the representation dated 7.5.2012.

Annexure A11 – Copy of the OM dated 28.3.1988.

Annexure PT-1 – Copy of PPO.

RESPONDENTS' ANNEXURES

Annexure R1 – Copy of Ministry of Finance, Department of Expenditure, Implementation Cell's office Memorandum dated 13th November, 2009.

Annexure R2 – Copy of Ministry of finance, Department of Expenditure, Controller General of Accounts , Office Memorandum dated 23rd November, 2009.

Annexure R3 – Copy of O/o Chief Controller of Accounts, M/o. Urban Development's office order dated 28.6.2010.

Annexure R4 – Copy of Ministry of Finance, Department of Expenditure, Controller General of Accounts' letter dated 3rd August, 2010.

Annexure R5 – Copy of O/o Chief Controller of Accounts M/o Urban Development's office order dated 1.10.2010.

Annexure R6 – Copy of O/o Pr. Chief Controller of Accounts, Ministry of External Affairs & Ministry of Overseas Indian Affairs' letter dated 12/13.7.2010.

Annexure R7 – Copy of Ministry of Finance, Department of Expenditure, Controller General of Accounts Office Memorandum dated 3rd August, 2010.

Annexure R8 – Copy of Ministry of Finance, Department of Expenditure, Controller General of Accounts' Office Memorandum dated 29th August, 2011.

Annexure R9 – Copy of representation dated 3.8.2010 of Sh. T. Radhakrishnan.

Annexure R1 – Copy of out patient's reference card.

Annexure R2 – Photo copy of the Bank pass book and certificate issued by bank.

Annexure R3 – Photo copy of the LPG connection papers, policy transfer papers.

Annexure R1 – Copy of M/o. Personnel, PG and Pensions, Department of Personnel and Training's office memorandum No. F. No. 18/26/2011-Estt.(Pay-1) dated 6th February, 2014.

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