

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No.180/00933/17
& M.A Nos.180/677/18 and 180/1154/17

Tuesday, this the 19th day of June, 2018

CORAM:

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

1. A.S.Ambika
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3. V.T.Kanakamma
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4. S.Usha Kumari
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5. M.B.Indira Devi
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6. V.Retnavally
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7. T.S.Rajalekshmy
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8. K.Santhakumari
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 Poonkulam, Vellayani.P.O, Thiruvananthapuram-695 522
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 Vandithadam, Vellayani P.O,
 Thiruvananthapuram-695 522 Applicants

(By Advocate – Mr.Vishnu S Chempazhanthiyil)

V e r s u s

1. The Joint Director
 Directorate of Census Operations, CGO Complex
 Poonkulam, Vellayani P.O, Thiruvananthapuram-695 522

2. The Additional Secretary & Registrar General, India
 Office of the Registrar General, India
 2/A Mansingh Road, New Delhi- 110 011

3. Union of India, represented by the Secretary
 Ministry of Home Affairs, New Delhi- 110 001 Respondents

(By Advocate – Mr.P.R.Sreejith,ACGSC)

This application having been heard on 12.6.2018, the Tribunal on 19.6.2018 delivered the following:

OR D E R

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

Applicants, 8 in number, are retired Senior Supervisors of Data

Capture Centre, Directorate of Census Operations, Thiruvananthapuram. They have filed this Original Application being aggrieved by the inaction on the part of the respondents on the representations submitted by them seeking the benefit of the Order of the Principal Bench of this Tribunal in Original Application No.904/2012. According to the applicants, the respondents ought to have granted them financial upgradation under the Modified Assured Career Progression Scheme (MACP Scheme, for short) in the promotional hierarchy as held by the Chandigarh Bench of this Tribunal in O.A No.1038 of 2010 and confirmed by the High Court of Punjab & Haryana and also by the Apex Court. They state that this Bench of the Tribunal also had passed a similar order and that the same was confirmed by the High Court. The order passed by this Tribunal was a declaratory relief which is intended to apply to all employees in a particular category, irrespective of whether they are parties to the litigation or not and hence there is absolutely no reason not to extend the benefits of such order to the other employees who were not parties to the litigation. In this Original Application they seek the following relief as under:

- “1) To declare that the refusal on the part of the respondents to grant the applicants financial up-gradation under the Modified Assured Career Progression Scheme in the promotional hierarchy itself is illegal, arbitrary, unjust, unreasonable and irrational and that the same violates Articles 14 and 16 of the Constitution of India
- 2) To direct the respondents to grant the applicants financial up-gradation under the Modified Assured Career Progression Scheme in the promotional hierarchy itself with effect from the dates they became eligible for the same with all consequential benefits including arrears, interest etc.
- 3) Such other relief as may be prayed for and this Tribunal may deem fit to grant
- 4) Grant the cost of this Original Application. ”

2. The Original Application was resisted by the respondents. According to

them as per paragraph 2 of the MACP scheme, Government employees were covered by it are merely to be placed in the immediate next higher grade pay in the hierarchy. The Grade Pay at the time of financial upgradation under the MACP Scheme can, in certain cases where regular promotion is not between two successive grades, be different than what is available at the time of regular promotion and in such cases, the higher Grade Pay attached to the next promotion post in the hierarchy of the concerned cadre will be given only at the time of regular promotion. According to the respondents, applicants have been given financial upgradation in the erstwhile ACP Scheme and thereafter financial upgradation under MACP scheme on completion of 20 and 30 years of their regular service. It is further stated by the respondents that a co-ordinate Bench of this Tribunal at Ahmedabad in O.A 120/000018/2015 and the co-ordinate Bench at Calcutta in O.A 351/00195/2014 also held that MACP benefit would be given in the hierarchy of the next higher Grade Pay and not in Grade Pay of promotional hierarchy which will be payable on actual promotion. It is also stated by the respondents that the judgment dated 17.3.2016 of the Hon'ble High Court at Hyderabad in WP No.8145/2016 allowing grant of financial upgradation under MACP Scheme in the scale of pay attached to the post in the promotional hierarchy has been stayed by the Supreme Court in Annexure R-3 order dated 21.10.2016 in SLP No.18405/16 and the said SLP is tagged with SLP(C) No.21803/14. The respondents state that though SLP(CC) No.7467/2013 filed in the Apex Court against Annexure A-6 judgment of the High Court of Punjab & Haryana was dismissed vide Annexure A-7 order, it was on account of the dismissal of the application for condonation of delay. Respondents maintain that MACP Scheme envisages only grant of financial upgradation to the

next Grade Pay and that it has no relation with next hierachial promotion post.

3 This case was being posted periodically from time to time awaiting the decision by the Hon'ble Apex Court in the matter pending before that Court. However, on 12.6.2018 when this O.A was posted along with M.A Nos.180/00677/18 for direction and 180/1154/2017 for joining together, we have heard both sides. In M.A 677/18 the applicants in the O.A pray for issuing a direction to the respondents to extend the benefit of Annexure A-11 order to the applicants. M.A 180/1154/2017 for joining together stands allowed.

4 Annexure A-11 is an order passed by this Bench by on 28.3.2017 in O.A 180/00644/2016. In that case also the issue involved was whether the applicants therein were entitled to financial upgradation under the MACP Scheme to the next higher scale in the promotional hierarchy or whether their entitlement is only to the next Grade Pay. Noting that the decision in the said case and another batch of similar cases decided on 17.1.2017 in O.A 387/14 and other connected cases are to rest on the decision to be taken by the Apex Court this Tribunal in the common order in O.A 387/14 dated 17.1.2017 passed the following order:

“5.The National Litigation Policy envisages reducing or minimising of litigation. Hence, the endeavour should be to avoid unnecessary and avoidable litigation. Unnecessary litigations can be avoided if all these applications are now closed with a rider that all the parties would be bound by the judgments that may be rendered by the Hon'ble Supreme Court; once the judgment is pronounced by the Hon'ble Supreme Court, if it is in favour of the applicants then all the applicants in these cases will certainly be entitled to the benefit of the judgment so rendered by the Hon'ble Supreme Court. In other words, for the purpose of granting the benefits under the MACP Scheme all these applications should be treated as revived and the order will then stand reviewed so as to grant the reliefs to

the respective applicants. If on the other hand the verdict goes against the applicants then all the aforesaid O.As shall be treated as dismissed. In that way there would be a quietus to the litigation.

6. The aforesaid course suggested has been accepted by the learned counsel appearing for the applicants and also by the learned counsel appearing for the respondents in the respective cases. Hence it is ordered as above. It is made clear that if the Original Applications are to be revived and the orders reviewed as stated above then the claim made by the applicants are to be decided as if the Original Applications are alive as on the date of the judgment that may be rendered by the Hon'ble Supreme Court."

5 Learned counsel for the applicant Shri.Vishnu S Chempazhanthiyil submitted that a similar order can be passed in this case also for disposal of the O.A. We pass a similar order as extracted above in this O.A as well. No order as to costs. The O.A and M.As are disposed of accordingly. No costs.

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

**(U.SARATHCHANDRAN)
JUDICIAL MEMBER**

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List of Annexures

Annexure A-1 - True copy of the Assured Career Progression Scheme.

Annexure A-2 - True copy of the Modified Assured Career Progression Scheme

Annexure A-3 - True copy of the order No.32011/22/2011 – Ad IV dated 14.9.2011 issued by the 2nd respondent

Annexure A-4 - True copy of the order No.32011/26/2012-Ad IV dated 12.9.2014 issued by the 2nd respondent

Annexure A-5 - True copy of the order dated 26.11.2012 in O.A No.904/2012 of the Principal of this Tribunal

Annexure A-6 - True copy of the judgment dated 19.10.011 in CWP No.19387 of 2011 (O&M) on the file of the Hon'ble High Court of Punjab & Haryana

Annexure A-7 - True copy of the judgment in Petition for Special Leave to CC 7467/2013 dated 15.4.2013 on the file of the Hon'ble Supreme Court

Annexure A-8 - True copy of the judgment dated 5.11.2014 in O.A No.1111/2013 and connected cases of this Tribunal

Annexure A-9 - True copy of the representation dated 24.12.2014 submitted by the 1st applicant to the 2nd respondent

Annexure A-10 - True copy of the representation dated 15.6.2017 submitted by the 1st applicant to the 2nd respondent

Annexure A-10(a) - True copy of the representation dated 15.6.2017 submitted by the 2nd applicant to the 2nd respondent

Annexure A-10(b) - True copy of the representation dated 15.6.2017 submitted by the 3rd applicant to the 2nd respondent

Annexure A-10(c) - True copy of the representation dated 15.6.2017 submitted by the 4th applicant to the 2nd respondent

Annexure A-10(d) - True copy of the representation dated 15.6.2017 submitted by the 5th applicant to the 2nd respondent

Annexure A-10(e) - True copy of the representation dated 15.6.2017 submitted by the 6th applicant to the 2nd respondent

Annexure A-10(f) - True copy of the representation dated 15.6.2017 submitted by the 7th applicant to the 2nd respondent

Annexure A-10(g) - True copy of the representation dated 15.6.2017 submitted by the 8th applicant to the 2nd respondent

Annexure A-11 - True copy of the order dated 28.3.2017 in O.A No.180/00644/2016 of this Tribunal

Annexure R-1 - True copy of the Order dated 16.10.2015 in O.A No.120/000018/2015 of the CAT, Ahmedabad Bench

Annexure R-2 - True copy of the order dated 28.4.2016 in O.A No.351/195/2014 of the CAT, Calcutta Bench along with O.M dated 17.5.2016

Annexure R-3 - True copy of the Order dated 21.10.2016 in SLP No.18405/2016 of Hon'ble Supreme Court

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