

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 180/00035/2016

Wednesday, this the 21st day of March, 2018.

CORAM:

**HON'BLE Mr. U. SARATHCHANDRAN, JUDICIAL MEMBER
HON'BLE Mr. E.K. BHARAT BHUSHAN, ADMINISTRATIVE MEMBER**

Rajeev E.V, 55 years,
S/o. E.R. Vasudevan,
Senior Accountant,
Pay & Accounts Office, Customs House,
Cochin – 682 009.
Residing at: Eranezhath House,
P.O. Thalikulam, Trichur District,
Kerala. - Applicant

[By Advocate Mr. T.C. Govindaswamy]

Versus

1. Union of India represented by the Secretary to
The Government of India, Ministry of Finance,
Department of Expenditure, New Delhi – 110 001.
2. The Principal Chief Controller of Accounts,
Central Board of Excise and Customs,
I Floor, AGCR Building, New Delhi – 110 002.
3. The Deputy Controller of Accounts,
Central Board of Excise & Customs (SZ),
Room No. 202, II Floor Central Excise Annexe Building,
26/1 Uthamar Gandhi Salai, Nungambakkam,
Chennai – 600 034.
4. The Pay & Accounts Officer,
Pay & Accounts Office, Customs House,
Cochin – 682 009. - Respondents

[By Advocate Mrs. Kavya for Mr. S. Ramesh, ACGSC]

The application having been heard on 13.03.2018, the Tribunal on 21.3.2018 delivered the following:

O R D E R**Per: Bharat Bhushan, Administrative Member**

O.A 35 of 2016 is filed by Shri E.V. Rajeev, Senior Accountant, Pay and Accounts Office, Customs House, Cochin aggrieved by Annexure A-1 Office Order dated 16.10.2015 issued by the 2nd respondent by which 3rd MACP benefit was granted to the applicant only with effect from 07.08.2015 instead of 25.06.2011 as claimed by him and Annexure A-2 letter dated 15.12.2015 rejecting the representation of the applicant stating that the applicant is eligible for granting of 3rd MACP benefit only after completion of 10 years of service in a Grade Pay or 30 years of service, whichever is earlier. The reliefs sought in the O.A are as under:-

- “(i) Call for the records leading to the issue of Annexure A-1 to the extent it grants the applicant the benefit of 3rd financial upgradation with effect from 07.08.2015, as against the requirement of grant of the same with effect from 25.06.2011(in PB2 + GP Rs. 4800/-).*
- (ii) Call for the records leading to the issue of Annexure A-2 and quash the same.*
- (iii) Declare that the applicant is entitled to be granted the 3rd financial upgradation in PB2 + GP Rs. 4800/- with effect from 25.06.2011 and direct the respondents accordingly.*
- (iv) Direct the respondents to grant the applicant the benefit of the 3rd financial upgradation in PB2 + GP Rs. 4800/- with effect from 25.06.2011 and direct further to grant all the consequential arrears of pay and allowances arising therefrom.*
- (v) Award costs of and incidental to this application.*
- (vi) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.”*

The applicant had initially joined as Accountant under the respondents on 07.08.1985, in the then scale of pay of Rs. 330-560/1200-2040. He was promoted as Senior Accountant in the then scale of pay of

Rs. 1400-2600/- with effect from 25.06.1991. The said scale of pay was revised with effect from 01.01.1996 as Rs. 5500-9000/- and further revised with effect from 01.01.2006 as PB2 + GP of Rs. 4200/-.

2. Thereafter, the applicant has not been beneficiary of any promotion. With the introduction of Modified Assured Career Progression Scheme (MACPS) as per O.M. of Government of India dated 19.05.2009 (Annexure A-3), the applicant was granted 2nd financial upgradation in PB2 + GP 4600/- with effect from 01.09.2008. The applicant contends that on completion of 20 years from the date of his first and only promotion on 25.06.1991, the applicant is entitled to be granted 3rd financial upgradation in PB2 + GP Rs. 4800/-, i.e. with effect from 25.06.2011.

3. The applicant has been repeatedly taking up his demand with higher authorities and finally by Annexure A-1 order was granted the said benefit in PB2 + GP 4800/- but only with effect from 07.08.2015 and not as claimed from 25.06.2011. The representation that he made to the 2nd respondent on 28.10.2015 (Annexure A-4) was rejected by the 3rd respondent. This communication at Annexure A-4 is assailed by the applicant as made without application of mind. The applicant, along with some others, have also filed O.A No. 271/2015 seeking financial upgradation to grades attached to posts in the promotional hierarchy and this O.A is said to be pending before this Tribunal.

4. As grounds, the applicant argues that the illustration contained in paragraph 28 A(ii) of Annexure A-3, which is the MACP Scheme

would show that the applicant is eligible for 3rd financial upgradation on completion of 20 years from the date of his promotion which took place on 25.06.1991. Applying the analogy in the illustration given in Annexure A-3 and also under paragraph 28 A(ii), the applicant states that he should get 3rd financial upgradation on completion of 25 years, 10 months and 18 days i.e. with effect from 25.06.2011.

5. Per contra, the respondents have filed a reply statement refuting the contentions in the O.A except those which are specifically admitted. It is maintained that the applicant was correctly granted 3rd MACP in PB2 + GP 4800/- with effect from 07.08.2015 on completion of 30 years of his service as per DoPT O.M. No. 35034/3/2008-Estt. dated 19.05.2009 (Annexure A-3). As regards para 28A (ii), the respondents have stated that financial upgradation under MACPS can be granted only after completion of 10 years of service in Grade Pay or 30 years of service, whichever is earlier. In the case of the applicant, he was granted 3rd MAPC when he completed 30 years of his initial appointment. The respondents also took the support of para 28A(i) of the MACP Scheme as justification of their decision.

6. Shri T.C. Govindaswamy, learned counsel appearing for the applicant and Smt Kavya representing Shri S. Ramesh, ACGSC were heard and all documents and record perused.

7. Two orders of this Tribunal, viz., in O.A No. 905/2012 and O.A. No. 392/2015 were submitted by the learned counsel for the applicant. Since both the orders have interpreted different aspects of the

MACP Scheme, it is necessary for us to delve into the question in detail ourselves.

8. The MACP Scheme, the details of which are available at Annexure A-3 offers three financial upgradations counted from “direct entry grade on completion of 10, 20 and 30 years service respectively. The financial upgradation under the Scheme will be admissible whenever a person has spent 10 years service in the same Grade Pay.” This forms the outer contours of the Scheme and admittedly under this eligibility norm, the applicant will be due for his 3rd financial upgradation only on completion of 30 years of service since his initial entry. From this perspective, no impropriety can be attributed to the respondents in having granted applicant the benefit of 3rd financial upgradation with effect from 16.10.2015.

9. The learned counsel for the applicant picked on Annexure A-2 communication which is quoted below:-

*“Office of the Deputy Controller of Accounts
Central Board of Excise & Customs (SZ0
Room No. 202, II Floor, Central Excise Annexe Building,
26/1 Uthamar Gandhi Salai, Nungambakkam,
Chennai – 600 034.*

No. Dy. CA/CBEC/SZ/Coordn./2015-16/3014

Dated 15/12/2015

To

*The Senior Accounts Officer,
Pay and Accounts Office,
Customs, Cochin.*

Sir,

Sub:- forwarding of representation submitted by Shri E.V. Rajeev,

Sr. Acctt. - reg.

Ref:- Your letter no. PAO/CUS/CHN/GEN/2015-16 dt. 04.11.2015.

With reference to your letter cited, I am to return herewith the representation submitted by Shri E.V. Rajeev, Sr. Acctt. requesting for the

advancement of date towards granting of 3rd financial upgradation under MACP from 25.06.2015 for the reason that as per the 6th CPC rule 28(A) (ii) financial upgradation under MAPC can be given only after completion of 10 years of service in a grade pay or 30 years of service whichever is earlier. In the instant case, the individual has got 3rd MACP after 30 years of initial appointment even though he has not completed 10 years of service in the previous grade pay.

This issues with the approval of Dy. CA, CBEC, SZ.

Yours faithfully,
Sd/-

Encl. : As above

Pay & Accounts Officer (Coordn)"

He drew our attention to the illustration at paragraph 28 A

“28. Illustrations”

A(i) If a Government servant (LDC) in PB-1 in the Grade Pay of Rs. 1900 gets his first regular promotion (UDC) in the PB-1 in the Grade pay of Rs. 2400 on completion of 8 years of service and then continues in the same Grade Pay for further 10 years without any promotion then he would be eligible for 2nd financial upgradation under the MACPS in the PB-1 in the Grade Pay of Rs. 2800 after completion of 18 years (8+10 years). (emphasis supplied)

(ii) In the case he does not get any promotion thereafter, then he would get 3rd financial upgradation in the PB-II in Grade Pay of Rs. 4200 on completion of further 10 years of service i.e. after 28 years (8+10+10). (emphasis supplied)

(iii) However, if he gets 2nd promotion after 5 years of further service in the pay PB-II in the Grade Pay of Rs. 4200 (Asst. Grade/Grade “C”) i.e. on completion of 23 years (8+10+5 years) then he would get 3rd financial upgradation after completion of 30 years i.e. 10 years after the 2nd ACP in the PB-II in the Grade Pay of Rs. 4600.”

As can be seen, the illustration in no way goes against the overall principle adopted in the Scheme which is to grant financial upgradations at 10/20/30 years of service. Also financial upgradation under the Scheme will be admissible whenever a person has spent 10 years continuously in the same Grade Pay. The learned counsel for the applicant relies on the instances mentioned in the illustration, wherein persons were eligible for 2nd and 3rd financial upgradation without completing 20 or 30 years. However, a closer examination of the

illustration would have shown that this contingency would arise only in the case of an employee, who continues in the same Grade Pay for 10 years. Clearly the applicant's case is not on similar lines.

10. After being granted his first promotion in 1991, his scale of pay was revised with effect from 01.01.2006 as PB2 + GP Rs. 4200/-. Further, with the adoption of MACP, he earned his 2nd financial upgradation on 01.09.2008 and his Grade Pay was revised as Rs. 4600/-. Thus, it can be seen that at no stage has the applicant languished in the same Grade Pay for 10 years. The respondents quite correctly allowed him his 3rd financial upgradation, revising his Grade Pay as Rs. 4800/- once he completed 30 years of service with effect from 07.08.2015.

11. These being the facts, we are of the view that the O.A is devoid of merit and ought to be dismissed. We proceed to do so. No order as to costs.

(Dated 21st March, 2018.)

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

**(U. SARATHCHANDRAN)
JUDICIAL MEMBER**

ax

Applicant's Annexures

Annexure A1 A true copy of the order bearing No. 214 dated 16.10.2015, issued by the 2nd respondent.

Annexure A2 A true copy of the letter bearing No. Dy. CA/ CBEC/ SZ/Coordn./2015-16/3014 dated 15.12.2015 issued by the 3rd respondent.

Annexure A3 A true copy of the Office Memorandum bearing No. 35034/3/2008-Estt. (D) dated 19.05.2009, issued by the Government of India (Department of Personnel & Training)

Annexure A4 A true copy of representation submitted by the applicant dated 28.10.2015, addressed to the 2nd respondent.

Annexures of Respondents

NIL
