

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00002/2017

DATED THIS THE 01st DAY OF AUGUST, 2017

HON'BLE JUSTICE SHRI HARUN UL RASHID, MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

S.Lalitha
Library & Information Assistant
Aged about 59 years
Doordarshan Kendra
J.C.Nagar
Bangalore-560 006.

.....Applicant

(By Advocate Sri N.Obalappa)

Vs.

1. The Union of India
Rep. by its Secretary
Ministry of Information and Broadcasting
'A' Wing, Shastry Bhavan
New Delhi – 110 001.
2. The Director
Department of Personnel & Training
Min., of Personnel, PG & Pensions
New Delhi-110 001.
3. The Chief Executive Officer
Prasar Bharati, II Floor
PTI Building, Parliament Street
New Delhi-110 001.
4. The Director General
All India Radio, Akashvani Bhavan
Parliament Street
New Delhi -110 001.
5. The Director General
Doordarshan
Doordarshan Bhavan
Copernicus Marg
New Delhi.
6. The Dy.Director General(P)
Doordarshan Kendra
J.C.Nagar
Bangalore-560 006.

....Respondents

(By Advocate Sri. M.Vasudeva Rao, Sr.CG for PC)

ORDER

(PER HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (ADMN))

The applicant has filed the present OA seeking the following relief:

- a. *Call for records leading to the grant of 2nd ACP due from 11.3.2009 & grant of 2nd MACP w.e.f. 1.9.2008 & pay fixation under 6th CPC from 11.3.2009 & also grant of 3rd MACP w.e.f. 11.3.2015.*
- b. *Quash the 5th respondent's order dated 5.11.2016(Annexure-A12) as the action of the respondent in implementing the Modified Assured Career Progression Scheme w.e.f. 1.9.2008 is to the detriment of the applicant.*
- c. *Direct the 2nd respondent to modify para 9 of the Office Memo No. dated 19.5.2009(Annexure-A8) whereby the employees including the applicant who are due for 2nd MACP do not have adverse effect on the entitlement the MACP between 1.9.2008 & 19.5.2009.*
- d. *Quash the order of the 2nd MACP granted to the applicant w.e.f. 1.9.2008 vide Annexure-A8 or in the alternative declaration may be issued that the case of the applicant is due for 2nd ACP w.e.f. 11.3.2009 with Gr.Pay of Rs.6600.*

2. The applicant got appointment as TV News & Film Librarian at Doordarshan Kendra, Bangalore in March 1985. Since she did not get any promotion for more than 12 years, she was granted 1st financial upgradation under ACP in the pay scale of Rs.6500-10500 which was available to the Assistant Librarian & Information Officer w.e.f. 9.8.1999 and corresponding Grade Pay of Rs.4600 was granted w.e.f. 1.1.2006. The applicant did not get further promotion thereafter and hence she was entitled for 2nd ACP w.e.f. 11.3.2009. The MACP scheme came into existence w.e.f. 1.9.2008 vide OM dated 19.5.2009. The 4th respondent vide order dated 10.8.2010(Annexure-A8) granted 2nd MACP w.e.f. 1.9.2008 in pay band-2 with grade pay of Rs.4800/-. Thereafter she was granted 3rd MACP in the grade pay of Rs.5400 w.e.f. 11.3.2015 vide order dated 18.11.2015(Annexure-A10). The applicant submits that the Chandigarh Bench of the Tribunal passed an order(Annexure-A8) in

which one of the UDC due for 2nd ACP w.e.f. 18.2.2009 was granted 2nd ACP in the pay scale of Rs.10000-15200 with grade pay of Rs.6600/- and subsequently 3rd MACP in the pay scale of Rs.14300-18300 with Grade Pay of Rs.7600. Thereafter, the applicant submitted a representation dated 4.10.2016 to the 5th respondent to consider the benefit under 2nd ACP w.e.f. 11.3.2009 and thereby the grade pay of Rs.6600. However, the 5th respondent vide reply dated 5.11.2016 turned down the request of the applicant saying that the MACP scheme came into operation in September 2008 and accordingly she was entitled to the grade pay of Rs.4600 w.e.f. 1.1.2006 in terms of MACP scheme (Annexure-A12). Hence, the applicant has approached the Tribunal seeking the aforesaid relief.

3. The applicant had mentioned that Hon'ble Chennai Bench and Chandigarh Bench of the Tribunal have allowed. 2nd ACP benefit to the persons who were due to get 2nd ACP prior to 19.5.2009 when the order in respect of MACP scheme was issued. The Chandigarh Bench had directed to the respondents to ensure that all the applicants who are similarly placed and were eligible for the 2nd ACP before 19.5.2009 should be given similar benefit as per law and rules and as per their eligibility. In accordance with the said order, the applicant is entitled to the 2nd ACP w.e.f. 11.3.2009 in the pay scale of Rs.10000-15000 with grade pay on Rs.6500/- and entitled for 3rd MACP on completion of 30 years of service in the pay scale of Rs.14300-18300 with Grade Pay Rs.7600/- as per 6th CPC. Therefore, she prayed for granting relief as sought for.
4. The respondents have filed reply statement in which they have

reiterated the fact that the applicant had joined the service on 11.3.1985 and got 1st financial upgradation w.e.f. 9.8.1999 after introduction of ACP scheme for Central Govt. Employees. The MACP scheme was introduced w.e.f. 1.9.2008. Therefore, the applicant entitled for 2nd MACP on completion of 20 years of service and 3rd MACP after completion of 30 years of service, after fulfilling the conditions prescribed for MACP. Though the applicant became eligible for 2nd ACP on completion of 24 years of service from 11.3.2009, the MACP was introduced w.e.f. 1.9.2008. Hence, she became eligible for 2nd financial upgradation under the MACP scheme since she had completed 20 years of service then. Thereafter, the 3rd MACP was granted on completion of 30 years of service. The representation submitted by the applicant was disposed of by the respondents clarifying the stand taken by them in granting MACP to the applicant. The claim of the applicant for 2nd ACP with grade pay of Rs.6600/- is not tenable. Therefore, they contended that the applicant is not entitled for any relief as sought for as the action taken by the respondents is as per the provisions contained in ACP and MACP scheme.

5. The applicant has filed rejoinder in which she reiterated the points already mentioned in the OA.
6. The respondents have also filed additional reply statement in which they reiterated the position already made in the reply statement and stated that after the introduction of the MACP Scheme w.e.f. 1.9.2008, the applicant will be eligible only for the benefits under the MACP scheme and not under ACP Scheme.
7. Heard the Learned Counsel for both the parties. The Learned

Counsel for the applicant reiterated the submission made in the OA and referred to the order passed by the Chennai Bench and also Chandigarh Bench of the Tribunal in which persons who were due for 2nd ACP prior to issue of order on MACP in May 2009 got the benefit under ACP and stated that since the applicant is due for 2nd ACP in March 2009, she is entitled to get the benefit under ACP to the next higher scale rather than the next grade pay on the same rationale. He also mentioned that the Hon'ble High Court of Karnataka in WP.No.24894-24908/2016 had taken a view that para-9 of the OM dated 19.5.2009 of the MACP scheme which make it applicable with retrospective effect from 1.9.2008 is bad in law. It held that the petitioners therein in whose cases 2nd ACP was done in April, 2009 are entitled for consideration for grant of 2nd ACP in terms of the ACP scheme. Subsequently, the Learned Counsel had submitted a memo on 10.7.2017 enclosing a copy of the order passed by the Hon'ble High Court in WP.No.24894-24908/2016(S-CAT).

8. The Learned Counsel for the respondents reiterated the submission made in the reply statement and stated that the MACP scheme replacing the ACP scheme came into existence vide OM dated 19.5.2009 and was given effect from 1.9.2008. Accordingly, applicant has been given benefits of 2nd and 3rd financial upgradations in terms of MACP scheme. Since the 2nd ACP was due after 1.9.2008, she was not entitled for benefits under ACP scheme but entitled for benefits under MACP scheme. Hence, the action taken by the respondents are perfectly in order.
9. We have carefully considered the facts of the case and

submissions made by either side. As per the available records, the applicant joined the service on 11.3.1985 and was given 1st ACP benefit w.e.f. 9.8.1999 giving the pay scale of Rs.6500-10500 which corresponds to PB-2 with Grade Pay 4600/-. She completed 24 years of service on 11.3.2009. The MACP scheme was introduced vide order dated 19.5.2009 and para-9 of the said order indicates that the scheme would be operational w.e.f. 1.9.2008 and the financial upgradations of August 1999 would be granted till 31.8.2008. Accordingly, the applicant was given 2nd financial upgradation under MACP allowing grade pay Rs.4800 and 3rd MACP on completion of 30 years of service in March 2015 with grade pay of Rs.5400/-. The main issue here is whether the applicant who completed 24 years of service in March, 2009 shall be entitled to financial upgradation under ACP scheme which will be to the next higher scale as compared to grant of higher grade pay under MACP.

10. The applicant has referred to the orders of Chennai Bench and Chandigarh Bench of the Tribunal. The Chennai Bench of the Tribunal in OA.No.811/2011 had held that the matter could be considered for grant of 2nd financial upgradation under ACP Scheme on completion of 24 years of service provided they complete this period between January 2006 and prior to DoPT order dtd.19.5.2009 by which MACP scheme came into existence. The Chandigarh Bench has also held similar view. This Tribunal in OA.No.1086-1091/2014 and 897-905/2015 had considered the similar issue and was of the view that the applicants were entitled to the similar benefits as would be available to the applicants in order passed by the Chennai Bench and Chandigarh Bench of the

Tribunal. The said orders of the Tribunals were challenged before the Hon'ble High Courts, the benefits shall be available only after the matter attains finality. The Tribunal also held that there is nothing wrong in para-9 of the MACP order giving retrospective effect of the MACP scheme. The order of this Tribunal in OA.No.1086-1091/2014 and 897-905/2015 was challenged by the petitioners in the Hon'ble High Court of Karnataka in WP.Nos.24894-24908/2016 and the Hon'ble High Court in its order dated 5.6.2017 held vide para 10-14 as follows:

10. In our view, the revision of pay of the employees has no nexus whatsoever with the grant of financial upgradation to the petitioners in accordance with the Scheme formulated by the Government. Since the pay structure has been changed uniformly to all the employees with effect from 1.1.2006, it goes without saying that the employees who are eligible for the financial upgradation under the erstwhile ACP Scheme are entitled for the said benefit in the new pay structure. Since all the petitioners in the instant case have completed 24 years of continuous service much prior to the introduction of MACP Scheme, in the ordinary course, the Screening Committee ought to have considered the case of the petitioners for grant of second financial upgradation under the ACP Scheme. If for any reason the Screening Committee has delayed in granting the benefit of second financial upgradation to the petitioners, the petitioners cannot be penalized for the laxity or inaction of the Screening Committee. The right of the petitioners for the II ACP having been crystallized much before introduction of the MACP Scheme, the said benefit cannot be taken away by retrospective application of the MACP Scheme.

11. It is a cardinal principle of law that benefits acquired under existing rules cannot be taken away by amending the Rules with retrospective effect. The retrospective date fixed under clause 9 of the MACP Scheme has no reasonable nexus with the object sought to be achieved by introducing a Modified Assured Progression Scheme. The MACP Scheme having been devised to off-set the opportunities of regular promotion to the employees, denial of the said benefit to a section of the employees who fall within the bracket is arbitrary and unconstitutional being violative of Articles 14 and 16 of the Constitution of India.

12. It is also important to note that the retrospective application of the MACP Scheme has the effect of adversely affecting the conditions of service of the petitioners in as much as the petitioners who have already completed 24 years in the same cadre are required to wait for another term of ten years to get the second financial upgradation, whereas the similarly placed employees who have availed the ACP just on the eve of the cut-off date would be entitled for III-ACP Scheme much earlier than the petitioners. Given the age of the petitioners, even the possibility of getting the second financial up-gradation by the petitioners is remote as in all likelihood most of the petitioners would retire before completing the term of ten years prescribed under MACP Scheme. This is an invidious discrimination and has the effect

of unreasonably restricting the conditions of service of the petitioners in violation of Article 311 of the Constitution of India.

13. The Tribunal has failed to advert its mind to the above facts and has proceeded to uphold the notification solely on the ground that the petitioners have availed the benefits of revised pay bands and grade pay with effect from 1.9.2008. The revised pay bands and grade pay having been availed even by the other employees who have been granted the ACP Scheme subsequent to 1.1.2006, there is absolutely no reason to deny the said benefits to the petitioners on the purported ground. Therefore, viewed from any angle, we do not find any justifiable reason to uphold the impugned order.

14. As the right of the petitioners to get second financial up-gradation under the erstwhile ACP Scheme had crystallized much before the introduction of MACP Scheme, the said right cannot be negated by retrospective operation of the MACP Scheme. On careful reading of O.M. dated 19.5.2009, we are of the considered view that the retrospective application of the MACP Scheme is detrimental to the rights of the petitioners and is discriminatory and therefore violative of Articles 14 and 16 of the Constitution of India. As a result, we hold that para 9 of the O.M. dated 19.5.2009(Annexure-A7) in so far as making the MACP Scheme applicable to the petitioners with retrospective effect from 1.9.2008 is bad in law. Consequently the petitioners are entitled to be considered for grant of II ACP in terms of the erstwhile ACP Scheme. To that extent, the impugned order passed by the Tribunal is liable to be set-aside.

Accordingly, we pass the following:-

ORDER

i) Writ petitions are allowed.

(ii) It is held that para 9 of the O.M. dated 19.5.2009 (Annexure-A7) in so far as making the MACP Scheme applicable to the petitioners with retrospective effect from 1.9.2008 is bad in law.

(iii) Consequently, the common order dated 10.3.2016 passed by the Central Administrative Tribunal, Bengaluru Bench, Bengaluru in O.A.Nos.1086-1091 of 2014 and 897-905 of 2015 in so far as making the MACP Scheme applicable to the petitioners with retrospective effect from 1.9.2008 is set-aside

(iv) Petitioners are entitled for consideration of grant of II-ACP benefits in terms of the erstwhile ACP Scheme. (O.M. Dated 9.8.1999).

(v) Respondents are directed to place the representations of the petitioners before the Screening Committee for consideration of grant of second financial upgradation to the petitioners as per the ACP Scheme (O.M. dated 9.8.1999).

11. The issue has been considered by the Hon'ble High Court of Karnataka as stated above. The applicants therein had completed 24 years of service in April 2009 and were allowed to avail benefits of 2nd ACP in terms of ACP Scheme. The present applicant had completed 24 years of service in March 2009. Therefore, keeping in view the order of the Hon'ble High Court of Karnataka as

mentioned above, we hold that the applicant will be entitled for consideration for grant of 2nd ACP benefit in terms of the erstwhile ACP scheme from the date she completed 24 years of service. The respondents are directed to consider the case of the applicant accordingly and pass necessary orders within a period of three(3) months from the date of receipt of copy of this order.

12. The OA is accordingly, allowed. No order as to costs.

(P.K.PRADHAN)
MEMBER (A)
/ps/

(JUSICE HARUN UL RASHID)
MEMBER (J)