

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.229 of 2014

DATED THIS THE 07th DAY OF AUGUST, 2017

HON'BLE SHRI DR.K.B.SURESH, MEMBER (J)

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

D.K.Dubey
Section Officer (Accounts)
S/o Late Shri B.P.Dubey
National Institute of Public Cooperation and Child Development
Southern Regional Centre
No.18, New Town, Yelehanka
Bangalore-560064.Applicant

(By Advocate Sri K.Rajaram)

Vs.

1. The Director
National Institute of Public Cooperation and Child Development
5, Siri Institutional Area, Hauz Khas
New Delhi-110116.
2. The Regional Director
National Institute of Public Cooperation and Child Development
Southern Regional Centre
No.18, New Town, Yelehanka
Bangalore-560064.Respondents

(By Advocate Sri M.Swayam Prakash, ACGSC)

O R D E R(PER HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (ADMN))

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

- i. Call for records leading to issue of Office Order No.107/2012 dated 05.10.2012 issued by the 3rd respondent and quash the same (Annexure-A9).
- ii. Call for the records leading to issue of Memorandum NO.NI/SRC/AD/PF-16/2013-2014/1974 dated 04.07.2013 from the 2nd respondent's office and quash the same(Annexure-A12).
- iii. Issue a direction to the respondents to consider the

applicant for grant of 2nd ACP to the grade of Rs.15600-39100 with grade pay of Rs.6600 w.e.f. 02.01.2008 and grant the same.

2. The applicant submits that he joined National Institute of Public Cooperation and Child Development (NIPCCD) on 2.1.84 as Accounts Clerk in the pay scale of Rs.425-700(Annexure-A1). The same post was re-designated as Assistant Accountant in the same scale as per the office order dated 11.5.1990(Annexure-A2). The applicant went on deputation as Section Officer(Accounts) at NIPCCD, Regional Centre in 1988 and while working as such he was promoted as Section Officer(Accounts) in the pay scale of Rs.2000-3200(subsequently revised to Rs.6500-10500)(Annexure-A3). He was regularised in the promotional post w.e.f. 23.10.1990(Annexure-A4). Subsequent to the introduction of ACP scheme w.e.f. 9.8.1999, the applicant became eligible for 2nd financial upgradation in the scale of Rs.7450-11500 w.e.f. 2.1.2008 vide office order dated 6.8.2008(Annexure-A6). In the meanwhile, subsequent to the 6th Central Pay Commission recommendation, the scales of Rs.6500-10500 and Rs.7450-11500 were merged and were placed in PB-2 with scale of pay of Rs.9300-34800 with grade pay of Rs.4600. Since the applicant was in the scale of PB-2 with grade pay of Rs.4600 as on 2.1.2008, he claims for the next higher grade in the hierarchy as per the provisions of the ACP Scheme. Subsequent to the introduction of MACP Scheme w.e.f. 31.8.2008, the applicant was again granted 2nd MACP w.e.f. 1.9.2008. He was also directed to exercise his option for pay fixation. As the applicant was eligible for 2nd ACP w.e.f. 2.1.2008 and has already been granted 2nd ACP with effect from that date, he could have been granted only 3rd MACP when he becomes eligible. The applicant exercised option and elected the revised scale under protest as the same was not correct as per his earlier representation dated 2.9.2012. The applicant again made a representation requesting him to grant 2nd ACP w.e.f. 2.1.2008 in the pre-revised scale of pay of Rs.10000-15200 corresponding to the pay band of Rs.15600-39100 with grade pay of Rs.6600 as

it was the next available pay scale in the hierarchy as per the cadre and recruitment rules(Annexure-A11). However, the applicant was informed by the 2nd respondent that his request for grant of higher grade pay of Rs.6600 cannot be acceded to as he was not fulfilling the promotional norms as per the existing recruitment rules for the post of Deputy Director(Accounts) as on the date when he was granted 2nd ACP on 2.1.2008. The applicant submits that he was already in the scale of Rs.7450-11500 w.e.f. 1.1.2006 due to merger. Thus he was eligible for next higher scale in the hierarchy by granting him 2nd ACP w.e.f. 2.1.2008. Therefore, he submits that granting of 2nd MACP w.e.f. 1.9.2008 instead of revising the earlier ACP order by the respondents is irregular and he is entitled to the relief sought of the present OA.

3. The applicant has further referred to the clarification issued by the DOPT in its Frequently Asked Questions issued on 1.4.2011 at para 26(ii) to say that since the pre-revised pay scales Rs.6500-10500 and Rs.7450-11500 have been merged and placed in PB-2 with grade pay of Rs.4600, 2nd financial upgradation would be allowed in the grade pay of Rs.6600 subject to fulfilment of promotional norms as stipulated in condition 6 of Annexure-I ACP. Since the applicant was already granted 2nd financial upgradation after satisfying the conditions for grant of financial upgradation, he was required to be given next eligible grade in the existing hierarchy, i.e. Rs.10000-15200 revised to Rs.15600-39100 with grade pay of Rs.6600/-.

4. The respondents have filed their reply statement wherein they submitted that the hierarchical promotion is from the post of Section Officer(Accounts) to the post of Accounts Officer and then to the post of Deputy Director(Accounts). The anomaly in the scales of pay of Rs.6500-10500 and Rs.7450-11500 were resolved by the Government by issue of an office memorandum dated

13.11.2009 by the Deptt. of Expenditure which has been implemented by the Institute. It also stated that the post of Section Officer(Accounts) having the pre-revised pay scale of Rs.6500-10500 was granted the Grade Pay of Rs.4200 and the post of Accounts Officer in the pre-revised pay scale of Rs.7450-11500 was granted grade pay of Rs.4600. As per para-5 of MACP Scheme promotion granted under the ACP in the past to those grades which now carries the same grade pay due to the merger of pay scales/upgradation of posts recommended by the 6th pay commissions shall be ignored for the purpose of granting upgradation under in ACP scheme. Hence the 2nd ACP granted to the applicant in the pre-revised pay scale of Rs.7450-11500 was ignored and he was granted the financial upgradation in the grade pay of Rs.4800 as per the provision of MACP scheme w.e.f. 1.9.2008.

5. The respondents further submitted that as per the recruitment rules, the Section Officer(Accts.) with 3 year service is eligible for the promotion to the post of Accounts Officer and Accounts Officer with 5 year service in the grade is eligible for promotion to the post of Deputy Director(Accts.) in PB-3 Rs.15600-39100 + GP Rs.6600 (Annexure-R1 & R2). The applicant was appointed as Accounts Clerk w.e.f. 2.1.1984 and got first promotion to the post of Section Officer(Accts.) w.e.f. 23.1.1990 in the pre-revised pay scale of Rs.2000-3200 revised to Rs.6500-10500. He was granted Grade Pay of Rs.4600/- as per the 6th Central Pay Commission recommendations w.e.f. 1.1.2006. Since hierarchical promotion was available to the post of Accounts Officer, the applicant was granted 2nd ACP in the pre-revised pay scale of Rs.7450-11500 which corresponds to grade pay of Rs.4600. As per recruitment rules for the post of Deputy Director(Accts.), the applicant does not fulfil the eligibility criteria of 5 year regular service in the grade of Accounts Officer. Therefore, he is not entitled to the scale of Deputy Director(Accts.) in 2008. The representations of the applicant dated 2.9.2012 and 15.10.2012 was

duly considered and he was informed the position vide memorandum dated 4.7.2013 clarifying that as per the existing recruitment rules, he was not fulfilling the primary requirements on the date when he was granted 2nd ACP i.e. on 2.1.2008. In view of this and the provisions of MACP, para-6 which is given below, the applicant is not entitled to any relief as claimed by him:

“In the case of all the employees granted financial upgradations under ACPS till 01.01.2006, their revised pay will be fixed with reference to the pay scale granted to them under the ACPS. In the case of ACP upgradations granted between 01.01.2006 and 31.8.2008, the Government servant has the option under the CCS(RP) Rules, 2008, to have his pay fixed in the revised pay structure either (a) w.e.f. 01.01.2006 with reference to his pre-revised scale as on 01.01.2006, or (b) w.e.f. the date of his financial upgradation under ACP with reference to the pre-revised scale granted under ACP.”

After implementation of MACP scheme, the 2nd ACP granted to the applicant in the pre-revised scale of Rs.7450-11500 was ignored and he was granted financial upgradation in the grade pay of Rs.4800 as per the provisions of MACP scheme w.e.f. 31.8.2008. Therefore, the applicant is not entitled to any relief as claimed by him.

6. Heard the Learned Counsel for the parties. The Learned Counsel for the applicant while reiterating the facts mentioned in the OA referred to the hierarchy of scales in the Accounts Cadre and stated that under 2nd ACP, the applicant was initially granted pay scale of Rs.7450-11500 w.e.f. 2.1.2008 vide order dated 6.8.2008. However, subsequent to the merger of the two scales i.e. 6500-10500 and 7450-11500 with the same Grade Pay Rs.4600 w.e.f. 1.1.2006, he is entitled to get 2nd ACP benefit to the next higher scale Rs.10000-15200 w.e.f. 2.1.2008 ignoring the upgradation already granted before merger. He also referred to the clarification given in SI.No.27(ii) on the Frequently Asked Questions(FAQs) on MACP issued on 1.4.2011 and emphasising that the 2nd upgradation under ACP to the grade pay Rs.6600 should be allowed. However, without allowing the same, the applicant has granted 2nd upgradation under MACP w.e.f 1.9.2008 which is admissible under

law on completion of 20 years of service, disregarding the provisions in para 9 of the MACP order. This order was issued without superseding the earlier order dated 6.8.2008 granting 2nd ACP to the applicant. Since the applicant had already completed 24 years of service, he is eligible for 2nd ACP on 2.1.2008 which should be in the next higher scale. On the contention of the respondents that the applicant did not fulfil the promotional norms applicable to the Deputy Director, he submits that upgradation under ACPS is allowed on completion of 12/24 years of service and the norms will not be applicable for grant of ACP.

7. The Learned Counsel for the respondents, on the other hand, reiterated the facts submitted in the reply statement and submits that on completion of 24 years of service, the applicant was granted 2nd ACP w.e.f. 2.1.2008 in the pre-revised pay scale of Rs.7450-11500. However, following 6th Pay Commission recommendation, the two scales of 6500-10500 and 7450-11500 were merged by giving same grade pay Rs.4600 w.e.f. 1.1.2006. As per para-5 of the MACP Scheme, upgradation granted under the ACP in the past to those grades which carries the same grade pay due to merger of pay scales shall be ignored for the purpose of granting upgradation under MACP scheme. Accordingly, he was granted 2nd MACP in the next hierarchy of grade pay of Rs.4800 w.e.f. 1.9.2008. Thereafter, on completion of 30 years of service, 3rd financial upgradation was granted in grade pay of Rs.5400. He also referred that the hierarchy given in financial upgradation under MACP is in the pay grade and not in promotional hierarchy in ACP. In any case, the applicant is not eligible for getting higher post of Deputy Director as on 2.1.2008 as he has not completed required service in the post of Accounts Officer. Therefore, the stand taken by the respondents and communicated to the applicant on 4.7.2013 is perfectly in order.

8. We have carefully considered the facts of the case and submissions made by

either side. From the records and the facts brought out by both the sides, it is evident that the applicant joined NIPCCD on 02.01.1984 and got promotion as Accounts Clerk in 1990 in the pay scale of Rs. 425-700. On completion of 24 years of service on 02.01.2008, he has granted 2nd financial upgradation under ACP in the pre-revised pay scale of Rs.7450-11500/-. However, following the implementation of the 6th Pay Commission recommendation, the two scales Rs.6500-10500 and Rs.7450-11500 were merged by giving same grade pay of Rs.4600/- w.e.f. 01.01.2006. While the applicant claim for grant of 2nd financial upgradation under ACP w.e.f. 02.01.2008 in the next higher scale of Rs.10000-15200/- corresponding to PB-3 i.e. Rs.15600-39100 with grade pay of Rs.6600/- as he was in the scale of Rs.7450-11500 due to merger, the respondents have granted him 2nd MACP w.e.f. 01.09.2008 in PB-2 with grade pay of Rs.4800/-. Therefore, the issue in the present case is whether the applicant is entitled to grant of 2nd financial upgradation under ACP on 02.01.2008 considering the earlier scale of Rs.7450-11500/- given to applicant from 01.01.2006.

9. The respondents have mentioned the hierarchical promotion which is from the post of Section Officer (Accounts) to the post of Accounts Officer and then to the post of Deputy Director (Accounts). The post of the Deputy Director (Accounts) is in the pay scale of Rs.10000-15200/- which is now in the PB-3 with grade pay of Rs.6600/-. They say that since the applicant is in the scale of Accounts Officer in the pre-revised pay scale of Rs.7450-11500/- which correspond to the grade pay of Rs.4600/- in PB-2 w.e.f. 01.01.2006, he does not have eligibility for the scale of Deputy Director (Accounts) in 2008. They have also taken the stand that in terms of MACP scheme the earlier promotion given under ACP was ignored due to merger of the scale and hence the applicant was given 2nd financial upgradation under MACP to the grade pay of Rs.4800/-.

10. The Frequently Asked Questions(FAQs) on Modified Career Progression Scheme(MACPS) which have been referred to by the applicant reads as follows:-

Sl.No.	Doubts	Clarification
26	Whether the benefits of ACPS would be allowed in respect of isolated cases due between 01.01.2006 and 31.08.2008 where the pre-revised pay scales of Rs.5000-8000 & Rs.5500-9000 and Rs.6500-10500 & Rs.7450-11500 have been merged into single grade pay of Rs.4200 and Rs.4600 respectively w.e.f. 01.01.2006?	Yes. Since the pre-revised Rs.5000-8000 & Rs.5500-9000 and Rs.6500-10500 & Rs.7450-11500 (isolated cases) have been merged into single grade pay of Rs.4200 and Rs.4600 respectively w.e.f. 01.01.2006, the benefits of 1st and 2nd financial upgradations under the ACPS should be considered/allowed in the grade pays of Rs.4600 and Rs.4800 in PB-2, as the case may be, due between 01.01.2006 and 31.08.2008 in respect of isolated cases in terms of para 5 of Annexure-I of MACPS dated 19.05.2009.
27	In a hypothetical situation cadre hierarchy was as follows: Rs.5000-8000 (revised GP 4200) Rs.5500-9000 (revised GP 4200) Rs.6500-10500 (revised GP 4600) Rs.7450-11500 (revised GP 4600) Rs.10000-15200 (revised GP 6600)	In terms of clarification given on point of doubt no.3 issued vide DOPT's O.M.No.35034/3/2008-Estt.(D) dated 9.9.2010, the benefits of ACPS would be applicable in the new pay structure adopted w.e.f. 1.1.2006 in the promotional hierarchy.
(i)	What would be the 1 st financial upgradation under the ACPS for a Government employee recruited in pre-revised pay scale of Rs.5000-8000, who has completed his 12 years of regular service on 12.04.2007 (between 1.1.2006 and 31.8.2008);	(i): Since the pre-revised pay scales Rs.5000-8000 & Rs.5500-9000 have been merged and placed in PB-2 with grade pay of Rs.4200, 1st financial upgradation would be allowed in the grade pays of Rs.4600, subject to fulfilment of promotional norms as stipulated in condition no.6 of Annexure-I ACPS dated 9.8.1999, in terms of clarification given on point of doubt no.1 of ACPS dated 10.02.2000.
(ii)	What would be 2nd financial upgradation for employee recruited in 5000-8000, who has completed 24 years of regular service on 12.04.2007 (between 1.1.2006 and 31.8.2008)	Since the pre-revised pay scales Rs.6500-10500 & Rs.7450-11500 have been merged and placed in PB-2 with grade pay of Rs.4600, 2nd financial upgradation would be allowed in the grade pay of Rs.6600, subject to fulfilment of promotional norms (after framing of RRs post merger) as stipulated in condition no.6 of Annexure-I ACPS dated 9.8.1999, in terms of clarification given on point of doubt no.1 of ACPS dated

		10.02.2000.
--	--	-------------

Clarification 27 (ii) clearly specifies that since the pre-revised scales of Rs.6500-10500 and Rs.7450-11500 have been merged and placed in PB-2 with grade pay of Rs.4600, the 2nd financial upgradation would be allowed in the grade pay of Rs.6600/-, subject to fulfilment of promotional norms as stipulated in condition no.6 of Annexure-I ACPS dated 09.08.1999.

11. Para-6 of the conditions for grant of benefits under the ACP scheme reads as follows:

“Fulfilment of normal promotion norms (bench-mark, departmental examination, seniority-cum-fitness in the case of Group ‘D’ employees, etc.) for grant of financial upgradations, performance of such duties as are entrusted to the employees together with retention of old designations, financial upgradations as personal to the incumbent for the stated purposes and restriction of the ACP Scheme for financial and certain other benefits (House Building Advance, allotment of Government accommodation, advances, etc) only without conferring any privileges related to higher status (e.g. invitation to ceremonial functions, deputation to higher posts, etc) shall be ensured for grant of benefits under the ACP Scheme.”

The above condition only mentions fulfilment of promotional norms such as bench-mark, departmental examination etc. and not eligibility in terms of no. of years of service to be put in the feeder cadre. The scale of Rs7450/- will be available from 01.01.2006 due to merger only and hence one cannot meet such criteria w.e.f. 31.08.2006. In that event there was no need for this clarification. Therefore, we are of the view that there is no stipulation/restriction that the applicant has to complete requisite period of service as Accounts Officer to be eligible to the grade pay of Rs.6600/- under the ACP Scheme. Consequently, the applicant shall be eligible for getting grade pay of Rs.6600/- on 02.01.2008 towards 2nd financial upgradation under ACP, if he fulfils the promotional norms such as bench-mark, departmental examination etc. Therefore the stand taken by the respondents in their communication dated 04.07.2013 is not justified and

the same is therefore quashed.

12. In the light of discussion in the preceding paragraphs, we hold that the applicant is entitled to be considered for 2nd financial upgradation under ACP on 02.01.2008 to the grade pay of Rs.6600/-. Therefore we direct the respondents to reconsider the case of the applicant for grant of grade pay of Rs.6600/- w.e.f. 02.01.2008 as 2nd financial upgradation under ACP scheme, if he fulfils the promotional norms as mentioned above. This shall be done within a period of two months from the date of receipt of a copy of this order.
13. The OA is accordingly disposed of in terms of the above. No order as to costs.

(P.K.PRADHAN)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/ /sv/