

OA.No.170/00345/2017/CAT/Bangalore Bench
**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00345/2017

DATED THIS THE 20th DAY OF FEBRUARY, 2018

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

Sri.A.P.Chandrashekhar
S/o Late A.M.Pandurangan
Aged about 65 years
Retd. Senior Project Assistant
Office of the ISRO Satellite Centre Bangalore
R/at No.360, 6th Main Road ISRO Layout
Bangalore-560111.

... Applicant

(By Advocate Shri Yogesh L.Hiremath)

Vs.

1. Union of India
Represented by its Director
ISRO Satellite Centre
Old Airport Road, Vimanapura Post
Bangalore-560017.
2. The Secretary
Department of Space
Anthariksh Bhavan
New BEL Road
Bangalore-560231.
3. Union of India
Represented by its Secretary
Ministry of Finance
Department of Expenditure
New Delhi-110001.
4. Secretary
Department of Personnel and Training
North Block, Central Secretariat
New Delhi-110001.

... Respondents

(By Advocate Shri S.Prakash Shetty)

ORDER

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

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

- a. Issue writ of certiorari or order or any other appropriate Writ or Order or Direction quashing the endorsement/Memorandum dated 06.06.2017 in No.020/1(1)/Est-1/2017 issued by the respondent No.1 as per Annexure-A9.*
- b. Issue a writ of Mandamus directing the respondents to pay Grade Pay of Rs.5400/- in PB-3 (Rs.15,600-39,100/-) with effect from 01/01/2010 as per representation dated 18.05.2017 at Annexure-A8.*

2. The applicant submits that he was initially appointed as Attendant 'A' on 22.06.1973 in the respondent organisation and then appointed as Office Clerk-A on 26.12.1980 through a selection process. Thereafter on receiving various promotions, he became Senior Project Assistant on 01.08.2011 and retired on superannuation on 31.08.2011. According to the applicant, based on the guidelines, the respondents had adopted the Assured Career Progression(ACP) Scheme and then the Modified Assured Career Progression(MACP) Scheme as per which an employee will be eligible for three financial upgradations on completion of 10,20 & 30 years of service. Based on the recommendation of Screening Committee and approval accorded by the competent authority vide order dtd.26.3.2013(Annexure-A2), the applicant was granted 2nd ACP in the Grade Pay of Rs.4800 w.e.f. 01.01.2006 and 3rd MACP w.e.f.26.12.2010 with Grade Pay of Rs.5400 in PB-2.
3. The applicant submits that vide office memorandum dtd.24/26.12.2009, the employees in the category of Personnel Secretary, Project Personnel Secretary, Senior Project Assistant, Assistant Catering Manager and Assistant Security Officer who have received the Grade Pay of Rs.4800 are entitled to get the higher grade pay of Rs.5400 in PB 3 on completion of 4 years from the date of assigning the Grade Pay Rs.4800. Since the applicant was Sr. Project Assistant, he therefore claimed eligibility for placement in PB 3 with grade pay of Rs.5400/-

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immediately after completion of 4 years in the grade pay of Rs.4800/- i.e. from 01.01.2010. He submits that some similarly situated employees had approached this Tribunal in OA No. 308/2013 for placement in PB 3 with grade pay of Rs. 5400/- which was allowed and the respondents are directed to pay the benefits. But the respondents approached the Hon'ble High Court of Karnataka in Writ Petition No.32501/2016 which was dismissed and the order of the Tribunal was confirmed. The SLP No.34238/2016 filed before the Hon'ble Apex Court was also dismissed. Thereafter, the applicants therein were granted the benefits vide order dated 24.04.2017(Annexure-A7). Since the said benefit was not granted to the applicant, he has filed representation on 18.05.2017(Annexure-A8) to the respondent No.4 for assigning Grade Pay Rs.5400 in PB-3 on completion of 4 years of service from the date of assigning Grade Pay Rs.4800. But the respondents vide Memorandum dtd. 06.06.2017(Annexure-A9) rejected the same saying that the benefit given to the applicants in OA.No.308/2013 and OA.No.136/2014 was restricted to them only and cannot be extended. Aggrieved by the same, the applicant has approached the Tribunal in the present OA seeking the relief as already mentioned.

4. The respondents in their reply statement have referred to OM dtd.24/26.12.2009 and also subsequent clarificatory OM dtd.13.12.2012 saying that only those who are holding the post of Sr.Project Assistant on regular basis are entitled to the benefit of grade pay Rs.5400/- in PB 3 on completion of 4 years of service from the date of assigning the grade pay of Rs. 4800/-. But the applicant had got Grade Pay Rs.4800 only through ACP and hence he is not entitled to the benefit of Grade Pay Rs.5400 in PB-3. Some other employees have approached the Ernakulam Bench of the Tribunal in OA Nos. 521, 514 and 544/2013 and the Tribunal had dismissed their claim in terms of the clarificatory OM dated 13.12.2012. The respondents have given a chart of career progression of the

applicant which is as follows:

Designation	w.e.f.	Details	Pay Scale
Attendant 'A'	22.06.1973	Initial Appointment	200-3-206-4-234-EB-4-250
Attendant 'B'	01.07.1976	Promotion	210-4-250-EB-5-270
Office Clerk 'A'	26.12.1980	Appointed/Selected	260-6-290-EB-6-326-8-366-EB-8-390-10-400
Office Clerk 'B'	01.01.1984	Promotion	1200-30-1560-EB-40-2040
Assistant 'A'	12.08.2003	Promotion	5000-150-8000
Assistant 'B'	02.08.2006	Promotion	Pre-revised scale of Rs.5500-175-9000
Sr.Assistant 'A'	26.12.2004/ 01.01.2006	2 nd financial upgradation under ACP Scheme	In the pre-revised Pay Scale of 5500-175-9000. Subsequently, on implementation of 6 th CPC, he was granted with a Grade Pay of Rs.4800/- in the pay band of Rs.9300-34800/- w.e.f.01.01.2006
Sr.Project Assistant	26.12.2010	Third Financial Upgradation under MACP Scheme in PB-II	Pay Band of Rs.9300-34800/- with GP of Rs.5400/-
Sr.Project Assistant	01.08.2011	Promotion	Pay band of Rs.9300-34800/- with GP of Rs.4800/-

The respondents submit that the applicant has been granted all the admissible benefits and he is not entitled to any further benefit.

5. We have heard the Learned Counsel for both sides. During the hearing, Learned Counsel for either side practically reiterated the submissions made in the OA and in the reply statement as highlighted in the preceding paras.
6. Exactly similar issue as raised by the applicant in the present OA was agitated in OA.No.329/2017 filed by H.S.Anantha Krishnamurthy and other related cases wherein the applicants who had been allowed the Grade Pay Rs.4800 as 2nd financial upgradation under ACP had claimed Grade Pay of Rs.5400 in PB-3 on completion of 4 years of service in Grade Pay Rs.4800. This issue was considered with reference to the earlier order passed by this Tribunal on 27.10.2015 in OA.No.308/2013 wherein both the OMs dtd.24./26.12.2009 as well as OM dtd.13.12.2012 were examined in detail and it was held that employees

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are entitled to the grade pay of Rs.5400/- in PB-3 on completion of 4 years of service in the grade pay of Rs.4800/-. Further reference was also made to the order of the Hon'ble High Court of Karnataka in Writ Petition No. 32524/2016 and 36516/2016 which has upheld the order of the Tribunal. It was concluded in the order dtd.13.02.2018 in OA.No.329/2017 and connected cases that the issue as to whether the applicant is entitled to receive the non-functional upgradation to PB 3 with grade pay of Rs.5400/- on completion of 4 years of service in the grade pay of Rs.4800/- has attained finality and hence the same principle shall apply to the applicants in the said OAs. On same rational, the same principle shall also be applied to the applicant in the present OA also.

7. However, on going through the service particulars of the employees in OA.No.329/2017 & others which is almost similar to the service particulars of the present applicant, the provisions under ACP and MACP scheme were examined in detail and it was held vide para-17 to 22 of the order dtd.13.02.2018 in OA.329/2017 & ors. as follows:

17. It seems that the Department of Space had undertaken a cadre review in 2003 and decided to abolish induction at the level of Office Clerk-A and introduction of induction at the level of Office Clerk-B. Following the implementation of 6th Pay Commission's recommendations, issuance of revised pay rules and introduction of the Modified Assured Career Progression Scheme(MACPS), the Dept. of Space issued an Office Memorandum dtd.3.8.2009 providing clarifications regarding grant of MACP scheme. In the said OM, the Dept. of Space clarified that the promotion from the post of Sr.Assistant 'A' to that of Sr.Assistant 'B' shall be ignored for the purpose of MACPS. However, the promotion from the post of Office Clerk-A to that of Office Clerk-B should not be ignored for the purpose of MACPS. The point of doubt and clarifications under Sl.No.1 & 2 in the said OM reads as follows:

Sl.No.	Point of Doubt	Clarifications
01.	In the Revised Pay Structure, the posts of Sr.Assistant 'A' and Sr.Assistant 'B' carry the same Grade Pay of Rs.4200/- in PB-2. Para 8 of the Modified ACP Scheme stipulates that the promotions earned in the post carrying same Grade Pay in the promotional hierarchy as per Recruitment Rules shall be counted for the purpose of Modified ACP Scheme. It may kindly be clarified whether the promotion from the post of Sr.Assistant	The promotion from the post of Sr.Assistant 'A' to that of Sr.Assistant 'B' shall be ignored for the purpose of MACPS.

	'A' to that of Sr.Assistant 'B' is to be treated as promotion for the purpose of Modified ACP Scheme	
02.	In terms of DOS OM No.9/2/2/2003-V dated 15.07.2003, the grade of Office Clerk 'A' has been phased out and there has been no direct induction in this grade since then. Since direct induction is made at the level of Assistant/Office Clerk 'B', it may kindly be clarified whether the promotion availed from the post of Office Clerk 'A' to that of Office Clerk 'B' (Assistant) should be ignored for the purpose of Modified ACP Scheme.	The promotion from the post of Office Clerk 'A' to that of Office Clerk 'B' (Assistant) should NOT be ignored for the purpose of MACPS.

18. The Department of Space later issued an Office Memorandum No.A12013/3/2009 dtd.9.11.2011 which mentions as follows:

- I. Promotion from the post of OCA to OCB may be ignored for the purpose of grant of financial upgradations under ACP/MACP Scheme in respect of those employees who were inducted as OCA through open recruitment process.
- II. The date of acquiring the grade of OCB (re-designated as Assistant) will be treated as date of direct recruitment for the limited purpose of grant of financial upgradations under ACP/MACP Scheme.

Subsequent clarification in OM dtd.3.4.2012 stated to delete II above and simply say as follows:

"Promotion from the post of Office Clerk A to Office Clerk B may be ignored for the purpose of grant of financial upgradations under ACP/MACP Scheme in respect of those employees who were inducted as Office Clerk A through open recruitment process."

Following this, the Dept. of Space issued another Office Memorandum dtd. 7.8.2012 in which they further made clarification as under:

- i) For the purpose of reckoning services for ACP/MACP, the date of appointment as OC-A shall be taken into account in cases where normalization to higher grades are effected.
- ii) The date of extension of the benefits contained in DOS OM dated November 09, 2011 read with April 03, 2012 shall be w.e.f. 15th July, 2003 i.e., the date on which the induction level has been enhanced from OC-A to OC-B. In other words, although in effect the promotion to the post of OC-B could have taken place between 9.8.1999 and 14.7.2003, the Actual benefit of ignoring promotion will be effective from 15.7.2003 only.

19. It is thus evident that the earlier stipulation that the date of acquiring the grade of OCB will be treated as date of direct recruitment for the limited purpose of grant of financial upgradations under ACP/MACP Scheme was modified to make it from the date of appointment as Office Clerk-A. These OMs dtd.9.11.2011, 3.4.2012 and 7.8.2012 extending the scope to ACP as well as MACP were at variance with the earlier OM dtd.3.8.2009 giving clarification on applicability of MACP following 6th Pay Commission recommendation. It is not clear from the Office Memorandum

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nor could be clarified by the department representative as to whether the said Memorandums were issued in consultation with the Department of Personnel and Training or the Ministry of Finance since both Office Memorandums introducing the ACP and MACP schemes, it is clearly stipulated that any interpretation/clarification of doubt as to the scope and meaning of the provisions of the ACP scheme or MACP scheme shall be given by the Department of Personnel and Training.

20. Following the issuance of OM dtd.7.8.2012, the respondent department issued an office order on 18.9.2012 granting financial upgradations to the applicants and others both under ACP as well as MACP from an earlier date and vide which the applicants started getting Grade Pay Rs.4800 consequent to the 2nd financial upgradation granted under ACP.
21. Subsequent to the 6th Pay Commission recommendation, there were mergers of different pay scales like 5000-8000, 5500-9000 & 6500-10500 into one and hence there was a provision in the MACP scheme that promotion and upgradation granted in the past to those grades which are now carry the same grade pay due to merger of scales, shall be ignored for the purpose of upgradation under MACP. However, there was no such provision/stipulation under ACP scheme for ignoring any promotion. Therefore, ignoring the promotion from Clerk-A to Clerk-B for the purpose of grant of ACP benefit seems to us as in contravention of the ACP scheme. Therefore it needs to be examined whether the department can ignore the promotion from the post of OC-A to OC-B for the purpose of grant of benefit under ACP scheme when no such provision is existed in that scheme that too following the 6th Pay Commission recommendation. No doubt the MACP guidelines allows for ignoring certain promotions for grant of financial upgradations under MACP. But it shall be under the purview and provisions of MACP scheme only but not under ACP. Further, there is a difference in the financial upgradations allowed under the ACP and the MACP schemes. The MACP scheme envisages merely placement of pay in the next Grade Pay in the hierarchy and not the benefit of next higher scale as available in the promotion which was allowed under ACP. Therefore, in the event promotion to certain category of posts have to be ignored for the purpose of granting financial upgradation under MACP, the benefit has to be in terms of the stipulation made in the MACP scheme but not under ACP scheme.
22. As specified in the guidelines under ACP and MACP schemes any interpretation or relaxation under the ACP or MACP schemes shall have to be done in concurrence with the Dept. of Personnel and Training and if required with the Ministry of Finance. Neither the OMs indicate nor the departmental representative could throw any light as to whether concurrence of DoPT was taken for this. Therefore, it is necessary that the Office Memorandums dtd.9.11.2011, 3.4.2012 & 7.8.2012 issued by the respondent department and the grant of ACP & MACP benefits in accordance with the said OMs needs to be reconsidered first in consultation with the DoPT and Ministry of Finance specially in the light of our observation in the preceding paras. This is because if grant of ACP benefits to the applicants by the respondents which prima facie appears to be unjustified is to be revised then it will have implication on the dates from which the applicants would be entitled to get the Grade Pay Rs.4800. Consequently it will impact the date of assigning of Grade Pay Rs.5400 in PB-3 which will be on completion of 4 years from the date of assigning the Grade Pay Rs.4800.

8. Based on the above observation, a direction was issued to the respondents as follows:

- i. The Dept. of Personnel & Training in consultation with the Dept. of Expenditure shall examine the validity of OMs dtd.9.11.2011, 3.4.2012 and 7.8.2012 in the light of the guidelines issued for grant of ACP and MACP schemes in general and in particular as to whether the promotion from the post of Office Clerk-A to Office Clerk-B can be ignored for the purpose of grant of financial upgradation under ACP scheme and issue a clear order on the justifiability of the said Memorandums and the orders issued by the respondents granting ACP benefits in 2012 pursuant to the said OMs. The Dept. of Space shall immediately take up the matter with the DoPT with all relevant details relating to issuance of the said OMs. This shall be done within a period of three(3) months from the date of receipt of a copy of this order.
- ii. Based on the decision taken by the DoPT on the grant of financial upgradation allowed to the applicants under the ACP and what will be their actual entitlement, the applicants shall be entitled to the Grade Pay of Rs.5400 in PB-3 on completion of 4 years of regular service from the date of assignment of Grade Pay of Rs.4800 subject to the stipulation prescribed for grant of the said benefit. This shall be done within a period of three(3) months thereafter.

9. In the context of the above direction given to the respondents, the entitlement of the applicant to the Grade Pay of Rs.4800 shall also be determined in accordance with the decision to be taken by the DOPT on the validity of OMs dtd.9.11.2011, 3.4.2012 and 7.8.2012. Once the said issue is decided and the entitlement of the applicant to the Grade Pay Rs.4800 is fixed, the respondents shall consider the case of the applicant for sanction of Grade Pay Rs.5400 in PB-3 on completion of 4 years of regular service from the date of assigning of Grade Pay Rs.4800 subject to fulfilment of stipulation prescribed for grant of the said benefit. This shall be done within a period of three(3) months from the date the matter is decided by the DOPT.

10. The OA is accordingly disposed of with the aforesaid direction. No order as to costs.

(P.K. PRADHAN)
MEMBER(A)

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

Annexures referred to by the applicant in OA.170/00345/2017

Annexure-A1: Copy of appointment order
Annexure-A2: Copy of office order dtd.26.03.2013
Annexure-A3: Copy of OM dtd.24/26.12.2009
Annexure-A4: Copy of order dtd.27.10.2015 in OA.No.308/2013
Annexure-A5: Copy of order dtd.02.09.2016 in WP.No.32501/2016(S-CAT)
Annexure-A6: Copy of order dtd.23.02.2017 in SLP.No.34238/2016
Annexure-A7: Copy of OM dtd.24.04.2017
Annexure-A8: Copy of representation dtd.18.05.2017
Annexure-A9: Copy of impugned Memorandum dtd.06.06.2017

Annexures with reply statement:

Annexure-R1: Copy of OM dated 9.8.1999
Annexure-R2: Copy of OM dtd.12.09.2008
Annexure-R3: Copy of OM dtd.24/26.12.2009
Annexure-R4: Copy of clarificatory OM dtd.13.12.2012
Annexure-R5: Copy of order dtd.27.10.2015 passed in OA.No.308/2013
Annexure-R6: Copy of order dtd.12.7.2016 passed in WP.No.32524/2016(S-CAT) &
36516/2016 by the Hon'ble High Court of Karnataka
Annexure-R7: Copy of dtd.02.09.2016 in WP.No.32501/2016(S-CAT)
Annexure-R8: Copy of order dtd.23.02.2017 in SLP.No.34238/2016
Annexure-R9: Copy of OM dtd.24.04.2017
