

OA.No.170/00378/2017/CAT/Bangalore Bench
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00378/2017

DATED THIS THE 19th DAY OF APRIL, 2018

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

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

Sri.Veerabhadrappa B.
 Age: 62 years
 S/o.Late Sri.Basappa
 Retired Senior Scientific Officer Gr.II
 CQAR, J.C.Nagar
 Bengaluru:560 006.
 Residing at No.205
 'Elegant Embassy Apartments'
 Jakkar Main Road, Yelahanka
 Bengaluru:560 064.Applicant

(By Advocate Sri.P.A.Kulkarni)

Vs.

1. Union of India
 Ministry of Defence
 Department of Defence Production
 Directorate General of Quality Assurance
 New Delhi-110011.
2. The Principal Controller of Defence Accounts (Pensions)
 Allahabad
 Draupadi Ghat
 Uttar Pradesh:211 014.
3. The Controller
 Controllerate of Quality Assurance Radar (CQAR)
 J.C.Nagar, Bengaluru:560 006.
4. Chief Manager
 CPPC, State Bank of India
 Hebbal Branch
 Ganganagar(N)
 Bengaluru:560 024.
5. Chief Manager
 State Bank of India
 Jayamahal Extension Branch
 Bengaluru: 560 046.Respondents

(By Advocates Smt. P.K.Praneeshwari for R1-3 and Sri M.G.Vykunta Swamy
 for R5)

ORDER

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

The applicant aggrieved by the unilateral revision of his pension has filed the present OA seeking the following relief:

- a. *Quash the corrigendum PPO No:C/CORR/MISC/11937/2017 dated 1.6.2017 Annexure-A8 issued by Principal CDA(Pensions) Allahabad R-2 herein.*
- b. *Direct the respondents to cause payment of pension to the applicant in terms of the original PPO being No:C/MISC/16806/2015 dated 23.4.2015 Ann-A7.*
- c. *Direct the respondents to re-credit to applicant's pension account the amount if any recovered pursuant to corrigendum PPO dated 1.6.2017 Ann-A8.*

2. The applicant submits that he joined the services of the respondents as Supervisor(Technical) in March 1982. The same post was merged with Chargeman II grade and had a common pay scale. Thereafter, he got Chargeman I grade in July 1989. The posts of Chargeman II, Chargeman I and Assistant Foreman came to be merged in terms of CCS(Revised Pay) Rules 2008 following 6th Pay Commission recommendation. By that time the applicant was already in Foreman cadre. In the year 2006 the applicant was placed in Junior Scientific Officer pay scale of PB-2 i.e.Rs.9300-34800+GP of Rs.4800. Thereafter he was granted 3rd financial upgradation under Modified Assured Career Progression Scheme(MACPS) w.e.f.20.6.2012(Annexure-A1) in the pay scale of PB-2 with Grade Pay of Rs.5400. At the time of pay fixation upon placement in 3rd MACP, the applicant exercised his option for fixation of pay after earning annual increment in the lower grade pay of Rs.4800 due on 1.7.2012 in terms of Ministry of Finance OM dtd.13.9.2008 and DOPT OM dtd.19.5.2009(Annexure-A2 & A3 respectively). The applicant was promoted to the post of Senior Scientific Officer(SSO) Gr.II (Group 'A' cadre) in terms of

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the notification dtd.17.8.2012 (Annexure-A4). The SSO Gr.II was in the scale of Rs.15600-39100(PB-3)+GP Rs.5400. Subsequent to the promotion to the post of SSO-II, the applicant's pay fixation was done vide order dtd.23.09.2014 by the Controllerate of Quality Assurance(Annexure-A9). In pursuance to the same, a further order was issued on 24.11.2014 and his pay was fixed at Rs.24280+GP Rs.5400 w.e.f. 10.10.2012 and was raised to Rs.25170 +GP Rs.5400 w.e.f.1.7.2013 and to Rs.26090+GP Rs.5400 w.e.f. 1.7.2014. According to the applicant, in terms of pay fixation order dtd.24.11.2014, his last pay drawn was Rs.26090 with Grade Pay of Rs.5400 as on 31.05.2015 i.e. the date of his retirement from Government service. On that basis Centralized Pension Authority at Allahabad had worked out the applicant's pension and issued PPO dtd.23.4.2015 and sanctioned a monthly pension of Rs.15745/-(Annexure-A7). The applicant was receiving his monthly pension accordingly. However, the Pension Authority on their own issued a corrigendum PPO dtd.1.6.2017 reducing the monthly pension of the applicant from Rs.15745 to Rs.15285. No reasons were ascribed in the said revised PPO of 1.6.2017(Annexure-A8). Based on the unilateral reduction of pension, the State Bank of India CPPC Bengaluru i.e. respondent No.4 has computed that pension paid from 1.6.2015 to 31.5.2017 is in excess of Rs.23145 and the commuted value of pension paid is in excess of Rs.18092 and hence a recovery of Rs.41237 has been indicated. Further from 1.6.2017 pension is shown at Rs.39283 as against the earlier drawal of pension of Rs.40465 w.e.f. 1.1.2016. Aggrieved by the said unilateral reduction of pension, the applicant has filed the present OA seeking the relief mentioned earlier.

3. The respondents in the reply statement have referred to the service particulars of the applicant, the post held by him, the dates of his promotion and pay scale allowed and corroborated the fact that the applicant was

allowed 3rd financial upgradation under MACP in PB-2 with Grade Pay of Rs.5400 w.e.f. 20.06.2012. At the time of allowing the 3rd financial upgradation under MACP, the benefit of pay fixation was allowed. However, there should not be any further fixation of pay at the time of regular promotion if it is in the same grade pay as granted under MACPS. It has also been stipulated in the MACP scheme that at the time of actual promotion if it happens to be in a post carrying higher grade pay than what is available, no pay fixation would be available and only difference of grade pay would be made available. They stipulated that at the time of 3rd financial upgradation under MACP, his Grade Pay was raised from Rs.4800 to the Grade Pay of Rs.5400 in PB-2. Therefore, he would not be eligible for any further financial upgradation at the time of promotion to SSO-II which has the same Grade Pay of Rs.5400 though in the Pay Band-3 as there is no change in the grade pay from what was granted under MACP. They have submitted that the officers(JSOs) who were granted 3rd financial upgradation under MACP and placed in the grade pay of Rs.5400 are not eligible for one increment on their promotion in addition to the 3rd MACP benefits. They have also mentioned that O/o PCDA, Bangalore detected the error of granting one increment on promotion after the retirement of the applicant. Further as per Rule 70 of CCS Pension Rules, it is the responsibility of the Head of Office to give notice/intimate to the concerned Government servant regarding the wrong pay fixation and recovery of excess payment towards pension. Respondent No.3 submitted the due/drawn statement to the O/o PCDA, Bangalore for recovery of excess payment made to the official. The PCDA(Pension) Allahabad has issued corrigendum PPO based on the details provided to them.

4. We have heard the Learned Counsel for both the parties. The Learned Counsel for the applicant while highlighting the submission already made in

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the OA emphasised on the fact that the scale awarded to the applicant under MACP was in PB-2 i.e.Rs.9300-34500 scale with Grade Pay Rs.5400 whereas the promotional post is in PB-3 i.e. Rs.15600-39100 scale with Grade Pay Rs.5400. He stated that the pay fixation order under Annexure-A6 and A9 clearly indicate the pay allowed to the applicant on different dates and based on which the pension was fixed. There has been no revision of the pay fixation statement by the respondents nor there was any notice given to the applicant in this regard. Therefore, on unilateral to revise the pension and reducing the pension of the applicant is arbitrary and should be set aside.

5. The Learned Counsel for the respondents, on the other hand, highlighted the submission made in the reply statement and submitted that since the grade pay remain same in the promotional post, the applicant is not entitled to any increment and he should have been granted the same pay as was drawn under MACP earlier. There was a mistake in the pay fixation and hence the pension earlier fixed was rectified and therefore rectification order issued subsequently. On a query as to why the pay fixation statement was not modified after giving a show cause notice if it is found to be erroneous, the Ld.Counsel had no specific answer to the same. The Ld.Counsel for the respondents mentioned that the action taken by the Pension Payment Authority is justified and hence the applicant's contention does not merit any consideration.
6. We have carefully considered the facts of the case and submissions made by either side. The only issue in the present case is whether the unilateral revision of pension of the applicant is justified. It is evident from the records that while working as Junior Scientific Officer in PB-2 with GP Rs.4800, the applicant was granted 3rd financial upgradation under MACP raising his pay to

PB-2 with Grade Pay Rs.5400. Thereafter, the applicant was promoted to the post of Senior Scientific Officer(SSO) Gr.II in PB-3 scale of Rs.15600-39100 with Grade Pay of Rs.5400. It is to be noted that the promotional post of SSO carried a higher pay scale i.e.PB-3 as compared to the pay scale of PB-2 being drawn by the applicant earlier on receiving 3rd financial upgradation under MACP though the grade pay remain the same i.e. Rs.5400. After his promotion, the applicant's pay was fixed by an order dtd.23.09.2014(Annexure-A9) followed by another order dtd.24.11.2014(Annexure-A6). Based on the same pay fixation order, the applicant's pay was fixed at Rs.24280+GP of Rs.5400 in PB-3 scale w.e.f. 10.10.2012 and was raised to Rs.25170+GP Rs.5400 w.e.f. 1.7.2013 and Rs.26090+GP Rs.5400 w.e.f. 1.7.2014. The pay fixation order has not been revised by the respondents. If the respondents were of the view that there was a mistake in the pay fixation order, then the normal course of action is to issue a show-cause notice to the applicant and then consider any revision of the pay fixation order. But the pay fixation order was not revised and the same still stands. Based on the pay drawn by the applicant at the time of retirement, his pension was fixed at Rs.15745. The subsequent order of 01.06.2017 revising the pension has been done without ascribing any reason or issue of any notice. If the pay fixation order and the pay drawn at the time of retirement is remain unchanged and not modified the pension has to be in accordance with that.

7. Rule-13 of CCS(RP) Rules, 2008 pertaining to the 'fixation of pay on promotion on or after 1.1.2006' reads as follows:

In the case of promotion from one grade pay to another in the revised pay structure, the fixation will be done as follows:-

One increment equal to 3% of the sum of the pay in the pay band and the existing grade pay will be computed and rounded off to the next multiple of

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10. This will be added to the existing pay in the pay band. The grade pay corresponding to the promotion post will thereafter be granted in addition to this pay in the pay band. In cases where promotion involves change in the pay band also, the same methodology will be followed. However, if the pay in the pay band after, adding the increment is less than the minimum of the higher pay band to which promotion is taking place, pay in the pay band will be stepped to such minimum.

It is fact that in the present case, the promotion involves a change in pay band i.e. from PB-2 to PB-3. Therefore, in the context of the above rule position, the same method should be followed i.e. increment equal to 3% of the sum of the pay in the pay band in the existing grade pay. Apparently, this aspect was taken into consideration while issuing the pay fixation statement by the office. The subsequent action on the part of the respondents referring to provisions relating to promotion in the same grade pay apparently missed out the fact that there has been a change in the pay band in this case i.e. from PB-2 to PB-3 which is in Group-A.

8. Therefore, we are of the view that pay fixation order of 23.9.2014 and 24.11.2014 are in accordance with the rules. Further the revised pension payment order without issuing any show-cause notice and without revision of the earlier pay fixation order appears to be erroneous and therefore cannot be sustained. Therefore, we set aside the revising PPO dtd.1.6.2017(Annexure-A8) reducing the pension of the applicant and hold that the applicant is entitled to get his pension and the pension fixed earlier vide order dtd.23.04.2015(Annexure-A7) in terms of pay fixation order and the last pay drawn.

9. The OA is accordingly allowed in terms of the aforesaid direction. The original pension should be restored within one(1) month from the date of receipt of a copy of this order. Any recovery if made shall be refunded to the applicant within that time. No order as to costs.

(P.K.PRADHAN)
MEMBER (A)

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

/ps/

Annexures referred to by the applicant in OA No.170/00378/2017

Annexure A1: 3rd MACP order dated 3.10.2012 along with typed copy

Annexure A2: GOI orders dtd:13.9.2008-Clarifications on CCS(RP) Rules 2008

Annexure A3: MACP Scheme notified on 19.5.2009

Annexure A4: SSO Gr.II panel notified on 17.8.2012

Annexure A5: Promotion and posting order of the applicant to the grade of SSO II
issued by R-1

Annexure A6: Pay fixation memo dated 24.11.2014

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Annexure A7: PPO dated 23.4.2015

Annexure A8: Impugned corrigendum PPO dated 1.6.2017

Annexure A9: Pay fixation memo dated 23.9.2014 issued by R-3

Annexures with reply statement:

Annexure-R1: A copy of HQ DGQA vide their L/No.A/94243/Court
Case/DGQA/Adm-6 dt.28 Aug 2017

Annexure-R2: DO Part II No.122/CGO dt.03 Oct 2017 issued by Controllerate of
Quality Assurance Electronics, Bangalore-560 006.

Annexure-R3: PCDA, Bangalore letter No.Pay Tech/Pay Fix., dated 08/10/2015
