

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO. 170/00395/2017

DATED THIS THE 10TH DAY OF OCTOBER, 2017

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

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

Shri K. Gopalakrishnan
S/o late Y.K. Kallaiyer,
Aged 60 years,
Stenographer Gr.II (Retired)
O/o the Director of Quality Assurance, DGS&D,
D&F Wings, III-Floor, Kendriya Sadan,
17th Main Road, Koramangala 2nd Block,
Bangalore – 560 034.

Residing at Flat No.3, 1st Floor,
Vasistha Dhama,
24/2, Railway Men Colony,
Lottegollahalli, RMV II Stage,
Bangalore – 94.

.....Applicant

(By Advocate M/s Subbarao & Co.)

Vs.

1. Union of India,
to be represented by its Secretary to
Department of Commerce & Industry,
New Delhi – 110 001.
2. The Director General of Supplies & Disposals,
Jeevan Tara Building,
No.5, Parliament Street,
New Delhi – 110 001.
3. The Director of Quality Assurance, DGS&D
D&F Wings, III-Floor, Kendriya Sadan,
17th Main Road, Koramangala 2nd Block,
Bangalore – 560 034.

....Respondents

(By Smt. P.K. Praneshwari, Senior Panel Counsel)

ORDER (ORAL)

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

Heard. The applicant was appointed on 10.01.1986 and was granted the 1st ACP on 09.08.1999. On 10.06.2002, he was promoted as Grade II Stenographer and on 31.05.2005 he was promoted as Grade I Stenographer which he had refused and therefore the refusal will have the effect for one year therefore the new payscale he will not be entitled at that point of time. But then on 01.01.2006, following the 6th Central Pay Commission recommendation and its acceptance by the government, Grade II Stenographer post and Grade I Stenographer post were merged and therefore he became eligible for the payscale of Grade I Stenographer. At that point of time, he also became eligible for the 2nd MACP which he now requests for. In Annexure-I of Annexure-A6 which is the scheme of Modified Assured Career Progression in paragraph 5 to 8.1 the methodology of granting the MACP is delineated by the government which is quoted below:

“5. Promotions earned/upgradations granted under the ACP Scheme in the past to those grades which now carry the same grade pay due to merger of pay scales/upgradations of posts recommended by the Sixth Pay Commission shall be ignored for the purpose of granting upgradations under Modified ACPS.

Illustration-1

The pre-revised hierarchy (in ascending order) in a particular organization was as under:-

Rs. 5000-8000, Rs.5500-9000 & Rs.6500-10500

- (a) *A Government servant who was recruited in the hierarchy in the pre-revised pay scale Rs. 5000-8000 and who did not get a promotion even after 25 years of service prior to 1.1.2006, in his case as on 1.1.2006 he would have got two financial upgradations under ACP to*

the next grades in the hierarchy of his organization, i.e., to the pre-revised scales of Rs. 5500-9000 and Rs. 6500-10500.

- (b) *Another Government servant recruited in the same hierarchy in the pre-revised scale of Rs. 5000-8000 has also completed about 25 years of service, but he got two promotions to the next higher grades of Rs. 5500-9000 & Rs. 6500-10500 during this period.*

In the case of both (a) and (b) above, the promotions/financial upgradations granted under ACP to the pre-revised scales of Rs. 5500-9000 and Rs. 6500-10500 prior to 1.1.2006 will be ignored on account of merger of the pre-revised scales of Rs. 5000- 8000, Rs. 5500-9000 and Rs. 6500-10500 recommended by the Sixth CPC. As per CCS (RP) Rules, both of them will be granted grade pay of Rs. 4200 in the pay band PB-2. After the implementation of MACPS, two financial upgradations will be granted both in the case of (a) and (b) above to the next higher grade pays of Rs. 4600 and Rs. 4800 in the pay band PB-2.

6. *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.*

6.1 *In the case of ACP upgradations granted between 01.01.2006 and 31.08.2008, 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 prerevised 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. In case of option (b), he shall be entitled to draw his arrears of pay only from the date of his option i.e. the date of financial upgradation under ACP.*

6.2 *In cases where financial upgradation had been granted to Government servants in the next higher scale in the hierarchy of their cadre as per the provisions of the ACP Scheme of August, 1999, but whereas as a result of the implementation of Sixth CPC's recommendations, the next higher post in the hierarchy of the cadre has been upgraded by granting a higher grade pay, the pay of such employees in the revised pay structure will be fixed with reference to the higher grade pay granted to the post. **To illustrate, in the case of Jr. Engineer in CPWD, who was granted 1st ACP in his hierarchy to the grade of Asstt. Engineer in the pre-revised scale of Rs.6500-10500 corresponding to the revised grade pay of Rs.4200 in the pay band PB-2, he will now be granted grade pay of Rs.4600 in the pay band PB-2 consequent upon upgradation of the post of Asstt. Enggs. In CPWD by granting them the grade pay of Rs.4600 in PB-2 as a result of Sixth CPC's recommendation. However, from the date of implementation of the MACPS, all the financial upgradations under***

the Scheme should be done strictly in accordance with the hierarchy of grade pays in pay bands as notified vide CCS (Revised Pay) Rules, 2008.

7. *With regard to fixation of his pay on grant of promotion/financial upgradation under MACP Scheme, a Government servant has an option under FR22 (1) (a) (1) to get his pay fixed in the higher post/ grade pay either from the date of his promotion/upgradation or from the date of his next increment viz. 1st July of the year. The pay and the date of increment would be fixed in accordance with clarification no.2 of Department of Expenditure's O.M. No.1/1/2008-1C dated 13.09.2008.*

8. *Promotions earned in the post carrying same grade pay in the promotional hierarchy as per Recruitment Rules shall be counted for the purpose of MACPS.*

8.1 *Consequent upon the implementation of Sixth CPC's recommendations, grade pay of Rs. 5400 is now in two pay bands viz., PB-2 and PB-3. The grade pay of Rs. 5400 in PB-2 and Rs.5400 in PB-3 shall be treated as separate grade pays for the purpose of grant of upgradations under MACP Scheme."*

2. The learned counsel for the respondents Smt Praneshwari submits that paragraph 25 of the said scheme in Annexure-A1 is also significant which is quoted below:

"25. If a regular promotion has been offered but was refused by the employee before becoming entitled to a financial upgradation, no financial upgradation shall be allowed as such an employee has not been stagnated due to lack of opportunities. If, however, financial upgradation has been allowed due to stagnation and the employees subsequently refuse the promotion, it shall not be a ground to withdraw the financial upgradation. He shall, however, not be eligible to be considered for further financial upgradation till he agrees to be considered for promotion again and the second the next financial upgradation shall also be deferred to the extent of period of debarment due to the refusal."

3. But then it has to be understood that this is only a temporary deferment and not a denial and therefore it may not have the effect of denial to the applicant. This is further buttressed by the fact that the learned counsel for the

respondents submit that this particular institution is being closed down on 31.10.2017 by the orders of the government. Therefore the realization and declaration of the rights of the party have to be done before that date.

4. Therefore there will be a declaration that the applicant is eligible for the 2nd MACP as stated above with effect from 01.01.2006. Benefits to be made available from the year 2012 onwards. The consequences will be made available within 2 months next. All further orders contrary to our declaration is hereby set aside. At this point of time, learned counsel for the applicant mentions that applicant had retired from service, therefore, the revised PPO will be issued to him and benefit will be made available within the said time.

5. The OA is allowed to this extent. No order as to costs.

(PRASANNA KUMAR PRADHAN)
MEMBER (A)

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

/ksk/

Annexures referred to by the applicant in OA No. 170/00395/2017

Annexure A1: True copy of the Appointment order of the applicant dated 30.12.1985

Annexure A2: True copy of office order order No.B/EST/3 dated 19.04.2000

Annexure A3: True copy of office order No.B/EST/3 dated 16.03.2001

Annexure A4: True copy of office order No.B/EST/3 dated 10.06.2002

Annexure A5: True copy of office memo No.E2(8)/2005 dated 31.05.2005

Annexure A6: True copy of OM No.35034/3/2008-Estt.(D) dated 19.05.2009

Annexure A7: True copy of representation of the applicant dated 10.03.2016

Annexure A8: True copy of letter No: DCA/SY/CHN/MISC/2016/217 dated 08/14.07.2016 from the office of DCOA, Department of Commerce (Supply Division) Chennai

Annexure A9: True copy of representation of the applicant dated 21.12.2016

Annexure A10: True copy of office order No.E(P)-169(1) dated 23.03.2017.

Annexures with reply statement:

Nil.
