

OA.No.170/00518/2017/CAT/Bangalore Bench
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00518/2017

DATED THIS THE 31st DAY OF OCTOBER, 2018

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

HON'BLE SHRI C.V.SANKAR, MEMBER (A)

Maitreyee K Jagirdar
 Announcer (Retd.) aged about 64 years
 C/o.Krishna Jagirdar Hullur
 # 10-921, Upper Lane
 Bramhapur
 Gulbarga-585103.

....Applicant

(By Advocate Sri N.Obalappa)

Vs.

1. The Union of India
 represented by its Secretary
 Ministry of Information and Broadcasting
 'A' Wing, Shastry Bhavan
 New Delhi-110 001.
2. The Chief Executive Officer
 Prasar Bharati, I "C" Tower
 Doordarshan Bhavan
 Copernicus Marg
 Mandi House
 New Delhi – 110 001.
3. The Director General
 All India Radio
 Akashvani Bhavan
 Parliament Street
 New Delhi – 110 001.
4. The Station Director
 All India Radio
 Commercial Broadcasting Service
 Raj Bhavan Road
 Bangalore-560001.

...Respondents

(By Advocate Sri Vishnu Bhat)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

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

- a. *To quash Annexure-A4 dtd.10.10.2011 (to the limited extent of Sl.No.4 Smt.Maitreyee K.Jagirdar Announcer(Gr.II) (Impugned order) which is not admissible to the applicant.*
 - b. *Call for records leading to not granting the 2nd ACP in the pay scale of Rs.10000-15200 with Grade Pay of rs.6600/- w.e.f. 6.3.2006 vide Annexure A-6 dtd.4.9.2013 and grant of 3rd MACP after 30 years of service with Grade Pay of Rs.7600/- vide Annexure-A2 dtd.19.05.2009 and to grant all other consequential benefits of pay and allowances & arrears payments, retirement benefits and revision of pension admissible to the applicant.*
 - c. *To direct the respondents to grant the 2nd ACP with Grade Pay of Rs.6600/- w.e.f. 6.3.2006 vide Annexure-A6, dtd.4.9.2013 & 3rd MACP with Grade Pay of Rs.7600/- w.e.f. 6.3.2013 vide Annexure-A2 dtd.19.05.2009 and to pay all the consequential benefits of the arrears of pay & allowances, retirement benefits, revision of pension etc. as per the draft pay fixation statement supported by the applicant at Annexure-A9 after due verification by the respondents.*
2. According to the applicant, she was engaged as Announcer on contract basis w.e.f. 9.1.1975 at All India Radio, Gulbarga and subsequently declared as Government servant w.e.f. 6.3.1982. Thereafter she got 1st ACP w.e.f. 9.8.1999 and 2nd MACP with Grade Pay(GP) of Rs.4800 and 3rd MACP with Grade Pay of Rs.5400 w.e.f. 1.9.2008 and retired from service w.e.f. 30.04.2013. She submits that the DOPT vide OM dtd.9.8.1999 issued the ACP scheme to the central Govt. staff effective from 9.8.1999(Annexure-A1). Thereafter vide OM dtd.19.05.2009(Annexure-A2), the DOPT had introduced the MACP Scheme effective from 1.9.2008. The Station Director, All India Radio, Bangalore being the Zonal Station of All India Radio in Karnataka conveyed the approval of the 3rd respondent for grant of 2nd & 3rd MACP to the applicant vide communication dtd.30.09.2011(Annexure-A3) based on which 4th respondent vide order dtd.10.10.2011(Annexure-A4) granted 2nd and 3rd MACP to the applicant.

3. It is submitted that as per the 3rd respondent's communication dtd.17.01.2013(Annexure-A5), the applicant was granted the GP of Rs.4600 w.e.f.1.1.2006 as the applicant has completed 12 years in the pre-revised pay scale of Rs.5500-9000 and got the 1st ACP w.e.f. 9.8.1999. The 3rd respondent vide communication dtd.4.9.2013(Annexure-A6) clarified that Announcers who are recruited in the pre-revised pay scale of Rs.5000-8000 and completed 24 years of regular service on a date between 1.1.2006 and 31.8.2008, will be allowed 2nd financial upgradation in GP of Rs.6600 subject to fulfilment of promotion norms(after framing of Recruitment Rules(RRs) post- merger). The applicant submitted a representation dtd.26.10.2015(Annexure-A7) requesting for ACP as she has completed 24 years of Govt. service w.e.f. 6.3.1982 but she did not receive any reply on the same. The Ministry of Personnel and PG & Pensions vide OM dtd.12.5.2017(Annexure-A8) based on the 7th CPC orders and DOPT OM dtd.4.8.2016 informed the subordinate offices to revise the pension from the respective pay scales drawn by them and notionally arrived as on 1.1.2016. And thus after granting 2nd ACP with GP Rs.6600 w.e.f. 6.3.2006 and 3rd MACP with GP Rs.7600 w.e.f. 6.3.2013, the applicant's pay will go up and accordingly her pension in the 7th CPC will also be increased. She produces the standard pay scales from 4th to 7th CPC and a draft pay fixation statement for the period from 6.3.1982 to 30.4.2013(Annexure-A9) and prays for the relief as sought by her.
4. The respondents have filed reply statement wherein they submit that the applicant joined as Staff Artist/Announcer on contractual terms w.e.f. 09.01.1975 in the pay scale of Rs.170-10-260-15-335 (revised pay scale of Rs.5000-8000 as per 5th CPC and revised to GP Rs.4200 by 6th CPC) and has been declared as deemed Govt. servant w.e.f. 06.03.1982. However, for the

purpose of ACP, her service is to be reckoned from the date of her initial appointment i.e. 09.01.1975 as per the clarification issued by DOPT(Annexure-I). The applicant has failed to bring out the fact that she was granted promotion to Announcer (Senior Grade) w.e.f. 25.6.1990 in the pay scale of Rs.5500-9000(as per 5th CPC and revised to GP Rs.4200 by 6th CPC). She was granted 2nd financial upgradation under ACP Scheme w.e.f. 09.08.1999 in the Scale of Rs.6500-10500 (revised to GP Rs.4600 as per 6th CPC). After introduction of MACP Scheme, her pay was revised and 1st and 2nd financial upgradations were revised in the GP Rs.4600 and Rs.4800 respectively w.e.f. 01.09.2008 by ignoring her first promotion from Grade-III to Grade-II as per directions of DOPT. The applicant was also granted 3rd MACP with GP Rs.5400 w.e.f. 1.9.2008 vide order dtd.30.09.2011 i.e. on completion of 30 years of service. The applicant has also failed to bring out the fact that she was also granted promotion as Announcer Gr-II in GP Rs.4600 w.e.f. 28.4.2009. So far as the representation dtd.26.10.2015 is concerned, she is not entitled for any further upgradations as she has already been given three financial upgradations. Accordingly, she has been intimated vide communication dtd.2.8.2018.

5. Respondents further submitted that as per clarification dtd.4.9.2013 which clearly clarifies for the question “what would be 2nd financial upgradation for employee recruited in the scale Rs.5000-8000, who has completed 24 years of regular service on 12.4.2007 (between 1.1.2006 and 31.8.2008)” that since the pre-revised pay scale Rs.6500-10500 & Rs.7450-11500 have been merged and placed in PB-2 with GP Rs.4600, 2nd financial upgradation would be allowed in the GP 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 dtd.9.8.1999, in terms of clarification given on point of doubt

No.1 of ACPS dtd.10.02.2000, the applicant is not entitled to get upgradation in the GP Rs.6600. The order is applicable only after the framing of RRs post merger. However, in Announcer cadre there has been no merger till date. Although the proposal to merge the grades were initiated, the same was not approved by the competent authority. The cadre remains as 4-grades cadre as Announcer Gr-IV with scale of Rs.5000-8000(revised to GP Rs.4200), Announcer Gr-III with scale of Rs.5500-9000(revised to GP Rs.4200), Announcer Gr-II with scale of Rs.6500-10500(revised to GP Rs.4600) and Announcer Gr-I with scale of Rs.10000-15200(revised to GP Rs.6600). Therefore, since the applicant has already been granted 2nd financial upgradation as per the available hierarchy of Announcer cadre in the scale of Rs.6500-10500 (revised to GP of Rs.4600 as per 6th CPC) as per ACP Scheme and 3rd financial upgradation as per MACP Scheme, she is not entitled for any further upgradation under ACP/MACP Scheme.

6. The applicant has filed rejoinder wherein she submits that she was declared as Civil Govt. Servant as Announcer Grade-III w.e.f. 6.3.1982 and the contract service from 9.1.1975 to 5.3.1982 was automatically ceased w.e.f. 6.3.1982 as stated in the order dtd.19.07.1993(Annexure-A10). Since she did not get any promotion for more than 12 years from 6.3.1982 as a civil Govt. servant, as per ACP orders, the 3rd respondent granted promotion to the post of Announcer Gr.II w.e.f. 26.5.1990 in pre-revised pay scale of Rs.6500-10500 which is adjusted against the 1st ACP vide order dtd.17.1.2013(Annexure-A5). As the applicant did not get any further promotion for 24 years of service from 6.3.1982, she is entitled for 2nd ACP in the next Announcer Gr.I i.e. promotional pay scale of Rs.10000-15200 with GP of Rs.6600 as clarified by 3rd respondent vide clarification dtd.4.9.2013(Annexure-A6). Since the applicant retired from service w.e.f. 30.4.2013 before completing 30 years of

service from 6.3.1982, she is not entitled for MACP scheme which is admissible from 1.9.2008 and as per ACP OM dtd.9.8.1999 the contract service from 9.1.1975 to 5.3.1982 will not be counted for ACP benefits.

7. The applicant further submits that in a similar case in OA.No.559/2011 filed before CAT, Principal Bench in order dtd.8.11.2012(Annexure-A11) at para 8, the DOPT clarified that the contract service will not be counted for promotion and accordingly the DG, AIR, N.Delhi, 3rd respondent has after counting only the Govt. service granted the 1st and 2nd ACP in that case. It is further submitted that Ministry of Finance vide order dtd.13.11.2009(Annexure-A12) had merged the pay scales of Rs.5000-8000, Rs.5500-9000 & Rs.6500-10500 and upgraded to Rs.7450-11500 and hence the post merger issue is also settled. With regard to the query that what would be 2nd financial upgradation for employee recruited in the scale Rs.5000-8000, who has completed 24 years of regular service on 12.4.2007 (between 1.1.2006 and 31.8.2008), the respondents have rightly considered in Annexure-I of ACP OM dtd.9.8.1999 that since the pre-revised pay scale Rs.6500-10500 & Rs.7450-11500 have been merged and placed in PB-2 with GP Rs.4600, 2nd financial upgradation would be allowed in the GP of Rs.6600. Accordingly, the applicant is entitled to be granted 2nd ACP w.e.f. 6.3.2006 in the pay scale of Rs.10000-15200 with GP Rs.6600 and all the consequential service benefits.
8. We have heard the Learned Counsel for all the parties. The Learned Counsels for the applicant and the respondents have made submissions reiterating the factual position and their points as highlighted by them in the OA, reply statement and rejoinder.
9. We have gone through the main contentions of the applicant and replies of the respondents in detail. We find that the applicant was given a contractual

appointment initially in the year 1975 and was deemed as Civil Government Servant w.e.f. 6.3.1982. The order relating to this also specifically mentioned that the contract is ceased to exist as admitted by both the parties. We also find that the applicant has not made any mention about the first promotion as Announcer Gr-III given to her on 25.6.1990 in her original application but later admitted the same in her rejoinder to the reply of the respondents. Considering this, the financial upgradation under ACP was given on 09.08.1999. Further the applicant was given promotion as Announcer Gr-II w.e.f.28.4.2009. After the introduction of MACP Scheme, she has been given the 1st and 2nd financial upgradations w.e.f. 1.1.2006 and 1.9.2008 with Grade Pay of Rs.4600 and Rs.4800 respectively. The applicant was granted the 3rd MACP with the Grade Pay of Rs.5400 w.e.f.01.09.2008 on completion of 30 years of service. The applicant has also sought to make a point that she has already fulfilled the conditions relating to entitlement of further grant of 2nd ACP with Grade Pay of Rs.6600 on the basis of the respondents' letter dtd.4.9.2013(Annexure-A6) that such entitlement would be allowed subject to fulfilment of promotional norms after framing of RRs post merger as prescribed therein. The applicant would claim that the Ministry of Finance OM dtd.13.11.2009(Annexure-A12) relating to merger of posts in various pay scales would suffice so far as the condition relating to the merger of posts as mandated by the respondents' letter dtd.4.9.2013 is concerned. The respondents have maintained that the various grades of Announcers are still continuing and there has been no merger as such and no new RRs have been framed for these posts. This is the position as it appears today and therefore, the contention of the applicant that the merger issue has been settled cannot be accepted.

10. The applicant would also claim that she is similarly placed at All India Radio

with that of Sri B.V.Mohan whose petition was allowed by this Tribunal in OA.No.472/2017 vide order dtd.17.09.2018. On perusal of the details of the two cases, it is clear that the same cannot be accepted since the issue in the case of Sri B.V.Mohan was relating to counting the period when he was actually employed on contract basis and this Tribunal has also remitted the matter back to the respondents to seek the option from the applicant to adjust the pay and pension in accordance with either the appointment based on 1974 or 1982 when he was deemed to be the Govt. servant. In the case of Sri Mohan, there were no promotions in between and as such the case of the applicant cannot be considered to be similar to that of Sri B.V.Mohan. As has been made out by the respondents, the applicant is clearly not entitled for any further upgradations.

11. Considering the above, the OA deserves to be dismissed and therefore, it is ordered accordingly. No costs.

(C.V.SANKAR)
MEMBER (A)

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

/ps/

Annexures referred to by the applicant in OA.No.170/00518/2017

Annexure A1: The DOPT OM No.35034/1/197 Estt(D) dtd:09.08.1999 ACP Scheme

Annexure A2: The DOPT OM 35034/3/2008 Estt(D) dtd: 19.05.2009 the applicant is entitled for ACP benefits

Annexure A3: The approval of granting the 2nd & 3rd MACP to the applicant vide order No.19(6)201111-S dtd.30.09.2011

Annexure A4: The 4th respondent vide order No.1(8) 2011 dtd.10.10.2011 granted 2nd & 3rd MACP to the applicant

Annexure A5: The 3rd respondent vide communication No.6/1/2013-S-VIII/23 dtd.17.01.2013 issued clarification towards the 1st ACP for

OA.No.170/00518/2017/CAT/Bangalore Bench

Announcers

- Annexure A6: The 3rd respondent vide communication No.6/1/2013/S-VIII/402 dt.4.9.13 clarified the entitlement of 2nd ACP to Announcer Grade-IV
- Annexure A7: The applicant submitted a representation dtd.26.10.2015 to consider the 2nd ACP admissible to her
- Annexure A8: The DOPT OM.No.38/37/2016-P&PW(A) dtd.12.05.2017 towards revision of pension from 01.01.1986 to 1.1.2016
- Annexure A9: The applicant produces a draft pay fixation statement for the period from 06.03.1992 to 30.04.2013

Annexures with reply statement:

Annexure-I: Clarification of DOPT

Annexures with rejoinder:

- Annexure-10: Copy of the order dtd.19.07.1993
- Annexure-11: Copy of the order dtd.08.11.2012
- Annexure-12: Copy of the order dtd.13.11.2009
