

OA.No.170/00586/2017/CAT/Bangalore Bench
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00586/2017

DATED THIS THE 18th DAY OF SEPTEMBER, 2018

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

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

Smt.B.Rajeshwari
 W/o Sri.C.M.Mohan, aged 52 years
 R/a No.99, SAI quarters
 Bangalore University Campus
 Bangalore-560 056.
 Working as Mess Manager
 Sport Authority of India
 NSSC, Bangalore.

....Applicant

(By Advocate Sri N.Amaresh)

Vs.

1. Union of India represented
 by the Secretary
 Ministry of Youth Affairs and Sports
 New Delhi-110 001.
2. The Director General of
 Sports Authority of India
 J.N.Stadium Complex
 (East Gate), Lodhi Road
 New Delhi: 110 003.
3. The Regional Director
 Sports Authority of India
 Netaji Subhash Southern Centre
 Mysore Road
 Bengaluru: 560 056.
4. Deputy Director (Personal)
 Sports Authority of India
 Netaji Subhash Southern Centre
 Mysore Road
 Bengaluru: 560 056.Respondents

(By Advocate Sri M.Vasudeva Rao)

ORDER

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

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

- a. *Call for the records pertaining SAI/Pers/1851/2011/(Bengalore & Trivendrum)/145 dated 27.01.2017 at Annexure-A10, SAI/NSSC/PERS/CF-497/2015 dt.19.05.2017(Annexure-A11) SAI/Pers/1851/2011/(Bengalore&Trivendrum)/1015 dt.08.09.2017(Annexure-13) and on perusal quash and set aside the same as arbitrary and discriminatory in the interest of justice and equity.*
 - b. *Consequently direct the respondents to consider the case of the applicant for grant of Grade Pay of Rs.4800/- w.e.f. 14.10.2008 with all consequential benefits such as arrears of pay etc., in the interest of justice.*
2. According to the applicant, she was appointed as Mess Manager on 14.10.1988 in the pay scale of Rs.1200-2040. The said pay scale was subsequently upgraded to Rs.1400-2300 w.e.f. 30.09.1989 vide order dtd.11.03.1991(Annexure-A1). The said scale was again upgraded to Rs.4500-7000 w.e.f. 01.01.1996 (5th CPC). On completion of 12 years of service she was granted with 1st ACP vide order dtd.22.01.2001(Annexure-A2) in the pay scale of Rs.5500-9000 which was the pay scale in the next hierarchical post i.e. Catering Manager. It is submitted that she made several representations to promote her to the post of Catering Manager which fell vacant in April 2010 following the retirement of one Mr.Antony Fernandez who was promoted by a duly constituted DPC to the post of Catering Manager. He was also placed in the pay scale of Rs.4500-7000 w.e.f. 01.01.1996(5th CPC) as Mess Manager, corresponding to 4th CPC i.e. Rs.1400-2300 as per recruitment rules. She also represented that after introduction of MACP she is entitled for Grade Pay of Rs.4600 and Rs.4800 by ignoring her 1st ACP granted prior to 01.01.2006. The request of the applicant was forwarded by 4th respondent on 17.04.2015(Annexure-A4) to SAI, N.Delhi. In reply to the same, 2nd respondent issued a letter dtd.15.10.2015(Annexure-A5) stating

OA.No.170/00586/2017/CAT/Bangalore Bench that the applicant was incorrectly granted 1st ACP in the pay scale of Rs.5500-9000 instead of pay scale of Rs.5000-8000 and excess payment to be recovered. In reply to the said letter, the 4th respondent's office vide letter dtd.13.11.2015(Annexure-A6) submitted that the 1st ACP was granted to the applicant w.e.f. 01.10.2000 in the pre-revised scale of Rs.5500-9000 which is the next higher grade in the hierarchy in category of posts and hence question of recovery does not arise in case of the applicant and she is now entitled for Grade Pay of Rs.4600 w.e.f. 01.09.2008 and Rs.4800 w.e.f. 14.10.2008.

3. The applicant further submits that the 2nd respondent's office vide letter dtd.11.03.2016(Annexure-A9) claims that as per the existing recruitment rules, the post of Supervisor in the scale of Rs.1640-2900(pre-revised) is next higher grade and there is no post of Mess Manager and Catering Manager. Applicant submitted that absence of nomenclature of Catering Manager makes no difference as next higher scale to Rs.1400-2300 available in the department is Rs.1640-2900. Accordingly, she was rightly put in the pay scale of Rs.5500-9000. She submits that the proper recruitment rules in SAI came into existence from 01.09.1993. The 2nd respondent's office again issued a letter dtd.27.1.2017(Annexure-A10) reiterating their stand to recover the excess amount paid to the applicant followed by a show cause notice dtd.19.05.2017(Annexure-A11). The applicant submitted a detailed reply on 19.06.2017(Annexure-A12) and submits that she was rightly granted 1st ACP in the pay scale of Rs.5500-9000 and now she is entitled for GP of Rs.4600 and Rs.4800. The respondents vide order dtd.08.09.2017(Annexure-A13) rejected the case of the applicant. Aggrieved by the same, applicant has filed the present OA seeking the relief as prayed by her.
4. The applicant further submits that as per the letter dtd.11.03.2016 issued by the respondents, there is a sanctioned post of Supervisor in the pre-revised

pay scale of Rs.1640-2900 which was revised to Rs.5500-9000 w.e.f. 1.1.1996. It is a settled position that the financial upgradation under the ACP scheme shall be given to the next higher post in accordance with the existing hierarchy in a cadre/category of posts without creating new posts for the purpose. In SAI, Bangalore the post of Supervisor was sanctioned in the next higher grade/scale of Rs.5500-9000. Hence, the applicant was eligible for financial upgradation under the ACP in the next higher grade/scale of Rs.5500-9000 from her existing pay scale of Rs.4500-7000. And hence the impugned order asking for recovery of excess amount should be set aside.

5. The respondents have filed their reply statement wherein they submit that there is no post of Mess Manager and Catering Manager as per the recruitment rules of SAI. However, the applicant was appointed on different post but in the catering cadre itself. And hence in the absence of defined hierarchical grade from Mess Manager to Catering Manager, the applicant is not eligible for the financial upgradation directly to the pay scale of Rs.5500-9000 instead of Rs.5000-8000. The applicant was appointed as Mess Manager in 1988 initially in the pay scale of Rs.1200-2040 which was revised to Rs.4500-7000. 1st financial upgradation under ACP was admissible on 14.10.2000 in the pay scale of Rs.5000-8000 instead of Rs.5500-9000 as per OM No.35034/1/97-Estt(D) dtd.09.08.1999 in case of isolated posts. In the absence of defined hierarchical grades, financial upgradation shall be given in the immediate next higher pay scale/grade pay as indicated in Annexure-II of the OM. Accordingly, SAI, HO has issued appropriate directions to RD(NSSC), Bangalore vide its letter dtd.15.10.2015 regarding grant of ACP scheme to isolated posts. Accordingly, the applicant is entitled for 2nd MACP w.e.f. 14.10.2008 in GP of Rs.4600 and 3rd MACP of Rs.4800 w.e.f. 14.10.2018. It is further submitted that SIU of M/o Finance, Govt. of India

OA.No.170/00586/2017/CAT/Bangalore Bench recommended one post of Catering Manager at SAI-NSSC-Bangalore, but the same is yet to be approved by Govt. of India. Accordingly, the OA being devoid of merit has to be dismissed.

6. Applicant has filed rejoinder wherein she submits that when she was appointed, the recruitment rules of SAI were yet to be framed. Since she was holding the pay scale of Rs.1400-2300, she was given 1st ACP in the next higher post available in Rs.1640-2900. After the recruitment rules came into force, the respondents forgot to re-designate or rename certain posts. The applicant cannot be denied her rightful benefits for the mistake on the part of the respondents.
7. It is further submitted that the respondents for the first time contended that the applicant's post of Mess Manager is an isolated post and therefore her case falls under para 7 of the ACP scheme 09.08.1999. But at the same time, it is to be seen that the subsequent clarifications issued by the DOPT dt.10.2.2000 and 18.07.2001 provides that for isolated posts, the scales of pay for ACPs shall be the same as those applicable for similar posts in the same Ministry/Department/Cadre(Clarification 10). Further clarification No.32 also provides for similar exercise to be done by the department in case the hierarchy in a cadre is limited to only two grades. Therefore, the respondents failed to re-designate the post of the applicant after framing of the recruitment rules and hence she is entitled for the pay scale of the analogous or similar post i.e. Mess Supervisor (Rs.1640-2900) as the duties and responsibilities of a Mess Manager, Catering Manager and Supervisor are similar and also entitled for the consequential pay fixations i.e. grant of Grade Pay of Rs.4600 and 4800 as per the OM dtd.19.05.2009.
8. Respondents have filed additional reply reiterating the submission already

made in the reply statement.

9. We have heard the Learned Counsel for 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 and the reply statements.
10. We have gone through the main contentions of the applicant and replies of the respondents in detail. From the DoPT OM dtd.09.08.1999 relating to Assured Career Progression scheme for the Central Government civilian employees, it is clear that incumbents of isolated pay scales will be eligible for the proposed two financial upgradations only to the next higher pay scales. Financial upgradation on a dynamic basis (i.e. without having to create posts in the relevant scales of pay) has been recommended by the 5th Central Pay Commission only for the incumbents of isolated posts which have no avenues of promotion at all. Posts which are part of well-defined cadre shall not qualify for the ACP scheme on dynamic basis. In the present case, the applicant was in the pay scale of Rs.1400-2300 and as per the 5th Central Pay Commission this pay scale was revised to Rs.4500-7000. Therefore, the 1st financial upgradation under ACP should have been granted to the applicant only in the pay scale of Rs.5000-8000 as per DoPT OM dtd.09.08.1999. The contention of the respondents that the financial upgradation shall be given only in the immediate higher scale is acceptable. If the contention of the applicant that she was rightly given in the next higher scale initially namely Rs.5500-9000 is to be accepted, it would mean that she is promoted to the next hierarchical higher pay scale which is not the case. Since the Assured Career Progression scheme itself is drafted for the purpose of preventing stagnation and giving a financial upgradation, it is obvious that it should be for only in the next higher

OA.No.170/00586/2017/CAT/Bangalore Bench scale and not the higher scale in the promoted post. As such, from the pay scale of Rs.4500-7000, she should have been rightly placed in the pay scale of Rs.5000-8000 on 14.10.2000 instead of Rs.5500-9000. The issue of the other Mess Manager having been given will not help her since in that case, Mr.Antony Fernandez was promoted to the higher post by a duly constituted DPC which was also before DoPT OM. As such, we fail to appreciate the contention made in the OA and therefore, the OA is dismissed. No costs.

(C.V.SANKAR)
MEMBER (A)

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

/ps/

Annexures referred to by the applicant in OA.No.170/00586/2017

- Annexure A1: Copy of the Office Order dtd.11.03.1991
- Annexure A2: Copy of the Office Order dtd.22.01.2001
- Annexure A3: Copy of the Office Order dtd.16.08.2001
- Annexure A4: Copy of the letter dtd.17.04.2015
- Annexure A5: Copy of the letter dtd.15.10.2015
- Annexure A6: Copy of the letter dtd.13.11.2015
- Annexure A7: Copy of the letter dtd.24.11.1998

Annexure A8: Copy of the Minutes dtd.18.07.2001

Annexure A9: Copy of the letter dtd.11.03.2016

Annexure A10: Copy of the impugned order dtd.27.01.2017

Annexure A11: Copy of the impugned order dtd.19.05.2017

Annexure A12: Copy of the representation dtd.19.06.2017

Annexure A13: Copy of the impugned order dtd.08.09.2017

Annexures with reply statement:

Annexure-R1: Copy of OM No.35034/1/97-Estt(D) dtd.09.08.1999

Annexures with rejoinder:

Annexure-A14: Copy of OM No.35034/3/2008-Estt.(D) dtd.19.05.2009

Annexures with additional reply:

-NIL-
