

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00713/2015

DATED THIS THE 20th DAY OF JULY, 2017

HON'BLE JUSTICE SHRI HARUN UL RASHID, MEMBER (J)

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

A.Francis
S/o. Anthonappa
Aged 57 years, working as
Lascar in Security Section
Air Force Technical College
403, Air Force Station
Jalahalli West
Bengaluru-560 015.
Residing at No.27
Mariyana Palya
Mother Theresa Road
2nd Cross, HA.Farm Post
Bengaluru-560 024.

.....Applicant

(By Advocate Sri A.R.Holla)

Vs.

1. Union of India
By Secretary
Ministry of Defence
104, South Block
New Delhi-110 001.
2. The Air Officer Commandant
Air Force Technical College
403, Air Force Station
Jalahalli West
Bengaluru-560 015.
3. Officer in Charge
Civil Administration
Air Force Technical College
403, Air Force Station
Jalahalli West
Bengaluru-560 015.

....Respondents

(By Advocate Sri. S.Prakash Shetty)

ORDER

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

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

- i. *To quash the (a) Order No.AFTC/1327/689/PC dated 21.12.2011, issued by the respondent No.3, Annexure-A2 and (b) Order No.1327/689/PC dated 17.6.2014, issued by the respondent No.3, Annexure-A5.*
- ii. *Direct the respondents to fix the pay of the applicant granting him the benefits of 1st and 2nd financial upgradations under the ACP scheme with effect from 09.08.1999 and 01.08.2007 respectively and 3rd MACP benefit from 30.04.2013 and extend consequential benefits accordingly.*

2. The applicant joined Military Farm, Bangalore in April, 1983 and presently he is working as Lascar, a Group-D post in Air Force Technical College, Bengaluru. He submits that subsequent to the introduction of ACP Scheme from 9.8.1999 following 5th Central Pay Commission, he was granted the 1st financial upgradation from 9.8.1999. Since the ACP scheme provided for 2nd financial upgradation after completion of 24 years of regular service, he was granted 2nd financial upgradation from 1.8.2007 as no promotion was given to him. After the implementation of the 6th Central Pay Commission from 1.1.2006 and introduction of the MACP scheme from 1.9.2008, the financial upgradation granted under ACP scheme between 1.1.2006 to 31.8.2008 was cancelled and subsequently he was granted 1st/2nd/3rd MACP w.e.f. 1.9.2008(Annexure-A2). According to the applicant, he was never given the benefits under the ACP scheme nor has he exercised any option to MACP scheme. Similarly situated employees who joined along with him viz. Sri Veeranna and Sri Sayed Taufel working as Gardeners were getting Rs.9630/- as basic pay whereas the applicant was getting Rs.9490/- as basic pay. Thereafter he made representation to step up his pay on par with his colleagues(Annexure-A3). In response to which he was informed that at the time of 1st ACP, the applicant had exercised his option for fixation of pay with effect from the date of ACP whereas, Sri

Sayed Taufel exercised his option from the date of his next increment i.e. 1.4.2000. Therefore, his case does not come under the provisions of anomaly of pay(Annexure-A4). The respondent No.3 issued an order saying that as per the ACP scheme, financial upgradation is purely personal to the employees and no additional financial upgradation will be given to the senior employee on the ground that the junior employee in the grade is getting higher pay under ACP scheme.

3. According to the applicant, Annexure-A2 and A5 are arbitrary. The cancellation of the financial upgradation granted under ACP scheme w.e.f. 1.8.2007 is not in accordance with law. The applicant is entitled to 3rd financial upgradation under MACP scheme w.e.f. 30.4.2013. Therefore, the respondents should be directed to extend the benefits to the applicant under ACP and MACP scheme accordingly. The view taken by the respondents that the anomaly between his pay and the pay of Sri Sayed Taufel due to exercise of option from a different date is not correct and according to him it is due to cancellation of benefits under ACP scheme in his case only but not in other cases. Therefore, he prayed for granting the relief as sought for.
4. The respondents have filed their reply statement wherein they submit that the ACP scheme was introduced w.e.f. 9.8.1999 for granting two financial upgradations on completion of 12 and 24 years of regular service to Group B, C & D employees, if no regular promotion was availed by the employee during this period. The erstwhile Group D employees in the pre-revised pay scale of Rs.2550-3200 was normally granted 1st and 2nd financial upgradation benefit under the ACP scheme to the pre-revised pay scale of Rs.2610-4000 and Rs.2750-4400. In case of matriculates, they are given pre-revised scale of Rs.3050-4590. On introduction of MACP scheme with

effect from 1.9.2008, three financial upgradations were available on completion of 10,20 and 30 years of service. Further consequent upon the implementation of 6th CPC, the four pre-revised Group D pay scales viz Rs.2550-3200, Rs.2610-4000, Rs.2650-4000 & 2750-4400 was upgraded and replaced by PB-1 with grade pay Rs.1800/-. The Govt. servants in these four pre-revised Group-D scales was thus granted the revised pay structure of PB-1 with grade pay of Rs.1800/-. Further MACP scheme stated that promotions earned or upgradation granted under ACP scheme, in the past to the four pay scales mentioned above, which now carry the grade pay of Rs.1800/- shall be ignored for the purpose of MACP scheme.

5. According to the respondents, the applicant was granted 1st financial upgradation in the ACP scheme w.e.f. 9.8.1999 in the pay scale of Rs.2650-4000 and as per option exercised by him, his pay was fixed at Rs.3235/-. The subsequent annual increment was being granted w.e.f. 01st August of every year. On completion of 24 years of regular service, the applicant was granted 2nd financial upgradation under ACP scheme in the pay scale of Rs.3050-4590 w.e.f. 30.4.2007 and was fixed at Rs.3950/-. On implementation of 6th CPC and introduction of MACP Scheme, the applicant had been granted two financial upgradation i.e. 1st and 2nd MACP scheme as the upgradation was granted under ACP scheme in the pay scales which carry the grade pay of Rs.1800 had to be ignored in terms of Para 5 of Annexure-1 of MACP scheme.

6. The respondents further submitted that Shri Veeranna and Shri Syed Tufel, both MTS referred to by the applicant were also appointed on 30.4.1984. They were given 1st financial upgradation on completion of 12 years of regular service on 1.4.2000 in the pay scale of Rs.2610-4000. Their pay was initially fixed at Rs.3105/- from 9th August, 1999 to 31 Mar 2000 and from 01 Apr 2000 at the rate of Rs.3300/-. Their subsequent

annual increments were granted on 01st Apr of every year. In terms of the CCS(Revised Pay) Rules, a uniform date of annual increment was introduced. Therefore, the first increment after fixation of pay on 1.1.2006 in the revised pay structure was granted on 1.7.2006 for those employees for whom the date of next increment was between 1st July 2006 to 1st Jan 2007. As per Govt. policy letter dated 19 Mar 2012, which states that 'those Central Government Employees who were due to get their annual increment between Feb to Jun during 2006 may be granted one increment on 1.1.2006 in the pre-revised pay scale as a onetime measure and thereafter will get the next increment in the revised pay structure on 1.7.2006 as per Rule 10 of CCS(RP) Rules, 2008.

7. They further mentioned that while the applicant was drawing the annual increment during the month of Aug every year, Sri Veeranna and Sri Syed Tufel were drawing the annual increment during the month of Apr every year. Therefore, on grant of one additional increment in the pre-revised scale as on 1.1.2006, they started drawing more pay than the applicant. The difference in pay between the employees has arisen since one employee had exercised option to have his pay fixed on the date of financial upgradation and the other had exercised option to have his pay fixed from the date of next increment. This under the provisions of FR 22 it does not constitute an anomaly. Therefore, they submit that there is no merit in the contention made by the applicant.
8. When the matter was taken up for consideration earlier, the Tribunal vide order dated 12.2.2016 had held that the applicant is entitled to the benefits of 1st ACP and 2nd ACP and after that he became eligible for 3rd MACP. The benefits for the applicant shall be recalculated accordingly. The matter was then agitated by the respondents before the Hon'ble High Court of

Karnataka in WP.No.38933/2016(S-CAT) and the Hon'ble High Court vide order dated 6.2.2017 observed that the contention of the respondents that the respective benefits already been granted have not been considered by the Tribunal and hence remanded the matter back for reconsideration on merits. Therefore, the matter was taken up afresh for further hearing. The respondents have also filed additional reply statement saying that the applicant was given 1st ACP on 9.8.1999 and the 2nd ACP on 1.7.2007. Since the applicant was drawing grade pay Rs.1900 as on 1.9.2008, he was allowed 2nd MACP with grade pay of Rs.2000/-. Thereafter in July, 2013, he was granted 3rd MACP with grade pay of Rs.2400/-. There is a mistake in the order of 21.12.2011 saying that the financial upgradation granted under ACP scheme between 1.1.2006 to 31.8.2008 was cancelled. According to the respondents, the applicant was given 2nd ACP and 2nd MACP by mistake. In fact the applicant is not entitled to the 2nd MACP w.e.f. 1.9.2008 and they may be permitted to withdraw the same. They also mentioned that as on 1.1.2016, the applicant and Sri Syed Tuffel were getting same pay of Rs.35,300/-. On 1.7.2016, both were getting pay scale of Rs.36,400/-. They have also given comparative statement of pay in respect of the applicant and Sri Syed Tuffel along with their additional reply.

9. Heard the Learned Counsel for the parties. The Learned Counsel for the applicant reiterated the submission made in the OA and referred to the order at Annexure-A2 saying that the financial upgradation granted under ACP Scheme between 01st Jan 2006 to 31st Aug 2008 is cancelled. He submits that there is no reason as to how the applicant is not entitled to the ACP benefits already granted to him. He also pointed out the pay difference between Sri Veeranna, Sri Syed Tuffel vis-à-vis the applicant.

10. The Learned Counsel for the respondents, while explaining the details provided in the reply statement and additional reply submitted that there was no withdrawal of financial benefits given to the applicant. Taking into consideration the pay scales availed by him, if only 2nd ACP is retained and thereafter the 3rd MACP will be granted, it will only adversely impact the salary of the applicant. The financial upgradations have been allowed as per the MACP Scheme only. Regarding the pay anomaly between the applicant and other persons mentioned by the applicant, he submits that the same is on account of difference in the date of increment. He further submits that as on 1.1.2016, he is getting the same salary. Therefore, there is no merit in the OA.

11. We have carefully considered the facts of the case and submissions made by either side. It is evident from the records that the applicant who has joined as Group-D Lascar did not get any regular promotion. As such he was granted 1st ACP when the ACP Scheme came into existence w.e.f. 9.8.1999 and 2nd ACP from 1.8.2007. Subsequent to the 6th Pay Commission recommendation, several pay scales were merged. The initial scale of the applicant i.e. Rs.2550-3200 and the scale granted on 1st financial upgradation at Rs.2650-4000 got merged. Therefore, the 1st ACP gets nullified. The scale he got under 2nd ACP corresponds to PB-1 with Grade Pay of Rs.1900. Therefore, the applicant was considered as having got one financial upgradation i.e. from GP Rs.1800 to GP Rs.1900. Accordingly under MACP Scheme, he was given 2nd financial upgradation from 1.9.2008 and allowed PB-1+ GP 2000. The 3rd MACP was given w.e.f. 30.4.2013 in PB-1 with GP 2400. Hence we find that there is absolutely no anomaly in granting financial upgradation to the applicant as has been alleged. The other persons who have been referred to by the

applicant had got 1st ACP on 1.4.2000. Since it was nullified due to merger of the scales, they were given 1st and 2nd MACP on 1.9.2008 and 3rd MACP on 1.7.2013. Hence, there is no difference in the financial upgradation given to those persons vis-à-vis the applicant. As on 1.7.2007 and 1.7.2008, the applicant was getting Grade Pay of Rs.1900 as compared to others who got GP 1900 from 1.9.2008 only. The communication dated 21.12.2011 at Annexure-A2 saying that the ACP granted was cancelled was wrong as has been admitted by respondents in their reply statement. They should have indicated that one of the financial upgradation granted earlier is not taken into reckoning in view of the merger of the scales and hence the 2nd MACP was granted w.e.f. 1.9.2008. Then there would not have been any confusion. In any case there is nothing irregular in grant of financial upgradation by the respondents.

12. The applicant has raised another issue which relates to difference in pay between the applicant and other two persons such as Sri Syed Tuffel. It is evident from the comparative statement given by the respondents along with additional reply statement that both the applicant Sri A. Francis and Sri Syed Tuffel joined on 30.4.1983 in the same scale and continued to draw the same pay till 1.4.1999. The problem started subsequently on granting of 1st ACP. In the reply statement, the respondents have mentioned that Sri Veeranna and said Sri Syed Tuffel joined the service on 30.4.1984. It seems that the applicant was granted 1st ACP on 9.8.1999 and hence his pay was fixed at Rs.3235. The other two persons got 1st ACP w.e.f. 1.4.2000. This is not clear as they had completed 12 years before 1999 and should have got ACP benefit from 9.8.1999 when the applicant received the same. However, they were given one additional increment taking their pay at Rs.3300/- Therefore, while the applicant started getting the same pay from 01st August, the other got from 1st April. The other

persons also started getting one additional increment following 6th pay commission recommendation, resulting a difference in salary. This is continued till 7th pay commission when all have started drawing the same pay as on 1.1.2016 and 1.7.2016. Hence, the difference in pay resulted only on account of date of increment and not on account of difference in financial upgradation as claimed in the OA. On this issue, the applicant may agitate the matter before the appropriate authority if the other two persons have joined on the same day or are junior to him demanding parity in pay for their consideration.

13. As far as the present issue raised by the applicant in this OA is concerned, it is quite clear that three financial upgradations allowed to the applicant under ACP and MACP are clearly in order and there is no irregularity in the matter. Therefore, we do not find any merit in the OA and hold that the same is liable to be dismissed. The OA is accordingly, dismissed. However, the applicant shall be at liberty to agitate before the respondents the issue of parity in pay with his juniors if he so desires. No order as to costs.

(P.K.PRADHAN)
MEMBER (A)

(JUSICE HARUN UL RASHID)
MEMBER (J)

/ps/

