

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO. 170/00731-00732/2016

DATED THIS THE 21ST DAY OF JUNE, 2017

HON'BLE SHRI JUSTICE HARUN UL RASHID...MEMBER (J)
HON'BLE SHRI P. K. PRADHAN, MEMBER (A)

1. R. Vijaya Kumar,
S/o P. Rudrappa,
Aged about 51 years,
Working as Senior Social Security Assistant,
EPFO Sub Regional Office,
Bhavishyanidhi Bhavan,
Shivaram Chambers, Ratnagiri Road
Chikmangaluru – 577 101
Residing at Mallikarjuna Nilaya
Opp. Sarathi Coffee curing
Jyothi Nagara Chikmangalur – 577 102.

2. K.N. Shrikanth,
S/o Late K.V. Narasimha Moorty,
Aged about 52 years,
Working as Senior Social Security Assistant,
EPFO Sub Regional Office,
Bhavishyanidhi Bhavan,
Shivaram Chambers, Ratnagiri Road
Chikmangaluru – 577 101
Residing at Upstairs Venkateshwara Provision Store
5th Cross Main Road Gandhinagara
Chikmangalur – 577 101.

... Applicants

(By Advocate M/s Subbarao & Co.)

Vs.

1. The Union of India,
Ministry of Labour and Employment,
Shrama Sadan,
New Delhi – 110 011,
By the Secretary.

2. The Central Provident Fund Commissioner,
 Employees Provident Fund Organisation,
 Ministry of Labour and Employment,
 Head Office, Bhavishya Nidhi Bhavan,
 14, Bhikaji Kama Place,
 New Delhi – 66.

3. The Additional Central Provident Fund
 Commissioner (Hq),
 Employees Provident Fund Organisation,
 Ministry of Labour and Employment,
 Head office, Bhavishya Nidhi Bhavan,
 14, Bhikaji Kama Place,
 New Delhi – 66.

4. The Regional Provident Fund Commissioner-I,
 EPF Organisation,
 Bhavishya Nidhi Bhavana,
 P.B. No. 572, High Lands Silva Road,
 Mangaluru – 575 002.

... Respondents

(By Shri Pundikai Ishwar Bhat, Counsel for Respondent No.2 to 4)

ORDER (ORAL)

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

The applicants in the present OA have sought the following reliefs:

- a) *Issue a Writ of certiorari or any other appropriate writ, order or direction quashing the Order bearing No. KN/MN/ADM/I/885/377/422/2015-16, dated 04.12.2015, issued by the 4th Respondent, (Annexure-A11) as the same is violative of Articles 14, 16, 19 and 21 of the Constitution of India;*
- b) *Issue a Writ of Mandamus or any other appropriate writ, order or direction directing the Respondents to continue the benefits of MACP to the Applicants and restrain them from reducing and revising the grade pay to the disadvantage of the Applicants, to meet the ends of justice.*

2. Both the applicants are presently working as Senior Social Security Assistants in the Employees Provident Fund Organisation (EPFO). They were initially appointed as LDC and were then promoted as UDC.

Following the framing of Employees' Provident Fund Organisation (Social Security Assistant) Recruitment Rules, 2003, a new SSA cadre was constituted integrating the cadres of LDC and UDC in the payscale of Rs. 4000-6000. All these were designated as SSA with effect from 03.02.2004. Vide office memorandum dated 15.11.2007, the payscale of SSA, Sr.SSA and Section Supervisors were revised. The revised scale was applicable with effect from 01.04.2004 notionally and the actual benefits were paid with effect from 01.09.2007. The SSA who had completed 4 years of service as on 01.04.2004 were placed in the scale of Rs. 4500-7000 corresponding to grade pay of Rs.2800/- . By virtue of their own scheme, the applicants were entitled to the cadre of Sr.SSA under 60% quota as per OM dated 15.11.2007 and they were given the scale of Rs.5000-8000 (pre-revised) which corresponds to grade pay of Rs.4200/- . The applicants were then extended the benefit of MACP scheme vide order dated 25.04.2014 and were given upgradation to PB2 with grade pay of Rs.4600/- from 02.04.2014 (Annexure-A7). However subsequently the respondents took a stand that officials who have been granted promotions from LDC to UDC in the pre-revised payscale of Rs.4000-6000 and thereafter financial upgradation under their own scheme in the grade pay of Rs. 2800/- and Rs.4200/- are not entitled for benefit under the MACP scheme. Further they did not respond to representation of the applicant and vide Annexure-A11 withdrew the upgradation granted against MACP vide order dated 02.04.2014 hence the present OA.

3. The contention made in the present OA are exactly similar to that of the applicants in OA No. 1753-1766/2015 and in OA No. 845/2016. Both the facts as well as the nature of the reliefs sought in those OAs and the present OA are exactly the same. In fact, these two people also figured along with the applicants in the said order at Annexure-A11. Both these OAs were allowed directing the respondents to restore the benefits to the applicants. The relevant portion from the order of OA No. 1753-1766/ 2015 dated 02.06.2017 says as follows:

“4. The applicants submit that Annexure A8 was ordered without issuing them any notice. Their promotion to UDC took place before cadre restructuring and cannot be counted as promotion. They were extended the benefit of revision of pay scale of Rs.4500-7000 without being given any additional responsibility as per FR 2(1)(a)(2) which states that:

(2).the appointment to the new post does not involve such assumption of duties and responsibilities of greater importance, he shall draw the initial pay, stage of time scale which is equal to his pay in respect of the old post held by him on regular basis, or, if there is no such stage next above his pay in respect of the old post held by him on regular basis.

“5. The applicants submit that as per a DOPT clarification (Annexure A9) the SSAs were granted the upgradation once they completed four years of service: there was no element of selection in the process. Their rejoinder statement dated 10.09.2016 encloses a communication dated 30.01.2008 (Annexure A12) containing certain clarifications to boost their argument. The respondents had not responded to a representation submitted by the federation of employees; meanwhile recovery had commenced in respect of certain employees (Annexure A11). The applicants have also filed a written argument note dated 22.03.2016 in which they have cited an

order of the Principal Bench of this Tribunal in OA No.3441/2012 in support of their stand. The applicants have sought an order directing the respondents to continue to grant MACP benefit extended to them by Annexure A9.

“6. The respondents submit that Annexure A7 provided undue benefits to the applicants who had already been granted three promotions/upgradations. Hence the benefit of MACP had to be withdrawn. Annexure A8 stated precisely why the MACP benefit was withdrawn. The contention that the promotion from LDC to UDC should be ignored was baseless. The applicants were promoted to the post of Sr.SSA in the scale of pay of Rs.5000-8000 (revised pay scale PB 2 of Rs.9300-34800 with GP of Rs.4,200) from the pay scale of Rs.4500-7000 (revised pay scale PB 1 of Rs.5200-20200 with GP of Rs.2800] within a period of two successive days since they were eligible for this benefit by virtue of their seniority in the cadre of SSA. The OM dated 18.7.2001 cited by applicants (Annexure A9) refers to ACP Scheme and not to the MACPS, and is therefore not relevant.

“7. We have studied an order of the Principal Bench of this Tribunal in OA No.3441/2012 dated 31.01.2014 in which a similar matter was heard and disposed of in favour of the applicants therein. The said order referred to a judgment of the Hon’ble Bombay High Court dated 11.12.2006. The relevant portion is reproduced below:

16. The view held by the Honble High Court in that case was that the placement of pay revised in the case of applicants in that case could not be treated as regular promotion and the ACP benefits rightly granted to the applicants could not be withdrawn. The operative portion of the order is reproduced below:-

It appears that by the impugned order dated 9/8/2003 before the Tribunal, the benefits granted under the ACP Scheme were sought to be withdrawn, contending that the upgradations in the pay scale of Draughtsmen, were already granted to the applicants by the

order dated 15/9/1998 or the earlier notification dated 9/10/1994 and the said was, in fact, a promotion. The Tribunal held that by placement in higher scale and redesignation under O.M. dated 15/9/1990, the pay was fixed in terms of pay 97 of OM & FR 22(1)(a) (2) and the said did not amount to promotions in as much as there were no higher responsibilities or duties of greater importance assigned. In addition, there was absence of the promotion process either on the basis of seniority-cum-merit or merit-cum-seniority in the said upgradation by OM dated 15/9/1998. The Tribunal concluded, thus the placement of the pay revision granted in pursuance to CPWD Arbitration award cannot be treated as regular promotion and ACP benefit rightly granted to the applicant cannot be withdrawn.

“8. The Principal Bench also noted that “*The view of the Hon’ble High Court was challenged in SLP by the Union of India, which was rejected*”.

“9. The said order of the Principal Bench has also referred to an order of the Ernakulam Bench of this Tribunal in OA No.286/2007 which held that when posts are placed in a higher scale without a change in responsibilities and duties, then such placement should not be treated as promotion/ upgradation..

“10. The Principal Bench concluded as follows:

21. *In view of the aforesaid, we do not agree with the contention of the respondents in their counter reply to the effect that the implementation of the recommendations of the FTC for Pharmacists for upgradation of grade pay of Rs.4200/- from Rs.2800/- on completion of two years of service should be treated as 1st financial upgradation under MACP Scheme. When it has been specifically clarified that word promotion is replaced by the word placement, it cannot be held that the grant of grade pay of Rs.4200/- on non-functional and time-bound basis be treated as a financial upgradation under MACP.*

“11. We have also examined Annexure A12 which provides the following clarification:

Sl.No	Points raised	Reply/clarification
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1.		
2.	Whether reservation has to be applied while grant of up-graded scale of Rs.4500-125-7000 and next scale of Rs.5000-150-8000 (to Sr. SSA of 60% of sanctioned strength).	The scales of Rs.4500-7000 and Rs.5000-8000 are separate upgraded scales made available to a certain percentage of persons who have completed the required minimum period of service and also come within a percentage of the total sanctioned strength in the grade of SSA. <i>These scales are not promotional scales which are regulated by any separate recruitment rules and is also not vacancy based. This being only the upgraded scales available in the cadre of Social Security Assistants cannot be termed as promotion to the next higher grade. It is only a placement in an upgraded scale</i> (emphasis supplied).As such no reservation point need to be applied while granting the scales of pay as the upgraded scales are not against defined vacancies. However, the placement in the upgraded scale will be after assessing the fitness of the officials with reference to ACRs and subject to their vigilance clearance. The promotion to the next higher grade of S.S will however be subject to reservation under normal reservation rules.

4. In both the OAs, the Tribunal set aside the impugned orders and held that the applicants are entitled to enjoy the benefits conferred by Annexure-A7. They set aside the impugned order of Annexure-A8 and Annexure-A11 and directed the respondents to restore the said benefit to the applicants within three months of receiving a copy of the order and to

repay any amount that has been recovered from the applicants within the same period.

5. Since the matter has already been adjudicated by this Tribunal as mentioned in the aforesaid order, we are of the view that the applicants in the present OA are also entitled to similar benefits as given by Annexure-A7 order. Therefore the impugned orders at Annexure-A8 and Annexure-A11 are set aside and the respondents are directed to restore the said benefits to the applicants, i.e., 3rd MACP upgradation allowed from 02.04.2014 within three months from the date of receipt of a copy of this order. In case any amount has been recovered from the applicant, the same also be repaid to them within the same period.

6. The OA is allowed accordingly. No order as to costs.

(P.K. PRADHAN)
MEMBER (A)

(JUSTICE HARUN UL RASHID)
MEMBER (J)

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