

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
Order reserved on: 26.11.2018

ORIGINAL APPLICATION NO. 060/00191/2016

Chandigarh, this the 7th day of December, 2018

...
**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MRS. AJANTA DAYALAN, MEMBER (A)**

...
Amar Singh son of Shri Pritam Singh, aged 43 years, working as O.T. Technician, Department of Anaesthesia, Post Graduate Institute of Medical Education and Research, Sector 12, Chandigarh Group-C.

....APPLICANT

(By Advocate: Shri V.K. Sharma)

VERSUS

Post Graduate Institute of Medical Education and Research, Sector 12, Chandigarh through Director.

....RESPONDENT

(By Advocate: Shri Kshitij Sharma)

ORDER

AJANTA DAYALAN, MEMBER (A)

The present Original Application (O.A.) has been filed by applicant Amar Singh feeling aggrieved by order dated 14.12.2015 (Annexure A-20) whereby his representation seeking fixation of his pay correctly on grant of financial upgradation under Modified Assured Career Progression Scheme (MACP) w.e.f. 24.3.2011 or on his promotion as O.T. Technician w.e.f. 24.1.2012 by application of FR 22 I(a)(i) has been rejected.

2. The case of the applicant is that he was drawing pay of Rs. 9230+2400 as GP w.e.f. 1.7.2010 and Rs. 9400+2800 GP w.e.f. 1.7.2011. But, on promotion his pay was fixed at Rs. 9400/- only which was already drawn by him. He was thus denied the benefit of FR 22 I (a) (i). The applicant has placed reliance on notification dated 19.3.2012 (Annexure A-7) issued by Ministry of Finance whereby a decision was taken that in relaxation of stipulation under Rule 10 of CCS (Revised Pay) Rules, 2008 those Central Government employees due to get their annual increment between February to June 2006 could be granted one increment in pre-revised scale as one time measure and thereafter next increment in the revised pay structure on 1.7.2006 as per the said Rule 10.

3. The applicant further pleaded that persons junior to him were granted 1st financial upgradation under MACP in the grade of Rs. 9300-34800+4200 GP w.e.f. March 2011(Annexure A-8). The grant of MACP to juniors did not affect the applicant as he was already promoted in this scale of Rs. 9300-34,800+ 4200 GP. However, pay of number to OT Assistants including the applicant (for which there was no request on his part) was stepped up by the authorities in the same pay scale with GP of Rs. 4200 w.e.f. 24.3.2011. However, in the process, benefit of pay fixation under FR 22 I (a) (i) was not given and in fact his pay was reduced from Rs. 9400 to Rs. 9300. A copy of order dated 26.3.2012 in this connection is enclosed as Annexure A-9 to the O.A. Specific orders of pay fixation as per this order were issued on 3.4.2012 (Annexure A-10) vide which the pay

was fixed at Rs. 9230+2400 GP w.e.f. 1.7.2010 and Rs. 9230+ 2800 GP w.e.f. 17.3.2011.

4. On submission of representation by the applicant his pay was re-fixed as follows (Annexure A-11):-

Existing Scale	New Scale
Rs. 5200-20200+2800) 17.3.2011 9230+2800	(9300-34800+4200 24.3.2011 9230+4200 01.07.2011 9590+4200 01.07.2012 10010+4200

However, even this pay fixation is not correct as per the applicant as it denies the benefit of FR 22 I (a) (i) both at the time of promotion and at the time of stepping up of his pay. The applicant submitted representation dated 23.7.2011 and subsequent reminders stating that with this pay fixation, he is drawing less pay than earlier and even his juniors are drawing more pay than him. Feeling aggrieved with the action of the respondents the applicant earlier filed O.A. No. 060/894/2015 before this Tribunal, which was disposed of vide order dated 30.9.2015 with a direction to the respondents to decide his representation. The representation has been rejected vide orders dated 14.12.2015 (Annexure A-20) without reference to Rules and instructions. This order is being challenged through this O.A.

5. The respondent has strongly contested the claim of applicant in their written statement. It is stated that consequent to 2nd cadre review, 8 posts of O.T. Assistant Grade II were sanctioned. Mode of recruitment was 100% by way of promotion from feeder cadre of OT

Assistant Grade III having 3 years regular service in the respondent Institute. The case of the applicant for promotion was placed before DPC in its meeting on 11.9.1998 for promotion to the post of OTA Grade II against 8 clear cut posts plus 2 resultant posts. The DPC, however, recommended promotion of only 9 incumbents. Later, one Nirmal Singh who was senior most amongst OTA Grade-III but was not earlier considered, was considered for promotion to the post of OTA Grade II retrospectively w.e.f. 1.8.1992 as a result of decision dated 27.2.2006 of the Court of Assistant Labour Commissioner. As such, all posts of OTA Grade-II were filled. 13 posts were created in the year 2005 and 2008 and applicant was promoted vide order dated 15.10.2008 in the scale of Rs. 4000-6000 (pre-revised). No further pay fixation on promotion was available to the applicant as he had already been given this pay scale under ACP Scheme w.e.f. 10.2.2005 and his pay was fixed by giving him one increment. The department has further averred that as per office order dated 24.1.2012 his pay was fixed under FR 22 (1)(a) as he was drawing grade pay of Rs. 2800 prior to this post. But, his pay was stepped up in the scale of Rs. 9300-34800 with GP of Rs. 4200 w.e.f. 24.3.2011. It is also stated that his pay was fixed according to his option with date of next increment on 1.7.2011 under FR 22 (1). No benefit was given on his promotion on 24.1.2012 as he was already drawing the same pay scale earlier.

6. The respondent has further averred that it is not right to say that the applicant has not benefited in accordance with FR 22(1) (a). The fixation has been done as per rules and as verified by

Accounts Branch and approved by DDO. It is also stated that no junior to the applicant is drawing more pay than the applicant except for the period from 24.3.2011 to 30.6.2011. It is also stated that on 24.3.2011 his pay was fixed only to bring his pay at par with his junior who in turn was granted MACP on the same date as per Rules. As such, no increment was due and hence was not granted to him. The respondents have, therefore, prayed for dismissal of the O.A.

7. We have heard the learned counsels for the opposing parties, carefully gone though the pleadings and have given our thoughtful consideration to the matter.

8. The sole issue before this Tribunal is of pay fixation. The applicant is claiming that he has been denied benefit of FR I (a)(i) and his juniors are getting more pay than him. On the other hand, the respondents have categorically stated that the pay fixation has been done as per rules and the pay fixation in question was not to give the benefit of MACP to the applicant but to bring him at par with his juniors who had been given benefit of MACP, w.e.f. 24.3.2011.

9. For reaching a conclusion in the case, it is important to segregate and identify the basic facts of the case. The basic facts of the case required for adjudication here would be that the applicant was appointed as adhoc OTA in May 1992 and was regularized as such w.e.f. 10.2.1993. On completion of 12 years of service, he was granted benefit of ACP and his pay was fixed at Rs. 4000 in the scale of Rs. 4000-6000 w.e.f. 10.2.2005. Consequent to cadre

review earlier and additional creation of posts in OTA Grade II cadre in 2005 and 2008, the applicant was promoted as OTA Grade II in the scale of Rs. 4000-6000 w.e.f. 15.10.2008. As he had already been granted this scale earlier under ACP, no further fixation of his pay was involved. He was granted one increment w.e.f. 1.1.2006 in pursuance of the instructions issued by the Ministry of Finance, taking his pay to Rs. 4100 per month w.e.f. 1.1.2006. Consequent, to 6th Pay Commission recommendations, taking Rs. 4100 as his basic pay, his pay fixation was done which indicated pay as on 1.7.2010 to be Rs. 9230+ 2400 GP. In 2011, two cadres of OTA Grade III and OTA Grade II, which were created under cadre review, were again merged as OTA in the scale of Rs. 5200-20,200 with GP of Rs. 2800 w.e.f. 17.3.2011. Accordingly, his pay was fixed at Rs. 9230+2800 GP w.e.f. 17.3.2011. These are admitted facts and are not in dispute.

10. On 24.3.2012, the department stepped up his pay at par with his juniors in the scale of Rs. 9300-34800+4200 GP. This was made effective from 24.3.2011 which shows his pay as follows:

24.3.2011	9300+4200
01.07.2011	9590+4200
01.07.2012	10010+4200

11. It is this pay fixation that is in dispute. According to the applicant, he was already drawing Rs. 9400 and has been put at loss because of his fixation at Rs. 9300 now. Further, according to

the applicant he has been denied the benefit of one increment that he will be eligible under MACP Scheme. The applicant also pleads that his juniors are getting more pay than him under this dispensation. The applicant was promoted at OT Technician w.e.f. 24.1.2012 in the pay scale of Rs. 9300-34800+ 4200 GP. The applicant is, therefore, praying for benefit of one increment in this pay fixation in case his request for grant of MACP w.e.f. 24.3.2011 is not accepted.

12. After perusing the prayer, we note that the prayer of the applicant is basically threefold – (1) for quashing the order dated 14.12.2015 rejecting his representation; (2) for correctly fixing his pay on grant of MACP w.e.f. 24.3.2011; and alternatively (3) granting him benefit under FR 22 I(a)(i) on his promotion as OT Technician w.e.f. 24.1.2012.

13. We observe that the applicant is claiming that he was in receipt of pay of Rs. 9400 basic as on 24.3.2011. However, the service record that he has produced does not corroborate this statement (Annexures A-10 & A-11). The department has also nowhere stated that he was drawing Rs. 9400 as basic pay at this time. We have no reason to doubt the statement of the respondents specially when it is corroborated with evidence produced by the applicant himself. Moreover, as per pay fixation done on 24.3.2011, he would draw Rs. 9590+4200 GP w.e.f. 1.7.2011. So, he is drawing more pay than Rs. 9400 w.e.f. 1.7.2011. Hence, the plea of the applicant that he was put to loss because of his fixation in pay

at Rs. 9300 w.e.f. 24.3.2011 when he was earlier already in receipt of higher pay is not accepted.

14. As regards the grant of MACP benefits to the applicant, we observe that his services were regularized as OTA w.e.f. 10.2.1993. He was also granted 1st ACP benefit w.e.f. 10.2.2005 - that is after completion of 12 years of service. Considering this as the basis for working out length of service, no benefit either under ACP or MACP was accrued to him on 24.3.2011 or even till his promotion as OTA w.e.f. 24.1.2012. Hence, he cannot be granted any benefit of MACP w.e.f. 24.3.2011. In fact, the benefit on 24.3.2011 that has been granted to him was to step up his pay with reference to his juniors, who on grant of MACP to them started getting higher pay than him. This was because of merger of two cadres of OTA Grade III and OTA Grade II w.e.f. 17.3.2011. Accordingly, some seniors like the applicant, who were first in Grade III and then promoted to Grade II, lost out of their juniors, who got placed directly to the combined cadre. As pay fixation of the applicant of 24.3.2011 was an exercise only for removing the anomaly caused due to merger of cadres, no increment was to be granted to the applicant. Only his pay was to be made at par with his juniors. This was done. Hence this prayer of the applicant does not have merit.

15. As regards pay fixation on his promotion as OTT w.e.f. 24.1.2012, we note that the department has itself in its rejection letter to the applicant indicated that he was not entitled for increment as he was already drawing the same pay scale w.e.f. 24.3.2011. We, however, do not see as to how benefit of one

increment on promotion can be denied to the applicant specially as no benefit under 2nd financial upgradation under ACP/MACP has been granted to him. The 1st financial upgradation under ACP has already been covered by his promotion as OTA Grade II in 2008. Hence, it is logical that on his further promotion as OTT and without corresponding benefit of ACP/MACP being available to him, he would be entitled for one increment under FR 22 I (a)(i).

16. We find merit in this plea of the applicant and O.A. deserves to be allowed to this extent. Accordingly, the O.A. is partly allowed and the impugned order dated 14.12.2015 (Annexure A-20) is quashed to this extent. The respondents are directed to grant the applicant benefit of one increment with all consequential benefits on his promotion as OTT w.e.f. 24.1.2012. The above exercise be carried out within a period of 3 months from the date of receipt of certified copy of this order. No costs.

(AJANTA DAYALAN)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 07.12.2018
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