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CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No.O.A.1577 of 2013

Present : Hon'ble Mr. A.K. Patnaik, Judicial Member

Hon'ble Ms. Jaya Das Gupta, Administrative Member

ARUN KUMAR MAJUMDAR

VS.

UNION OF INDIA & OTHERS
(M/O Consumer Affairs)

For the applicant : Mr. N. Roy, counsel

For the respondents : Ms. M. Bhattacharyya, counsel

Heard on : 24.01.2017

Date of order : 3.2.2017

ORDER

Per Ms. Jaya Das Gupta, A.M.

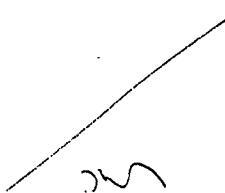
The applicant has approached C.A.T. under Section 19 of Administrative Tribunals Act, 1985 seeking the following reliefs:-

"8(a) To set aside and quash impugned order No. F. No. C-18012/1/2013-NTH dated 10.10.2013 issued by Secretary, Consumer Affairs.

(b) To set aside and quash impugned memo No. NTH/HQ/MACP/ACP/2010 dated 23.7.2012 issued by DG, NTH, Kolkata.

(c) To set aside and quash the impugned office order No. G-117/Esst dated 03.08.2012 issued by Director National Test House (ER) Kolkata and corrigendum no. G-117/Asstt. Dated 14.8.12 issued by Director NTH(ER) Kolkata.

(d) To direct the respondents to grant 1st financial upgradation under ACP Scheme in scale of Rs. 8500-13500 corresponding to revised PB III of Rs. 15600-39100 with GP of Rs. 5400/- w.e.f. 1.1.06 with all consequential benefits.



(e) To direct the respondents to grant 2nd Financial upgradation under MACP Scheme in Pay Band III of Rs. 15600-39100/- with GP Rs. 6600/- w.e.f. 30.03.2010 with all consequential benefits.

(f) Any other order or orders as the Hon'ble Tribunal deems fit and proper."

2. It is the case of the applicant that he was appointed to the post of Junior Hindi Translator in the National Test House w.e.f. 30.03.1990 in the scale of Rs.1400-2300. His pay was fixed in the scale of Rs.4500-7000 as per recommendation of Vth CPC. However, the pay of the Junior Hindi Translator was upgraded to the scale of Rs.5000-8000 w.e.f. 01.01.1996 i.e. on the initiation of pay fixation under Vth Pay Commission. He received the financial upgradation under ACP in the next higher pay scale of Rs.5500-9000 after 12 years of service i.e. on 30.03.2002. It is the contention of the applicant that subsequently the pay of the Junior Hindi Translator was placed in the scale of Rs. 6500-10500 corresponding to the revised pay in the pay band with Grade Pay 4200 w.e.f. 01.01.2006. According to the applicant, as per the hierarchy of promotion, his next promotional post is that of Assistant Director(OL) which enjoyed the Grade Pay Rs.5400. It is his grievance that in spite of the above facts he was granted the Grade Pay of Rs.4600 for his first ACP and not in the Grade Pay of Rs.5400 which is the Grade Pay of the next promotional post of Assistant Director. His 2nd financial upgradation has also been given under MACP Scheme in pay band 2 with Grade Pay of Rs.4800 w.e.f. 30.03.2010 which according to him, should be in the next higher grade pay of Rs.6600/-.

3. He had approached C.A.T. in O.A.1078 of 2012 and an order was given on 08.08.2013 to Respondent No.1 to dispose of the representation made by the applicant to the Secretary, Ministry of Consumer Affairs, Food and Public

Distribution on 29.05.2012 regarding revision of the first financial upgradation under ACP, by passing a reasoned and speaking order.

4. As per direction of C.A.T. a reasoned and speaking order was given on 10.10.2013 which rejected the claim of the applicant. Hence, against the said impugned order the applicant has approached C.A.T. in the present O.A. seeking redressal of his grievances.

5. Per contra, it is the contention of the respondents that all benefits of upgradation have been given to the applicant strictly as per rules of ACP/MACP and hence the O.A. should be dismissed.

6. Heard both and consulted the records.

7. It has been brought to our notice in Annexure A-4 that the Ministry of Finance, Department of Expenditure issued an Office Memorandum dated 24.11.2008 which runs as follows:-

"F. No. 1/1/2008-IC
Government of India
Ministry of Finance
Department of Expenditure
Implementation Cell

New Delhi, dated the 24th November, 2008.

OFFICE MEMORANDUM

Subject :Revised pay scales for Official Language posts in various subordinate offices of the Central Government.

Consequent upon the implementation of the recommendation of Sixth Central Pay Commission, this Department has received queries from many Ministries/Departments regarding the revised pay structure applicable in the case of Official Language posts existing in subordinate offices of the Central Government. In this connection, it is clarified that in accordance with the recommendations of the Sixth Central Pay Commission as accepted by the Government, similarly designated posts existing outside

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the Central Secretariat Official Language Service (CSOLS) cadre in various subordinate offices of the Central Government have been granted the same pay scales as those granted to CSOLS. The Government has notified the following revised pay structure for the Official language cadre belonging to CSOLS:-

Designation	Recommended pay scale	Corresponding Pay Band & Grade Pay	
		Pay Band	Grade Pay
Jr. Translator	6500-10500	PB-2	4200
Sr. Translator	7450-11500	PB-2	4600
Asstt. Director (OL)	8000-13500	PB-3	5400
Dy. Director (OL)	10000-13500	PB-3	6100
Jt. Director (OL)	12000-16500	PB-3	6600
Director (OL)	14300-18300	PB-3	7600

2. Accordingly, w.e.f.1.1.2006, all Ministries/Departments etc., are required to grant the revised pay scales approved for various posts in the CSOLS to similarly designated Official Language posts existing in their subordinate offices.

(ALOK SAXENA)
DIRECTOR (IC)"

Accordingly an order was issued by the Ministry of Consumer Affairs, Food and Public Distribution on 20.03.2009 which is reproduced below:-

"No. J-11011/10/2009-NTH (ESTT)
Government of India
Ministry of Consumer Affairs Food & PD
(Department of Consumer Affairs)

Gallery No. 12/2, Jamnagar House
Shahjahan Road, New Delhi, dated the 20th March, 2009

To

The Director General (Incharge)
National Test House
Sector V, CP Block, Salt Lake
Kolkata- 700 091

SUBJECT

Revised pay scales for Official Language posts in various subordinate offices of the Central Government.

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Sir,

I am directed to refer to the National Test House letter No. NTH/HQ/6th CPC dated the 24th February, 2009 on the above subject and to say that the matter has been considered in the light of the Sixth Central Pay Commission's recommendations contained in para 7.19.68 of its report and instructions issued by the Ministry of Finance (Implementation Cell) vide Office Memorandum No. 1/1/20089-IC dated the 24th November, 2008. It has been decided to grant the following pay scale to the post of Hindi Officer and Junior Hindi Translator of the National Test House at par with the pay scale recommended for the Central Secretariat Official Language Service (CSOLS) cadre with effect from 1st January, 2006:-

Designation	Recommended pay scale	Corresponding Pay Band & Grade Pay	
		Pay Band	Grade Pay
Junior Translator	6,500-10,500	PB-2	4200
Asstt. Director(OL)	8,000-13,500	PB-3	5400

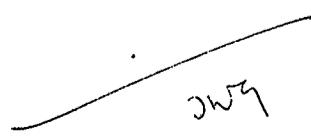
2. You are requested to take further necessary action for straightway grant of pay scale as recommended by the Sixth Central Pay Commission above. NTH is also requested to take immediate action to amend the recruitment rules for the post of Hindi Officer and Junior Hindi Translator.
3. This issues with the concurrence of the Integrated Finance of this Department vide dy. No. 233/DS(IF)/09 dated the 18the March, 2009.

Yours faithfully,

(Kewal Krishan)
Under Secretary to the Govt. of India"

8. Hence, we see that as per the recommendations of the VIth CPC, the pay of the Junior Translator i.e. the applicant was placed in PB-2 with Grade Pay of Rs.4200 from 01.01.2006 and the pay of the promotional post of Assistant Director(OL) was fixed at PB-3 with Grade Pay Rs.5400 from the same date.

9. The respondent authorities have given him the benefit of ACP Scheme from 01.01.2006 in Pay Band 2 and Grade Pay of Rs.4600 which is the next higher



Grade Pay in the hierarchy of posts in the organisation of the applicant. Again after 20 years of service the respondent authorities have granted him the next higher Grade Pay of Rs.4800 as the 2nd MACP. However, the above fixations led to the grievance of the applicant as he is claiming Rs.5400/- as Grade Pay under ACP Scheme and Rs.6600/- as Grade Pay under MACP Scheme.

10. On going through the MACP Scheme as announced by DOP&T we observe at para 2 of Annexure 1 the following rules:-

"The MACPs envisages merely placement in the minimum next higher Grade Pay in the hierarchy of the recommended revised Pay Band and Grade Pay as given in Section 1 part-A of the First Schedule of the CCS (Revised Pay) Rules, 2008. Thus the Grade Pay at the time of financial upgradation under the MACPs can, in certain cases where regular promotion is not between 2 successive grades be different than what is available at the time of regular promotion. In such cases the higher grade pay attached to the next promotion post in the hierarchy of the concerned cadre/organisation will be given only at the time of regular promotion."

11. We observe on going through the first Schedule of CCS(Revised) Rules that the next higher Grade Pay of Rs.4200 is Rs.4600 and there is also another higher Grade Pay of Rs.4800/- which has been given to the applicant as first ACP and 2nd MACP respectively. The claim of the applicant for Rs.5400 cannot be awarded to him as the grade pay of Rs.5400 has been fixed for the next promotional post of Assistant Director(OL). As per the stipulation laid down in Para 2 of Annexure-1 of the Modified Assured Career Progression Scheme, he will be entitled to Rs.5400/- only on getting promotion to the post of Assistant Director(OL). Hence,

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we find that there is nothing wrong in the impugned order which is extracted below:-

"F. No. C-18012/1/2013-NTH

Government of India
 Ministry of Consumer Affairs,
 Food and Public Distribution
 [Department of Consumer Affairs]

Krishi Bhawan, New Delhi
 Dated, the 10th October, 2013

ORDER

WHEREAS, Shri A.K. Majumdar, was appointed to the post of Junior Hindi Translator in the National Test House w.e.f. 30.03.1990 in the scale of Rs. 1400-2300/- and on implementation of the 5th Central Pay Commission was placed in the pay scale of Rs. 4500-7000/- On up-gradation of pay scale, he was granted the pay scale of Rs. 5000-8000/- attached to the Jr. Hindi Translator w.e.f. 01.01.1996. Later, the post of Jr. Translator and Hindi Officer have been redesignated as Jr. Translator and Assistant Director (OL) respectively and the applicant received the 1st ACP and financial upgradation in the scale of Rs. 5500-9000/- w.e.f. 30.03.2002. Subsequently, after the implementation of the 6th Pay Commission the pay of Jr. Hindi Translator in the National Test House was placed in the scale of Rs. 6500-10500/- corresponding to the revised Pay Band – 2 of the recommended 6th Pay Commission of Rs. 9300-34800/- with Grade Pay of Rs. 4200/- w.e.f. 01.01.2006 in the National Test House which is a subordinate office of Department of Consumer Affairs.

WHEREAS, financial upgradation under the ACPs in respect of Common category post like Junior Translator under Central Secretariat Official Language Service [CSOLS], the Government has accepted a uniform hierarchical structure, then existing hierarchy in relation to such common categories shall be standard hierarchy as approved by the Government and not the hierarchy of a particular Officer. To this effect the Department of Expenditure OM dated 24.11.2008, as per the recommendations of 6th CPC has issued a clarification, notifying the revised pay structure for the Official Language cadre belonging to CSOLS in various subordinate Offices of the Central Government w.e.f. 01.01.2006, the clarification is as under:

Designation	Recommended pay scale	Corresponding Pay Band & Grade Pay	
		Pay Band	Grade Pay
Jr. Translator	6500-10500	PB-2	4200
Sr. Translator	7450-11500	PB-2	4600
Asstt. Director (OL)	8000-13500	PB-3	5400
Dy. Director (OL)	10000-13500	PB-3	6100

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Jt. Director (OL)	12000-16500	PB-3	6600
Director (OL)	14300-18300	PB-3	7600

WHEREAS, in the ACP Scheme, it has already been envisaged that in r/o common category posts, if the Government has accepted a uniform standard hierarchical structure, then 'existing hierarchy' in relation to such common categories shall be the standard hierarchy approved by the Government and not the hierarchy in a particular office, which; for consideration may not have all the grades. If such financial upgradations are allowed keeping purely such local hierarchy in view, it will result in vast disparities in entitlements under the ACP Scheme for identical category of post which cannot be justified.

WHEREAS, Shri Arun Kr. Majumdar, Jr. Hindi Translator submitted various representations insisting that as per the new MACP Order b DoPT OM No. 35034/3/2008-Estt (D) dated 19.05.2009, he may be given higher grade pay than of Rs. 4600/- for his 1st ACP in PB-2 which was not found acceptable by NTH(HQ) in the light of the fact that the ACP in question has to be allowed in the existing hierarchy and that notwithstanding the smaller cadre of NTH where lesser number of posts are available, since Government has accepted a uniform standard hierarchical structure, the existing hierarchy in case of these cases with relation to common categories shall be treated as standard hierarchy as approved by the Government and not the hierarchy in a particular office.

WHEREAS, as per the Department of Expenditure's OM dated 24.11.2008, a JHT is eligible for 1st ACP in the scale of pay attached to the post of SHT despite the fact that in the National Test House, Kolkata, the next hierarchy of JHT is a AD(OL) and not SHT. As per instructions contained in ACP Rules as recorded, the hierarchy of a particular office is not at all a factor and the standard hierarchy prescribed by the Government, in case of common category posts, is to be adhered for grant of ACP. Hence, no injustice has been done in fixing up the pay of the applicant.

WHEREAS, the issues raised in representation addressed by the applicant vide his letter dated 29.05.2012 addressed to Secretary, Consumer Affairs were also addressed by the NTH(HQ), Kolkata vide their letter dated 28/29.05.2012.

WHEREAS, the Department had earlier considered the case of Shri A.K. Majumdar & Smt. Urmila Chakraborty both Junior Hindi Translators in NTH, Kolkata and rejected the case of these officers for grant of 1st financial upgradation as per the hierarchy of promotional post of Assistant Director (OL) from Junior Hindi Translator in NTH to them and opined as under:-

"The salient feature of the ACP Scheme was that it was to be allowed in the existing hierarchy. It also clarified that in respect of common category posts, if the Govt. has accepted a uniform standard

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hierarchical structure, then existing hierarchy in relation to such common categories shall be standard hierarchy as approved by the Govt. and not the hierarchy in a particular office. The standard hierarchy of the JHT is SHT and AD(OL) as prescribed by the cadre controlling Authority i.e. the Ministry of Home Affairs. Therefore, a JHT is eligible for 1st ACP in the scale of pay attached to the post of SHT. In NTH, Kolkata, the next hierarchy of JHT is AD(OL) and not SHT. Citing this example, both the JHTs posted in NTH, Kolkata, have been representing for the 1st ACP rules as recorded above, hierarchy of particular offence is not factor. The standard hierarchy prescribed by the Govt. is to be adhered to for grant of ACP. Therefore, there is no merit in the representation. NTH may be informed that 1st ACP in the scale of pay of AD(OL) cannot be granted to them and their pays are to be fixed in the respective pay band and grade pay after implementation of 6th CPC. NTH should settle such minor issues at their own level."

WHEREAS aggrieved by the grant of 1st financial upgradation to the Pay Band-2 of Rs.5600-39100/- with Grade Pay of Rs.4600/- attached to the post of Senior Hindi Translator which is not the hierachal promotion post of Junior Hindi Translator in NTH, Shri A.K. Majumdar, Junior Hindi Translator filed a case before the Hon'ble Central Administrative Tribunal, Calcutta Bench vide O.A.No.1078 of 2012.

WHEREAS, the Hon'ble CAT, Calcutta Bench, vide Order dated 08.08.2013 directed the Respondent No.1 i.e. Secretary, Consumer Affairs to pass a reasoned and speaking order within a period of two months from the date of receipt of the certified copy of its Order. The certified copy of this Order was sent by the Advocate vide his letter dated 22.08.2013.

WHEREAS, in view of the facts stated in the preceding paras, it is reiterated that, Shri A.K. Majumdar, Junior Hindi Translator joined NTH w.e.f. 30.03.1990 in the pay scale of Rs.1400-2300/-as per 4th Central Pay Commission and subsequently placed in the pay scale of Rs.4500-7000/- by the 5th Central Pay Commission. On the basis of OM No.12/2/97-OL(S) dated 08/11/2000, the pay scale of Shri A.K. Majumdar was upgraded to the pay scale of Rs.5000-8000/- w.e.f. 08/11/2000 and was granted 1st financial upgradation under ACP Scheme and placed him in the next higher scale of Rs.5500-175-9000/- w.e.f. 30/03/2002.

WHEREAS, the Department considered the case of Shri A.K. Majumdar, Junior Hindi Translator for grant of financial upgradation under the ACP Scheme to the post of Hindi Officer[now Assistant Director(OL)] and in terms of extant rules rejected the case of Shri A.K. Majumdar alongwith Smt. Urmila Chakraborty both Junior Hindi Translator in National Test House.

NOW THEREFORE, the Department after considering the relevant rules on ACPS/MACPS, does not find merit in the case and hereby, rejects the case of Shri A.K. Majumdar, Junior Hindi Translator, National Test House for grant of 1st financial upgradation to the post of Hindi Officer [now Assistant Director(OL) with Pay Band-3 of Rs.5600-39100/- with Grade Pay of Rs.5400/-.

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[Pankaj Agrawala]
Secretary, Consumer Affairs

To:

Shri Arun Kumar Majumdar
Junior Hindi Translator
National Test House (Eastern Region)
Block CP, Sector – V, Salt Lake,
KOLKATA – 700 091

12. At the bar, Id. counsel for the applicant also referred to the findings of C.A.T., Chandigarh Bench in O.A.No.1038/CH/2010 [Raj Pal Vs. Union of India & Others] decided on 31.05.2011, where the applicant was a Photocopier which was an isolated post. Subsequently the said order of C.A.T. was upheld by Punjab and Haryana High Court in C.W.P.No.19387/2011 delivered on 19.10.2011. The relevant portion of the order of C.A.T., Chandigarh Bench is extracted below:-

“15 Be that as it may, the principle enunciated and settled by the Tribunals/High Court for grant of ACP cannot be changed and the same principle would apply for grant of MACP to him . The only difference is the number of years required to be completed. We find no justification to take a different view of the matter.

The Hon'ble High Court of Punjab and Haryana while agreeing with the order passed by the Chandigarh Bench of the Tribunal commented that “Under the ACP Scheme of 1999, the financial upgradations were to be granted upon completion of 12 years and 24 years of regular service whereas under the MACP Scheme, such financial upgradations are envisaged by the completion of 10/20 and 30 years of service.”

13. However, the decision of the Punjab and Haryana High Court in CWP 19387/2011 was refuted by the Hon'ble Delhi High Court in WP(C)No.4662 of 2013 delivered on 26.07.2013 which is as follows:-

“The decision of the Punjab and Haryana High Court in W.P.(C) No.19387 of 2011 has *prima facie* proceeded on a wrong assumption that the only difference between the ACP and MACP was to remove the stagnation in the

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sense that under ACP Scheme two financial upgradation upon rendering 12 and 24 years of service were envisaged and under MACP three financial upgradations after rendering 10,20 and 30 years were envisaged. The Punjab and Haryana High Court did not take W.P.(C) No.4662 of 2013 into account that MACP was introduced on the recommendation of the VI CPC where in place of hitherto concept of pay scale came to be replaced by Pay Band and GP."

14. Moreover, the case of Raj Pal, which was a stand alone case was not concerned with any promotional hierarchy while the present case very much involves a promotional hierarchy.

15. Also the Delhi High Court in **W.P.(C)No.3420 of 2010(R.S. Sengor and Others v. Union of India and Others)** has passed an order on 04.04.2011 in which the final decision has been taken by the Hon'ble High Court "that to put it pithily, the MACPS Scheme requires the hierarchy of the Grade Pays to be adhered to and not the Grade Pay in the hierarchy of posts."

In this case, the Grade Pay of the applicant, while fixing his pay for first ACP and 2nd MACP has rightly be taken in the hierarchy of the Grade Pay and not the Grade Pay of the promotional post which is correct as per para 2 of the Scheme of MACPs Annexure -I.

16. The C.A.T., Ahmedabad Bench in a recent judgment in O.A.No.120/00018/2015 has taken the same view as the Hon'ble High Court of Delhi in W.P.(C)No.3420 of 2010.

17. We are, therefore, firmly of the view that MACP benefit would be given in the hierarchy of next higher Grade Pay and not in the Grade Pay of promotional hierarchy which is payable on actual promotion only.

18. Hence the O.A. lacks merit and is dismissed. No cost.


(Jaya Das Gupta)
Administrative Member
sb


(A.K. Patnaik)
Judicial Member