

**CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH,  
CAMP AT NAGPUR.**

**O.A.2109/2013**

**Dated this Tuesday the 9<sup>th</sup> day of October, 2018.**

**Coram: Dr.Bhagwan Sahai, Member (A) .**

Shri Ajay Arunrao Rajkarne,  
Aged about 42 years,  
Occ. Retired - Transmission  
Executive, Doordarshan Kendra,  
Nagpur.  
R/o. "Navjivan", Lakdi Pool,  
Mahal, Nagpur - 440 032. .. Applicant.

**( By Advocate Shri M.M. Sudame ) .**

**Versus**

1. Union of India, through  
the Secretary to Govt. of  
India, Ministry of Information  
& Broadcasting, Shastri Bhawan,  
New Delhi - 110 001.
2. Prasar Bharti Broadcasting  
Corporation of India,  
PTI Building,  
Parliament Street,  
New Delhi - 110 001.
3. Director General,  
All India Radio,  
Akashwani Bhawan,  
Parliament Street,  
New Delhi - 110 001.
4. Director General,  
Doordarshan Bhawan,  
Copernicus Marg,  
New Delhi - 110 001.
5. Director,  
Doordarshan Kendra,  
Seminary Hills, TV Tower,  
Nagpur - 440 006.
6. Pay & Accounts Officer,

Doordarshan Kendra,  
Old CGO Building,  
Opposite VCA Stadium,  
Civil Lines, Nagpur - 440 001. ..Respondents.

( By Advocate Ms.Renuka Puranik Nalamwar ).

Order reserved on : 31.08.2018

Order delivered on : 09.10.2018.

**O R D E R**

1. Through this O.A. the applicant Shri Ajay Arunrao Rajkarne, seeks relief in terms of -

(a). quashing and setting aside of the Office Order No.NGP/TV/AAR (Pen.)/2013-S/412 dated 18.06.2013 passed by the Director (Engineering), Prasar Bharti, Doordarshan Kendra, Nagpur;

(b). quashing and setting aside of the Office Order No.NGP/TV/Pension(AAR)/2013/S/1145 dated 25.06.2013 passed by the DDO, Prasar Bharti, Doordarshan Kendra, Nagpur;

(c). direct the respondents to grant MACP to him on completion of 10 and 20 years of service in the grade of TREX with effect from 2001 and 2011, respectively;

(d). direct the respondents to issue and calculate the pay of the applicant and the revised pay after granting MACP;

(e). direct the respondents to pay pension, gratuity, leave encashment, etc within a period of 2 months to the applicant together with penal interest

@ 18% per annum;

**(f)**. award to the applicant damages of Rs.5 lakhs for physical and mental harassment, and direct the respondents to conduct an inquiry, fixing responsibility and recover the amount of damages from the persons responsible for causing mental harassment to him; and

**(g)**. award him the cost of this application.

**2.** Facts of the case stated in brief:-

**2(a)**. Based on his B.Com qualification, the applicant was selected by Staff Selection Commission, Mumbai for the post of Transmission Executive in All India Radio/Doordarshan Kendra and appointed on this post with All India Radio, Beed. He worked there from 1991-1994. Then he was transferred to All India Radio, Mumbai, where he worked from 1994 to 1997. Then he was posted with Doordarshan Kendra, Nagpur from 1997 till his retirement.

**2(b)**. The applicant claims that his two daughters (named Ms.Gayatri and Ms.Manjiri), 13 and 8 years old at the time of filing of this O.A. on 15.07.2013, have been suffering from mental retardation since birth. He sought Child Care Leave, but it was refused to him and, therefore, he took voluntary retirement.

**2(c).** The applicant claims that he performed his duties with integrity and devotion, and was never communicated any adverse remarks. No departmental inquiry was contemplated or pending against him. However, due to certain domestic difficulties he had to seek voluntary retirement from service. He was granted the voluntary retirement from 24.07.2012.

**2(d).** The applicant claims that he was entitled to receive pension atleast from October, 2012 i.e. 3 months after his retirement. However, he was not paid pensionary benefits such as gratuity, leave encashment and pension, etc and was paid only amount with his G.P.F. Account. He represented to the respondents on 21.02.2013 for grant of pension. However, he did not receive even a reply to the application and he has not yet been paid the pension and gratuity.

**2(e).** Vide Office Order No.15/2012 dated 29.08.2012, the Prasar Bharati Corporation of India conveyed approval of the competent authority for grant of 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> financial upgradations under MACP on completion of 10, 20 and 30 years of regular service in the grade in respect of TREX. Accordingly the DDO, Doordarshan Kendra, Nagpur fixed the applicant's pay with grant of MACP-II financial upgradation as on 12.10.2012, with retrospective

effect and revised his pay scale for fixation of pension and payment of arrears.

**2 (f) .** In Para 2 of the above order it was stated that the MACP financial upgradation has been granted subject to outcome of clarification sought by the Prasar Bharati Corporation from Ministry of Information and Broadcasting, and the MACP benefits would be recovered without prior notice in respect of incumbents of the post of TREX if it is decided to so by the Ministry.

**2 (g) .** The applicant further claims that MACP is required to be given to the TREX employees after verification of their service particulars since the applicant had completed 10 years of service in 2001 and 20 years of service in 2011, but he was paid MACP-I benefits from 01.09.2008 and MACP-II from 01.10.2011. The applicant further claims that he was entitled to fixation of pension in the revised pay scale and the DDO, Doordarshan Kendra, Nagpur fixed the pension accordingly. However, on directions of respondent Nos.5 and 6, the applicant's pay was again revised and MACP benefit given to him was withdrawn as per the order of 18.06.2013 for fixing the pay with MACP and without MACP.

**2 (h) .** Subsequently, by order dated 25.06.2013,

the applicant's case was submitted without giving MACP benefit and after recovery of Rs.1,74,670/- from the benefits payable to him. This order is illegal and liable to be struck down.

**2(i).** The applicant claims that he is entitled under the law to receive MACP benefits which are granted to all the employees who were working in the TREX cadre in All India Radio and Doordarshan. The said benefits were already granted to him and cannot be withdrawn without any show cause notice or without observing principles of natural justice. Therefore, against the denial of MACP benefits, non-payment of pension, gratuity, leave encashment, etc and recovery of Rs.1,74,670/- from his retirement benefits, the O.A. has been filed by the applicant.

**3.** Contentions of the parties:-

The applicant and his counsel have submitted in the O.A. memo that -

**3(a).** the applicant's pay and pension ought to have been fixed after granting M.A.C.P. benefits on completion of 20 years of service. Although the respondents fixed the applicant's pay by granting MACP benefits, but withdrew the said benefits by ordering recovery of Rs.1,74,670/- without issuing any show cause notice and without any information to him;

**3 (b) .** the impugned action taken by the respondents is illegal, violative of fundamental rights and it has caused mental and physical harassment to the applicant. The action of the respondents, therefore, is liable to be severely deprecated;

**3 (c) .** from 01.04.2000 the applicant was on deputation with Prasar Bharti Board as per Prasar Bharti Act, 2012. The respondents have not paid the MACP benefits and pension to the applicant. As per order of 12.10.2012, the applicant was granted 2<sup>nd</sup> MACP from 09.10.2011 and his pay was fixed accordingly. It was also stated in the order that pay fixation is subject to post audit and if any overpayment is made the same will be recovered from him for which he will submit an undertaking. The applicant accordingly submitted his undertaking but as per the revised order of 18.06.2013, the MACP granted to him earlier was withdrawn;

**3 (d) .** that O.A.2109/2013 was decided on 05.05.2017 granting the benefit of MACP-I & II to the applicant and re-fixation of his pension along with payment of 12% interest for the difference in the restored amount of pension and the pension actually drawn with effect from the date reduced pension was paid to him. However, the respondents

challenged that order in Writ Petition No.606/2018 before the Hon'ble Bombay High Court, Nagpur Bench and it came to be decided on 13.04.2018, remanding the case back to the Tribunal for reconsideration along with consideration of letter dated 08.09.2014 from the Ministry of Information and Broadcasting, Government of India to the Chief Executive Officer, Prasar Bharti, New Delhi. Thus the O.A.2109/2013 came to be restored with the Tribunal;

**3(e).** in view of the subsequent clarification issued by the Ministry on 31.01.2018, the issue of earlier upgradations granted to the applicant is to be treated equivalent to only one upgradation under the MACP and the payment already made to the applicant cannot be recovered as per the caselaw - State of Punjab and others Vs. Rafiq Masih decided by Hon. Supreme Court on 18.12.2014 and the DOPT OM dated 02.03.2016 issued based thereon;

**3(f).** the applicant was under category 11 of the employees i.e. Transmission Executive as per the order of the Ministry dated 25.02.1999 on the subject 'upgradation of pay scales of certain categories of employees working in Prasar Bharati'. The upgradation granted to the applicant was from 01.03.1999 and the respondents have not granted him even one financial upgradation under the MACP; and

**3(g).** the respondents have not fixed the pay of the applicant from 20.11.2007 as was directed by this Tribunal in the order dated 05.05.2017.

The respondents have contended that -

**3(h).** the applicant has filed present O.A. against the order of 18.06.2013 passed by the Director (Engineering), Prasar Bharati, Doordarshan Kendra, Nagpur by which the pay of the applicant was revised without granting MACP-II benefit and in this order it was specifically mentioned that pay fixation was subject to post-audit and if any overpayment is made, it would be recovered in lumpsum without any notice;

**3(i).** in the order dated 25.06.2013 passed by the DDO, Prasar Bharati, Doordarshan Kendra, Nagpur, it was clearly mentioned that the pension case would be considered after deducting Rs.1,74,670/- and this action was as per the provisions of Rules and, therefore, there is no merit in the O.A.; and

**3(j).** the issue of admissibility of MACP benefits to TREX and other cadres was taken up with the Ministry of Information and Broadcasting on which the final clarification has been received through a speaking order of 05.02.2018 to the effect that upgraded pay scales granted by the Ministry vide order dated 25.05.1999 will be counted as one

financial upgradation against the 3 upgradations admissible under the MACP Scheme and accordingly the pay of the applicant would be revised by the respondents and consequential revised pensionary/terminal benefits due and admissible would also be paid to the applicant.

**4. Analysis and conclusions:-**

**4(a).** I have considered the O.A. memo filed by the applicant, along with its annexes A-1 to A-7, the order dated 05.05.2017 of this Tribunal on the O.A. and subsequent decision of Hon. High Court dated 13.04.2018 remanding the O.A. for its reconsideration in view of the clarification received from the Ministry of Information and Broadcasting, Government of India dated 08.09.2014, the reply of the respondents dated 01.08.2017, additional documents brought on record by the respondents along with copies of communications from the Ministry of Information and Broadcasting dated 08.09.2014, 31.01.2018 and 05.02.2018 as well as the arguments of counsel on both the sides.

**4(b).** From this consideration, the position in this case is as follows:-

**(i).** The main issue here pertains to lack of clarity about eligibility of the applicant under MACP in view of the earlier financial upgradation

granted to him i.e. whether the earlier upgradation granted to the applicant in 1999 was to be counted as equivalent to one financial upgradation under the MACP or equivalent to 3 financial upgradations. On this issue, now the latest clarification has been issued by the Ministry on 05.02.2018 to the effect that the upgraded pay scales granted by the Ministry dated 25.02.1999 will be counted as one financial upgradation against the three upgradations admissible under the MACP Scheme. It has been further clarified in this decision that recovery of excess payment, if any, is to be regulated as per the DOPT OM dated 02.03.2016 issued in pursuance to the decision of the Apex Court on 18.12.2014 in the case of State of Punjab & Ors. Vs. Rafiq Masih, etc in Civil Appeal No.11527/2014 (Annex.R-5, page 72 to 77).

**(ii).** In the affidavit filed on behalf of the respondents on 14.06.2018, the earlier clarification issued by the Ministry of Information and Broadcasting on 31.01.2018 was taken into account and it was assured that the pay of the applicant would be revised and consequential revised pensionary / terminal benefits due and admissible would be released to him. Thereafter as conceded by the respondents during the hearing on 31.08.2018

they have to grant benefit of the MACP financial upgradation to the applicant as per the latest clarification issued by the Ministry on 05.02.2018.

**(iii).** This means the applicant is entitled for 2<sup>nd</sup> financial upgradation under the MACP Scheme by considering the earlier pay upgradation granted to him in 1999 as equivalent to the first financial upgradation under the MACP. Accordingly he is entitled for refixation of his pay on the due date and refixing of his pension, and grant of payment to him.

**5.        Decision:-**

The O.A. is allowed. The respondents are directed to refix the pay of the applicant on the date of his eligibility by granting him 2<sup>nd</sup> financial upgradation under the MACP Scheme and accordingly revise his pay as well as pension and pensionary benefits due to him. Then the respondents have to release to the applicant all the payments due to him accordingly before 30.11.2018 by adjusting the payments already released to him.

**(Dr.Bhagwan Sahai)**  
**Member (A) .**

H.