

OA.No.170/00389/2017/CAT/Bangalore Bench

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00389/2017

DATED THIS THE 25th DAY OF JANUARY, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Malathi Sharma
Announcer (Retd)
R/a No.229, Garden Villa
Nagarabavi Maruthinagar
Bangalore-560072.

....Applicant

(By Advocate Sri N.Obalappa)

Vs.

1. The Union of India
Represented by its Secretary
Ministry of Information and Broadcasting
'A' Wing, Shastry Bhavan
New Delhi-110 001.

2. The Chief Executive Officer
Prasar Bharati, II Floor
PTI Building, Parliament Street
New Delhi-110 001.

3. The Director General
All India Radio, Akashvani Bhavan
Parliament Street
New Delhi-110 001.

4. The Station Director
All India Radio
Commercial Broadcasting Service
Raj Bhavan Road, Bangalore-560001.

5. The Pay & Accounts Officer
All India Radio, Kamarajar Salai
Mylapore, Chennai-4.

...Respondents

(By Advocate Shri V.N.Holla)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

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

a. Call for the records leading to grant of 2nd & 3rd MACP to the

applicant from the respondents and grant the 2nd ACP in the pay scale of Rs.1000-15200 with Grade Pay of Rs.6600/- w.e.f. 6.3.2006 vide Annexure-A17 dtd.4.9.2013 and grant all other consequential benefits of pay and allowances & arrears payments and retirement benefits admissible to the applicant.

- b. Direct the respondents to grant the 2nd ACP as per the clarifications issued by the 3rd respondent vide Annexure-A17 dtd.4.9.2013 and fix the pay of the applicant as per the draft pay fixation statement supported by the applicant at Annexure-A8 after due verification.*
- c. To quash the 2nd MACP & 3rd MACP order granted by the 4th respondent vide Annexure-A10 dtd.30.09.2011 to the limited extent of S.No.3 Malathi Sharma, Announcer & one more 2nd & 3rd MACP order dtd.10.10.2011 & pay fixation statements vide Annexure-A12 dtd.13.10.2011 issued by the 4th respondent (impugned orders) which are totally incorrect and contrary to the clarifications issued by the 3rd respondent.*

2. The case of the applicant in a nutshell is that she joined as erstwhile Staff Artists/Announcer and declared as Govt. servant w.e.f. 6.3.1982 vide Annexure-A1 dtd.9.1.1974 and he got 1st ACP in the pay scale of Rs.6500-10500 w.e.f. 9.8.1999 vide order dtd.16.3.2001(Annexure-A5) and entitled for 2nd ACP with GP Rs.6600 vide order dtd.4.9.2013(Annexure-A17) whereas the 3rd and 4th respondents issued the impugned orders dtd.22.9.2011/30.09.2011(Annexure-A10) and dtd.10.10.2011(Annexure-A12) granting 2nd and 3rd MACP and pay fixation statement dtd.13.10.2011 instead of 2nd ACP w.e.f. 6.3.2006 and the 4th respondent failed to take any action on receipt of clarifications of 3rd respondent dtd.4.9.2013(Annexure-A17).
3. The applicant submits that the 3rd respondent engaged her as Staff Artist/Announcer for a period of 3 years w.e.f.10.1.1974 vide 1st respondent order dtd.9.1.1974(Annexure-A1). She was again engaged on contract basis in the pay scale of Rs.550-20-650-25-750 w.e.f. 19.3.1981 vide 4th respondent order dtd.14.4.1981(Annexure-A2). The 1st respondent vide letter dtd.29.11.1991 followed by 3rd respondent letter dtd.19.11.1992 & 24.2.1993 declared the applicant as deemed Central Civil Govt. Servant w.e.f. 6.3.1982

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vide 4th respondent order dtd.19.4.1993 and the contract entered into was automatically ceased w.e.f.6.3.1982(Annexure-A3). The applicant produces the DOPT OM dtd.9.8.1999(Annexure-A4) towards the two financial upgradations after completion of 12/24 years of service without promotions. The 4th CPC pay scales of Rs.550-900 were revised to Rs.1640-2600 and by the 5th CPC revised to Rs.5500-9000 and the applicant was given all the benefits admissible to the Central Govt. servants and as per the 3rd respondent letter dtd.29/31.01.2001, the applicant has been granted the 1st ACP from the pay scale of Rs.5500-9000 to Rs.6500-10500 w.e.f. 9.8.1999 vide 4th respondent fixation statement dtd.16.3.2001. It is noted from the fixation statement that after allowing the notional increment in the lower post, the pay of the applicant will be at Rs.8650 and as per FR-22C the pay of the applicant is to be fixed at the next stage i.e. Rs.8700. The applicant has been granted 1st ACP in the pay scale of Rs.6500-10500 w.e.f. 9.8.1999 and she was granted regular promotion of Announcer Grade II in the same pay scale of Rs.6500-10500 w.e.f. 16.12.2008 vide 3rd respondent order dtd.15.12.2008(Annexure-A6) hence there shall not be any fresh pay fixation on account of regular promotion of Announcer Gr.II w.e.f. 16.12.2008 and the applicant retired from service w.e.f. 31.3.2009. A copy of the service register of the applicant is at Annexure-A5. The applicant produced the DOPT OM dtd.19.5.2009(Annexure-A7) MACP scheme of the financial upgradations to Central Govt. employees. The 5th respondent issued the PPO dtd.31.8.2010(Annexure-A8) wherein the applicant's pension was fixed at Rs.12585/- based on the last pay drawn Rs.20570 with GP Rs.4600. Her pay after the 1st ACP w.e.f. 1.1.2006 was fixed at Rs.20,570 with GP Rs.4600 is totally incorrect. She has produced a draft copy of the pay fixation since 6.3.1982 to 31.3.2009 and her last pay drawn is to be fixed at Rs.28,220. The

3rd respondent vide communication dtd.26.7.2011(Annexure-A9) clarified that contract service will not be counted for the purpose of MACP. The applicant has already been granted 1st ACP w.e.f. 9.8.1999 in the pre-revised and merged pay scale of Rs.6500-10500 and after completion of 24 years' service by 6.3.2006, the applicant is entitled for 2nd ACP in the pay scale of Rs.10000-15200 with GP Rs.6600 w.e.f. 6.3.2006 as clarified by the 3rd respondent vide order dtd.4.9.2013(Annexure-A17) whereas the 4th respondent based on the approval of the 3rd respondent vide order dtd.22.9.2011 granted the 2nd MACP with GP Rs.4800 and 3rd MACP with GP Rs.5400 to the applicant w.e.f. 1.9.2008 vide order dtd.30.9.2011(Annexure-A10). The applicant submitted a representation dtd.12.10.2011(Annexure-A11) to the 4th respondent to revise her retirement benefits with GP Rs.5400 w.e.f.1.9.2008. In pursuance of the 4th respondent order dtd.10.10.2011(Annexure-A12) and pay fixation statement dtd.13.10.2011 fixed the pay of the applicant at Rs.22120/- with GP Rs.5400 which is incorrect. However, the same has not been implemented by the respondents and hence the impugned order is liable to be set aside. The 4th respondent vide letter dtd.15.11.2011(Annexure-A13) forwarded the revised bills on revision of GP Rs.5400 to the 5th respondent to make payment and to revise the pension, whereas the 5th respondent recorded his remarks stating that the applicant was declared as Govt. servant only from 1982 and not entitled for 3rd MACP and returned the bills to the 4th respondent.

4. The applicant submits that the 4th respondent based on the recorded comments of the 5th respondent on Annexure-A13, sought clarification from the Station Director, All India Radio, Bangalore, Zonal Office vide communication dtd.12.1.2012(Annexure-A14). The Station Director, All India Radio, Bangalore vide letter dtd.19.1.2012(Annexure-A15) sought clarification from the 3rd respondent towards the 3rd MACP to the applicant from

01.09.2008. The 3rd respondent vide communication dtd.17.1.2013(Annexure-A16) issued the clarification towards the entitlement of Announcers etc. at All India Radio, consequent on merger of pay scale of Rs.5000-8000 & 5500-9000 w.e.f. 1.1.2006. The 3rd respondent vide communication dtd.4.9.2013(Annexure-A17) clarified that 'as regards grant of financial upgradation for Announcers recruited in the pre-revised pay scale of 5000-8000 who have completed 24 years of regular service on a date between 1.1.2006 and 31.8.2008, it is clarified that 2nd financial upgradation would be allowed in the GP Rs.6600 subject to fulfilment of promotional norms (after framing of RRs post-merger) as stipulated in condition No.6 of Annexure-I ACP Scheme dtd.9.8.1999. Whereas the 4th respondent receiving this clarification on 20.9.2013, has not taken any action to grant the 2nd ACP to the applicant with GP of Rs.6000 w.e.f. 6.3.2006. The applicant submitted an RTI application dtd.31.3.2017 to the 4th respondent seeking an information which has been received vide 4th respondent letter dtd.25.4.2017(Annexure-A18). The applicant based on the RTI details at Annexure-A18 submitted another representation (Annexure-A19) to the 4th respondent requesting for 2nd ACP w.e.f. 6.3.2006 for which there is no reply till date. She submitted one more RTI application(Annexure-A20) to the 4th respondent and obtained legible copies supported in the OA.

5. The respondents have filed their reply statement wherein they submit that the applicant joined as Staff Artist/Announcer on contractual terms for three years w.e.f. 9.1.1974 in the pay scale of Rs.170-10-260-15-335 (revised by 5th CPC to pay scale Rs.5000-8000). Thereafter, she was promoted to Announcer (Senior Grade) w.e.f. 19.3.1981 in the pay scale of Rs.550-25-750 (revised by 5th CPC to pay scale Rs.5500-9000). In the meantime, in order to cope up with the problem of genuine stagnation and hardship faced by the employees

due to lack of promotional avenues, GOI introduced ACP scheme. As per the scheme an employee can be given two ACPs at the interval of 12 years and 24 years subject to fulfilment of promotional norms and other criteria. The scheme was made applicable w.e.f. 09.08.1999. Further, this scheme was replaced by MACP scheme w.e.f.01.11.2008 wherein 3 upgradations can be granted in next Grade Pay at the interval of 10, 20 & 30 years subject to fulfilment of other criteria given in the schemes. Based on this scheme, the applicant was granted 2nd financial upgradation under ACP scheme after completion of 24 years in service as per the norms prescribed in the scheme. Accordingly, she was granted 2nd financial upgradation w.e.f. 09.08.1999 in the pay scale of Rs.6500-10500 (revised to grade pay of Rs.4600 as per 6th CPC). Therefore, the applicant was already granted 2nd financial upgradation. Further, she was also granted 2nd MACP and 3rd MACP in GP of Rs.4800 and Rs.5400 respectively w.e.f. 1.9.2008. The claim of the applicant that she is entitled for GP Rs.6600 is wrong and she is not entitled for the same. The order dtd.4.9.2013 referred to by the applicant clearly states that 'as regards for grant of 2nd financial upgradation for Announcers recruited in the pre-revised pay scale of Rs.5000-8000/- who have completed 24 years of service on a date between 1.1.2006 and 31.8.2008, it is clarified that 2nd financial upgradation would be allowed in the GP Rs.6600/- subject to fulfilment of promotional norms (after framing of RRs post-merger) as stipulated in condition No.6 of Annexure-I ACP Scheme dtd.9.8.1999, in terms of clarification given on point of doubt no.1 of ACP Scheme dtd.10.2.2000, as the pre-revised pay scales Rs.6500-10500 & Rs.7450-11500 have been merged and placed in PB-2 with GP of Rs.4600/-.' According to this, the applicant is not entitled to get upgradation in GP Rs.6600. The order is applicable only after the framing of RRs post-merger. However, in Announcer

cadre there has been no merger till date although the proposal to merge the grades were initiated but the same was not approved by the competent authority. The cadre remains as 4-grades cadre. Therefore, the applicant has already been granted 2nd financial upgradation as per the available hierarchy of Announcer cadre w.e.f. 9.8.1999 in the pay scale of Rs.6500-10500 (revised to grade pay of Rs.4600 as per 6th CPC) and is not entitled for any further upgradation under ACP Scheme. But based on the clarifications received from Ministry of I&B, the instant matter needs to be re-examined and placed before the screening committee to revise the grant of MACP to the applicant if eligible. The representation submitted by the applicant is related to the grant of 2nd ACP in GP Rs.6600 which she is not entitled to.

6. The applicant has filed rejoinder reiterating the submission made in the OA and submits that since the applicant did not get any promotion for more than 12 years from 6.3.1982 as a Civil Govt. Servant, as per ACP orders, the 1st ACP was granted to her in the pre-revised pay scale of Rs.6500-10500, the promotional scale of Announcer Gr.II w.e.f. 9.8.1999. Thereafter since she did not get further promotion after 24 years of service from 6.3.1982, she is entitled for 2nd ACP in the next Announcer Gr.I promotional pay scale of Rs.1000-15200 with GP Rs.6600 as already clarified by DG, AIR vide order dtd.4.9.2013(Annexure-A17). She further submits that in a similar case in OA.No.559/2011 filed before the Hon'ble CAT, Principal Bench, New Delhi between *Sri R.L.Malhotra vs. Union of India & others* order dtd.8.11.2012(Annexure-A21) at para8, the DOPT clarified that the contract service will not be counted for promotion and the DG, AIR, New Delhi has also proposed accordingly and counting Govt. service, 1st & 2nd ACP were granted. The Ministry of Finance vide order dtd.13.11.2009(Annexure-A22) merged the pay scales of Rs.5000-8000, 5500-9000 & 6500-10500 and

upgraded to Rs.7450-10500 hence the post-merger issue is settled. The applicant has not claimed the MACP benefit for her 1st contract service from 9.1.1974 terminated w.e.f. 18.3.1981 and 2nd contract service from 19.3.1981 automatically ceased from 6.3.1982 as stated by the Station Director All India Radio Bengaluru order dtd.19.4.1993 recorded in her service book but she claims to count the service when she was appointed as Gr.III, Announcer w.e.f. 6.3.1982. She has been granted 1st ACP w.e.f. 9.8.1999 for 12 years stagnated service and for 24 years stagnated service she is entitled for 2nd ACP w.e.f. 6.3.2006 and entitled for revision of pay consequential benefits and revision in pension. Therefore, the statement of the respondents that after 24 years of service, 2nd ACP granted to the applicant w.e.f. 9.8.1999 is totally incorrect. Therefore, the applicant whose pay scale of Rs.6500-10500 when she was Announcer Grade-II was merged to the pay scale of Rs.7450-11500 w.e.f. 1.1.2006 is entitled for Announcer Gr.I for 2nd ACP in the pre-revised pay scale of Rs.10000-15200 with GP of Rs.6600 from 6.3.2006.

7. The applicant further submitted that the respondents themselves admitted that contractual period rendered would not be counted for the purpose of MACP. Hence, their stand for granting of 2nd MACP and 3rd MACP counting the contractual service period vide Annexure-A10 dtd.30.9.2011 and Annexure-A12 dtd.10.10.2011 & 13.10.2011 is incorrect. As she was already granted the 1st ACP, she is entitled for 2nd ACP w.e.f. 6.3.2006. Vide DOPT clarification dtd.10.2.2000 since she has not completed 30 years of service from 6.3.1982 as a Govt. servant she is not entitled for 3rd MACP hence the proposal of examining the issue and placing before the screening committee for 3rd MACP does not arise and the respondents cannot supersede the DOPT clarifications. The 5th respondent rightly returned the bills on 3rd MACP order to the 4th respondent saying that since the applicant had not completed 30

years of service by 31.03.2009 as she is declared as Govt. servant only from 6.3.1982, she is not entitled for 3rd MACP accordingly. Hence, there is no need to re-examine the matter and place before the screening committee for 3rd MACP and it is an attempt of the respondents to prolong the issue unnecessarily. Therefore, the MACP order and pay fixation statement dtd.13.10.2011 is liable to be set aside.

8. We have heard the Learned Counsel for the parties. The Learned Counsels for the applicant and the respondents have made submissions reiterating the factual position and their points as highlighted by them in the OA and the reply statements. Both the Counsels have submitted their written arguments note enclosing therewith office orders and citations on which they rely upon.
9. We have gone through the main contentions of the applicant and replies of the respondents in detail. The facts in this case are similar to OA.518/2017 wherein we had dismissed the OA holding that the applicant has not fulfilled the conditions relating to entitlement of further grant of 2nd ACP with Grade Pay of Rs.6600 on the basis of the respondents' letter dtd.4.9.2013(Annexure-A17) that such entitlement would be allowed subject to fulfilment of promotional norms after framing of RRs post-merger as prescribed therein. We have held that since the recruitment rules have not been framed and there has been no merger of posts as mandated by the respondents' letter dtd.4.9.2013, the applicant would not be eligible for the benefit. The case of the applicant in this OA also needs to be considered on the same lines and therefore we hold that the applicant is not entitled for the Grade Pay of Rs.6600 as claimed by her after quashing the 2nd and 3rd MACP granted to her vide Annexures-A10 & A12. The applicant has cited the case decided by the CAT, Principal Bench in

OA.No.555/2011 dtd.8.11.2012 in the case of Shri R.L.Malhotra vs. UOI wherein the contract service before entry into Govt. service has not been considered for the purpose of ACP. The respondents have contended that the DOPT's note dtd.27.04.2004 has not been produced by the department in OA.No.555/2011(supra) and therefore considering that after being declared as Govt. servant on 6.3.1982, she has been given the financial upgradation under ACP scheme on 9.8.1999 and has also been given second promotion as Announcer Grade-II on 16.12.2008, she is not entitled for the 2nd ACP with Grade Pay of Rs.6600 as claimed by her in the OA. The respondents have also contended that if the contract service has to be taken into consideration, the grant of 3rd MACP to the applicant after completion of 30 years of service would arise and since the same was initially granted w.e.f. 1.9.2008 but has subsequently been objected to by PAO, AIR, Chennai, they have decided to review the case of the applicant in the light of the Ministry/DOPT's note dtd.27.04.2004. We therefore, hold that while the applicant is not entitled for the benefit as per the DOPT letter dtd.4.9.2013, the respondents may consider the grant of 3rd MACP to the applicant as per note dtd.27.4.2004 of the DOPT. This they may do so within a period of two(2) months from the date of this order. The OA is disposed of. No costs.

(C.V.SANKAR)
MEMBER (A)
/ps/

(DR.K.B.SURESH)
MEMBER (J)

Annexures referred to by the applicant in OA.No.170/00389/2017

Annexure A1: The 4th respondent engaged the applicant as Staff Artist, Announcer for a period of 3 years w.e.f. 10.01.1974 vide order No.CBB-19(2)73 S dtd.09.01.1974

Annexure A2: The 4th respondent again engaged the applicant on contract basis in the fee scale of Rs.550-20-650-25-750 w.e.f. 19.03.1981 vide order No.CBB 19(2)81-S dtd.25.04.1981

Annexure A3: The 4th respondent vide order No.CBB 19(2)/93-S dtd. applicant

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declared the applicant as deemed Central Civil Govt. servant
w.e.f. 06.03.1982

Annexure A4: The applicant produces the DOPT OM dtd.09.08.1999 towards the ACP Scheme

Annexure A5: The 4th respondent granted the 1st ACP to the applicant in the pay scale of Rs.6500-200-10500 w.e.f. 09.08.1999 vide fixation statement No.CBB-10(2)/2001-S dtd:16.03.2001

Annexure A6: The 3rd respondent promoted the applicant to the post of Announcer Gr-II in the pay scale of 6500-10500/- w.e.f. 16.12.2008 vide order No.3/6/2008-S-VIII/933 dtd:16.12.2008 and the applicant retired from service vide 4th respondent order No.CBB 19(2)2009-S dtd.31.3.2009 vide SR extract of the applicant

Annexure A7: The applicant produces the DOPT OM dtd.19.05.2009 & subsequent clarifications towards the MACP scheme of Central Govt. Employee

Annexure A8: The 5th respondent issued the PPO No.28554090016 dtd. and the applicant's supported the draft pay fixation statement

Annexure A9: The 3rd respondent vide communication No.5/18/2009-S-I (B)/711 dtd.26.7.2011 clarified that contract service will not count for purpose of MACP

Annexure A10: The 3rd respondent vide order No.3/20/2011-S-VIII/809 dtd.22.09.2011 granted the 2nd & 3rd MACP to the applicant w.e.f. 01.09.2008 and 4th respondent, re-issued the same vide order No.Ban.19(6)/2011-S/dated:30.09.2011(impugned order)

Annexure A11: The applicant submitted a representation to the 4th respondent to revise her retirement benefits with Grade Pay of Rs.5400/- w.e.f. 01.09.2008

Annexure A12: The 4th respondent vide order No.10(2)/2011-S dtd.13.10.2011 granted 2nd & 3rd MACP & fixed the pay of the applicant vide fixation statement No.CB 1(8)2011 dtd.13.10.2011(impugned order)

Annexure A13: The 4th respondent vide letter No.13(2) 2011-S dtd.15.11.2011 forwarded the revised bills to the 5th respondent & the 5th respondent recorded his remarks on Annexure-A12 and returned the bills to the 4th respondent.

Annexure-A14: The 4th respondent sought clarification from the Station Director All India Radio, Bangalore, Zonal Office, vide communication No.1(8)/2011-S dtd.12.01.2012

Annexure-A15: The Station Director AIR, Bangalore, vide letter No.Ban/19(6)/2012-S dtd.19.01.2012 sought clarification from the 3rd respondent towards 3rd MACP to the applicant from 01.09.2008

Annexure-A16: The 3rd respondent vide communication No.6/1/2013-S-VIII/23 dtd.17.1.2013 issued clarification towards the entitlement of 1st ACP by the Announcers etc. in the department

Annexure-A17: The 3rd respondent vide communication No.6/1/2013/S-VIII/402, clarified the entitlement of 2nd ACP to Announcer Grade-IV & completed 24 years of service

Annexure-A18: The applicant produces the RTI application dtd.31.3.2017 addressed to 4th respondent & their reply No.CBB-6(3)2017-G/310 dtd.25/26.4.2017

Annexure-A19: The applicant submitted one more representation

dtd.02.05.2017 to the 3rd respondent requesting for 2nd ACP
w.e.f. 06.03.2006 with Grade Pay of Rs.6600/-.
Annexure-A20: The 4th respondent provided to the applicant the certified
copies of the orders, clarifications etc. issued by the 3rd & 5th
respondent vide Annexure-A13 & Annexure-A17.

Annexures with reply statement:

-NIL-

Annexures with rejoinder:

Annexure-A21: Copy of the order dtd.08.11.2012
Annexure-A22: Copy of the order dtd.13.11.2009

Annexures with written arguments note by the applicant:

Annexure-1: Copy of the order dtd.17.9.2018 in OA.No.472/2017
Annexure-2: Copy of the DOPT, clarification OM dtd.9.9.2010
Annexure-3: Copy of DOPT OM clarification dtd.10.2.2000
Annexure-4: Copy of the Annexure-A3 page 19
Annexure-5: Copy of the order dtd.19.7.1993 of AIR Gulbarga
Annexure-6: Copy of Annexure-A13 dtd.15.11.2011 & 5th respondent
endorsement dtd.28.11.2011
Annexure-7: Copy of Annexure-A15 dtd.19.1.2012
Annexure-8: Copy of 3rd respondent communication dtd.9.12.2013

Annexures with written arguments note by the respondents:

Annexure-1: Copy of the Hon'ble CAT, Bangalore order dtd.31.10.2018
Annexure-2: Copy of recruitment rules of Announcers Grade I to IV
Annexure-3: Copy of DOPT Note dtd.27.4.2004
