

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/01663/2018

DATED THIS THE 02nd DAY OF APRIL, 2019

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

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

Jayashree Narain, age: 66 years
Programme Executive (Retd)
R/a No.7, 1st Cross
Kumara Park West
Bangalore-560020.

...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, "C" Tower
Doordarshan Bhavan
Copernicus Marg
Mandi House
New Delhi-110 001.
3. The Director General
All India Radio
Akashvani Bhavan
Parliament Street
New Delhi-110 001.
4. The Dy.Director General (E)/HOO
All India Radio
Raj Bhavan Road
Bangalore-560 001.
5. The Pay & Accounts Officer
IRLA, Min. of I & B,

Soochana Bhavan
CGO Complex, Lodhi Road
New Delhi-110003.

...Respondents

(By Advocate Sri V.N.Holla, Sr.CGSC)

ORDER

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

The case of the applicant is that she joined the 4th respondent office as Librarian on 18.3.1974 vide order dtd.9.1.1974(Annexure-A1) and got 1st promotion to the post of Transmission Executive on 28.2.1984(Annexure-A2). She was reverted back to the post of Senior Library & Information Assistant from the post of Transmission Executive vide order dtd.25.4.1985(Annexure-A3) and again promoted as Transmision Executive w.e.f. 30.10.1987(Annexure-A4). As per the Ministry of Finance OM dtd.24.7.1990 circulated vide DG, Doordarshan Communication dtd.1.4.1992(Annexure-A5), the pay scales of Library & Information Assistant Rs.1200-1800, 1200-2140, 1320-2040, 1350-2200, 1400-2300, 1400-2600 have been merged and placed in the single revised pay scale of Rs.1400-2600 by the 4th CPC and by the 5th CPC, this scale is revised to Rs.5000-8000 which is equivalent to the pay scale of Transmission Executives. The 1st respondent granted the upgraded pay scales to the Transmission Executives vide communication dtd.25.2.1999(Annexure-A7) with notional fixation from 1.1.1986 and actual fixation w.e.f. 1.1.1996. Since the applicant had already got the ad-hoc promotion in the pay scale of Rs.6500-10500 w.e.f. 8.1.1999 before the grant of the upgraded scale dtd.25.2.1999, the applicant has not submitted any option and the respondents have also not granted any upgraded pay scales to the applicant. The DOPT vide OM dtd.10.2.2000(Annexure-A8) clarified at point No.1 that 'the benefits of upgradation under ACP scheme (ACP) are to be allowed in the existing

hierarchy, the mobility under ACPS shall be in the hierarchy existing after merger of pay scales by ignoring the promotion'. An employee who got promoted from lower pay scale to higher pay scales as a result of promotion before merger of pay scales shall be entitled for upgradation under ACPS ignoring the said promotion as otherwise he/she would be placed in a disadvantageous position vis-a-vis the fresh entrant in the merged grade. The applicant's 1st promotion as Programme Executive is adjusted against the 1st ACP and after completion of 24 years of service by 18.3.1998, she is entitled for 2nd ACP in the next promotional pay scale of Rs.8000-135000 w.e.f. 9.8.1999. Since she did not get any promotion from 8.1.1999 and completed 30 years of service by 18.3.2004, she is entitled for 3rd MACP w.e.f. 1.9.2008 with Grade Pay of Rs.6600. The applicant retired from service w.e.f. 31.7.2011 by attaining the age of superannuation vide 4th respondent's order dtd.29.7.2011(Annexure-A10). The 5th respondent issued PPO dtd.27.5.2014(Annexure-A11) taking last pay drawn at Rs.29,080/- and fixed pension which is incorrect. As per the draft pay fixation statement for the period from 28.2.1984 to 31.7.2011(Annexure-A12), the last pay drawn as on 31.7.2011 is arrived at Rs.31,020/- whereas the last pay arrived by the 5th respondent in the PPO dtd.27.5.2014 is Rs.29,080 and hence there is a difference of pay of Rs.1940/- admissible to the applicant. In a similar case of one of her juniors Shri R.Venkatesh Babu who passed away while on duty as Programme Executive, the respondents have ignored his promotion to Transmision Executive from the post of Library & Information Assistant for the purpose of ACP and MACP vide OM dtd.10.4.2017(Annexure-A13). In the reply filed in OA.No.388/2017, the respondents submit that the applicant was given 2nd ACP with GP of Rs.5400 w.e.f. 9.8.1999 and it is also mentioned that the promotions/appointments from the post of

Librarian to the post of Transmision Executive is to be ignored as after merger of scales revised pay scales of Librarians are equivalent to the post of Transmision Executive(Annexure-A14). The 5th respondent has filed reply in OA.No.388/2017 stating incorrectly that the applicant has already availed two promotions and one upgradation of pay scale but he has not produced any option exercised by the applicant for upgradation of pay scales and the pay fixation statement granted to the applicant w.e.f. 25.2.1999 or 8.1.1999 from the date of 1st promotion as Programme Executive and submitted that the applicant is not entitled for 3rd MACP(Annexure-A15). The respondents submit in the OA.No.388/2017 that the applicant joined as Librarian in 1974 and got promotion as Senior Librarian in 1985 and thereafter promoted as Transmision Executive on 28.10.1987 and further promoted as Programme Executive on 8.1.1999 which is contrary to their own orders stating that the promotion from the post of Librarian to Transmision Executive should be ignored due to merger of pay scales. Hence, the orders were passed in OA.388/2017 with liberty to file a fresh OA if needed(Annexure-A16).

Therefore, the applicant has filed the present OA with the following relief:

- a) *Call for the records leading to grant of promotion to the post of Programme Executive w.e.f.8.1.1999 in the pay scale of Rs.6500-10500 and option exercised by the applicant for the upgraded pay scales & pay fixation statement issued by the PAO IRLA New Delhi by granting the upgraded pay scales if any to the applicant w.e.f. 30.10.1987 & 1.1.1996.*
- b) *The OA.No.3046/2015 pending before the Hon'ble CAT, PB New Delhi is not applicable to the applicant as the applicant has not been granted any upgraded pay scales vide Annexure-A7 dated 25.2.1999.*
- c) *The respondents have already granted the 1st & 2nd ACP to the applicant vide Annexure-A14 order No.04/35/2017-SI(B) dated 30.10.2017 Annexure-R1 at SI.No.98 of the list: name of the applicant: Jayashree Narain hence,*
- d) *This Hon'ble Tribunal is prayed to direct the respondents to grant the 3rd MACP w.e.f. 1.9.2008 with Grade Pay of Rs.6600/- vide per Annexure-A9 dated 19.5.2009 as the applicant completed 30 years of service by*

18.3.2004 and did not get any promotion from 9.8.1999 and to consider the draft pay fixation statement at Annexure-A12 after due verification.

e) Direct the respondents to revise the PPO dt.27.5.2014, Annexure-A11(Impugned order).

2. Respondents have not filed their reply statement.

3. Heard the Learned Counsel for both the parties and perused the materials in detail. The applicant has filed written arguments notes enclosing therewith Annexure-A17 which is Transfer Application filed by the respondents to transfer the matter to the Principal Bench of this Tribunal at Delhi and Annexure-A18 which is the order of this Tribunal in OA.No.119/2017.

4. From the details of the case and as admitted by the respondents in the reply statement filed in OA.No.388/2017 vide Annexure-A14 in this application, the applicant had joined the respondents as Librarian w.e.f. 18.3.1974, she was promoted as Transmission Executive in the pay scale of Rs.1400-2600 w.e.f. 30.10.1987 and that she was further promoted as Programme Executive in the pay scale of Rs.6500-10500 w.e.f. 8.1.1999. The respondents in their reply at para-2 e,f & g vide Annexure-A14 have stated as follows:

e) Ministry of Finance vide OM dated 24.07.1990(Annexure-A5 of OA) had merged the pay scales of Librarians and upgraded to the pay scales of Rs.1400-2600/-.

f) As per DoPT's OM dated 10.02.2000, promotion from the post of Librarian to the post of Transmission Executive is to be ignored as after merger of scales by Ministry of Finance vide OM dated 24.07.1990, pre-revised pay scales of Librarians are equivalent to the post of Transmission Executive i.e., Rs.1400-2600/-.

g) The next promotional post is Programme Executive. She was drawing the Grade Pay of Rs.4800/- on ad-hoc promotion to the post of Programme Executive w.e.f. 08.01.1999, no benefit of pay fixation on grant of 1st ACP is admissible to her. In compliance with the order dated 13.07.2017 of the Hon'ble High Court of Delhi in the WP.No.4151/2003

filed by the Union of India and others, the proposal of grant of ACP to the applicant along with other Programme Executives was considered by the competent authority in the Directorate General, All India Radio. The applicant has been granted 1st financial upgradation under ACP to the post of Programme Executive on promotional hierarchy w.e.f. 09.08.1999. Since the applicant was already drawing the Grade Pay of Rs.4800/- on ad-hoc promotion to the post of Programme Executive w.e.f. 08.01.1999, no benefit of pay fixation on grant of 1st ACP is admissible to her and 2nd financial upgradation under ACP has been granted to the post of Assistant Station Director (JTS level) of IBPS next post in promotional hierarchy in PB-III Grade Pay Rs.5400/- w.e.f. 09.08.1999 by the Directorate vide order No.04/35/2017-S-1(B) dated 30.10.2017(Annexure-R1).

5. It is clear that the applicant has not got the benefit of upgraded scale of Rs.7500-12000 vide Ministry's order dtd.25.2.1999 as stated by the applicant. The respondents have not produced any evidence to confirm that she has availed the upgraded scale of Rs.7500-12000 based on the Ministry's order dtd.25.2.1999 which is the subject matter of the case filed before the Principal Bench of this Tribunal. Further, this Tribunal had in several earlier cases viz., in RA.No.2/2018 in OA.No.253/2017 vide order dtd.24.7.2018 ordered as follows:

ORDER (ORAL)

HON'BLE DR. K.B. SURESH, MEMBER(J)

1. Heard. The issue is in a very short compass. Apparently, the respondents wanted to treat the upgradation as merger of 3rd MACP. It is not possible. The upgradation granted on merger of pay scale is within the ambit of the employer. But, then once having granted, it becomes the right of the employee to retain it. It has nothing to do with the MACP which is the result of non-stagnation policy inaugurated by the Hon'ble Apex Court. Therefore, these are two different genres which cannot be mixed together at all. Therefore, there is no ground in the RA.

2. At this point of time Shri VN.Holla, on this point would submit that a similar matter is pending before the Principal Bench also. This is absolutely irrelevant, as it is trite law is that there cannot be mixing up of benefits granted due to merger of pay scale and the MACP. Both are distinct and separate from each other. Shri VN.Holla, relies on a judgement of the Hon'ble Apex Court in Government (NCT of Delhi) & others vs. Grade-I DASS Officers' Association. But, then in which paragraph 14, the Hon'ble Apex Court held that in policy matters there need not be interference unless so specifically warranted. Since there is no question of policy involved in

this, even if, it is a policy, even then also we are duty bound to interfere in this because it goes against the rule of proportionality and rationality as well as Wednesbury reasonableness. There cannot be any arbitrary policy of the government notwithstanding the fact that there is no policy of the government in this case as policy has to be spelt out in legally recognizable forms. A decision taken by one authority cannot be a policy because it does not have strength of sovereignty behind it. There is no question of any policy involved in this matter.

3. Review application is dismissed. No order as costs.

The same was challenged before the Hon'ble High Court of Karnataka in WP.No.50820/2018 wherein the Hon'ble High Court vide order dtd.18.01.2019 ordered as follows:

ORDER

Aggrieved by the order passed by the Central Administrative Tribunal, Bengaluru, the respondents therein have filed the instant writ petition.

2. The Tribunal in terms of the impugned order followed an earlier order passed in OA.No.170 OF 00253 OF 2017, in the case of C.U.BELLAKKI VS. SECRETARY, MINISTRY OF INFORMATION AND BROADCASTING, NEW DELHI AND OTHERS, and granted relief to the applicant. That the review applications filed against the order referred to supra, were rejected.

3. Therefore, following the earlier order wherein similar relief as sought for in the present writ petition has been granted, we find no good ground to take a different view of the matter. Hence, the writ petition is dismissed.

*Sd/-
JUDGE*

*Sd/-
JUDGE*

6. This Tribunal has time and again held that if a pay scale is upgraded and benefit is granted, it cannot be treated as a career enhancement as stipulated by the Hon'ble Apex Court. It is also not in consonance with the circulars issued by the concerned Ministries. It is therefore, crystal clear that she has got only one promotion as Programme Executive as on 8.1.1999 and she has been given 2nd financial upgradation under ACP w.e.f. 9.8.1999 as noted above. On completion of 30 years of service, she is therefore, entitled for the 3rd MACP w.e.f. 18.3.2004 and

therefore, we direct the respondents to grant the same to the applicant with all consequential benefits within two(2) months from the date of this order. The OA is allowed. No costs.

(C.V.SANKAR)
MEMBER (A)

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

/ps/

Annexures referred to by the applicant in OA.No.170/01663/2018

Annexure-A1: The applicant joined as Librarian at 4th respondents Office, and placed on probation vide order No.1(10)/74-S dated 18.3.1974

Annexure-A2: The applicant was promoted as Transmission Executive vide order No.BNG/DDK 1(5)84 S dated 28.2.1984

Annexure-A3: The applicant was reverted from the post of Transmission Executive to the post of Sr.Library & Information Assistant, vide order No.BNG/DDK 1(5)85-S dated 25.4.1985

Annexure-A4: The applicant was re-promoted as Transmission Executive vide 4th respondent order No.1(3)87-S dated 28.10.1987 reported for duty at All India Radio Bhadravathi on 30.10.1987

Annexure-A5: Vide Ministry of Finance OM No.19(1)/1C/86 dated 24.07.1990 & DG, Doordarshan Communication No.9/24/S-I/S-II dated 1st April 1992, the pay scales of Library & Information Asst. Have been merged and placed in the single revised pay scale of Rs.1400-2600

Annexure-A6: The 4th-6th CPC pay scales the entry grade pay of Transmission Executives in AIR/Doordarshan Rs.1400-2600 pre-revised pay scales revised to Rs.5000-8000 (S9) w.e.f. 1.1.1996

Annexure-A7: The upgraded pay scales granted by the 1st respondent vide order No.310/173/97-B(D) dated 25.02.1999

Annexure-A8: DOPT OM.No.35034/1/97-Estt (D) dated 9.8.1999 & clarification OM dated 10.2.2000 towards merged pay scales

Annexure-A9: The DOPT OM.No.35034/1/97-Estt (D) dated 19.5.2009 towards the grant of MACP to the Central Govt. employees

Annexure-A10: The applicant retired from service w.e.f. 31.07.2011 vide 4th respondent order No.1(2)2011-S(p) dated 29.7.2011

Annexure-A11: The PPO No.280621400531 dated 27.05.2014 granting the pension taking last pay of Rs.29,080/-

Annexure-A12: The applicant produces the draft Pay Fixation statement from 1984 to 2011

Annexure-A13: The 3rd respondent O.M.No.06/01-2017-SI(B) dated 10.04.2017 issued in respect of similarly placed employee Sri R.Venkatesha Babu, Librarian/Programme Executive

Annexure-A14: The respondents submitted a reply on 13.11.2017

Annexure-A15: The 5th respondent filed a separate reply dated 07.06.2018

Annexure-A16: The OA.No.388/2017 filed by the applicant before this Hon'ble Tribunal was dismissed vide order dated 14.08.2018 issued on 07.09.2018

Annexures with written argument note filed by the applicant:

Annexure-A17: Transfer application

Annexure-A18: Order of this Hon'ble Tribunal
