

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00397/2018

DATED THIS THE 04th DAY OF APRIL, 2019

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

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

C.A.Ramachandra Murthy
Aged about 60 years
Residing at No.923, 1st Floor, EWS
2nd Phase, Yelahanka New Town
Bengaluru-560064.

...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.(Cadre Controlling Authority)
4. The Director General
Doordarshan, Doordarshan Bhavan
Copernicus Marg
New Delhi-110 001.
5. The Dy.Director General (P)
Doordarshan Kendra
J.C.Nagar
Bengaluru-560 006.

6. The Pay & Accounts Officer
Min. of I & B,
Doordarshan Kendra
Swami Sivananda Salai
Chennai-600005.

...Respondents

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

O R D E R

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

The brief facts of the applicant's case is that he joined as Floor Assistant on 8.3.1985(Annexure-A1) and again appoined as a direct recruit w.e.f. 9.1.1990 to the post of Property & Wardrobe Assistant at 5th respondent's office. The 1st respondent granted the upgraded pay scale of Rs.7500-12000 to the applicant w.e.f. 1.1.1996 vide order dtd.25.2.1999(Annexure-A2). He submits that as per DOPT OM dtd.19.5.2009(Annexure-A3) he is entitled for 2nd & 3rd MACP. Since he got upgraded pay scales w.e.f. 1.1.1996 and thereafter did not get any promotion, the 4th respondent vide order dtd.5.8.2011(Annexure-A4) granted the 1st & 2nd MACP to the applicant with Grade Pay of Rs.5400/- w.e.f. 9.1.2010. As per order dtd.5.8.2011, the 5th respondent issued the pay fixation statement dtd.24.8.2011(Annexure-A5) for the 1st & 2nd MACP with grade pay of Rs.5400/- w.e.f. 9.1.2010. When the 1st respondent sought clarification from DOPT to consider the grant of ACP/MACP to the employees granted the upgraded pay scales vide Annexure-A2, the DOPT vide ID Note dtd.10.7.2013(Annexure-A6) has clarified that such upgradation can be adjusted against three promotions/upgradation entitled by the employee. Accordingly, the applicant drawn the upgraded pay scale of Rs.7500-12000/- w.e.f. 1.1.1996. The applicant retired from service w.e.f. 31.8.2017 on attaining the age of superannuation and the 5th respondent issued the last pay certificate dtd.27.9.2017(Annexure-A7) with the last pay drawn by the

applicant as Rs.90300/- as on 31.8.2017. The 5th respondent issued a pension calculation sheet during September 2017(Annexure-A8) wherein the last pay drawn for the month of August 2017 is reduced and taken at Rs.83600/- and calculated the other retirement benefits depriving the entitled financial benefits to the applicant, which is illegal and is liable to be set aside. Based on the Annexure-A8, the 6th respondent had fixed the pension at Rs.41800 vide PPO dtd.22.11.2017(Annexure-A10). The representation dtd.5.10.2017(Annexure-A9) filed by the applicant to the 6th respondent i.e. Pay & Account Officer requesting to consider the last drawn pay of Rs.90300/-, is not replied so far. Aggrieved by the same, he filed the present OA seeking the following relief:

1. *Call for records leading to the issuance of the revised pension calculation sheet issued by 5th respondent vide Annexure-A8 dated:nil, during the month of September 2017 and reduction of Grade Pay from Rs.5400/- to Rs.4800/- and the reduction of pay from Rs.90,300/- to Rs.83,600/- w.e.f. 31.08.2017, vide Annexure-A8(Impugned order).*
2. *To quash the pension calculation sheet vide Annexure-A8, dated nil (Impugned order) issued by the Dy.Director Doordarshan Kendra Bangalore 5th respondent which is incorrect.*
3. *To direct the respondents to restore the 1st and 2nd MACP granted by the 4th respondent vide Annexure-A4 dated: 05.08.2011.*
4. *To direct the respondents to issue non-functional grade pay of Rs.5400/- w.e.f. 01.01.2006 and refix the pay, revision of retirement benefits, pension and extend all consequential benefits admissible to the applicant w.e.f. 01.01.2006. In case the N.F Grade Pay of Rs.5400/- is granted the applicant is entitled for only 2nd MACP w.e.f. 09.1.2010 as at relief point No.3 above.*

2. The applicant submits that one Shri Chandrashekar, Assistant Engineer working as Super Power Transmitter, All India Radio, Bangalore who filed OA.469/2017, had drawn the upgraded pay scale of Rs.7500-12000 w.e.f. 1.1.1996 and he has been granted the Non Functional Grade pay of Rs.5400/- w.e.f. 1.1.2006 and hence he had withdrawn the said OA vide order dtd.8.3.2018(Annexure-A11) of this Tribunal.

The applicant submits that he being similarly placed employee and drawn the upgraded pay scale of Rs.7500-12000/- for more than 4 years, is also entitled for the Non Functional Grade pay of Rs.5400 w.e.f. 1.1.2006. In case the Non Functional Grade Pay of Rs.5400 is granted from 1.1.2006, the applicant will be entitled only 2nd MACP w.e.f. 9.1.2010 and entitled for re-fixation of pay w.e.f. 1.1.2006 onwards with arrears of pay and pension and revision of retirement benefits admissible under the rules.

3. The respondents on the other hand have submitted in their reply statement that the OA suffers from multiple prayers such as restoration of MACP and grant of Grade Pay of Rs.5400 are not consequential. Hence, on this ground, the OA is liable to be rejected.

4. They submit that the applicant who was holding the regular post of Property & Ward Robe Assistant which carries the Grade Pay of Rs.4600, was granted the upgraded pay scale of Rs.6500-10500 and not the pay scale of Rs.7500-12000 as has been stated by him. Since he was granted upgraded pay scale w.e.f. 1.1.1996, he is not entitled to 1st MACP and he is only entitled to 2nd MACP. The 1st upgradation availed by the applicant will be counted against 1st MACP and he is entitled to 2nd MACP with Grade Pay of Rs.4800/- As such he was granted 2nd MACP in the Grade Pay of Rs.4800 w.e.f. 1.9.2008. Prior to it the applicant was drawing the Grade Pay of Rs.4600/- only. Earlier the applicant was granted 1st & 2nd MACP erroneously which was pointed out by the Pay & Accounts Office, Chennai who is the statutory body to audit, at the time of scrutinizing the pension papers of the applicant and advised the office to correct it. Accordingly, the respondents have revised the fixation statement of the applicant. The Pay & Accounts Officer, DDK,

Chennai have issued the Pension Payment Order after thoroughly examining and checking the service records. The actual entitlement of pension and retirement benefits to the applicant were correctly worked out and were granted to him under the provisions of Pension Rules. The applicant has forwarded his representation directly to the Pay & Accounts Officer, DDK, Chennai without the knowledge of the respondents.

5. The respondents further submit that the applicant is not entitled to Non-functional Grade Pay of Rs.5400 as he was drawing the grade pay of Rs.4800 by virtue of MACP scheme and not holding a regular post of grade pay of Rs.4800. As per Directorate General, All India Radio, New Delhi's order dtd.25.8.2017, the Non-functional Grade Pay of Rs.5400/- in PB-2 will however, not be granted to such Group-B officers who have got the Grade Pay of Rs.4800 on upgradation under the ACP/MACP scheme. Therefore the applicant is not eligible for non-functional grade pay of Rs.5400 because he was not appointed to the regular post of Programme Executive. Hence, the applicant cannot be treated as similar with that of Sri Chandrashekar who is Asst. Engineer, Super Power Transmitter, All India Radio, Bangalore and was holding the regular post of Asst.Engineer which carries the Grade Pay of Rs.4800 which he was drawing not by way of any ACP/MACP and hence, he was given GP Rs.5400/- after four years of service in the GP Rs.4800. The applicant belongs to Programme Cadre and cannot compare himself with the Engineering Cadres. The two cadres have different functions and activities. Therefore, the OA being devoid of merit is liable to be dismissed.

6. The applicant has filed rejoinder reiterating the submission already made in the OA and submits that the 4th respondent has granted the upgraded pay scale to the

Floor Assistant at Rs.6500-10500 w.e.f. 21.2.2005. The applicant was appointed as direct recruit to the post of Property & Wardrobe Assistant in the same line of programme in the upgraded pay scale of Rs.6500-10500 w.e.f. 9.1.1990 and hence, the 4th respondent vide order dtd.5.8.2011(Annexure-A4) has granted 1st MACP w.e.f. 1.9.2008 and 2nd MACP w.e.f. 9.1.2010 to the applicant after completion of 20 years of service without promotion. The pay fixation statement issued by the 5th respondent for 2nd MACP with grade pay of Rs.5400 is in order. Even counting the service from the entry grade w.e.f. 8.3.1985 on which date the applicant joined as Floor Assistant which is equivalent to the direct recruit post of Property and Wardrobe Assistant and upgraded to the pay scale of Rs.6500-10500 with Grade Pay of Rs.4600, the applicant is entitled for 2nd MACP with Grade Pay of Rs.4800/- w.e.f. 1.9.2008 and 3rd MACP w.e.f. 8.3.2015 with Grade Pay of Rs.5400/-. Hence the Tribunal may direct the respondents to grant the Grade Pay of Rs.5400/- w.e.f. 8.3.2015 in the interest of justice and equity.

7. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. Learned Counsel for both the parties have filed their written arguments note. The issue in this case is in a very small compass. The applicant joined as a Floor Assistant on 8.3.1985 and subsequently appointed as a direct recruit to the post of Property & Wardrobe Assistant w.e.f. 9.1.1990 in the pay scale of Rs.1400-2600 which is revised to Rs.5000-8000 by the 5th Pay Commission. The applicant got the benefit of order at Annexure-A2 and got the upgraded pay scale of Rs.6500-10500 with fixation benefits from 01.01.1996. As rightly mentioned by the respondents, the applicant has wrongly stated that he was granted the upgraded pay scales of Rs.7500-12000 w.e.f. 1.1.1996. This is a clear case of wrong statement made by the applicant which deserves to be condemned.

Subsequently, the first upgradation of scales w.e.f. 1.1.1996 is to be adjusted against the 1st ACP which is also accepted by the applicant and the applicant was entitled for the second upgradation under MACP in the Grade Pay of Rs.4800. The applicant claims that since the 6th Pay Commission's revision of pay scales resulted in pay scales of Rs.6500-10500 being merged in the upgraded pay scales of Rs.7450-11500 with the admissible Grade Pay is Rs.4800 w.e.f. 1.1.2006 and the same is to be given to him because of the merged pay scales. The applicant also claims that the 1st MACP already granted to him vide Annexure-A4 dtd.5.8.2011 is to be ignored and that he is entitled for the 2nd MACP w.e.f. 9.1.2010 with Grade Pay Rs.5400. As has been clearly established by the respondents, the applicant has got the Grade Pay of Rs.4800 by virtue of MACP. As stated by the respondents, based on the DG, All India Radio order No.8/9/2016-S.IV(b)(Vol.II)/541 dtd.25.8.2017, the non-functional Grade Pay of Rs.5400 in PB-2 will not be granted to such Group 'B' officers who have got the Grade Pay of Rs.4800 on upgradation under the ACP/MACP scheme. The applicant, the respondents would claim, is therefore, not eligible for non-functional grade pay of Rs.5400 because he was not appointed to the regular post of Programme Executive. The respondents have also stated that the case of Shri C.Chandrashekar, Asst.Engineer, quoted by the applicant as exactly similar to his case, is not the same since Sri C.Chandrashekar was holding the regular post of Asst.Engineer which carries the Grade Pay of Rs.4800 and he was not drawing it by way of any ACP/MACP whereas the applicant who was holding the regular post of Property & Wardrobe Assistant carrying the Grade Pay of Rs.4600 was granted the Grade Pay of Rs.4800 by virtue of MACP and is therefore not eligible for further non-functional upgradation. In fact this point is very clearly mentioned in Annexure-A11 where the applicant has cited the order given to Shri

C.Chandrashekar. At para-3 of the order dtd.25.8.2017 at Annexure-A11, the respondents have clearly stated that the non-functional Grade Pay of Rs.5400 in PB-2 will, however, not be granted to such Group 'B' officers of sub-ordinate Engineering Cadre, who have got the Grade Pay of Rs.4800 on upgradation under the ACP/MACP scheme. Therefore, it is crystal clear that the applicant is not entitled for the benefit claimed by him.

8. The OA is therefore, dismissed. No costs.

(C.V.SANKAR)
MEMBER (A)

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

/ps/

Annexures referred to by the applicant in OA.No.170/00397/2018

- Annexure-A1: Applicant joined as Floor Assistant and again appointed as Property & Wardrobe Assistant w.e.f. 09.01.1999 vide order dtd.4.3.1985
- Annexure-A2: The 1st respondent granted the upgraded scales vide order No.310/173/97-B(D) dtd.25.2.1999
- Annexure-A3: DOPT OM No.35034/3/2008.Estt.(D) dtd.19.5.2009 for MACP Scheme
- Annexure-A4: The 4th respondent granted the applicant the 1st & 2nd MACP w.e.f. 1.9.2008 & 9.1.2010 vide order dt.5.8.2011
- Annexure-A5: The 5th respondent issued the pay fixation statement dtd.24.8.2011
- Annexure-A6: DOPT vide ID No.47539/13/CR dtd.10.7.2013 and 1st respondent letter dtd.8.9.2014 issued clarifications
- Annexure-A7: Applicant retired from service w.e.f.31.8.2017 and the 5th respondent issued last pay certificate dtd.27.9.2017 fixing the pay at Rs.90,300/-
- Annexure-A8: The 5th respondent issued revised undated last pay drawn statement fixing & revising the last pay at Rs.83600/-(impugned order)
- Annexure-A9: The applicant submitted a representation dtd.5.10.2017 requesting revision of pension etc.
- Annexure-A10: The 6th respondent taken the last pay at Rs.83600/- issued PPO No.286601701063 dt.22.11.17 sanctioned commutation of pension etc.
- Annexure-A11: The applicant produces the order No.7(2)/2017-S-560, dtd.05.09.2017 & copy of the order dtd.8.3.2018 passed by this Hon'ble Tribunal in OA.No.469/2017
- Annexure-A12: The applicant produces the standard pay scales of 5th to 7th CPC

Annexures with reply statement:

-NIL-

Annexures with rejoinder:

- Annexure-A13: Order dtd.1.2.2012
- Annexure-A14: Pay fixation statement

Annexures with written argument note filed by the applicant:

- Annexure-A15: Copy of Min. Of Finance OM dtd.13.11.2009
- Annexure-A16: Copy of DOPT OM clarification dtd.9.9.2010
- Annexure-A17: Copy of clarification of DOPT OM dtd.10.2.2000

Annexures with written argument note filed by the respondents:

-NIL-
