

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260/898 OF 2015
Cuttack, this the 18th day of December, 2018

CORAM
HON'BLE MR. G.C. PATI, MEMBER (A)
HON'BLE MR. S. K. MISHRA, MEMBER(J)

.....
Godabarish Sahoo, aged about 67 years, S/o. Late Purusottam Sahoo, retired Asst. Meteorologist, Grade-1, presently residing At/PO. Haja(Jnkia), Dist Khurda(Odisha).

...Applicant

(By the Advocate- M/s. C.A. Rao, S. K. Behera, S. K. Parida)

-VERSUS-

Union of India Represented through :

1. Secretary, Department of Earth Science, Govt. of India, Prithivi Bhawan, Lodhi Road, New Delhi-110003.
Director General of Meteorology, Mousam Bhawan, Lodhi Road, New Delhi-110003.
2. Deputy Director General of Meteorology(Administration & stores), Mousam Bhawan, Lodhi Road, New Delhi-110003.
Union of India, represented by Secretary, Department of Expenditure, Ministry of Finance, Govt. of India, New Delhi-110003.

...Respondents

(By the Advocate- Mr. S. B. Mohanty)

ORDER

S. K. MISHRA, MEMBER (J):

Applicant is a retired employee from the Department of Earth Science.

He had earlier approached this Tribunal in O.A.No.840 of 2014 which was disposed of vide order dated 24.11.2014 with direction to Respondent No.2 to consider the representation of the applicant and communicate the decision thereof in a well-reasoned order within a period of sixty days from the date of receipt of the order. In compliance with the aforesaid direction of this Tribunal, Respondent No. 2 passed an order dated 25.2.2015 (A/5) by virtue of which applicant's request for grant of financial upgradation under the

MACP Scheme has been rejected. Aggrieved with this, applicant has moved this Tribunal in this Original Application under Section 19 of the A.T.Act, 1985 praying for the following reliefs.

- i) The application be admitted and call for the records and after hearing the parties be pleased to quash the order dt. 8.4.2014 9n (Annexure-3) and dt. 25.2.2015(Annexure-5), declaring they are contrary to the 6th C.P.C. recommendation ACP Scheme, as is (Annexures-1 and 2) passed without taking into consideration the applicant's higher qualification for Post Graduation, in Scientific Service with further direction that applicant is eligible to be fixed at revised pay scale A.M.-II (1st ACP) at 7450-11500/- PB 2 with grade pay Rs.4600/- and 2nd ACP (AM-1) PB 3, revised pay scale Rs.15,600-39,100/- with grade pay Rs.6600/- in view of Annexures-1 and 2).
- ii) Respondents be directed to act on the basis of Annexure-1 & 2 in consultation with Dept. of Expenditure, Ministry of Finance by removing anomaly and regularize/revise the pension and give all such benefits accrued from such action with interest.
- iii) Any other appropriate reliefs as may be deemed fit and proper be issued.

2. The facts in brief are that the applicant joined service as Senior Observer under the Respondent-Department with effect from 18.05.1973 and was promoted as Scientific Assistant in the scale of Rs.5500-9000/- with effect from 26.4.1982. He was again promoted as Professional Assistant/Assistant Meteorologist, Gr.II(AM.II) in the scale of Rs.6500-10500 with effect from 17.2.1995 and as Assistant Meteorologist in the scale of Rs.7500-12000/- with effect from 27.4.2004 and while working as such, the applicant retired from service on 31.03.2008 on attaining the age of superannuation. After coming into force the 6th CPC with effect from 1.1.2006, vide notification dated 18.6.2009 the post of Senior Observer stood merged with Scientific Assistant with effect from 1.1.2006 carrying the revised scale of Rs.9300-34800 with Grade Pay of Rs.4200/-. According to applicant, vide Gazette Notification Part-B & C dated 29.08.2008, the post of Scientific Staff in the scale of Rs.6500-

10500 with Post Graduate Degree was upgraded and placed in the scale of Rs.74500-11500 corresponding to the revised Pay Band (PB-2) of Rs.9300-34800/- with Grade Pay of Rs.4600/-. Grievance of the applicant is that the Respondents without taking into consideration the relevant instructions provided in the Gazette Notification dated 20.8.2008 (A/2 series) in respect of the benefit of Scientific Service with Post Graduation Qualification in Science with effect from 1.1.2006, granted 1st and 2nd financial upgradation under the ACP Scheme in the scale of Rs.7450-11500/- (pre-revised) (revised to Rs.9300-34800 with GP of Rs.4600/-) and Rs.10,000-15200 (pre-revised) (revised to Rs.15600-39100 with Grade Pay of Rs.6600) with effect from 17.2.1995 and 27.4.2004 respectively.

3. It is the case of the applicant that on account of merger of the post of Senior Observer with that of Scientific Assistant in I.M.D. in pursuance of notification dated 18.6.2009, three promotions availed by the applicant stood reduced to two and therefore, he is entitled to 3rd financial upgradation under the MACP Scheme.

4. Per contra, respondents have filed a detailed counter. According to Respondents. While admitting the fact of three promotions as well as merger of the post of Senior Observer with the post of Scientific Assistant with effect from 1.1.2006 thus reducing promotions of the applicant to two, it has been pointed out by the Respondents that the regular promotion earned by the applicant from the cadre of Senior Observer (Rs.5000-150-8000) to Scientific Assistant (Rs.5500-175-9000) was ignored for the purpose of grant of 1st financial upgradation under the ACP Scheme as per clarification to the point of doubt no.1 to DOP&T OM No.35034/1/97-Estt. (D) Vol. IV dated 10.02.2000 and to this effect further clarification under Para-9 to DOP&T OM

No.35034/3/2008-Estt.(D) dated 19.05.2009. Due to merger of the post as above with effect from 01.01.2006, the 1st financial upgradation was counted in the cadre of Professional Assistant (now AM-II) which he earned on promotion in view of DOP&T OM dated 9.8.1999. Similarly, the 2nd financial upgradation is counted in the cadre of Assistant Meteorologist-I which he earned on promotion in line with DOP&T OM dated 09.08.1999. The pay scale of Professional Assistant (Rs.6500-200-10500) and Assistant Meteorologist-I (Rs.7500-2500-12000) have been revised in PB-2 (Rs.93400-34800 + GP 4600 & PB-2 (Rs.9300-34800 + GP Rs.4800 from 01.01.2006, respectively as per 6th PC recommendations. Respondents have mentioned that the applicant retired from service on 31.03.2008 on attaining the age of superannuation and MACP Scheme was introduced w.e.f. 1.9.2008 and as such he is not entitled to financial upgradation under MACP Scheme.

5. We have heard the learned counsels for both the sides and perused the records.

6. It was contended by the learned counsel for the applicant that since the applicant was having the qualification of M.Sc. (Physics), i.e., Post Graduate qualification while he entered service, he was entitled to pay which is one grade above the normal pay as per the circular which was issued in the month of September, 2008 and was effective retrospectively with effect from 1.1.2006.

7. On the other hand, learned counsel for the respondents by drawing the attention to this Tribunal the averments made at Para-8 of the counter submitted that the applicant is not entitled to any such financial upgradation since the minimum qualification required to join as Senior Observer was B.Sc. and therefore, it does not make any difference as to whether the applicant by

that time was having the qualification of M.Sc. Physics. Hence, as per his submission, the applicant is not entitled to any such relief in this case. He also forcefully argued that the scheme in question having come into effect from 1.9.2008 by which time the applicant had already retired from service. It has been pointed out by the learned counsel for the respondents that the applicant has availed two regular vacancy based promotions with financial upgradations as per the ACP Scheme and therefore, there is no case for further financial upgradation under the ACP/MACP Scheme as claimed by the applicant.

8. It is not disputed that the applicant has been given three promotions in normal course and has in the meantime retired after attaining the age of superannuation on 31.3.2008. It is claimed by the applicant that there has been merger of the post of Senior Observer with the promotional post of Scientific Assistant. Learned counsel for the applicant placed reliance on the notification dated 18.6.2009 as per A/1 and submitted that as per Para-(iv) (Part-B) Section-I which states the posts of Scientific staff in the scale of Rs.6500-1500 carrying minimum qualification of engineering degree or a post-graduate degree should also be upgraded and placed in the scale of Rs.7400-11500 corresponding to the revised pay band PB-2 of Rs.9300-34800 along with grade pay of Rs.4600/-. He also submitted that the applicant had not availed any further financial upgradation under the MACP Scheme.

9. On the other hand, it is the contentions of the respondents that MACP Scheme came into force with effect from 01.09.2008 and prior to that the applicant had already retired from Government service on 31.03.2008. Therefore, he is not governed under the provisions of the MACP Scheme.

10. We have considered the rival submissions. For the sake of clarity, we would like to quote Rule-5 of the MACP Scheme which reads as under:

"5. Promotions earned/upgradations granted under the ACP Scheme in the past to those grades which now carry the same grade pay due to merger of pay scales/upgradations of posts recommended by the Sixth Pay Commission shall be ignored for the purpose of granting gradations under Modified ACPS.

The pre-revised hierarchy (in ascending order) in a particular organization was as under:-

Rs.5000-8000, Rs.5500-9000 & Rs.6500-10500.

- (a) A Government servant who was recruited in the hierarchy in the pre-revised pay scale Rs.5000-8000 and who did not get a promotion even after 25 years of service prior to 1.1.2006, in his case as on 1.1.2006 he would have got two financial upgradations under ACP to the next grades in the hierarchy of his organization, i.e., to the pre-revised scales of Rs.5500-9000 and Rs.6500-10500.
- (b) Another Government servant recruited in the same hierarchy in the pre-revised scale of Rs.5000-80000 has also completed about 25 years of service, but he got two promotions to the next higher grades of Rs.5500-9000 & Rs.6500-10500 during this period.

In the case of both (a) and (b) above, the promotions/financial upgradations granted under ACP to the pre-revised scales of Rs.5500-9000 and Rs.6500-10500 prior to 1.1.2006 will be ignored on account of merger of the pre-revised scales of Rs.5000-800, Rs.5500-900 and Rs.6500-10500 recommended by the Sixth CPC. As per CCS (RP) Rules, both of them will be granted grade pay of Rs.4200 in the pay band PB-2. After the implementation of MACPS, two financial upgradations will be granted both in the case of (a) and (b) above to the next higher grade pay of Rs.4600 and Rs.4800 in the pay band PB-2".

11. Admittedly, applicant had initially been appointed as Senior Observer in the scale of Rs.5000-8000 (pre-revised) in the year 1973. He was promoted as Scientific Assistant in the scale of Rs.5500-9000/- in the year 1982. He was further promoted as Professional Assistant (now Assistant Meteorologist)

Gr.II (AM.II) in the scale of Rs.6500-10500 in the year 1995. While working as such, scale of Rs.6500-10500 was revised to Rs.Rs.7450-11500/- carrying Grade Pay Rs.4600/-. The applicant thereafter was promoted as Assistant Meteorologist, Gr.I(AM-I) in the scale of Rs.7500-12000/-(pre-revised) carrying Grade Pay of Rs.4800 in the year 2004 and subsequently retired from service on 31.03.2008 on attaining the age of superannuation. From above, it is clear that while the scale of Rs. 5500-8000/- of Senior Observer stood merged with the scale of Rs.5500-9000 of Scientific Assistant forming a common Grade Pay of Rs. 4200 as per 6th CPC recommendations, the post of Professional Assistant (Assistant Meteorologist) Gr.II (AM.II) carrying the scale of Rs.6500-10500/- was upgraded to Rs.74500-11500/- PB-2 (Rs.9300-34800) with Grade Pay of Rs.4600/- as per the Gazette of India (Part-B) Section-I read with Part-C (Section-I) (A/2 series). Be that as it may, it is an admitted fact that the applicant was promoted as Assistant Meteorologist, Gr.I(AM-I) in the scale of Rs.7500-12000/- in the year 2004. Rule-1 of the MACP Scheme stipulates that there shall be three financial upgradations under the MACPS counted from the direct entry grade on completion of 10, 20, 30 years service respectively. Financial upgradation under the Scheme will be admissible whenever a person has spent 10 years continuously in the same grade. It is an admitted position that before completing 10 years service in the Grade Pay of Rs.4800/- the applicant has retired from service on superannuation. Therefore, by any stretch of imagination he could not be entitled to get the benefit of financial upgradation under the MACP Scheme. Secondly, as regards the benefit of merger of the post of Senior Observer in the scale of Rs.5000-8000 with that of Scientific Assistant carrying the scale of Rs.5500-9000/-, as indicated above, MACP Scheme provides merger of

three pay scales, i.e., Rs.5000-8000, Rs.5500-9000 and Rs.6500/10500/- to a common Grade Pay of Rs.4200/- and that too grant of the next higher grade pay in such a situation is to be considered only after the implementation of MACP Scheme. But in the instant case, whereas scale of Rs.5000-8000 and Rs.5500-9000 stood merged together, scale of Rs.6500-10500 was upgraded to Rs.7450-11500/- as per the recommendation of the 6th CPC whereafter applicant was promoted to Assistant Meteorologist, Gr.I(AM-I) in the scale of Rs.7500-12000/-(pre-revised) carrying Grade Pay of Rs.4800 in the year 2004. Thus, the applicant having not completed 10 years service in GP Rs.4800/- is not entitled to any financial benefit under the MACP Scheme or for that by the time the Scheme came into force, he had already retired from service.

12. For the aforesaid reasons, the O.A. is held to be without any merit and the same is dismissed with no order as to costs.

(S.K.MISHRA)
MEMBER(J)

BKS

(G.C.PATI)
MEMBER(A)

