

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH**

**OA No. 594 of 2014**

**Present: Hon'ble Mr.Gokul Chandra Pati, Member (A)  
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Sashankar Sekhar Mishra, aged about 49 years, S/o Late Brundaban Mishra, resident of A/e-250, At/Po-Saheed Nagar, V.S.S.Nagar, Dist. – Khurda.

.....Applicant.

VERSUS

1. Union of India, represented through its Secretary, Ministry of Defence, South Block, New Delhi – 110011.
2. Director General NCC, Pers(C) Section, West Block No. 4, R.K.Puram, New Delhi – 110066.
3. Addl. CDA, Area Accounts Office, 13 Camac Street (9<sup>th</sup> Floor), Kolkata – 17.
4. Dy. Director General, 4 NCC Directorate Odisha, Lewis Road, Bhubaneswar, Dist. – Khurda – 751002.

.....Respondents.

For the applicant : Mr.A.Mishra, counsel

For the respondents : Mr.D.K.Mallick, counsel

Heard & reserved on : 14.1.2019

Order on : 30.1.2019

**O R D E R**

**Per Mr.Gokul Chandra Pati, Member (A)**

The OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

“Under these circumstances it is most humbly prayed therefore that this Hon'ble Tribunal may graciously be pleased to quash the rejection order at Annexure A/7 and further be pleased to direct the respondents to pay Rs.4800/- in the first financial upgradation under MACP with effect from 1.9.2008 that is the operational date of MACP and pay all consequential financial benefits within a stipulated period.”

2. Briefly, the facts of this case are that the applicant, initially joined as LDC on 22.2.1988, was re-appointed to the post of Junior Hindi Translator (in short JHT) on 27.5.1994 under, which is an isolated post having no promotional prospects. After completion of 12 years of service, the applicant was granted the first financial upgradation under Assured Career Progression (in short ACP) Scheme w.e.f. 27.5.2006 and was placed in the pay scale of Rs.5500-9000/- (pre-revised). After introduction of 6<sup>th</sup> CPC recommendations w.e.f. 1.1.2006, resulting in a merger of three pre-revised scales of Rs.5000-

8000, Rs.5500-9000 and Rs.6500-10,500/-, the post of JHT was upgraded to pre-revised scale of Rs.6500-10,500/- which was revised to Pay Band PB-2 with Grade Pay of Rs.4200/- w.e.f. 1.1.2006, vide the Ministry of Finance OM dated 24.11.2008 (Annexure A/1). Then it was revised to pay scale of Rs.7450-11,500/- (pre-revised) w.e.f. 1.1.2006.

3. After introduction of Modified ACP (in short MACP) Scheme w.e.f. 1.9.2008, the applicant has claimed that after ignoring the earlier upgradation under ACP Scheme as per the para 5 of the guidelines of MACP Scheme, he should be allowed the benefit of first financial upgradation under MACP Scheme to the Grade pay of Rs.4800/- w.e.f. 1.9.2008. The pay scale of the applicant as JHT was revised from the Grade pay Rs.4200/- to Grade pay Rs.4600/- with pre revised pay scale Rs.6500-10,500/- w.e.f. 1.1.2006, vide order of Ministry of Finance dated 13.11.2009 (copy at Annexure-A/9, attached to the Rejoinder). Accordingly, the respondent No.3 vide order dated 20.1.2011 (Annexure A/3) fixed the pay of the applicant with Grade Pay of Rs.4600/- w.e.f. 1.1.2006 .

4. The applicant submitted a representation dated 22.3.2013 (Annexure A/4) requesting for the benefit of first MACP to him w.e.f. 1.9.2008, which was rejected vide order dated 6.9.2013 (Annexure A/5). The applicant submitted another representation dated 25.3.2014 (Annexure A/6), citing the case of one T.P.Leena, JHT who had filed OA No. 107/2011 before Ernakulam Bench of this Tribunal, which was allowed and the writ filed by the Government in Hon'ble High Court of Kerala was dismissed. Subsequently SLP filed was dismissed vide order 15.10.2012 of Hon'ble Apex Court. Another OA No. 953/2012 in case of JHT was also disposed of by the Tribunal giving the similar benefit. It is the case of the applicant that his case is same as the case of T.P.Leena and accordingly he is also entitled for first financial upgradation of MACP to Grade Pay of Rs.4800/-, which was allowed by the Tribunal in the case of T.P. Leena (supra).

5. The respondents filed counter denying the claim of the applicant. It is stated therein that the applicant was working in a post which was placed in pre-revised pay scale lower than Rs.6500-10,500 for which he will not be eligible for Grade pay of Rs.4600/- after 6<sup>th</sup> CPC recommendation w.e.f. 1.1.2006. Further the applicant does not have any judgment or order from the Court in support of his claim unlike other employees, who have been granted similar benefit and that the OM of the Ministry of Finance dated 13.11.2009 is not applicable in respect of the JHT of the NCC. The parity of JHT with the Translators of Central Secretariat was decided vide letter dated 24.11.2008 of the Ministry of Finance (Annexure-A/1) and the respondents' case is that JHT

in the NCC Directorate being in a subordinate office, was not upgraded to pre revised scale of Rs.7450-11,500/- by the order of the Ministry of finance dated 13.11.2009 for which the applicant will get a Grade Pay of Rs.4200/-. Hence, the OA is stated to be devoid of merit.

6. The applicant has filed rejoinder denying the averments in the counter. It is staged that the applicant as JHT was eligible to get the Grade Pay of Rs.4600/- w.e.f. 1.1.2006 and accordingly he was granted by the respondents. Similar benefits to T.P.Leena and many other JHTs have been granted by virtue of the order of this Tribunal which is upheld by the higher Court.

7. We have heard learned counsel for the applicant and the respondents. On behalf of the applicant, learned counsel also submitted a written note dated 24.7.2018 at the time of earlier hearing broadly reiterating the averments made in the OA. It was stated that the applicant as JHT was placed in the pre revised pay scale of Rs.6500-10,500/- as on 1.1.2006 and his Grade pay was fixed at Rs.4600/- w.e.f. 1.1.2006 vide copy of the order dated 13.11.2009 enclosed as Annexure A/9 to the rejoinder. The case of T.P.Leena was also referred in the written submissions.

8. We have carefully perused the pleadings on record and also considered the submissions. As per the circular dated 13.11.2009 of the Ministry of Finance,

“Consequent upon the Notification of CCS (RP) Rules, 2008, Department of Expenditure has received a large number of references from administrative ministries / departments proposing upgradations of the posts which were in the pre-revised scale of Rs.6500-10500 as on 1.1.2006 by been granting them grade pay of Rs.4600 in the pay band PB-2. The matter has been considered and it has now been decided that the posts which were granted the normal replacement pay structure of grade pay of Rs.4200 in the pay band PB-2, will be granted pay of Rs.4600 in the pay band PB-2 corresponding to the pre-revised scale of Rs.7450-11500 w.e.f.1.1.2006. Further, in terms of the aforementioned provisions of CCS (RP) Rules, 2008, in case a post already existed in the pre-revised scale of Rs.7450-11500, the posts being upgraded from the scale of Rs.6500-10500 should be merged with the post in the scale of Rs.7450-11500.

Accordingly, in terms of Rule 6 of CCS (RP) Rules, 2008, revised pay of Government servants in the pre-revised scale of Rs.6500-10500 who were earlier granted grade pay of Rs.4200 and who have already exercised their option for drawal of pay in the revised pay structure in the format prescribed in the Second Schedule to the Rules, will be fixed again in accordance with illustration 4A annexed to CCS (RP) Rules, 2008.”

9. The applicant has enclosed the copy of the order of the Tribunal in the case of T.P.Leena at Annexure A/8 to the rejoinder filed by him in reply to the counter. From the said order it is seen that T.P.Leena joined the service as Hindi Translator on 30.9.1990. Since 2004 the post of Hindi Translator was re-designated as JHT without any change of pay scale or functional

responsibilities. On completion of 12 years of service in 2002, T.P.Leena was given the ACP Scheme and placed in the pay scale of Rs.5500-9000 w.e.f. 30.3.2002. By OM dated 24.11.2008 (Annexure-A/1), the pay of the JHTs was revised to the revised pay of Rs.6500-10,500/-, which was revised to PB 2 (i.e. Rs.9300-34,800/-) with Grade Pay of Rs.4200/- w.e.f. 1.1.2006. Then the JHTs were placed at a higher pay scale of Rs. 7450-11,500/-, revised to PB 2 (i.e. Rs.9300-34,800/-) with Grade Pay of Rs.4600/- w.e.f. 1.1.2006, vide the OM dated 13.11.2009. The respondents' case was that the JHTs in subordinate offices are not entitled for the Grade pay of Rs. 4600/- w.e.f. 1.1.2006 as the parity with the Translators of Central Secretariat with subordinate offices was allowed w.e.f. 24.11.2008 and hence, the applicant was eligible for Grade pay of Rs. 4200/- in PB 2 w.e.f. 1.1.2006.

10. The case of T.P.Leena was considered for financial upgradation increasing the Grade Pay from Rs.4600/- to Rs.4800/- w.e.f. 1.9.2008 (1<sup>st</sup> MACP) and to Grade pay of Rs. 5400/- w.e.f. 30.3.2010 (2<sup>nd</sup> MACP). The respondents approved the Grade pay to Rs.4800/- w.e.f 30.3.2010 without ignoring the ACP upgradation. The claim of T.P.Leena was that the upgradation to ACP should have been ignored and she should have been given 2<sup>nd</sup> financial upgradation with Grade pay of Rs.5400/- w.e.f. 30.3.2010 and 1<sup>st</sup> MACP upgradation to Grade pay of Rs. 4800/- after introduction of MACP Scheme w.e.f. 1.9.2008. In that case, the internal Audit Department of the respondents had recommended that T.P.Leena was entitled to get first financial upgradation with MACP scheme w.e.f. 1.9.2008 with Grade Pay Rs.4800/- and 2<sup>nd</sup> MACP w.e.f. 30.3.2010 to Grade Pay of Rs.5400/-. However, this was not accepted by the authorities. The case was considered vis-a-vis the guidelines of MACP and it has held by Ernakulam Bench of CAT in OA No. 107/2011 as under :

"10. We must at this juncture get a hang of the import of the provisions of Clause 5 of the MACP Scheme, which has been given with illustration 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 upgradations under Modified ACPs.

The pre-revised hierarchy (in ascending order) in a particular organisation 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 01.01.2006, 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 organisation, 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.5000-8000 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 01.01.2006 will be ignored on account of merger of the pre-revised scales of Rs.5000-8000, Rs.5500-9000 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 pays of Rs.4600 and Rs.4800 in the pay band PB-2.

11. The applicability of the above rule in so far as the applicant is concerned has to be considered now. Initially, the applicant joined as Hindi Translator (later on redesignated as Junior Hindi Translator) in the pay scale of Rs 1,400 - 2,300/- which under the Pay Rules 1997 effective from 01-01-1996 underwent an upward revision of Rs 5,000 - 8000/- (Grade S-9). W.e.f. 30-03-2002, the applicant gained the first ACP and her pay was fixed in the scale of Rs 5,500 - 9,000/- which is the next grade in the normal pay scales from S-9 and S-10. Annexure R-5 Office Order dated 11-02-2003 refers. This pay scale of Rs 5,500 - 9,000/- was replaced by Rs 7,450 - 11,500/- vide Annexure A-3 dated 24-11-2008 (as modified by Annexure A-4 dated 27-11-2008.) This pay scale of Rs 7,450 - 11,500/- is replaced by the Revised Pay Scale (PB-2 ) of Rs 9,300 - 34,800/- with a grade pay of Rs 4,600/-. There is no quarrel upto this stage.

12. When the question of applicability of MACP came, it is the case of the applicant that since the pay scales of Rs 5,000 - 8,000/-, Rs 5,500 - 9,000/-, 6,500

- 10,500/- have been merged, the financial upgradation granted from Rs 5,000 - 8,000/- to Rs 5,500 - 9,000 in 2003 has to be ignored by virtue of clause No. 5 of the Scheme (extracted above). Thus, the applicant has to be treated to be in the very initial grade without any financial upgradation and thus, she is entitled to two financial upgradations, one as on 01-09-2008 (from the date the MACP became operative) and another on completion of 20 years i.e. 30-03-2010. And since, the grade pay the applicant was drawing was Rs 4,600/-, the first Financial Upgradation should carry Grade pay of Rs 4,800/- while the second one Rs 5,400/-. This is objected to by the respondents as according to them, the higher pay scale claimed by the applicant relates to Hindi Translators of the Central Secretariat Services and not to the subordinate offices in which the applicant is functioning.

13. Now, a close look again at para 5 of the Scheme is essential. The wordings are "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 upgradations under Modified ACPs." It is pertinent to mention that after the sixth Pay Commission Recommendations, in respect of grant of MACP, it is not the pay scale that undergoes any upward revision but only the Grade Pay, as is evident from para 2 of the scheme itself. Thus, for invoking the provision of Rule 5 of MACP, what is to be seen is as to whether the grant of financial upgradation resulted in a higher grade pay in the upgraded pay scale. The first Schedule vide Rules 3 and 4 (section I, Part A) annexed to the Revised Pay Commission Rules 2008 provides for the the scale, revised pay structure and corresponding grade pay for the erstwhile pay scale of Rs 5000 - 8000 and 5,500 - 9000 as under:-

Present Scale			Revised Pay Structure		
Sl No.	Post/Gr	Present scale	Name of	Corresponding pay	Corresponding
		Pay Band/scale	Bands/Scales		
10	S-9	5000 - 150 -8000	PB-2	9,300 - 34,800/-	4200
11	S-10	5500 - 150 -9000	PB-2	9,300 - 34,800/-	4200

14. The illustration appended to para 5 would clarify the point. When the scales of pay of Rs 5,000 - 8000 and Rs 5,500 - 9,000/- get merged, the grade pay in these two grades remained the same i.e. Rs 4,200/-. It is only under such a circumstance, (i.e. The two pay scales should have the same grade pay) that the promotion or upgradation should be ignored. In the instant case, admittedly, the financial upgradation resulted in the pay scale of the applicant substituted the earlier Rs 5,000-8000/- Rs 5,500 - 9000 and thus, the Pay Band remained the same, as also the grade pay. Under such circumstances, when there is a merger of the two, into a single pay scale, the earlier upgradation granted under the ACP scheme has to be ignored. . Thus, clause 5 of the scheme does apply to the case of the applicant. Hence, though the applicant had earned one Financial upgradation in 2002, the same has to be ignored. It is at a very late stage i.e. w.e.f. 01-01-2006 that the pay scale of Junior Hindi Translator was revised to Rs 7,450 - 11,500/- and the grade pay attached to the same is Rs 4,600/- as per the aforesaid First Schedule. This is the admitted position, as could be seen from Annexures A-6 Pay fixation as well as the statement annexed thereto, Annexure A- 8 proforma (vide entry against para 3(i) and (iv) thereof, Annexure R-6 and para 7 of Annexure MA1. Thus, though the pay scale of Junior Hindi Translator underwent upward revisions (from the initial scale of Rs 4,500 - 7000 to ultimate pay scale of Rs 7,450 - 11,500/-), practically, the applicant remained in the same post without any promotion for twenty years. This makes her eligible to two financial upgradations one on completion of ten years of service or 01-09-2008 whichever is later and the other on completion of 20 years. The upgradation shall be in respect of the grade pay i.e. Rs 4,800/- and Rs 5,400/- respectively. Thus, w.e.f. 01-09- 2008 the pay scale of the applicant shall be 9,300 - 34,800 with grade pay of Rs 4,800/- and w.e.f. 30-03-2010 the pay scale and grade pay of the applicant should be Rs 9,300 - 34,800 and Rs. 5,400 respectively. It is the same which has been claimed by the applicant and this is the same which has been observed by the internal audit as well, vide MA 1 (para 7). The claim of the applicant is not based on the pay scale applicable to the Central Secretariat Services but one purely within the ambit and scope of the provisions of the MACP including para 5 of the scheme, which is applicable to the facts and circumstance of this case.

15. In view of the discussion as in the preceding paragraphs the OA succeeds. The impugned order at Annexure A-1 and A-2 are hereby quashed and set aside. Respondents are directed to pass suitable orders, revising the pay of the applicant as hereunder:-

- (a) w.e.f. 01-09-2008: admissible pay in the scale of Rs 9,300 - 34,800 with grade pay of Rs. 4,800/-.
- (b) w.e.f. 30-03-2010: Admissible pay in the scale of Rs 9,300 - 34,800 with grade pay of Rs 5,400/-."

11. Coming back to the case of the present applicant, admittedly, the applicant's pay scale as JHT was modified/upgraded from Rs. 6500-10,500/- to Rs. 7450-11,500/- w.e.f. 1.1.2006 vide the OM dated 13.11.2009, and this pay scale was revised to Pay Band PB 2 (Rs.9300-34,800/-), with the Grade Pay of Rs.4600/- after implementation of the recommendation of 6<sup>th</sup> Central Pay Commission w.e.f. 1.1.2006. As mentioned in para 4.4 of the OA, the respondent No.3 vide letter dated 20.1.2011 (Annexure A/3) fixed the applicant's Grade Pay at Rs.4600/- under the revised pay scale w.e.f. 1.1.2006, which has not been denied by the respondents. Prior to 20.1.2011, the applicant's Grade pay was fixed at Rs. 4200/- w.e.f. 1.1.2006, which was his normal replacement grade pay as stated in para 4.4 of the OA. This pay scale was upgraded to Rs. 7450-11,500/- w.e.f. 1.1.2006 vide OM dated 13.11.2009

and this benefit was allowed w.e.f. 1.1.2006 raising the Grade Pay of the applicant to Rs. 4600/- vide order dated 20.1.2011 (Annexure-A/3).

12. From the above discussions, it is clear that the applicant was effectively placed at the pay scale of 7450-11,500/- w.e.f. 1.1.2006 (pre-revised) on account of the OM dated 24.11.2008 and OM dated 13.11.2009 of the Ministry of Finance. The merger of pay scales that took place w.e.f. 1.1.2006 was for the scales Rs. 5000-8000, Rs. 5500-9000 and Rs. 6500-10,500, which merged with other two scales and all three scales were revised to the Pay Band PB-2 Rs. 9300-34800/- with the Grade pay of Rs. 4200/- w.e.f. 1.1.2006 after implementation of 6<sup>th</sup> Pay Commission report. Subsequently, his pay scale was upgraded to (pre-revised) Rs.7450-11,500/-. This has been admitted by the applicant vide his representation dated 22.3.2013 (Annexure-A/4), which in para 4 stated as under:-

"4. Further as per Min of Finance, Deptt. Of Exp. Implementation Cell, New Delhi F No. 1/1/2008-IC dated 13 Nov 2009 (copy enclosed) the posts existed in the pre-revised pay scale of Rs. 6500-10500 and which were granted the normal replacement pay structure of Grade Pay of Rs. 4200/- in the pay band PB-2 are eligible to get Grade Pay of Rs. 4600/- corresponding to the pre-revised pay scale of Rs. 7450-11500 with effect from 01.1.2006. Accordingly ACDA, Kolkata fixed my pay and granted Rs. 4600/- as Grade Pay with effect from 01.1.2006 (copy enclosed) but no financial benefit has been given in the date of ACP (27 May 2006). As a matter of fact the pay band as well as Grade Pay on the date of ACP remains the same which is clearly violated the clause-5 Annexure-I of MACP Scheme."

13. From above contentions of the applicant, it is clear that he was enjoying the pay scale of Rs. 7450-11500/- (pre-revised) w.e.f. 1.1.2006 and this pay scale was revised to the pay band PB-2 with Grade Pay of Rs. 4600/- as stated in para 4.6 of the OA also. This higher pay scale was allowed by the respondents vide order dated 20.1.2011 (Annexure-A/3). It is the contention of the respondents that the applicant, as JTH, would not have been placed in the pre-revised pay scale of Rs. 7450-11500/- and OM dated 13.11.2009 was not applicable to the applicant. It is clear that the applicant was placed in the pre-revised pay scale of Rs. 7450-11500/- w.e.f. 1.1.2006 because of the fact that after OM dated 24.11.2008 (A/1), his pay scale was Rs. 6500-10500/- (pre-revised), which was upgraded to Rs. 7450-11500/- w.e.f. 1.1.2006 vide OM dated 13.11.2009.

14. It is noticed that in a similar case of another JTH decided by Cuttack Bench of this Tribunal, the relief of 1<sup>st</sup> MACP at the Grade Pay of Rs. 4800/- was not allowed by this Tribunal vide order dated 11.12.2017 in the OA No. 461/2016 in the case of **Abhimanyu Sahani vs. The Secretary to the Govt. of India, Ministry of Agriculture & others (OA No.461/2016)** ([indiankanoon.org/doc/166478867](http://indiankanoon.org/doc/166478867)), in which it was held as under:-

"The applicant was working as Junior Hindi Translator in the O/o. the Director, Central Poultry Development Organization, Bhubaneswar at the time of filing of the Original Application. He joined as Junior Hindi Translator on 29.11.1989 in the scale of Rs.1400-2300/- . After the recommendations of the 5th CPC, the scale of pay of Junior Hindi Translator stood revised to Rs.4500-7000/- with effect from 1.1.1996 which was subsequently revised to Rs.5000-8000/-. The applicant was granted 1st financial upgradation under the Assured Career Progression (ACP) Scheme on 29.11.2001 and was placed in the scale of Rs.5500-9000/-. After the 6th CPC, the pay scale of Rs.5500-9000/- was enhanced to Rs.7450-11500 with effect from 1.1.2006. However, the three pay scales of Rs.5000-8000, 5500-900 and 6500-10500 were merged and replaced by the revised PB-2 of Rs.9300-34800 with Grade Pay of Rs.4600/- with effect from 1.1.2006. Vide order dated 17.12.2008 the pay of the applicant was fixed in PB-II(Rs.9300-34800) with Grade Pay of Rs.4200/-. The applicant claims that this was a wrong fixation of pay since by the Memorandum dated 24.11.2008, the pay scale of Rs.5500-9000/- was replaced by Rs.7450-11500/- and the corresponding Grade Pay for that scale should have been Rs.4600/-. The applicant completed 20 years of service on 29.11.2009 and claims to have become eligible for 2nd financial upgradation under the Modified Assured Career Progression (MACP) Scheme. On 28.9.2010, he was granted 2nd financial upgradation in PB-II (Rs.9300-34800) with Grade Pay of Rs.4800/-. The applicant submitted a representation on 20.2.2015 for re-fixation of his pay and revision of Grade Pay to the Deputy Secretary to Government of India (Admn-III), Ministry of Agriculture (Respondent No.2). This was followed ORIGINAL APPLICATION NO.260/461/ 2016 by reminders dated 5.6.2015 and again on 13.7.2015. Since he did not get any relief, he had filed O.A.No.833 of 2015 before this Tribunal which was disposed of on 15.12.2015 with a direction to Respondent No.2 to consider the applicant's representation. The Respondent No.2 vide order dated 5.5.2016 rejected the prayer of the applicant. Aggrieved by this, he has filed the present O.A. paying for the following reliefs:

- i) To quash and/or set aside the impugned office order (speaking order) No.25-1/2016- Admn.VI (P) dated 05.05.2016 being Annexure-A/7 of this original application.
- ii) To quash and/or set aside the office orders in respect of wrong pay fixation under MACP Scheme dated 17.12.2008 & 28.09.2010 by violation of the Memorandum of Ministry of Finance dated 24.11.2008 being Annexure-A- 1 & A-3 of this original application.
- iii) Directing the Respondents to fix the appropriate Grade Pay of Rs.4600/- in place of Rs.4200/- in the pay scale of Rs.9300- 34800 w.e.f. dt. 01.01.2006 in favour of the Applicant.
- iv) Further directing the respondents to grant Rs.4800/- as 1st MACP w.e.f dt. 01.09.2008 (from the date of MACP scheme became operative) & Rs.5400/- as 2nd MACP in PB-3 in the pay scale of Rs.15600-39100 ( the pay scale of Assistant Director (OL) w.e.f. dt. 29.11.2009 (from the date of completion of 20 years of regular service) by ignoring 1st financial upgradation under ACP.
- iv) Direct the respondents to make the differential arrear payment with pendent lite interest along with cost of litigation in favour of the Applicant.
- v) Any other appropriate order/orders may be passed to give complete relief to the applicant as it would deem fit & proper.

2. The applicant has based his prayer mainly on the ground that many of the Departments in the Government of India have allowed enhanced Grade Pay of Rs.4600/- to their Junior Hindi Translators with effect from 01.01.2006. On the principle of equal pay for equal work, he is entitled to Grade Pay of Rs.4600 from 01.01.2006 and denial of the same is an act of discrimination and violation of Articles 14 and 16 of the Constitution of India. Applicant has also cited the order dated 14.10.2013 in O.A.NO.636 & 953 of 2012 of CAT, Ernakulam Bench to support his case.

3. The Respondents in their reply filed on 8.11.2016 have contested the claim of the applicant. It is their contention that the applicant has been granted 1st financial upgradation under the ACP Scheme on 29.11.2001 in the pay scale of Rs.5500- 9000 which was revised to Rs.9300-34800 with Grade Pay of Rs.4200/- with effect from 01.01.2006. He was granted the 2nd financial upgradation under the MACP Scheme with effect from 29.11.2009 ignoring the first financial upgradation granted under ACP and was given two financial



upgradations in PB-II( Rs.9300-34800\_ with Grade Pay of Rs.4600/- and Grade Pay of Rs.4800/- as first and second upgradation. There is no specific order to consider him for Grade Pay of Rs.4600/- with effect from 1.1.2006. They have also refuted the claim of the applicant that he is similarly placed as P.R.Anandvally Amma vs. Union of India before the CAT, Ernakula Bench in O.A.No.656 of 2012. The respondents have also enclosed the DOP&T Note dated 12.4.2016 in Diary No.1163862/16/CR wherein the prayer of the applicant has been analyzed in detail and it has been advised by the DOP&T that grant of two financial upgradations under the MACP Scheme in GP Rs.4600 and Rs.4800 to the applicant is in order.

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6. The issue on granting appropriate Grade Pay to Junior Hindi Translator has been dealt with in the order dated 14.10.2013 passed by the CAT, Ernakulam Bench in O.A.No.656 & 953 of 2012.The relevant Paragraph of the order of the Three Member Bench is extracted herein below:

"22. In the circumstances, the reference as to whether JHTs in the Subordinate Offices of the Central Government are entitled to Grade Pay of Rs.4600/- from 01.01.2006 on the basis of O.M. Dated 13.11.2009 or not has to be held to be in favour of the applicants and in the circumstances of the case there is no necessity of again referring the matter to the Division Bench for deciding the matter on facts. We hold that both the OAs are liable to be allowed and the same are accordingly allowed".

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8. In view of the above, the O.A. is partly allowed. The respondents are directed to pass necessary orders refixing the pay of the applicant in PB-II (Rs.9300-34800) with Grade Pay of Rs.4600/- taking into account the 1st financial upgradation granted to him under the ACP Scheme, with effect from 01.01.2006 and the 2nd financial upgradation under the MACP Scheme with Grade Pay of Rs.4800 from 28.11.2009 within a period of eight weeks from the date of receipt of this order. No costs."

In the above case, the prayer for granting 1<sup>st</sup> MACP at the Grade Pay of Rs. 4800/- w.e.f. 1.9.2008 was not allowed, while allowing the prayer for fixing the Grade Pay of Rs. 4600/- w.e.f. 1.1.2006 based on the Full Bench decision in Ernakulam Bench on the issue. It was also held that the applicant was entitled for 2<sup>nd</sup> MACP benefit with Grade Pay of Rs.4800/- after completion of 20 years of service.

15. Since the applicant was effectively placed in the pre-revised pay scale of Rs. 6500-10500/- vide OM dated 24.11.2008 with the revised pay band Grade Pay of Rs. 4200/- w.e.f. 1.1.2006 initially and thereafter, vide the OM dated 13.11.2009 (as quoted in para 8 above), he was placed at pre-revised scale of Rs. 7450-11,500/- which did not merge with the pay scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10,500 after 6<sup>th</sup> Pay Commission recommendations, we are of the considered view that the applicant had received the benefit of the upgradation to the pre-revised pay scale of Rs. 7450-11500/- with Grade Pay of Rs. 4600/- from the Grade Pay of Rs. 4200/- w.e.f. 1.1.2006 by virtue of the OM dated 24.11.2008 and 13.11.2009. The benefit of para 5 of the MACP guidelines will not be applicable to the case of the applicant, since the pre-revised pay scale of Rs. 7450-11,500/- was not merged

with three pay scales merging to PB-2 with Grade Pay of Rs. 4200/- and it was a higher pay scale. It is also noted that the language used in the OM dated 13.11.2009 as quoted in para 8 above, mentions that the pay scale of Rs. 7450-11500/- is the scale after upgradation of the pay scale of Rs. 6500-10500/-. The upgradation of the applicant's pay scale to the pre-revised pay scale of Rs. 7450-11500/- w.e.f. which was revised to PB-2 with Grade Pay of Rs. 4600/- w.e.f. 1.1.2006 vide OM dated 13.11.2009 (Annexure A/9) cannot be ignored as per the para 5 of the Annexure to the MACP guidelines. It is clear that the merged scales of Rs. 5000-8000/-, Rs. 5500-9000/- and Rs. 6500-10,500/- did not include the pay scale of Rs. 7450-11,500/-, which was revised to the PB 2 with Grade pay of Rs. 4600/- after implementation of 6<sup>th</sup> Pay Commission report. In the case of T.P. Leena (supra), the fact that the applicant's pay scale prior to revision under 6<sup>th</sup> pay commission report from 1.1.2006 was effectively upgraded to the pre-revised pay scale of Rs. 7450-11,500/- and this pay scale did not merge with three pay scales of Rs. 5000-8000, Rs. 5500-9000 and Rs. 6500-10,500 which got merged after implementation of 6<sup>th</sup> pay commission report (as discussed in para 13 above), was not considered. We are, therefore, of the view that the decision the case of T.P. Leena (supra) will not apply to the present OA.

16. In the circumstances, we are unable to allow the relief sought by the applicant in the OA to allow 1<sup>st</sup> MACP benefit to Grade Pay of Rs.4800/- w.e.f. 1.9.2008 and following the decision of Cuttack Bench of this Tribunal in OA No. 461/2016 in the case of Abhimanyu Sahani (supra), it is held that the applicant will be entitled for 2<sup>nd</sup> MACP benefit to the Grade Pay of Rs. 4800/- after completion of 20 years of service w.e.f. 27.5.2014. Hence, the OA is dismissed with no order as to cost.

(SWARUP KUMAR MISHRA)  
MEMBER (J)

(GOKUL CHANDRA PATI)  
MEMBER (A)

I.Nath