

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00980/2015

Tuesday, this the 5th day of February, 2019

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

T. Raghavan, S/o. Late T. Unni, aged 62 years,
 Senior Intelligence Officer (Retd.), Directorate of Revenue Intelligence,
 Kedaram, Jyothi Nagar, East Hill PO, Kozhikode -673005,
 Kerala State. **Applicant**

(By Advocate : Mr. C.S.G. Nair)

V e r s u s

1. Union of India, represented by its Secretary,
 Department of Revenue, North Block, New Delhi – 110 001.
2. Director General, Directorate of Revenue Intelligence,
 D Block, I.P. Bhavan (7th Floor), I.P. Estate, New Delhi-110 002.
3. Additional Director General, Directorate of Revenue Intelligence,
 Zonal Unit, No. 8(P)2, 1st Stage, 3rd Block, Opp. BDA Complex,
 HDR Layout, Opp. JSS School, Bengaluru – 560 043.
4. Deputy Director, Directorate of Revenue Intelligence, Regional Unit,
 Tyag, Chalapuram PO, Kozhikode – 673 002.
5. Pay & Accounts Officer, Central Board of Excise & Customs,
 AGCR Building, I.P. Estate, New Delhi –
 110 002. **Respondents**

(By Advocate : Mrs. P.K. Latha, ACGSC)

This application having been heard on 24.01.2019 the Tribunal on
 05.02.2019 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicant are as under:

“(i) To declare that the applicant is entitled for 3rd financial upgradation to the pay band 3 with grade pay of Rs. 5400/- under MACP scheme w.e.f. 1.9.2008.

(ii) To direct the respondents to grant 3rd financial upgradation to the pay band 3 with grade pay of Rs. 5400/- under MACP scheme w.e.f. 1.9.2008 and grant all consequential benefits including arrears of pay and allowances within a stipulated period.

(iii) To direct the respondents to revise the pension and other retirement benefits and pay the difference in pension, gratuity and commutation value of pension within a time frame.

(iv) To direct the respondents to pay interest @ 12% p.a. on the arrears of pension, and gratuity w.e.f. 1.1.2009 within a time frame.

(v) To direct the respondents to draw and disburse the differential amount of leave salary within a time frame.

(vi) Grant such other relief or reliefs that may be prayed for or that are found to be just and proper in the nature and circumstances of the case.

(vii) Grant cost of this OA.”

2. The brief facts of the case are that the applicant joined service as a Stenographer Grade III on 31.5.1976. He was promoted as Stenographer Grade II on 26.11.1983. On implementation of Revised Pay Rules, 2008 the the pay scales of Stenographer Grade III and Stenographer Grade II were merged together w.e.f. 1.1.2006. Since then there were only two grades of Stenographers i.e. Stenographer Grade II and Stenographer Grade-I. Condition No. 5 of MACP scheme clearly stipulates that promotion earned in the past to those grades which now carry the same grade pay due to merger of pay scales shall be ignored for the purpose of granting upgradations under MACP. The applicant had completed more than 32 years of service as on 1.9.2008 and as such he became entitled for two financial upgradations w.e.f. 1.9.2008. Applicant is entitled for 3rd financial upgradation to the grade pay of Rs. 5,400/- in PB-3 as per condition No. 6.2

of MACP Scheme, it stipulates that all financial upgradations should be done strictly in accordance with the hierarchy of Grade Pays in pay bands as notified vide CCS (RP) Rules, 2008. The next promotion as per the hierarchy is that of Assistant Director/Assistant Commissioner (Group A) and as such the applicant is entitled for 3rd financial upgradation under MACP scheme in PB-3 at Rs. 15,600-39,100/- plus Grade Pay of Rs. 5,400/-. He had submitted representations but no action was taken. Aggrieved the applicant has filed this OA.

3. Notices were issued to the respondents. They entered appearance through Mrs. P.K. Latha, ACGSC who contended that applicant has joined service as Stenographer Grade-III on 31.5.1976 in DRI, Calicut Regional Unit. He was promoted as Stenographer Grade II on 26.11.1983. Further he was transferred to officiate as an Intelligence Officer with effect from 14.3.1990 and his pay was fixed in new revised pay scale of PB-2 with Grade Pay of Rs. 4,600/- which involves 2nd financial upgradation of his career. Later the applicant was promoted as Sr. Intelligence Officer on 29.7.2009 and this was 3rd promotion in his service. Applicant has already been granted all applicable financial benefit/upgradation in his service. Applicant was granted 3rd financial upgradation in the Grade Pay of Rs. 4,800/- in PB-2 w.e.f. 1.9.2008 on completion of 30 years of service. Applicant is not entitled for grant of 3rd upgradation under MACP in PB-2 plus Grade Pay of Rs. 5,400/-. Stenographer Grade-I and Grade-II were merged and placed in PB-2 with Grade Pay of Rs. 4,200/-. However, there is no mention about the merger of Stenographer Grade-III and Stenographer

Grade-II. Therefore, prior to 1.1.2016 the promotion from Stenographer Grade-III to Stenographer Grade-II which involves financial upgradation from pre-revised pay scale of Rs. 4,000-6,000/- to Rs. 5,000-8,000/- cannot be ignored. Only the promotion earned by the Stenographer Grade-II prior to 1.1.2006 on account of merger of the pre-revised scales of Rs. 5,000-8,000/- and Rs.5,500-9,000/- in the grade of Stenographer Grade-I is to be ignored. Respondents pray for dismissing the OA.

4. Heard Shri C.S.G. Nair learned counsel appearing for the applicant and Mrs. P.K. Latha, ACGSC learned counsel appearing for the respondents. Perused the records.

5. The applicant has relied on the decision of this Tribunal in OA No. 180/68/2015 wherein a similar issue had been considered by this Tribunal on 15.11.2018. The relevant portion of the order is quoted below:

“8. Accordingly, the Original Application is allowed. The applicant is entitled to a Grade Pay of Rs.6,600/- in PB-3 w.e.f. 1.9.2008 notionally as the 3rd financial upgradation. However, the monetary benefits of arrears will be restricted to three years prior to the date of filing of this OA as laid down by the apex court in *Union of India & Ors. v. Tarsem Singh* – (2008) 8 SCC 648. The respondents shall implement the order within three months from the date of receipt of a copy of this order. Parties are directed to bear their own costs.”

In the above order of this Tribunal the Principal Bench order in OA No. 1707 of 2016 was referred in which the following order had been passed on 11th April, 2016:

“The applicants, working as Superintendents in the respondent Central Board of Excise & Customs, filed the instant OA seeking the following reliefs :-

“(i) To direct the respondents to grant Grade Pay of 5400 (PB-2) to applicants on completion of 04 years of regular service in the

grade pay of 4800 as per Judgment dated 06.09.2010 of Hon'ble High Court of Madras & Judgment dated 09.07.2012 of the High Court of Kerala, Ernakulam Bench with all consequential benefits including arrears of pay.

(ii) To quash and set aside the clarification dated 11.02.2009 and direct the respondents to grant grade pay of Rs.5400 in the pay scale of Rs.9300-34800 (PB-2) to the applicants from the date of completion of 4 years of service in the grade pay of Rs.4800 in PB-2.

(iii) To allow the OA with cost.

(iv) Pass any further orders as this Hon'ble Tribunal may deemed fit and proper in the facts and circumstances of the case.”

2. When the matter was taken up for hearing, both the counsels submit that in the identical circumstances, the OA No.060/01044/2014 with OA No.060/00018/2015 dated 04.11.2015 (Annexure-A/16) filed in Munish Kumar & Ors. Vs. Union of India and Ors. was allowed and the Writ Petition filed against the said orders before the Hon'ble High Court of Punjab and Haryana was also dismissed on 11.12.2017 in WP(C) No.3430 and 3932 of 2017, wherein it was categorically mentioned that the decision of the Tribunal was based on the judgment of Hon'ble High Court of Madras in WP(C) No.13225/2010 in M. Subramaniam Vs. Union of India & others, which was upheld by the Hon'ble Apex Court in Civil Appeal No.8883/2011 dated 10.10.2017.

3. In the circumstances and in view of the admitted position with regard to the claim of the applicants, the instant OA is also allowed in terms of the above referred decisions. The respondents shall complete the exercise within three months from the date of receipt of a certified copy of this order.

4. Pending MAs if any be disposed of”

6. Further in a similar matter the Hon'ble High Court of Delhi on 20.12.2017 in WP(C) No. 9357 of 2016 has held as under:

“18. In the present case, it is noticed that the petitioners' counterparts were granted the third financial upgradation, although they, like them were given the GP of ₹5400/-; they perform similar, if not identical functions. FC Jain (supra) is an authority that if such broadly identical functions are involved, both categories ought to be treated alike in regard to interpretation of pay norms, by the organization. Therefore, the principle of parity would result in acceptance of the petitioner's claim. The second aspect which this court would emphasize is that unlike “stagnation” or performance based increments, or placement in higher scales, the grant of ₹5400/- is automatic, after the happening of a certain event, i.e. completion of four years' service. This is quite different from promotion or placement in the selection grade, which is performance dependent or based on the availability of a few slots or vacancies (usually confined to a portion of the

entire cadre: say 20%). The last reason is that both V.K. Sharma (supra) and Suresh Chand Garg (supra), in somewhat similar circumstances, accepted that the grant of a higher grade pay did not preclude the grant of the third financial upgradation.

19. In view of the foregoing analysis, the court is of opinion that the petition has to succeed. As a consequence, the respondents are directed to revise and fix the pay scales by granting the third financial upgradation, to the petitioners. They shall be entitled to consequential arrears and all consequential benefits; the payments shall carry interest @ 9 per cent per annum. The payouts shall be made to the petitioners within 8 weeks. The petition is allowed, in these terms.”

We find that the order passed by this Tribunal in OA No. 180/68/2015 dated 15.11.2018, the order passed by the Principal Bench of the Tribunal and the judgment passed by the Hon'ble High Court of Delhi squarely applies to the present case as well. Therefore, nothing remains to be decided in the present case.

7. Accordingly, the Original Application is allowed. The applicant is entitled to a Grade Pay of Rs.5,400/- in PB-3 w.e.f. 1.9.2008 notionally as the 3rd financial upgradation. However, the monetary benefits of arrears will be restricted to three years prior to the date of filing of this OA as laid down by the apex court in *Union of India & Ors. v. Tarsem Singh* – (2008) 8 SCC 648. The respondents shall implement the order within three months from the date of receipt of a copy of this order. Parties are directed to bear their own costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

Original Application No. 180/00980/2015**APPLICANTS' ANNEXURES**

- Annexure A1** - True copy of the memorandum DRI. F. No. A12026/5/76-Admn. dt. 18.5.1976 issued by the 2nd respondent.
- Annexure A2** - True copy of the order No. 183/83 dt. 26.11.1983 issued by the 2nd respondent.
- Annexure A3** - True copy of the OM No. AB-14017/8/2010-Estt.(RR) dt. 10.3.2010.
- Annexure A4** - True copy of the MACP scheme.
- Annexure A5** - True copy of the order No. 49/2009 dt. 29.7.2009.
- Annexure A6** - True copy of the order No. 25/2011 dt. 24.5.2011 issued by the 2nd respondent.
- Annexure A7** - True copy of the representation dt. 25.6.2014.
- Annexure A8** - True copy of the reminder on 7.1.2015.
- Annexure A9** - True copy of the reminder on 8.7.2015.

RESPONDENTS' ANNEXURES

- Annexure R1** - Copy of F.No. A-26017/49/2011-Ad.II A dated 4.8.2012.
- Annexure R2** - Copy of vide office order No. 25/2011 dated 24.5.2011.
- Annexure R3** - Copy of MoF notification vide GSR 622(E) dated 29.8.2008 regarding 6th CPC, page 42-43 for revised pay scales.

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