

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 180/00812/2015

Original Application No. 180/00354/2016

Thursday, this the 7th day of March, 2019

CORAM:

**HON'BLE Mr. E.K. BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr. ASHISH KALIA, JUDICIAL MEMBER**

1. Original Application No. 180/00812/2015 :

V. Radhakrishnan, aged 56,
S/o. Kunhambu, Technician,
CPCRI, Kasaragod, Kudlu PO – 671124,
residing Vannarath Veed,
Iriyanni (PO), Muliari, Kasaragod.

..... **Applicant**

(By Advocate - Mr. P.V. Mohanan)

v e r s u s

1. The Secretary,
Indian Council of Agricultural Research,
Krishi Bhavan, New Delhi – 110 001.

2. The Director, Central Plantation
Crops Research Institute,
Kudlu PO, Kasaragod – 671124.

..... **Respondents**

(By Advocate - Mr. P. Santhosh Kumar)

2. Original Application No. 180/00354/2016 :

K.J. Sebastian, aged 53, S/o. K.J. Joseph,
Senior Technician (Filed/Farm),
CPCRI, Kasaragod, Residing at Uliyatadukka,
Kasaragod.

..... **Applicant**

(By Advocate - Mr. P.V. Mohanan)

v e r s u s

1. The Secretary, Indian Council of
Agriculture Research,
Krishi Bhavan, New Delhi – 110 001.
 2. The Director, Central Plantation
Crops Research Institute,
Kudlu PO, Kasaragod – 671 124.
- **Respondents**

(By Advocate - Mr. P. Santhosh Kumar)

These applications having been heard on 19.02.2019, this Tribunal on 07.03.2019 delivered the following:

ORDER

Per: Ashish Kalia, Judicial Member -

OAs Nos. 180-812-2015 and 180-354-2016 have common points of fact and law involved and hence are being disposed of through this common order. The pleadings, documents and records in OA No. 180-812-2015 are referred to in this common order for the sake of convenience.

2. The applicant commenced his service as Supporting Staff Grade-I (Mazdoor) on 23.6.1982. He was granted revised pay in PB-1 w.e.f. 1.1.2006 in the Grade Pay of Rs. 1,800/- and his pay was fixed at Rs. 9,460/- as on 31.8.2008 in PB-1 Rs. 5,200-20,200/- plus GP of Rs. 1,800/-. The applicant was granted 1st MACP w.e.f. 1.9.2008 in PB-1 Rs. 5,200-20,200/- plus GP of Rs. 1,900/- and his pay was fixed at Rs.9,850/-. The 2nd MACP was granted to the applicant w.e.f. 1.9.2008 in the PB-1 Rs. 5,200-

20,200/- plus GP of Rs. 2,000/- and his pay was fixed at Rs. 10,560/-. The applicant is entitled 3rd financial upgradation under MACP scheme on completion of 30 years of as on 23.6.2012 in the Grade Pay of Rs. 2,400/-. As per clause 7.1 of Technical Service Rules of ICAR 33.3% of vacancies in Grade T-1 of category-1 shall be filled by promotion of persons in supporting services possessing qualification prescribed for category-1. The promotion is to be made on the basis of selection. The post in Grade T-1 in category-1 of TSR carries higher duties, responsibilities and functionalities. When DPC met on 29.6.2010 it found the applicant meritorious for promotion to Grade T-1 (Junior Technical Assistant) and by proceeding dated 1.7.2010 he was promoted to the post of Junior Technical Assistant in the pay band of Rs. 5,200-20,200/- plus GP of Rs. 2,000/-. The grievance of the applicant is that similarly placed incumbents namely Shri K.J. Sebastian, T-1 (Junior Technical Assistant) and Shri O.G. Sivadas, Technician T-1 are granted higher fixation of pay by way of addition of one increment equal to 3% of the sum of the pay in the pay band and the existing Grade Pay to the existing pay in the pay band as envisaged under Rule 13 of CCS (Revised Pay) Rules, 2008. The applicant is arbitrarily discriminated without any reasonable basis.

3. Notices were issued to the respondents and they entered appearance through Shri P. Santhosh Kumar who had filed a reply statement contending

that as per recommendation of the 6th Central Pay Commission, the Government had decided to grant three financial upgradations under MACP scheme w.e.f. 1.9.2008. This scheme is in supersession of previous ACP scheme and clarifications issued thereunder. Under this scheme three financial upgradations are ensured at intervals of 10, 20 and 30 years of continuous regular service of government employee who are not getting any regular promotions during their service period. The applicant was granted two financial upgradations to the higher Grade Pay of Rs. 1,900/- and Rs. 2,000/- on completion of 10/20 years on 22.6.1992 and 22.6.2002 respectively. Applicant was promoted to the post of T1 Junior Technical Assistant vide Annexure A1 order and assumed the charge on 3.7.2010. Later the post of T1 JTA was designated as Technician. The Grade pay of the post of T1 JTA is Rs. 2,000/-. Paragraph 4 of Annexure R1(a) clearly prescribes that benefit of pay fixation available at the time of regular promotion shall also be allowed at the time of financial upgradation under the Scheme. Therefore, the pay shall be raised by 3% of the total pay in the pay band and the grade pay drawn before such upgradation. There shall, however, be no further fixation of pay at the time of regular promotion if it is in the same grade pay as granted under MACPS. In fact, at the time of actual promotion if it happens to be in a post carrying higher grade pay than what is available under MACPS, no pay fixation would be available and only difference of grade pay would be made available. To illustrate, in case

a Government Servant joins as a direct recruit in the grade pay of Rs. 1900 in PB-I and he gets no promotion till completion of 10 years of service, he will be granted financial upgradation under MACPS in the next higher grade pay of Rs. 2000 and his pay will be fixed by granting him one increment plus the difference of grade pay (i.e. Rs. 100). After availing financial upgradation under MACPS, if the Government servant gets his regular promotion in the hierarchy of his cadre, which is to the grade of Rs. 2400, on regular promotion, he will only be granted the difference of grade pay between Rs. 2000 and Rs. 2400. No additional increment will be granted at this stage. The respondents further submitted that eight supporting staff were promoted to Technical and Administrative category under the promotion quota earmarked for them. The above clause was incorporated at Sl. No. 2 in Annexure R1(b) order and pay fixation of all the promoted staff were done as per the guidelines except in case of Shri K.J. Sebastian. The pay fixation done in the case of Shri K.J. Sebastian was an oversight. When the issue came to the notice of the authority, modified order was issued by re-fixing the pay of Shri Sebastian vide Annexure R1(d). With regard to the pay fixation of Shri O.G. Sivadas the same will also be reviewed in a later stage by the competent authority. Lastly it is stated by the respondents that one increment equal to 3% of sum of the pay in the pay band and the Grade Pay in the promoted post has already been granted at the time of MACP promotion to the applicants. The demand of

the applicant to grant additional fixation of pay in his normal promotion to Technical category is not based on any orders/instructions issued by the Government but based on citing two wrong fixation orders which have no meaning and the same will not sustain before the law. Respondents pray for dismissing the OAs.

4. Heard Shri P.V. Mohanan, learned counsel for the applicants appearing in both the cases and learned Standing counsel for the respondents. Perused the records.

5. Shri P.V. Mohanan has made strenuous effort to convince this Tribunal that being promoted to the post of Junior Technical Assistant in pay scale of Rs. 5,200-20,200/- plus Grade Pay of Rs. 2,000/- which carries higher responsibilities and duties, the applicant should have been granted one increment equal to 3% of the sum of the pay in the pay band and the existing Grade Pay. The stand taken by the respondents in the reply is based upon the Supreme Court decision in which it was held that the person who is stagnating for more than 10, 20 and 30 years they should be given three financial upgradations in their career. The applicant has already received two upgradations on completion of 10/20 years and the next upgradation would be due on completion of 30 years of service. The applicant has not cited any rule or instructions where as per Annexure R1(a) after availing the

financial upgradation under MACPs if the Government servant get regular promotion in the hierarchy of his cadre he will be only granted difference of Grade Pay between Rs. 2,000/- and Rs. 2,400/-. No additional increment will be granted in this stage. The MACP scheme itself protected such person who has been promoted on the same Grade Pay shall be given difference of Grade Pay but no additional increment can be granted. The applicants' argument that since they were shouldering additional duties and responsibilities they are entitled for one more increment, cannot find force for the simple reason that when they were not shouldering the additional duties and responsibilities even then they were granted upgradation on completion of 10/20 years of service in one grade under the MACP scheme. Further the argument of the applicants that similarly placed incumbents namely Shri K.J. Sebastian, T-1 (Junior Technical Assistant) and Shri O.G. Sivadas, Technician T-1 are granted higher fixation of pay, we find that in the case of Shri K.J. Sebastian the Department has already modified the order and in the case of Shri O.G. Sivadas the Department shall review it at a later stage with the approval of the competent authority. Even otherwise by mistake or due to oversight these two employees were granted increment. That does not give applicants legal right to claim parity with them for grant of similar benefit.

6. Therefore, keeping in view the entire gambit, circumstances and legal positions, we find no merit on the side of the applicants. Hence, the present OAs are dismissed with no order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

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Applicant's Annexures

- Annexure A1** - True copy of the proceeding F. No. 4(13)/2008-Estt dated 1.7.2010.
- Annexure A2** - True copy of the proceeding F. No. 20(26)MACP/2010-Estt. dated 21.8.2010.
- Annexure A3** - True copy of the proceeding F. NO. 6(846)/1982-Estt dated 21.4.2014.
- Annexure A4** - True copy of the order No. F. 6(1463)/10-Estt., dated 24.9.2010.
- Annexure A5** - True copy of the order F. No. 8(348)/2014-Estt. Dated 14.1.2015.
- Annexure A6** - True copy of the representation dated 4.8.2014.
- Annexure A7** - True copy of the proceeding F. No. 4(VI-CPC) Tech/08-Estt./14540 dated 25.6.2015.
- Annexure A8** - True copy of the proceeding F. No. 24(1)/2008-CDN(A&A) dated 8.2.2013 along with OM No. 10/02/2011-E.III/A dated 7.1.2013
- Annexure A9** - True copy of the OM F.No. 169/2/2000-IC dated 24.11.2000.

Annexures of Respondents

- Annexure R1(a)** - True copy of the letter NO. 33(3)/200 Estt., dated 2.3.2010.
- Annexure R1(b)** - True copy of the office order No. 2(22)MACPS/10-Estt., dated 19.7.2010.
- Annexure R1(c)** - True copy of the fixation statement.
- Annexure R1(d)** - True copy of the office order F. No. 6(1463/10-Estt), daetd 15.4.2016.

Annexure R1(e) - True copy of the officer order F. No. (V-CPC) Tech/08-Estt dated 25.06.2015.

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Annexure A1 - True copy of the proceeding F. No. 4(156)/98-Estt dated 4.12.2009.

Annexure A2 - True copy of the proceeding F. No. 24(1)/2008-CDN(A&A) dated 8.2.2013 along with OM No. 10/02/2011-E.III/A dated 7.1.2013

Annexure A3 - True copy of the order No. F. 6(1463)/10-Estt., dated 24.9.2010.

Annexure A4 - True copy of the proceeding F. No. 4(158)/2014-Estt dated 16.9.2015.

Annexure A5 - True copy of the proceeding F. No. 6(1463)/10-Estt. Dated 28.10.2015.

Annexure A6 - True copy of the pay slip issued for the month of March, 2016.

Annexure A7 - True copy of the proceeding F. No.6(1463)/10-Estt dated 15.4.2016.

Annexures of Respondents

Annexure R2(a) - True copy of the letter No. 33(3)/2009 Estt.I, dated 2.3.2010.
