

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00428/2018

Wednesday, this the 3rd day of April, 2019

CORAM:

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

1. K. Sudeesh Kumar, (Assistant Director, (Retd.) Enforcement Directorate, Bangalore), S/o. The late Dr. V. Krishna Pillai, Aiswarya Enclave, Kochickal, West Fort, Mavelikara – 690 101, Alleppey Dt. **Applicants**
2. M.K. Appukuttan, (Assistant Director (Retd.), Enforcement Directorate, Calicut), S/o. The late M.S.Kuttappan, Vrindavan, H. No. 2/444A, Nellikavu Road, PO Karapparamba, Calicut, Kozhikod Dist., Kerala State, Pin – 673 010. **Applicants**

(By Advocate : Mr. Joshi N. Thomas)

V e r s u s

1. Union of India, represneted by the Secretary to Government, Ministry of Finance, Department of Revenue, North Block, New Delhi – 110 001.
2. The Director, Directorate of Enforcement, 6th Floor, Lok Nayak Bhavan, Khan Market, New Delhi – 110 003.
3. The Chief Controller of Accounts, Ministry of Finance/ Department of Economic Affairs, Internal Audit Wing, 4th Floor, AGCW & M Building, New Delhi -110 002.
3. The Pay & Accounts Officer, Pay & Accounts Office, Department of Revenue, Church Road, Central Secretariate Departments, New Delhi – 110 001. **Respondents**
4. The Joint Director, Directorate of Enforcement, Kanoon's Castle, A.K. Sheshadri Road, Near Maharaja's College Stadium, Kochi – 682 011. **Respondents**

(By Advocate : Mr. N. Anilkumar, SCGSC)

This application having been heard on 27.03.2019 the Tribunal on 03.04.2019 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicant are as under:

“1. to set aside Annexure A1 and A2 orders dated 5.9.2011 of the 2nd respondent in Annexure A3 and order dated 16.12.2011 of the 5th respondent in file No. A 12/3/CZ/2009 ordering recovery of the over payment made to the 2nd applicant due to fixation of pay done as per the earlier order No. 22/2009 dated 17.11.2009 of the 2nd respondent.

2. to direct the respondents to restore the earlier order No. 22/2009 dated 17.11.2009 and No. 51/2010 dated issued in file No. A 36/1/2009 granting 3rd financial upgradation under MACP scheme with Grade Pay of Rs. 6600/- in PB-3 (Rs. 15600-19100) to the applicants, and consequently re-fix their pension on the basis of the order No. 22/2009 dated 17.11.2009 dated 17.11.2009 and pay the applicants all the consequential benefits with interest and also costs.

3. to pass such further order as deemed fit and proper in the circumstances of the case and thus render justice.”

2. The brief facts of the case are that the 1st applicant joined the 2nd respondent department as a direct recruit Assistant Enforcement Officer on 30.1.1976 and retired as Assistant Director from the Zonal office of Directorate of Enforcement, Bangalore on 30.9.2011. The 2nd applicant joined as a direct recruit Assistant Enforcement Officer on 16.2.1977 and retired as Assistant Director from the Cochin Zonal office of the Directorate on 31.3.2012. As per order No. 22/2009 dated 17.11.2009 granting of 3rd financial upgradation with Grade Pay of Rs. 6,600/- in PB-3 under MACP scheme was ordered to all serving persons like the applicants in the Directorate of Enforcement. However, vide Annexure A1 order the 2nd respondent rescinded order dated 17.11.2009. The 2nd applicant was initially

paid GP of Rs. 6,600/- which was subsequently recovered vide Annexure A3 order. The present OA is filed by the applicants seeking directions to the respondents to restore the order dated 17.11.2009 granting 3rd financial upgradation to the applicants with GP of Rs. 6,600/- in PB-3 under MACP scheme. The Madras Bench of this Tribunal set aside Annexures A1 and A2 orders confirmed by the Hon'ble High Court of Madras and Hon'ble Supreme Court of India. The applicants filed representations to grant them the benefit of the court orders. However, no decision were taken on their representations. The applicants submit that in view of the orders passed by the Hon'ble Supreme Court of India the order passed by the Madras Bench of the Tribunal has become final with regard to the grant of GP of Rs. 6,600/- in PB-3 (3rd MACP) in respect of direct recruit Assistant Enforcement Officers including the applicants herein. Aggrieved the applicants have filed the present Original Application.

3. Notices were issued to the respondents. They entered appearance through Shri N.Anilkumar, SCGSC who filed a reply statement contending that the Directorate of Enforcement had granted 3rd MACP to certain officers to the next GP of Rs. 6,600/- in PB-3 vide order dated 17.11.2009. However, the said benefits were withdrawn as per the objection raised by the P&AO, Ministry of Finance, Department of Revenue vide Annexures A1 and A2. Therefore, the fact remains that the officials in the GP of Rs. 5400/- in PB-2 have to be given the upgradation to Rs. 5,400/- in PB-3 as per paragraph 8.1. of Annexure I MACP scheme. The MACP order dated 17.11.2009 granting GP of Rs. 6,600/- was issued erroneously and the same

was rectified vide Annexure A1 order. The decision of the Madras Bench of the Tribunal was implemented exclusively in those individual cases only. The respondents submitted that the pay scale of Rs. 8000-13500/- was not in Group-A scale. Earlier the post of Assistant Director was designated as Assistant Director-II from Chief Enforcement Officer. The pay scale of post of Chief Enforcement Officer was upgraded from Rs. 7500-12000/- to Rs. 8000-13500/- vide order dated 4.10.2005. The Department of Revenue, subsequently while creating certain posts/new offices re-designated all the posts of Chief Enforcement Officers in the pay scale of Rs. 8000-13500/- as Assistant Director (Grade-II). Further all the post of Assistant Director (Grade-II) were also re-designated as Assistant Director in the year 2011. The pay fixation benefits in the GP of Rs. 5400/- in PB-3 had already been given to the applicants. As per MACP scheme the GP of Rs. 5400/- in PB-2 and Rs. 5400/- in PB-3 shall be treated as separate Grade Pays for the purpose of grant of upgradation under MACP scheme. Respondents pray for dismissing the OA.

4. Heard Shri Joshi N. Thomas, learned counsel for the applicants and Shri N. Anilkumar, SCGSC, learned counsel for the respondents. Perused the record.

5. The short question raised by the applicants herein is whether they are entitled for the 3rd financial upgradation in PB-3 with Grade Pay of Rs. 6,600/- or not ?

6. Both the applicants retired from the posts of Assistant Director from the respondent organization. They were due for 3rd financial upgradation in terms of MACP scheme made applicable w.e.f. 1.9.2008. Initially applicants have been granted upgradation in PB-3 with Grade Pay of Rs.6,600/- but due to audit objection the same was withdrawn by the Department vide the impugned order dated 5.9.2011 and their pay was fixed at PB-3 with Grade Pay of Rs.5,400/-. In order to resolve this controversy we would have to look back to the MACP scheme itself. The relevant portion of the MACP scheme is extracted below:

“8.1 Consequent upon the implementation of the Sixth CPC recommendations, grade pay of Rs. 5400 is now in two pay bands viz. PB-2 and PB-3. The grade pay of Rs. 5400 in PB-2 and Rs. 5400 in PB-3 shall be treated as separate grade pays for the purpose of grant of upgradation under the MACP scheme.”

The above provision clearly transpires that the Grade Pay of Rs. 5,400/- is now in two pay bands i.e. PB-2 and PB-3 and for grant of upgradation under MACP scheme they should be treated as separate Grade Pays, meaning thereby that the upgradation can be done on completion of 10, 20 and 30 years of service from PB-2 Rs. 9,300-34,800/- with GP of Rs. 5,400/- to PB-3 Rs. 15,600-39,100/- with GP of Rs. 5,400/-. The pay would increase in PB-2 - Rs. 53,100/- to PB-3 - Rs. 56,100/- despite having same GP of Rs. 5,400/- within minimum financial benefit of Rs. 3,000/-. Respondents' counsel had taken a similar stand and submitted that though Grade Pay is same in PB-2 and PB-3 but financial benefit is there. The benefit of upgradation had been availed by the applicants.

7. The learned counsel for the applicants had relied upon the order of this Tribunal as well as the judgment of the Lucknow Bench of the Central Administrative Tribunal and Madras High Court judgment dated 16.10.2014 in Writ Petition No. 11535/2014 against which SLP was filed and which was dismissed. Thus seeking benefit of the said judgment in his favour. The facts of these cases are different to the present case of the applicant. When the rule position is so clear then there is no requirement under the law to further interpret with the help of the decision rendered by Courts. The facts and circumstances of each case has to be looked in to separately. Moreover, this Tribunal's order in OA No. 180/68/2015 - **K. Ravi v. Union of India & Ors.**, dated 15.11.2018 is entirely different with the facts of the case of the applicant herein. In the former case he was drawing Grade Pay of Rs. 5,400/- in PB-3 Rs. 15,600-39,100/- whereas the applicant in the present case was drawing Grade Pay of Rs. 5,400/- in PB-2 of Rs. 9,300-34,800/-. These two cannot be equated. The rule position is very clear that PB-2 and PB-3 with Grade Pay of Rs. 5,400/- should be treated as separate Grade Pays for grant of financial upgradation under MACP scheme. Therefore, no further interpretation is required in the present case. Hence, the benefit of the above orders/judgments cannot be extended to the applicant herein.

8. In our opinion the MACP guidelines clearly envisage that Grade Pay of Rs. 5,400/- is therein PB-2 and PB-3 and it should be taken as separate pays for the purpose of grant of upgradation under the MACP scheme. The rule is very clear and vocal and no further interpretation is required.

9. In view of the above facts and circumstances of the case the impugned order does not require to be interfered with and the present OA is devoid of merits and liable to be dismissed. Hence, dismissed. Parties are directed to bear their own costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

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APPLICANTS' ANNEXURES

Annexure A1 - Copy of order No. G2/1/2011 dated 5.9.2011 issued by 2nd respondent.

Annexure A2 - Copy of order No. A-36/1/2009 dated 5.9.2011 issued by 2nd respondent.

Annexure A3 - Copy of order regarding recovery of excess amount vide A.12/3/CZ/2009 dated 16.12.2011 against 2nd applicant issued by the 6th respondent.

Annexure A4 - Copy of representation dated 6.6.2017 submitted by the 1st applicant to the 2nd respondent.

Annexure A5 - Reminder dated 27.10.2017 submitted by the 1st applicant to the 2nd respondent.

Annexure A6 - Reminder dated 22.6.2017 submitted by the 2nd applicant to the 2nd respondent.

Annexure A7 - Reminder dated 16.11.2017 submitted by the 2nd applicant to the 2nd respondent.

Annexure A8 - Reminder dated 31.1.2018 submitted by the 2nd applicant to the 2nd respondent.

Annexure A9 - Copy of order No. F. No. 16/24/2004 Ad 1C New Delhi dated 4th October, 2005 issued by the 1st respondent.

Annexure A10 - Copy of order No. A-36/1/2004 dated 18.10.2005.

Annexure A11 - Copy of order No. A-33/2006 dated 20.10.2006 issued by the 2nd respondent.

Annexure A12 - Copy of Establishment order No. 7/2007 dated 11.5.2007 issued by the 2nd respondent.

Annexure A13 - Copy of establishment order No. 43/2011 dated 15.9.2011 issued by the 2nd respondent.

Annexure A14 - Copy of order No. 51 of 2010 dated 21.1.2010 granting 3rd MACP to the 2nd applicant.

Annexure A15 - Copy of order Admn. No. 90/2013 dated 24.7.2013 granting 3rd MACP to the 1st applicant.

Annexure A16 - Copy of office memorandum No. 22/22/2009-CS.,(CR) dated 12.4.2010 issued by the 1st respondent.

Annexure A17 - Copy of office memorandum No. 35034/3/2008-Esstt(D) dated 19.5.2009 issued by the 1st respondent.

Annexure A18 - Copy of office memorandum No. 35034/3/2008 Esstt. (D) dated 9.9.2010.

Annexure A19 - Copy of pay fixation order dated 14.12.2011 issued by the 6th respondent.

Annexure A20 - Copy of order dated 22.7.2013 of the Hon'ble CAT Madras Bench in OA No. 280 of 2012.

Annexure A21 - Copy of order dated 16.10.2014 of the Hon'ble High court of Madras in WPC 11535 of 2014.

Annexure A22 - Copy of order dated 31.8.2015 of the Hon'ble Supreme Court in SLP (C) 15396/2015.

Annexure A23 - Copy of order dated 19.9.2017 in RP(C) 802/17 in SLP(C) 25572/2015 of the Hon'ble Supreme Court.

RESPONDENTS' ANNEXURES

Nil

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