

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.213/2012

Dated this the 24<sup>th</sup> day of January, 2019

CORAM: R. VIJAYKUMAR, MEMBER (A)  
R.N. SINGH, MEMBER (J)

Shri P. Appa Rao,  
Administrative Officer, Grade-II,  
Heavy Water Board,  
Deptt. Of Atomic Energy,  
Anushakti Bhavan,  
C.S.M. Marg,  
MUMBAI-400 001.  
R/o A/21, Hastinapur,  
Anushakti Nagar,  
Mumbai-94.

...

Applicant.

(Advocate : Applicant In person )

**Versus**

1. The Union of India,  
Through the Secretary,  
Deptt. Of Atomic Energy,  
C.S.M. Marg, Anushakti Bhavan,  
MUMBAI-400 001.
2. Additional Secretary,  
Deptt. Of Atomic Energy,  
C.S.M. Marg, Anushakti Bhavan,  
MUMBAI-400 001.
3. The Under Secretary (Cadre),  
Deptt. Of Atomic Energy,  
C.S.M. Marg, Anushakti Bhavan,  
MUMBAI-400 001.

... Respondents.

(Advocate Shri R.R. Shetty alongwith Shri V.B. Joshi)

ORDER

Per : R.N. Singh, Member (J)

The Applicant has approached this Tribunal under Section 19 of the Administrative Tribunal's Act, 1985 seeking the following reliefs;

"a) to allow the Original Application.

b). to hold and declare that, the Applicant is entitled to be given 2<sup>nd</sup> Financial Upgradation benefit under ACP Scheme dated 09.08.1999 on completion of 24 years of regular service w.e.f. 9.8.1999.

c). to direct the Respondents to fix the pay of the Applicant in the pre revised pay scale of Rs.7500-250-12000/ w.e.f. 9.8.1999 and thereafter once again to revise and fix his pay w.e.f. 1.1.2006 in pay scale of Rs.10,000-15200/PB 3 with grade pay of Rs.6600 consequent on merger of pay scales due to cadre review.

d). to further direct the Respondent to grant 3<sup>rd</sup> Financial Upgradation under MACP in the next grade pay hierarchy i.e. Pay Band 3 of Rs.15600-39100 with grade pay of Rs.7600/- w.e.f. 1.9.2008 on completion of 30 years of regular services.

e). to direct the Respondent to pay the arrears of pay and allowances arising out of Prayer (c) and (d) above,

f). to grant interest @ 12% per annum on the arrears of pay and allowances since there was no justified reasons for withholding the grant of 2<sup>nd</sup> ACP benefit from 9.8.1999, despite DOPT advice dated 28.9.2000 received by Respondents in the year 2000 itself.

g). to pass other just and equitable order which is considered necessary in facts and circumstances of the case,

h). to award the cost of Original Application."

2. The precise facts of the case are as under:-

The applicant was a Civilian Group-B employee of the office of Respondents. The applicant was directly appointed to the post of Junior Stenographer in the pay scale of

Rs.330-560 w.e.f. 20.07.1974 which was revised to Rs.1200-2040 w.e.f. 1.1.1986 and again to Rs.4000-6000 w.e.f. 1.1.1996 on the basis of recommendations of the Central Pay Commission. It is stated that the next promotional post for Junior Stenographer/Stenographer Grade II as per the Recruitment Rules, is the post of Senior Stenographer/Stenographer Gr.II and thereafter to the post of Personal Assistant-II/Gr.I and thereafter to the post of Senior Personal Assistant. As per RRs, the Junior Stenographer is also eligible for appointment to the post of Assistant Personnel Officer (Gazetted) after completing eight years of service as Junior Stenographer, and through the selection process of Limited Departmental Competitive Examination. As the applicant was eligible to appear for the LDCE as such he appeared in the aforesaid examination and qualified in the examination and interview for filling up the posts of Assistant Personnel Officer (Gazetted) in the scale of Rs.2000-

—

3200 (pre-revised), revised to Rs.6500-10500 w.e.f. 01.01.1996. Upon qualifying in the LDCE the applicant was appointed to the post of Assistant Personnel Officer (Gazetted) w.e.f. 04.07.1991.

3. The Central Government introduced the Assured Career Progression Scheme by OM dated 09.08.1999 (Annexure A-2). As per the above ACP Scheme, an employee becomes entitled to be fitted in the pay scale of next higher promotional post on completion of 12 years of service in a post by way of 1<sup>st</sup> Financial Upgradation if he has not availed any promotion and for 2<sup>nd</sup> Financial Upgradation on completion of 24 years of regular service if he has availed not more than two promotions in his service and hence, his pay is to be again fitted in the pay scale of next higher promotional post.

4. The applicant had completed 24 years as on 19.07.1999 regular service and availed one promotion to the post of Assistant Personnel Officer

(Gazetted) from Junior Stenographer at the time of introduction of ACP Scheme w.e.f. 09.08.1999 and thus he became eligible for 2<sup>nd</sup> Financial Upgradation w.e.f. 09.08.1999 i.e. the date on which the ACP Scheme was introduced. Hence, his basic pay was required to be fitted in the pay scale of next promotional post of Administrative Officer Grade-I in the pay scale of Rs.7500-250-12000 w.e.f. 09.08.1999 as per F.R. 22 (1)(a)(1). The respondents have not granted the 2<sup>nd</sup> Financial Upgradation to the applicant in terms of ACP Scheme without any valid, legal and justified reason as such the action of the respondents is illegal and arbitrary.

5. It is stated that the case of the applicant was referred to the DOPT for advice as to whether the applicant was entitled for 2<sup>nd</sup> Financial Upgradation w.e.f. 09.08.1999, in view of his appointment to the post of Assistant Personnel Officer through LDCE. The cases of such officers who were promoted by

way of LDCE were kept pending by the respondents till the advice of the DOPT. The copies of the aforesaid letters 23.12.1999 and 28.09.2000 are enclosed as (Exhibit A-3) and (Exhibit A-4) respectively stating therein that the applicant is entailed for 2<sup>nd</sup> Financial Upgradation. It is stated that Respondent No.3 deliberately did not take any action even after receiving clarification from the DOPT and kept his case pending.

6. Further, the Respondents indulged only in inter-office correspondence from one office to another office and the applicant was also not informed that the advice of DOPT was received in the year 2000 itself. The inordinate delay in not granting the benefit of 2<sup>nd</sup> Financial Upgradation to the applicant was attributable to the respondents and his placement in the pay scale of Rs.7500-250-12000 which was due on 09.08.1999 was granted w.e.f. 01.09.2008 instead of 09.08.1999 to which the applicant was eligible.

The pay of the applicant was required to be fixed in the scale of pay of Rs.7500-250-12000 w.e.f. 09.08.1999 and not from 01.09.2008 as per FR 22 (1)(a)(i) which is still pending with the respondents. However, the applicant has made a representation dated 08.10.2009 (Exhibit A-5) to the respondents for grant of 2<sup>nd</sup> Financial Upgradation by fixing his pay in the pay scale of Rs.10000-15200 of the promotional post of Administrative Officer Gr.III referring the case of Shri Mathur. It is further stated by the applicant that MACP Scheme was introduced by Government w.e.f. 01.09.2008 and till such time he had also completed 30 years of service as such he was also entitled for 3<sup>rd</sup> Financial Upgradation with effect from 01.09.2008. It is stated that while granting 3<sup>rd</sup> MACP benefit his pay has to be fitted up in the scale of next promotional post of Chief Administrative Officer w.e.f. 01.09.2008.

/

The revised pay scale of Chief Administrative Officer w.e.f. 01.01.2006 is Rs.15,600-Rs.39,100 PB-3 with GP Rs.7600/-.

7. The respondents have issued a letter dated 07.10.2011 (Exhibit A-1), granting the benefit of 2<sup>nd</sup> Financial Upgradation to the applicant w.e.f. 01.09.2008, instead of 09.08.1999 and by the same order also granted 3<sup>rd</sup> Financial Upgradation w.e.f. 01.09.2008 in the Pay Band-3 Rs.15,600-39,100 with GP Rs.5400/- as such both the 2<sup>nd</sup> and 3<sup>rd</sup> Financial Upgradation were granted to the applicant from the same date i.e. 01.09.2008. Therefore, the order dated 07.11.2011 is illegal and is liable to be quashed and set aside.

8. On implementation of Second Cadre Review of administrative posts, Department of Atomic Energy vide OM No.2/5/2005-IR&W/106 dated 08.05.2009 (Exhibit A-6) have merged/upgraded the scale of pay of APO at Rs.6500-200-10500 to that of Rs.7500-250-12000 (Administrative Officer II), in the PB-2

(Rs.9300-34800) with the same grade pay of Rs.4800/-. The revised administrative cadre structure is as under:-

"APO	Rs.7500-250-10500	PB 2	Rs.9300-34800	GP Rs.4800
AO-II	Rs.10000-15200	PB 3	Rs.15600-39100	GP Rs.6600
CAO	Rs.12000-16500	PB 3	Rs.15600-39100	GP Rs.7600"

It is stated that w.e.f. 01.01.2006 there is no post either with GP of Rs.4200/- or with the GP of Rs.5400/- in Administrative cadre (Gazetted).

9. As per MACP Scheme issued vide OM No.35034/3/2008-Estt (D) dated 19.05.2009 (Exhibit A-7) and in accordance with para 5 in the Annexure-I to the above letter, it is stated that:

"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/upgradation of posts, shall be ignored for the purpose of granting upgradations under MACP and their cases are to be reviewed and they shall be granted financial upgradation to the next higher grade pay."

10. However, in accordance with the

clarification No.3 of DOPT OM No.35034/3/2008-Estt (D) dated 09.09.2010 (Exhibit A-8), it has been stated that cases due for ACP between 01.01.2006 and 31.03.2008, they should be granted financial upgradation in the hierarchy of promotional posts. Further, due to merger of the scales of pay of Rs.6500-10500 and Rs.7500-12000 into one pay scale of Rs.7500-12000 PB-2 (Rs.9300-34800) with Grade Pay of Rs.4800/- w.e.f. 01.01.2006, the applicant who has completed more than 24 years of service and got 2<sup>nd</sup> ACP to the scale of pay of Rs.7500-10500 and officers who have not received 2<sup>nd</sup> ACP as 01.01.2006, are also fixed in Rs.7500-12000 (GP Rs.4800) and as such the applicant is left in the same pay scale without any higher benefits on account of 2<sup>nd</sup> ACP and placed on par with the officers who have not been eligible for 2<sup>nd</sup> ACP. Therefore, the case of the applicant has to be reviewed w.e.f. 01.01.2006 for grant of financial upgradation in accordance with the Point No.5

of OM dated 19.05.2009. As per promotional norms, the next and immediate promotional hierarchical post/scale of pay to the scale of pay of Rs.7500-12000 (GP Rs.4800/-) is the post of Administrative Officer-III (Rs.10000-15200) with GP Rs.6600/-. Thus, the applicant case has to be reviewed as on 01.01.2006 and not as on 01.09.2008 and he is entitled for revised financial upgradation benefits to the scale of pay of Rs.10000-15200 with GP Rs.6600/- w.e.f. 01.01.2006. Moreover, the applicant has also completed more than 30 years of regular service as on 01.09.2008 and availed one promotion and one financial upgradation as such as per the clarification issued vide DOPT OM dated 09.09.2010, the applicant is eligible for 3<sup>rd</sup> financial upgradation under MACP w.e.f. 01.09.2008 in the next higher grade pay. The applicant is aggrieved by granting of 2<sup>nd</sup> financial upgradation erroneously under the earlier ACP Scheme dated 09.08.1999 w.e.f 01.09.2008 and

not taking into consideration of the orders of DOPT dated 19.05.2009 and 09.09.2010 for fixing the pay of the applicant correctly. Hence, this OA.

11. Opposing the claim of the applicant, the respondents have filed reply. They have not disputed the facts stated by the applicant and precisely noted herein above but they have contended that the applicant is at present a pensioner and retired from the post of Deputy Establishment Officer (in the pay band of Rs.15,600-39,100/- with Grade Pay of Rs.6,600/-) from Bhabha Atomic Research Center, a constituent unit of the Department of Atomic Energy and has filed the present OA seeking grant of 2<sup>nd</sup> financial upgradation under ACP Scheme on completion of 24 years of regular service w.e.f. 09.08.1999, fixation of pay in the pre-revised scales and for grant of 3<sup>rd</sup> financial upgradation under MACP Scheme in the Pay Band-3 of Rs.15,600-39,100 with GP Rs.7600/- w.e.f. 01.09.2008 on completion of

30 years of regular service. They have submitted that the OA for ACP w.e.f. 09.08.1999 is clearly barred by limitation and deserves to be dismissed on this ground alone.

12. It is contended on behalf of the respondents that in accordance with the RRs for the post of Assistant Personnel Officer/Assistant Administrative Officer, 80% of the posts are to be filled in on the basis of departmental qualifying examination including those from amongst Junior Stenographers in the pre-revised scale of Rs.4000-100-6000 who have completed 8 years of regular service in the grade; Stenographer Gr.II in the pre-revised scale of Rs.5500-175-9000 who have completed three years regular service in the grade; Stenographer Gr.I in the pre-revised scale of Rs.6500-200-10500/-. As per RRs to the post of Assistant Personnel Officer/Assistant Administrative Officer is to be made by 80% on the basis of Departmental Qualifying Examination and 20% on the basis of

Seniority-cum-fitness. Thus, there is no direct recruitment to the post of Assistant Personnel Officer. Hence, the statement made by the applicant that his appointment as Assistant Personnel Officer w.e.f. 04.07.1991 may be treated as direct appointment to the grade of Assistant Personnel Officer is not correct.

13. It is submitted on behalf of the respondents that the ACP Scheme was introduced with a view to deal with problems of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. In the case in hand, the applicant was initially appointed on 20.7.1974 as Junior Stenographer for which the corresponding 4<sup>th</sup> CPC pay scale is Rs.1200-2040. On 04.07.1991, the applicant was promoted as Assistant Personnel Officer in the administrative cadre in the corresponding 4<sup>th</sup> CPC pay scale of Rs.2000-3200. They have contended that applicant got promotion by passing more than

one stage in the normal hierarchy. He filed representation on 30.10.2011 requesting therein for grant of 2<sup>nd</sup> financial upgradation under ACP Scheme on completion of 24 years of service. Since he was promoted on 04.07.1991 to the post of Assistant Personnel Officer, which was three grades higher from the grade of his initial appointment as such the matter was referred to DoPT with regard to grant of ACP in such cases. The DoPT vide note dated 03.10.2000 clarified that if an employee has not already availed second vacancy based promotion, may be entitled for second financial upgradation as per the parameters prescribed in this regard. It is contended that as per RRs for the post of Assistant Personnel Officer, 80% of the posts are filled up by Limited Departmental Examination, interview and CR grading and 20% posts are to be filled up on seniority basis. The applicant was promoted against the 80% Limited Departmental Examination quota and got

promotion to a grade which was three grades higher than the post in which he was initially appointed on completion of 17 years of service as such he was not facing any stagnation nor hardship due to lack of promotional avenues. The purpose of Limited Departmental Examination enables an officer to get promotion fast, even by superseding seniors. In view of the above position a conscious decision was taken not to grant financial upgradation under the ACP in such cases, as by promoting the applicant to the grade of Assistant Personnel Officer, the spirit of the orders on ACP had been fulfilled.

**14.** Further, the applicant was duly informed in 2001 about the decision of the Department not to grant ACP in his case as there was no hardship faced by him. He had also availed regular promotion in the year 2012 to the higher grade of Administrative Officer-III in PB-3 Rs.15,600-39,100 + GP Rs.6,600 vide

DAE Office Order dated 17.02.2012, after being debarred for a period of one year due to his denial from accepting promotion to GP Rs.6,600/-. It is submitted that the representation dated 08.10.2009 as stated by the applicant has not been received in the respondent department till date. Moreover, the applicant has completed 34 years of service and got only one promotion on 04.07.1991 and no promotion thereafter until 01.09.2008, the applicant was eligible for consideration of 2<sup>nd</sup> and 3<sup>rd</sup> ACP w.e.f. 01.09.2008. A doubt arose as such the matter was referred to the DoP&T for clarification. The DoP&T vide their clarification dated 29.07.2011 clarified that the pay fixed after upgradation from PB-2 (Grade Pay Rs.5400) to PB-3 (Rs.5400) would be similar to that as in promotion. Therefore the applicant was granted second financial upgradation in PB-2 (Rs.9,300-34,800) plus grade pay of Rs.5400 and third financial upgradation in PB-3 (Rs.15,600-39,100) plus

Grade Pay Rs.5,400 under MACP scheme w.e.f. 01.09.2008.

15. In the Rejoinder, the applicant has reiterated the averments made in the OA and denied the contents raised in the Counter-reply. It is submitted by the learned counsel for the applicant that applicant has already superannuated from service on 31.03.2012 but his grievances for grant of financial benefits of 2<sup>nd</sup> ACP w.e.f. 09.09.1999 and pay fixation in Pay Band 3 with GP Rs.6600/- w.e.f.01.01.2006 as per the recommendations of 6<sup>th</sup> SPC are still pending.

16. Learned counsel for the respondents also placed reliance on a judgment of Hon'ble Supreme Court in **E. Parmasivan and Others vs. Union of India & Others** reported in (2003) 12 SCC 270.

17. Learned counsel for the respondents has also filed Sur-rejoinder reiterating the averments already made in their reply.

18. We have gone through the OA alongwith

/

Annexure A-1 to A-8.

19. We have also gone through the Reply filed on behalf of the respondents alongwith (Annexure-R-I to R-III) and Rejoinder reply filed on behalf of applicant and Sur-rejoinder filed on behalf of the respondents.

20. We have heard the learned counsel for the applicant and the learned counsel for the respondents and carefully considered the facts, circumstances, law points and rival contentions in the case.

#### **Findings**

21. It is an admitted fact that the applicant was initially appointed as a Civilian Group-B employee in the Respondent department. The applicant was appointed on the post of Junior Stenographer on 20.07.1974 in the pay scale of Rs.330-560 which was later on revised to Rs.1200-2040 w.e.f. 1.1.1986 and again to Rs.4000-6000 w.e.f. 1.1.1996 on the basis of recommendations of the Central Pay Commission. As per RRs, the Junior

Stenographer is also eligible for appointment to the post of Assistant Personnel Officer (Gazetted) after completing eight years of service as Junior Stenographer through the selection process of Limited Departmental Competitive Examination. The applicant had appeared in the LDCE and qualified in the said examination and interview. Upon qualifying in the aforesaid examination the applicant was appointed to the post of Assistant Personnel Officer (Gazetted) w.e.f. 04.07.1991. As the Central Government introduced the Assured Career Progression Scheme by OM dated 09.08.1999 (Annexure A-2) as such an employee becomes entitled to be fitted in the pay scale of next higher promotional post on completion of 12 years of service in a post by way of 1<sup>st</sup> Financial Upgradation if he has not availed any promotion and for 2<sup>nd</sup> Financial Upgradation on completion of 24 years of regular service if he has availed not more than two promotions in his service and hence, his pay has to be

/

again fitted in the pay scale of next higher promotional post. As regards the reliance placed by the learned counsel for the respondents on a judgment of Hon'ble Supreme Court in ***E. Parmasivan and Others vs. Union of India & Others (supra)*** is concerned, the same is not applicable in the facts of the present case inasmuch as there the E. Parmasivan case (supra) the anomaly in the scale of pay of the petitioners arose as early as on 12.1.1976 when the government of India declined to extend the revised scale of pay in terms of the concordance table to members of the cadres of the store officers and administrative officers. Therefore, the petitioners would have raised objection regarding the anomaly in their scale of pay at that point of time. But in the present case applicant is agitating the matter while in service and the respondents have themselves referred the matter to the DoP&T for advice as such the facts and circumstances of the cited case and the case

in hand are entirely different. Therefore, the same is not helpful to the respondents in the present case.

22. The applicant had completed 24 years of regular service and availed one promotion to the post of Assistant Personnel Officer (Gazetted) from Junior Stenographer at the time of introduction of ACP Scheme w.e.f. 09.08.1999 and thus he became eligible for 2<sup>nd</sup> Financial Upgradation w.e.f. 09.08.1999 i.e. the date on which the ACP Scheme was introduced. Hence, the basic pay of the applicant was required to be fitted in the pay scale of next promotional post of Administrative Officer Grade-I in the pay scale of Rs.7500-250-12000 w.e.f. 09.08.1999 as per F.R.22 (1)(a)(1). The case of the applicant was referred to the DOPT for advice as to whether the applicant was entitled for 2<sup>nd</sup> Financial Upgradation w.e.f. 09.08.1999, in view of his appointment to the post of Assistant Personnel Officer through LDCE. The

Respondent No.3 did not taken any action even after receiving clarification from the DOPT and kept his case pending.

23. Further, the inordinate delay in not granting the benefit of 2<sup>nd</sup> Financial Upgradation to the applicant was attributable to the respondents and his placement in the pay scale of Rs.7500-250-12000 which was due on 09.08.1999 was granted w.e.f. 01.09.2008 instead of 09.08.1999 to which the applicant was eligible by the impugned order dated 07.10.2011 (Exhibit A-1), after a period of more than eight years. The pay of the applicant was required to be fixed in the scale of pay of Rs.7500-250-12000 w.e.f. 09.08.1999 and not from 01.09.2008 as per FR 22 (1)(a)(i) which is still pending with the respondents. However, the applicant has made a representation dated 08.10.2009 (Exhibit A-5) to the respondents for grant of 2<sup>nd</sup> Financial Upgradation by fixing his pay in the pay scale of Rs.10000-15200 of the promotional post of

Administrative Officer Gr.III referring the case of Shri Mathur. The MACP Scheme was introduced by Government w.e.f. 01.09.2008 and till such time he was also completed 30 years of service as such he was also entitled for 3<sup>rd</sup> Financial Upgradation w.e.f. 01.09.2008 and while granting 3<sup>rd</sup> MACP benefit.

24. The respondents have issued a letter dated 07.10.2011 (Exhibit A-1), granting the benefit of 2<sup>nd</sup> Financial Upgradation to the applicant w.e.f. 01.09.2008, instead of 09.08.1999 and by the same order also granted 3<sup>rd</sup> Financial Upgradation w.e.f. 01.09.2008 in the Pay Band-3 Rs.15,600-39,100 with GP Rs.5400/- as such both the 2<sup>nd</sup> and 3<sup>rd</sup> Financial Upgradation were granted to the applicant from the same date i.e. 01.09.2008. Therefore, the order dated 07.11.2011 appears to be illegal and is liable to be quashed and set aside.

25. However, due to merger of the scales of pay of Rs.6500-10500 and Rs.7500-12000 into one pay scale of Rs.7500-12000 PB-2 (Rs.9300-

34800) with Grade Pay of Rs.4800/- w.e.f. 01.01.2006, the applicant who has completed more than 24 years of service and got 2<sup>nd</sup> ACP to the scale of pay of Rs.7500-10500 and officers who have not received 2<sup>nd</sup> ACP as 01.01.2006, are also fixed in Rs.7500-12000 (GP Rs.4800) and as such the applicant is left in the same pay scale without any higher benefits on account of 2<sup>nd</sup> ACP and placed on par with the officers who have not been eligible for 2<sup>nd</sup> ACP. Therefore, the case of the applicant has to be reviewed w.e.f. 01.01.2006 for grant of financial upgradation in accordance with the Point No.5 of OM dated 19.05.2009. Thus, the applicant case has to be reviewed as on 01.01.2006 and not as on 01.09.2008 and he is entitled for revised financial upgradation benefits w.e.f. 01.01.2006. Moreover, the applicant has also completed more than 30 years of regular service as on 01.09.2008 and availed one promotion and one financial upgradation as

such as per the clarification issued vide DOPT OM dated 09.09.2010, the applicant is eligible for 3<sup>rd</sup> financial upgradation under MACP w.e.f. 01.09.2008. In the case in hand the applicant is aggrieved by granting of 2<sup>nd</sup> financial upgradation erroneously under the earlier ACP Scheme dated 09.08.1999 w.e.f. 01.09.2008 and not taking in to consideration of the orders of DOPT dated 19.05.2009 and 09.09.2010 for fixing the pay of the applicant correctly.

26. The respondents in their reply have stated that the applicant is at present a pensioner and is seeking grant of 2<sup>nd</sup> financial upgradation under ACP Scheme on completion of 24 years of regular service w.e.f. 09.08.1999, fixation of pay in the pre-revised scales and for grant of 3<sup>rd</sup> financial upgradation under MACP Scheme in the Pay Band-3 of Rs.15,600-39,100 with GP Rs.7600/- w.e.f. 01.09.2008 on completion of 30 years of regular service. In accordance with the RRs for the post of Assistant Personnel Officer/Assistant

Administrative Officer, 80% of the posts are to be filled in on the basis of departmental qualifying examination including those from amongst Junior Stenographers in the pre-revised scale of Rs.4000-100-6000 who have completed 8 years of regular service in the grade; Stenographer Gr.II in the pre-revised scale of Rs.5500-175-9000 who have completed three years regular service in the grade; Stenographer Gr.I in the pre-revised scale of Rs.6500-200-10500/-.

27. Moreover, the applicant has completed 34 years of service and got only one promotion on 04.07.1991 and no promotion thereafter until 01.09.2008, the applicant was eligible for consideration of 2<sup>nd</sup> and 3<sup>rd</sup> ACP w.e.f. 01.09.2008. A doubt arose as such the matter was referred to the DoP&T for clarification. The DoP&T vide their clarification dated 29.07.2011 clarified that the pay fixed after upgradation from PB-2 (Grade Pay Rs.5400) to PB-3 (Rs.5400) would be similar to that as in

promotion. Therefore, the applicant was granted second financial upgradation in PB-2 (Rs.9,300-34,800) plus grade pay of Rs.5400 and third financial upgradation in PB-3 (Rs.15,600-39,100) plus Grade Pay Rs.5,400 under MACP scheme w.e.f. 01.09.2008. Further, the applicant has made a representation dated 08.10.2009 (Exhibit A-5) to the respondents for grant of 2<sup>nd</sup> Financial Upgradation by fixing his pay in the pay scale of Rs.10000-15200 of the promotional post of Administrative Officer Gr.III referring the case of Shri Mathur. In this regard, the Hon'ble Supreme Court in a five judges' Bench judgment in **K.C. Sharma vs. Union of India reported in 1998 (1) AISLJ 54** has observed that similarly situated employees should be granted the same relief.

28. In view of the facts and circumstances as discussed above, we are of the considered view that the OA is having merit.

29. Accordingly, the OA is allowed with the following directions:-

(i). The Respondents are directed to pass suitable orders regarding grant of 2<sup>nd</sup> Financial Up-gradation under ACP Scheme dated 09.08.1999 and 3<sup>rd</sup> Financial upgradation under MACP in accordance with the relevant rules and instructions w.e.f. 09.08.1999 and w.e.f. 01.01.2006 upon merger of pay scales due to cadre review and w.e.f. 01.01.2008 with all consequential benefits including refixation of pension and compute the arrears due to the applicant and pay the same to the applicant.

(ii). On the claim for grant of interest on arrears of 2<sup>nd</sup> ACP from 09.08.1999 and for delayed payment of 3<sup>rd</sup> MACP from 01.01.2006 for which reliefs has been granted in this OA,

it is noticed from the details of the OA that the applicant filed a representation against the incorrect grant of 2<sup>nd</sup> ACP and of 3<sup>rd</sup> MACP in his letter dated 08.10.2009 and for which he received reply from the respondents on 07.10.2011. This OA was filed thereafter on 12.03.2012 in the month on which he superannuated from service. There is no evidence that the applicant sought any legal remedies for the period of ten years from 1999 to 2009 and thereafter. This Court can come to the rescue and extend extraordinary relief only for a petitioner who is diligent in the pursuit of his grievances and seeks expeditious relief. There is little evidence of the applicant's efforts in this regard. In the event, the applicant shall be paid interest on the arrears of 3<sup>rd</sup> MACP arising from

the date of filing of this OA until the date of actual payment by the respondents.

(iii). The aforesaid exercise shall be completed by the respondents within three months from the date of receipt of a certified copy of this order.

30. The OA is allowed with the above directions. No order as to costs.

(R.N. SINGH)  
MEMBER (J)

(R. Vijaykumar)  
MEMBER (A)

ak/-

Judgment  
15