

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/01660/2018

DATED THIS THE 21st DAY OF FEBRUARY, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

M.Vijaya Kamath, age: 56 years
W/o.Late Sri C.N.Ramachandra
Station Director
No.35, 9th 'D' Main
Byraveswarnagar
Bangalore-560 072.

...Applicant

(By Advocate Sri N.Obalappa)

Vs.

1. The Union of India
Represented by its Secretary
Ministry of I & B
'A' Wing, Shastry Bhavan
New Delhi-110 001.
2. The Chief Executive Officer
Prasar Bharati, Secretariat, Tower C
Doordarshan Bhavan
Mandi House
New Delhi-110 001.
3. The Director General
All India Radio
Akashvani Bhavan
Parliament Street
New Delhi-110 001.
4. The Director General
Doordarshan, Doordarshan Bhavan
Coopericus Marg
New Delhi-110 001.
5. The Head of Office
Doordarshan Kendra
Swamy Sivananda Salai
Chennai-600 005.

6. The Pay & Accounts Officer
Min. of I & B, IRLA
A Wing, Sookhana Bhavan
Lodhi Road
New Delhi-110003.

...Respondents

(By Advocate Sri N.Amaresh)

O R D E R (ORAL)

(PER HON'BLE DR.K.B.SURESH, MEMBER (JUDL.))

Heard. It appears to us that the concerned official have taken a view that since the matter may have an all India effect, it should be heard by the Hon'ble Principal Bench. But then the Hon'ble Apex Court have made it clear that there is no principality in the Principal Bench as it is except for the administrative purposes, the Hon'ble Chairman normally sits thereon. Normally, the transfer application should be laid on the ground that the applicant stays in or near Delhi. Since the State of UP is very huge, it may be easier for them to have a case and adjudicated in Delhi than either in Allahabad or Lucknow. Sri N.Amaresh submits that people from Gurgaon and Faridabad files these kind of applications. Apparently, the application had been filed before the Hon'ble Chairman. But then the matter in issue has been set forth very carefully in that and therefore, the reply in this case may not be necessary. We quote from the Transfer Application in full:

***BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL
BENCH, NEW DELHI***

P.T.No._____/2019

IN

***O.A.No.170/1660/2018
(BANGALORE BENCH)***

IN THE MATTER OF:-

D.G., ALL INDIA RADIO & ORS

VERSUS

.....PETITIONERS

SMT.M.VIJAYA KAMATH**.....RESPONDENT****TRANSFER PETITION UNDER SECTION 25 OF THE ADMINISTRATIVE TRIBUNAL ACT, 1985****MOST RESPECTFULLY SHOWETH:-**

1. That the respondents herein, had approached the Hon'ble Tribunal, Bangalore Bench by filing OA.No.170/1660/2018 for the following reliefs:-

a) Call for records leading to non-grant of 3rd MACP with Grade Pay of Rs.7600/- after completion of 30 years of service by Shri C.N.Ramachandra, the husband of the applicant with effect from 13.01.2013; and

b) Direct the respondents to grant the 3rd MACP to Shri C.N.Ramachandra husband of the applicant with Grade Pay of Rs.7600/- on par with Annexure A-5 dtd.24.07.2018 issued on 06.08.2018 and Annexure-A6 dated 17.09.2018 issued on 26.09.2018 and extend all other consequential financial benefits of arrears of pay and allowances, retirement benefits and revision of pension etc.

c) Pass any other order or direction that this Hon'ble Tribunal may deem fit and necessary in the facts and circumstances of the present case and in the interest of Justice and Equity.

The copy of the OA is enclosed as Annexure-PT-1.

2. That 5 out of 6 Petitioners herein/respondents in OA are based at New Delhi.

3. Applicant's husband was selected by UPSC for the post of Programme Executive. He had joined to the post of PEX w.e.f. 07.06.1984 in the pay scale of Rs.2000-3500/-. The equivalent scale of Rs.2000-3500/- (4th CPC) was Rs.6500-10500/- (5th CPC).

4. The pay of Programme Executives was upgraded from Rs.6500-10500/- to Rs.7500-12000/ w.e.f. 01.01.1996 by the Ministry of I&B vide order dtd.25.2.1999 (Annexure-PT-II).

5. That the Ministry of Information and Broadcasting based on the advise of Department of Personnel and Training, the nodal Department vide its letter Nos.503/05/2014-BA(E) dated 08.09.2014 and 31.01.2018 has inter-alia clarified that the benefits under the MACP scheme is allowed in the Grade Pay hierarchy. Any upgradation availed during the career of incumbents would be counted against the three upgradation permissible under the MACP. The view of DoPT have been endorsed by the Department of Expenditure, M/o Finance.

6. Applicant's husband was granted two ACP by the Department (Annexure-A4 of OA). 3rd MACP was absorbed on upgradation of pay scales

granted by the Ministry vide order dtd.25.02.1999.

7. That OA.No.3046/2015 filed by Programme Staff Assn. Of All India Radio and Doordarshan etc. Vs. UOI and others is pending before the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi, wherein applicants had requested the Hon'ble Tribunal to direct the Respondents not to count upgraded pay scales granted by the Ministry vide order dated 25.02.1999 as one financial upgradation under MACP.

8. That all the records pertaining to the above said OA.No.3046/2015 is available with the office of Director General, All India Radio/Secretary, Ministry of Information & Broadcasting, which is based at New Delhi.

9. That many OAs are being filed at different benches of the Hon'ble Tribunal for almost similar relief. Therefore, it is very difficult for the Petitioners herein to attend and defend their legitimate action at different benches.

They are in the process of filing separate Transfer Petition in the respective OAs for their transfer to the Hon'ble Principal Bench so that a Common Order or Identical Order may be passed.

10. That no prejudice shall be caused to the respondents herein/applicant in OA, if the OA pending before the Bangalore Bench of this Hon'ble Tribunal is transferred to the Principal Bench, New Delhi for adjudication.

However, on the contrary, the Petitioners herein would suffer irreparable loss and injury, if the OA is not transferred for adjudication to the Principal Bench of the Hon'ble Tribunal.

PRAYER

In view of the submissions made hereinabove, it is most respectfully prayed that the OA bearing No.170/1660/2018 pending before the Bangalore Bench of this Hon'ble Tribunal may kindly be ordered to be transferred to the Principal Bench, New Delhi.

OR

In the alternative, the same may kindly be kept abeyance till the OA pending before the Hon'ble Tribunal, Principal Bench, are decided.

It is prayed accordingly, in the interest of justice.

**PETITIONERS/
RESPONDENTS in OA**

**NEW DELHI
DATED:24.01.2019**

THROUGH

**(S.M.ARIF)
ADVOCATE**

2. Apparently this has not been adjudicated yet. It seems to us to be an abuse of the process of Court. The applicant is a very low paid employee and may not be in a position to go to Delhi and fight out her cause. Whereas for the Union of India it is possible. Their endless resources make them a quite competent to fight a case anywhere in India and especially so under Section 20 of CPC, the cause of action have arisen in the jurisdiction of Karnataka only and therefore, there may not be any call for this matter to be transferred out.

3. At this point of time, we have reminded that in an earlier case, there was such an issue in OA.No.119/2017 and we have passed an order dtd.10.10.2017 which we quote below:

*CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE*

ORIGINAL APPLICATION NO.170/00119/2017

DATED THIS THE 10TH DAY OF OCTOBER, 2017

HON'BLE DR. K.B. SURESH, MEMBER(J)

HON'BLE SHRI P.K. PRADHAN, MEMBER(A)

A.S. Vijaya

...Applicant

(By Advocate Shri N. Obalappa)

Vs.

*Secretary, Ministry of Information and
Broadcasting, New Delhi & 7 ors.*

...Respondents

(By Smt P.K. Praneshwari. Sr. Panel Counsel)

ORDER

When the matter was taken up for consideration Shri Obalappa, learned counsel for the applicant submitted that the respondents have made an application before the Principal Bench for transfer of this case to them and the Hon'ble Chairman, CAT, Principal Bench had stayed further proceedings in the

matter. Learned counsel also mentions that the applicant is a lowly paid employee and would not be in a position to fight the matter at Delhi if it is transferred there. Learned counsel also submitted that as per the Administrative Tribunals Act, a person who is a resident of a place or if the office where he is working is located within the jurisdiction of a particular Bench, he can file the application therein and this has been provided to protect the interest of the poorest of poor. Therefore, he pleaded that the matter may be taken up with the Chairman for continuation of the OA at Bangalore only.

2.The learned counsel for the respondents could not throw any light as to why the department had moved the application for transfer of the matter to Principal Bench at Delhi. Smt P.K. Praneshwari, learned counsel for the respondents also mentions that similar matter has also been considered and dismissed by this Tribunal. However she could not clarify as to why under such circumstance the department had sought for transfer of the case to Delhi.

3.Being an All India organisation, the respondents in this case may have multiple considerations all over India. There is nothing under law which will permit the respondents to claim that any particular case of theirs can be canvassed only at jurisdictional centre to the detriment of the poor litigants. Under similar situations, other departments may also tend to seek transfer of their cases to Delhi. The departmental representative is also unable to throw any light on the need for seeking such a transfer.

4.After hearing both sides, we feel that it would be appropriate if both sides file a written submission in the matter. While the applicant is to point out the difficulty if the case is transferred to Principal Bench, the respondents shall specifically indicate if they have considered all the aspects before seeking the transfer.

5.Both submissions shall be in the form of an affidavit, which shall be taken up with the Chairman, who is eligible to pass an order for transfer.

6.While we have no difficulty in transfer of the matter to the Principal Bench or any other Bench, we feel that it will make a bad precedence for the respondents to claim, since they are all located in New Delhi that their matters must be heard at New Delhi only, which may lead to defeat the purpose of Administrative Tribunals Act Jurisdiction.

7.It is also to be noted that there may be conflicting views by different Bench in a particular issue. But there is provision for three Member Bench or agitating the matter in the High Court or in the Apex Court.

8.Post the matter on request by both the counsel to 25.10.2017.

(P.K. PRADHAN)
MEMBER(A)

(DR. K.B. SURESH)
MEMBER(J)

4. Thereafter, we had heard that matter and reserved for judgment. In fact in a similar matter, we had passed an order in Review Application No.00002/2018 in OA.No.253/2017 dtd.24.7.2018 which we quote below:

O R D E R (ORAL)

HON'BLE DR. K.B. SURESH, MEMBER(J)

1. *Heard. The issue is in a very short compass. Apparently, the respondents wanted to treat the upgradation as merger of 3rd MACP. It is not possible. The upgradation granted on merger of pay scale is within the ambit of the employer. But, then once having granted, it becomes the right of the employee to retain it. It has nothing to do with the MACP which is the result of non-stagnation policy inaugurated by the Hon'ble Apex Court. Therefore, these are two different genres which cannot be mixed together at all. Therefore, there is no ground in the RA.*

2. *At this point of time Shri VN.Holla, on this point would submit that a similar matter is pending before the Principal Bench also. This is absolutely irrelevant, as it is trite law is that there cannot be mixing up of benefits granted due to merger of pay scale and the MACP. Both are distinct and separate from each other. Shri VN.Holla, relies on a judgement of the Hon'ble Apex Court in Government (NCT of Delhi) & others vs. Grade-I DASS Officers' Association. But, then in which paragraph 14, the Hon'ble Apex Court held that in policy matters there need not be interference unless so specifically warranted. Since there is no question of policy involved in this, even if, it is a policy, even then also we are duty bound to interfere in this because it goes against the rule of proportionality and rationality as well as Wednesbury reasonableness. There cannot be any arbitrary policy of the government not withstanding the fact that there is no policy of the government in this case as policy has to be spelt out in legally recognizable forms. A decision taken by one authority cannot be a policy because it does not have strength of sovereignty behind it. There is no question of any policy involved in this matter.*

3. *Review application is dismissed. No order as costs.*

5. Against this, a challenge was raised before the Hon'ble High Court of Karnataka in WP.No.50820/2018 dtd.18.1.2019 which we quote:

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

ON THE 18TH DAY OF JANUARY, 2019

BEFORE

THE HON'BLE MR.JUSTICE RAVI MALIMATH
AND
THE HON'BLE MR.JUSTICE MOHAMMAD NAWAZ

WRIT PETITION NO.50820 OF 2018 (S-CAT)

BETWEEN:

1. THE UNION OF INDIA
REPRESENTED BY ITS SECRETARY
MINISTRY OF I AND B, 'A' WING
SHASTRI BHAVAN
NEW DELHI-110 001.

2. THE CHIEF EXECUTIVE OFFICER
PRASAR BHARATI, SECRETARIAT
TOWER C, DOORDARSHAN BHAVAN
MANDI HOUSE
NEW DELHI-110 001.

3. THE DIRECTOR GENERAL
ALL INDIA RADIO
AKASHAVANI BHAVAN
PARLIAMENT STREET
NEW DELHI-110 001.

4. THE DIRECTOR GENERAL
DOORDARSHAN, DOORDARSHAN BHAVAN
COPERNICUS MARG
NEW DELHI-110 001.

5. THE HEAD OF OFFICE
DOORDARSHAN KENDRA
GULBARGA-585 104.

6. THE PAY AND ACCOUNTS OFFICER
MIN. OF I AND B, IRLA
A WING, SOOCHANA BHAVAN
LODHI ROAD
NEW DELHI-110 003.

...PETITIONERS

(BY SRI M.VASUDEVA RAO, CENTRAL GOVERNMENT STANDING
COUNSEL)

AND:

SRI S.H.ANJANAPPA
SON OF HANUMATHAPPA

RESIDENT OF SUDDUKUNTE VILLAGE AND POST
MADHUGIRI TALUK
TUMAKURU DISTRICT
KARNATAKA-572 127.

....RESPONDENT

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DATED 17.09.2018 IN OA NO.170/00054/2018 PASSED BY THE CENTRAL ADMINISTRATIVE TRIBUNAL, BENGALURU BENCH, BENGALURU PRODUCED AT ANNEXURE-D AND ETC.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING THIS DAY, RAVI MALIMATH, J., MADE THE FOLLOWING:

ORDER

Aggrieved by the order passed by the Central Administrative Tribunal, Bengaluru, the respondents therein have filed the instant writ petition.

2. The Tribunal in terms of the impugned order followed an earlier order passed in OA.No.170 OF 00253 OF 2017, in the case of C.U.BELLAKKI VS. SECRETARY, MINISTRY OF INFORMATION AND BROADCASTING, NEW DELHI AND OTHERS, and granted relief to the applicant. That the review applications filed against the order referred to supra, were rejected.

3. Therefore, following the earlier order wherein similar relief as sought for in the present writ petition has been granted, we find no good ground to take a different view of the matter. Hence, the writ petition is dismissed.

Sd/-
JUDGE

Sd/-
JUDGE

6. The Hon'ble High Court held that there is no good ground to take a different view of the matter and WP was dismissed.

7. It is pointed out that the ground they could have taken in the reply is already filed in the application itself and the ground is that the 3rd MACP was absorbed on the upgradation of pay scale granted by the Ministry. The question therefore is

whether that can be correct or not. If a pay scale is upgraded and benefit granted, it cannot be treated as a career enhancement as stipulated by the Hon'ble Apex Court. It is also not in consonance with the circulars issued by the concerned Ministries. Therefore, this view of the respondents will not lie. In all these cases, it is clear that the same ground had been taken. There is no difference at all. Therefore, the OA is allowed. The benefit as available to the respondents in WP.No.50820/2018 may be made available to the applicant herein also.

8. At this point of time, it is also mentioned that some associations have filed the matter before the Principal Bench and therefore, this matter should also be adjudicated by the Principal Bench. But then the similar matters have already been adjudicated by the Bangalore Bench which have been upheld by the Hon'ble High Court of Karnataka. If the elements of these contentions were taken to their correct fruition, there will only be the existence of Supreme Court and not of any other High Courts. And all cases might have a bearing of a national issue and therefore what is the need for an existence of a High Court then. This contention is absolutely absurd.

9. The OA is allowed. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/01660/2018

- Annexure A1: This Hon'ble Tribunal order dtd.10.2.2017 in OA.No.836/2017 granted the 2nd ACP with Grade Pay of Rs.6600/- to Shri S.H.Anjanappa Station Director Retd.
- Annexure A2: Late Shri C.N.Ramachandra Station Director (Expired) similar to S.H.Anjanappa. The applicant filed an OA.No.140/2017 this Hon'ble CAT, granted 2nd ACP vide order dtd.25.7.2017 issued on 01.08.2017
- Annexure A3: Vide order dtd.18.8.2017 in OA.No.249/2017 granted 2nd ACP and 3rd MACP to Sri A.V.Patil, Station Director (Retd) similar to Shri C.N.Ramachandra
- Annexure A4: Vide order No.04/32/2017-SI(B) dtd.12.10.2017 2nd ACP to Sri C.N.Ramachandra (husband of the applicant) at SI.No.44 of the promotion list dtd.12.10.2017 with Grade Pay of Rs.6600/- with effect from 7.6.2008
- Annexure A5: Respondents filed by the RA.No.3/2017 in OA.No.249/2017 which is dismissed vide this Hon'ble Tribunal order dtd.6.8.2018
- Annexure A6: OA.No.54/2018 for 3rd MACP with Grade Pay of Rs.7600 filed by Shri S.H.Anjanappa is allowed vide this Hon'ble Tribunal order dtd.26.09.2018
