

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

OA.NO.170/01650/2018
DATED THIS THE 13TH DAY OF JUNE 2019

HON'BLE DR. K.B. SURESH, MEMBER (J)
HON'BLE SHRI CV. SANKAR, MEMBER (A)

NP.Ramesan,
S/o Late P.Narayana Pillai
Aged about 59 Years
presently working as
Junior Engineer at
Sports Authority of India ,
NSSC,Bangalore- 560 056
Karnataka State

...Applicants

(By Party in person)

V/s.

1. Union of India,
Represented by the Secretary,
Ministry of Youth Affairs & Sports,
Shastri Bhavan,
New Delhi-110 001.

2.The Director General,
Sports Authority of India,
J N Stadium Complex (East Gate),
Lodhi Road, New Delhi-110 003.

3.The Director (Personnel)
Sports Authority of India,
J N Stadium Complex (East Gate),
Lodhi Road, New Delhi-110 003.

4.The Regional Director,
Sports Authority of India ,
Netaji Subhash Southern Centre,
Bangalore- 560 056

...Respondents

(By Shri MV.Rao. Sr.Panel Counsel)

ORDER (ORAL)

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

1. Heard. The matter is in a very small compass.
Apparently, DoPT has issued the following circular which we quote:-

“OFFICE MEMORANDUM

**Subject: - ASSURED CAREER PROGRESSION SCHEME FOR THE
CENTRAL GOVERNMENT CIVILIAN EMPLOYEES -
CLARIFICATIONS REGARDING**

The undersigned is directed to invite reference to the Department of Personnel and Training Office Memorandum of even number dated August 9, 1999 regarding the Assured Career Progression Scheme (ACPS) and subsequent Office Memorandum dated February 10, 2000 clarifying the various points of doubt received from various quarters.

2. Some more situations in which a doubt persists in various organizations in regard to applicability/implementation of ACP Scheme have been brought to the notice of this Department. These have been duly examined and appropriate advice has been conveyed in individual cases. However, as it is observed that similar doubts are being received from various other Ministries/Departments/Organizations, it has been considered appropriate to issue a second set of clarificatory orders containing point-wise clarification to the additional points of doubt.

3. Cases where the ACP Scheme has already been implemented shall be reviewed/rectified if the same are not found to be in accordance with the scheme/clarifications.

3. All Ministries/Departments may give wide circulation to these clarificatory instructions for general guidance and appropriate action in the matter.

4. Hindi version would follow.

(R.K. GOEL)

DEPUTY SECRETARY TO THE GOVT OF INDIA

To

All Ministries/Departments of the Government of India

Copy to:-

1. President's Secretariat / Vice President's Secretariat / Prime Minister's Office / Supreme Court / Rajya Sabha Secretariat / Lok Sabha Secretariat / Cabinet Secretariat / UPSC / CVC / C&AG / Central Administrative Tribunal (Principal Bench), New Delhi.
2. All attached/subordinate offices of the Ministry of Personnel, Public Grievances and Pensions.
3. Secretary, National Commission for Minorities, New Delhi.
4. Secretary, National Commission for Scheduled Castes/Scheduled Tribes.
5. Secretary, Staff Side, National Council (JCM), 13-C, Ferozeshah Road, New Delhi.
6. All Staff Side Members of the National Council (JCM).
7. Facilitation Center, DoP&T – **20 copies**
8. Establishment (D) Section - **1000 copies**
9. NIC (DoP&T) for placing this Office Memorandum on the Website of DoP&T.

ANNEXURE

[Reference: Office Memorandum No. 35034/1/97-Estt(D)(Vol.IV) dated 18.7.2001]

S.No	Point of doubt	Clarification
33	An employee was promoted from Grade 'A' to Grade 'C'. Grade 'B' was introduced in the hierarchy in between Grade 'A' and Grade 'C' subsequent to such promotion. Will he be entitled to any more financial upgradation under the ACP Scheme (ACPS) considering that he is already placed in the third level of the hierarchy?	The reply is in the affirmative. The employee has got only one promotion in his career as per the hierarchy existing at the time of his promotion. The subsequent creation of the post in Grade 'B' will not, therefore, make any material difference in the situation in relation to the case of this employee for the purpose of grant of second financial upgradation under ACPS. The newly created Grade 'B' would, as such, need to be ignored in his case. However, persons in Grade 'A', who

		become entitled to financial upgradation only after introduction of Grade 'B' in the hierarchy, will be entitled for grant of financial upgradation only in Grade 'B' subject to fulfillment of the other stipulations and conditions specified in the ACP Scheme introduced on 9.8.1999
34.	An employee has superannuated after 9.8.1999, i.e. the date from which ACPS was introduced. He had completed the required eligibility service as on 9.8.1999 for grant of financial upgradation but he retired on superannuation before the Screening Committee could meet to assess his suitability for grant of benefits under ACPS. Will he be entitled for financial upgradation under ACPS?	In terms of condition no. 3 of the ACP Scheme introduced <u>vide</u> O.M. dated 9.8.1999, the financial benefit under the ACPS shall be granted from the date of completion of the eligibility period prescribed under the ACPS or from the date of issue of the instructions whichever is later. Therefore, in respect of employees who had completed eligibility service as on 9.8.1999 but retired prior to meeting of the first Screening Committee meeting, if the assessment to decide grant of financial upgradation is based on ACRs and other service records, the employees who retired after 9.8.1999 may also be considered by the Screening Committee and, if recommended for grant of financial upgradation, such employees may be allowed the benefit of ACPS from the due date. If, however, the assessment also includes passing of a trade test/skill test/written examination (as prescribed for regular promotion) under ACPS and

		the employee had not qualified in such tests already, then it may not be possible to consider the retired persons, as assessment based on such tests is not possible after the date of superannuation.
35.	Whether placement/appointment in higher scales of pay based on the recommendations of the Pay Commissions or Committees set up to rationalise the cadres is to be reckoned as promotion/financial upgradation and offset against the two financial upgradations applicable under the ACP Scheme?	<p>Where all the posts are placed in a higher scale of pay, with or without a change in the designation; without requirement of any new qualification for holding the post in the higher grade, not specified in the Recruitment Rules for the existing post, and without involving any change in responsibilities and duties, then placement of all the incumbents against such upgraded posts is not be treated as promotion/upgradation. Where, however, rationalisation/ restructuring involves creation of a number of new hierarchical grades in the rationalised set up and some of the incumbents in the pre-rationalised set up are placed in the hierarchy of the restructured set up in a grade higher than the normal corresponding level taking into consideration their length of service in existing pre-structured/pre-rationalised grade, then this will be taken as promotion/upgradation.</p> <p>If the rationalised/restructured grades require possession of a specific nature of qualification and experience,</p>

		<p>not specified for the existing posts in pre-rationalised set up, and existing incumbents in pre-rationalised scales/pre-structured grades, who are in possession of the required qualification/ experience are placed directly in the rationalised upgraded post, such placement will also not be viewed as promotion/upgradation .</p> <p>However, if existing incumbents in the pre-rationalised grades who do not possess the said qualification/ experience are considered for placement in the corresponding rationalised grade only after completion of specified length of service in the existing grade, then such a placement will be taken as promotion/upgradation.</p> <p>Where placement in a higher grade involves assumption of higher responsibilities and duties, then such upgradation will be viewed as promotion/upgradation.</p> <p>Where only a part of the posts are placed in a higher scale and rest are retained in the existing grade, thereby involving redistribution of posts, then it involves creation of another grade in the hierarchy requiring framing of separate recruitment rules for the upgraded posts. Placement of existing incumbents to the extent of upgradations involved, in the upgraded post will also be treated as promotion/upgradation and</p>
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		<p>offset against entitlements under the ACPS.</p> <p>For any doubts in this regard, matter should be referred to the Department of Personnel and Training (Establishment 'D' Section) giving all relevant details.</p>

of which clause 35

35.	<p>Whether placement/appointment in higher scales of pay based on the recommendations of the Pay Commissions or Committees set up to rationalise the cadres is to be reckoned as promotion/financial upgradation and offset against the two financial upgradations applicable under the ACP Scheme?</p>	<p>Where all the posts are placed in a higher scale of pay, with or without a change in the designation; without requirement of any new qualification for holding the post in the higher grade, not specified in the Recruitment Rules for the existing post, and without involving any change in responsibilities and duties, then placement of all the incumbents against such upgraded posts is not be treated as promotion/upgradation. Where, however, rationalisation/restructuring involves creation of a number of new hierarchical grades in the rationalised set up and some of the incumbents in the pre-rationalised set up are placed in the hierarchy of the restructured set up in a grade higher than the normal corresponding level taking into consideration their length of service in existing pre-structured/pre-rationalised grade, then this will be taken as promotion/upgradation.</p> <p>If the rationalised/restructured</p>
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		<p>grades require possession of a specific nature of qualification and experience, not specified for the existing posts in pre-rationalised set up, and existing incumbents in pre-rationalised scales/pre-structured grades, who are in possession of the required qualification/ experience are placed directly in the rationalised upgraded post, such placement will also not be viewed as promotion/upgradation. However, if existing incumbents in the pre-rationalised grades who do not possess the said qualification/ experience are considered for placement in the corresponding rationalised grade only after completion of specified length of service in the existing grade, then such a placement will be taken as promotion/upgradation.</p> <p>Where placement in a higher grade involves assumption of higher responsibilities and duties, then such upgradation will be viewed as promotion/upgradation.</p> <p>Where only a part of the posts are placed in a higher scale and rest are retained in the existing grade, thereby involving redistribution of posts, then it involves creation of another grade in the hierarchy requiring framing of separate recruitment rules for the upgraded posts. Placement of existing incumbents to the extent of upgradations involved, in the upgraded post will also be treated as promotion/upgradation and offset against entitlements under the ACPS.</p>
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		For any doubts in this regard, matter should be referred to the Department of Personnel and Training (Establishment 'D' Section) giving all relevant details.
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by which the applicant and others like him were given following a merger of pay scales, first a Pay Band 2 along with the Grade Pay Rs.4200/- which was increased on an interpretation to Rs.4600/- by a common government order.

2. The objections taken by the respondents seems to be available in Annexure-A1 which we quote:-

*"Sports Authority of India ,
Netaji Subhash Southern Centre,
Bangalore- 560 056*

To

*Dr.V.Sreenivasa
Advocate
No.1074/12, 3rd Floor
3rd "B" Main Road, "E" Block
2nd stage, Rajajinagar
Bangalore 560 0110.*

Sir,

Sub:Legal Notice on behalf of Mr.NP. Ramesan, Junior Engineer,

SAI,NSSC,Bangalore-reg.

With reference to your letter dated 1.3.2017 on the subject cited above, I am directed to inform you that legal notice received on behalf of Mr.NP. Ramesan, Junior Engineer has been referred to SAI Head Office and same was examined in detail and the following facts/comments/views of the case furnished accordingly as under:

-Mr.NP. Ramesan was appointed against the post of Jr. Engineer at this centre and joined his duties wef 23.12.1988 in the pre-revised pay scale of Rs.1400-2300/- which was replaced to the revised scale of Rs.5000-8000/- wef 1.1.1996 after implementation of 5th CPC.

-After completion of 8 years of continuous regular service, the official has been granted Time Bound Promotion (TBP) wef 23/12/1996 in the pay scale of Rs.6500-10500/- vide office order No.30/06 dated 2.2.2006.

-On implementation of 6th CPC the pre-revised pay scales of Rs.5000-8000/- and Rs.5500-9000 were merged with the pre-revised pay scale of Rs.6500-10-1500/- which was replaced with PB-2 Rs.9300-34800/- + Grade Pay of Rs.4200/-.

-He was granted next higher grade pay of Rs.4600/- in place of Rs.4200/- for the pre-revised scale of Rs. 6500-10500/- in terms of department of expenditure OM dated 13.11.2009.

-On completion of 10 years regular service from the date of grant of 1st financial upgradation w.e.f 23.12.1996, the official had been granted 2nd financial upgradation with the grade pay of Rs.4800/- from the date of implementation of MACP scheme i.e., w.e.f 1.9.2008.

-Mr.NP. Ramesan,JE is entitled for 3rd financial up-gradation under MACP in the Grade Pay Rs.5400/- after the completion of 10 years regular service wef. 1.9.2008 or 30 years of regular service from his date of initial appointment on 23.12.1998 whichever is earlier i.e., 1.9.2018

-Therefore, the official would not be entitled for the grade pay of Rs.5400/- on completion of 20 years of service wef 23.12.2008 as he had already got two upgradation and would be eligible for 3rd MACP in the grade pay of Rs.5400/- on completion of 30 years of service on 23.12.2008 or 10 years regular service wef 1.9.2008 whichever is earlier ie. 1.9.2018

-It is known fact that pay scales of Rs.5000-8000/-, Rs.5500-9000 and Rs.6500-10500/- were initially merged by the 6th CPC wef. 1.1.2006 by grant of common grade pay of Rs.4200/-. Based on merger of these pay scale para 5 of the MACP scheme provided that promotions/ financial upgradation granted under ACP to the pre-revised pay scales of Rs.5500-9000 and Rs.6500-10500/- should be ignored. However, subsequently, the replacement scale for those in the pre-revised scale of Rs.6500-10500/- was enhanced from Grade Pay of Rs.4200/- to Rs.4600/- wef. 1.1.2006. Accordingly, with the grant of higher grade pay of Rs.4600/- (in r/o of those in pay scale of Rs.6500-10500/-) cannot be treated as common replacement scale

of Rs.4200/-. Therefore, his promotion/financial upgradation has to be accounted for and not ignored.

-Further, it mentioned that Mr.A.Keshavan, Radiographer, Mr.Basavaraju, OS and Smt.Sundra Regina Bai, Lab Technician were granted two financial upgradation ignoring their promotion/upgradation earned by them in the revised pay scale of Rs.5000-8000/- and Rs.5500-9000. All these officials were given the replacement scale of and Rs.5500-8000, Rs.5500-9000 and Rs.6500-10500/- were merged in the PB-2 Rs.9300-34800/- with grade pay of Rs.4200/-. These officials were granted 1st MACP as on 1.9.2008 with grade pay of Rs.4600/- and 2nd MACP with grade pay of Rs.4800/- either on completion of 20 years of service or as on 1.9.2008 whichever is later. The grant of MACP to the three officials mentioned in the notice are in order.

In view of above points, I am directed to inform that there is no merit in the legal notice served to this office on behalf of Mr.NP. Ramesan, JE and the upgradation granted to the official is as per the MACP guidelines and are in order. In any case, Mr.NP. Ramesan, JE would be eligible for grant of 3rd MACP next year next year as on 1.9.2018.

It is requested to inform your client Mr.NP. Ramesan, accordingly. This issues with the approval of Regional Director, SAI NSSC, Bangalore.

Yours faithfully

M.VENKATESHWAR REDDY
Deputy
Director(Pers)

GH.Jayadeva
Assistant Engineer
AE BCSD-3/III
CPWD, Bangalore 34.”

3. They have taken a stand from page No.2 of which that on completion of 10 years regular service from the date of grant of 1st financial upgradation w.e.f 23.12.1996, the official had been granted

2nd financial upgradation with the grade pay of Rs.4800/- from the date of implementation of MACP scheme i.e., w.e.f 1.9.2008. That raises an interesting question.

4. As Hon'ble Apex Court had said that there must be an ACP available to him and he was in service when ACP was in current use. The grant of MACP as such is not warranted. But then we are not very sure whether there is a post of Assistant Engineer available in the said Department. If it is available, we hold that the applicant will be eligible to the promotional aspects and the consequential pay in relation to the promotional post and not on the basis of financial upgradation. But, if the posts are not available he is eligible for grant of financial upgradation. Since he had already been given a financial upgradation in the grade pay of Rs.4800/- and if he can complete 30 years of service within his superannuation 2 more opportunities of financial upgradation is available to him. This we will leave to the respondents to work out whether it is within the superannuation period, if he had completed 30 years. So calculating from 1988 to 2019 he would have completed 30 years of service. Therefore, we hold that the applicant is eligible for 2 more financial upgradations counting from grade pay of Rs.4800/- onwards which may be calculated and a Due and Drawn statement may be made available to the applicant within one month. Applicant will be granted 15 days time to reply to

it . This may be examined further and the benefit due to the applicant may be worked out and may be paid to him within the next 2 months.

5. OA allowed to this extent. No order as to costs. If the applicant is aggrieved by the calculations of the respondents He is granted liberty.

(CV. SANKAR)
MEMBER (A)

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

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Annexures referred to by the Applicant in OA.No.1650/2018

Annexure A-1: Copy of order dated 12.5.17

Annexure A-2: Copy of letters dated 19.12.1988 & 30.12.1989

Annexure A-3: Copy of order dated 20.7.2001

Annexure A-4: Copy of TBPO dated 27.7.2011

Annexure A-5: Copy of DoPT order dated 5.3.2018

Annexure A-6: Copy of DoPT order dated 13.11.2009

Annexure A-7: Copy of applicant's representations

Annexure A-8: Copy of recommendations by RO

Annexure A-9: Copy of order from R-2

Annexure A-10: Copy of order dated 6.1.2015

Annexure A-11: Copy of notice dated 1.3.2017

Annexures referred to in rejoinder

Annexure B-1: Copy DOPT clarification

Annexure B-2: Copy of OM on MACP from DOPT

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