

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00055/2018

DATED THIS THE 28th DAY OF JUNE, 2019

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

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

A.R.Kulkarni
Sr.Technical Assistant (S) (Retd.)
120, Srinivasa Building
Viveknagar, West BDA Layout
Bijapur-586109.

...Applicant

(By Advocate Sri N.Obalappa)

Vs.

1. The Union of India
Represented by its Secretary
Ministry of Information
and Broadcasting
'A' Wing, Shastry Bhavan
New Delhi-110 001.
2. The Directorate General
Directorate General of Field Publicity
Soochna Bhavan
Lodhi Road
New Delhi-110 003.
3. The Director
Directorate of Field Publicity
F Block, Kendriya Sadan
Koramangala
Bangalore-560 034.
4. The Pay & Accounts Officer
Doordarshan Kendra
Swamy Sivanannda Salai
Chennai.

...Respondents

(By Advocate Sri S.Sugumaran)

ORDER(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN.)

The case of the applicant in a nutshell is that he was appointed as Field Publicity Assistant on 21.4.1973 and got promotion as Technical Assistant(S) on 1.1.1995 and got 1st & 2nd ACP w.e.f.9.8.1999 in the pay scale of Rs.6500-10500 which was merged in the 6th CPC in one scale. As per the communication dtd.5.1.2000(Annexure-A2) the posts of Field Publicity Assistants, Technical Assistants and Sr.Technical Assistants(S) were upgraded to the pay scales of Rs.4500-7000, Rs.5000-8000 & Rs.5500-9000 respectively w.e.f. 1.1.1996. As such the 2nd respondent upgraded the pay scales of Field Publicity Assistants and Sr.Technical Assistant(S) vide communication dtd.4.2.2000(Annexure-A3). A similarly placed employee Shri J.S.Bhullar, Sr.Technical Asistant(S) has filed OA.469/CH/2002 before Chandigarh Bench of this Tribunal which is allowed and as per which the 2nd respondent decided to extend similar benefits to the similarly placed employees vide communication dtd.8.2.2006(Annexure-A4) granting the upgraded pay scale of Rs.5500-9000 to the applicant.

2. The applicant submits that as the pay scales of Rs.5000-8000, 5500-9000 & 6500 10500 have been merged in the pay scale of Rs.7450-11500 with GP Rs.4600 w.e.f.1.1.2006 vide circular dtd.13.11.2009(Annexure-A5), the 2nd respondent issued circular dtd.23.11.2009(Annexure-A6) to re-fix the pay of the employees. The applicant retired from service w.e.f. 31.12.2007 after attaining the age of superannuation and the 4th respondent issued Pension Payment Order vide PPO dtd.1.6.2009(Annexure-A7) which is impugned herein. The applicant submitted a representation dtd.24.12.2009 requesting for grant of higher grade pay admissible under the rules(Annexure-A8). He submits that as per DOPT clarification

dtd.9.9.2010(Annexure-A9) towards the admissibility of GP for the 1st and 2nd ACP for the merged pay scales of Rs.5000-8000, 5500-9000 & 6500-10500, the applicant who has completed 24 years of service and drawing the pay scale of Rs.6500-10500 as on 9.8.1999, is entitled for the GP of Rs.4600 for the 1st ACP and GP Rs.4800 for the 2nd ACP as on 1.1.2006. The applicant further submits that based on the above DOPT clarification, the Director General of All India Radio, New Delhi vide circular dtd.17.1.2013(Annexure-A10) & 4.9.2013(Annexure-A11) issued instructions to sub ordinate offices to refix the GP of Rs.4600 for 1st ACP and GP of Rs.4800 for 2nd ACP of the merged pay scales of Rs.6500-10500 w.e.f.1.1.2006. As the applicant is covered by the same instructions, he submitted a representation dtd.20.11.2014(Annexure-A12) requesting for grant of higher grade pay admissible under the rules. But the respondents have not replied so far. Consequent on the 7th CPC recommendations, the DOPT vide OM dtd.12.5.2017(Annexure-A14) directed the concerned authorities to revise the pension by notionally fixing the pay from 1.1.1986 to 1.1.2016. The applicant contended that the respondents have not implemented the revised pay fixation and hence aggrieved by the same he filed the present OA seeking the following relief:

- i. Call for records from the respondents for not granting the 2nd ACP in the Grade Pay of Rs.4800 w.e.f. 1.1.2006.*
- ii. To direct the respondents to fix the Grade Pay of Rs.4800/- w.e.f. 1.1.2006 vide Annexure-A9 and grant all other consequential benefits of pay and allowances & arrears payments and retirement benefits and revision of pension admissible to the applicant.*

3. The respondents, on the other hand, have submitted in their reply statement that the applicant entered the service as Field Publicity Assistant on 21.4.1973 with pay scale of Rs.1350-2200. Thereafter, he got one in-situ promotion (akin to TBOP or ACP) to the next hierarchical post. Subsequently there was merger of pay scales

after V CPC and that benefit was also accorded to him w.e.f.1.1.1996. On completion of 24 years, the applicant was granted 2nd ACP benefit. Further the subsequent benefit of enhancement of pay was given to the applicant vide order dtd.13.4.2006. The respondents have given the details of pay scales and promotion/ACP etc. provided to the applicant. The benefit of fixation of Grade Pay Rs.4600 was given to the applicant w.e.f. 1.1.2006 vide order dtd.29.12.2009(Annexure-R5). The applicant superannuated on 31.12.2007 before coming into effect the MACP scheme. Therefore, he is not entitled for the Grade Pay Rs.4800 w.e.f. 1.1.2006 as claimed by him and the OA is liable to be dismissed.

4. The applicant has filed rejoinder reiterating the submission already made in the OA and submits that as per DOPT clarification dtd.9.9.2010, it is clarified that 'since the pre-revised pay scales of Rs.5000-8000 & Rs.5500-9000 have been merged and placed in PB-2 with GP of Rs.4200, 1st Financial Upgradation would be allowed in the GP of Rs.4600 w.e.f. 1.1.2006. It is also clarified that 'since the pre-revised pay scales of Rs.6500-10500 & Rs.7450-11500 have been merged and placed in PB-2 with GP of Rs.4600, 2nd financial upgradation would be allowed in the GP of Rs.6600. The applicant having completed 30 years of service by 21.4.2003 but retired from service w.e.f. 31.12.2007 before the MACP scheme came into force, he is entitled for 1st ACP in GP Rs.4600 and 2nd ACP in GP Rs.4800 w.e.f.1.1.2006 and he is not making any claim for 3rd MACP as the MACP scheme came into force w.e.f. 19.5.2009. The contention of the respondents that he is not entitled for the Grade Pay of Rs.4800 is untenable and is liable to be set aside.

5. The respondents have filed additional reply statement wherein they submit that in accordance with Dept. of Field Publicity(DFP), Hqrs., letter

dtd.8.2.2006(Annexure-R2), the applicant's pay was fixed in the pay scale of Rs.5500-9000 with retrospective effect from 1.1.1996 and 2nd ACP upgradation pay is fixed in the scale of Rs.6500-10500 w.e.f. 9.8.1999. In the 6th CPC, the corresponding pay scale is Rs.9300-34800 with GP Rs.4200 but the same is upgraded to Rs.9300-34800 with GP Rs.4600 with retrospective effect from 1.1.2006 vide circular dtd.23.11.2009(Annexure-R4) and OM dtd.4.9.2013(Annexure-A11). As such the applicant would have got Grade Pay of Rs.4800 on coming into effect of MACP scheme w.e.f. 8.9.2008 but before that he reitred on superannuation on 31.12.2007. Accordingly, the OA is not maintainable.

6. We have heard the Learned Counsel for both the parties and perused the materials and written arguments note filed by both the parties in detail. The applicant was appointed as Field Publicity Assistant in April 1973 and thereafter got one in-situ promotion to the next hierarchical post in 1995 which, the applicant also admits, is considered/adjusted against the 1st ACP for having completed 12 years of service from April 1973. The pay in the promoted post was subsequently increased to Rs.5000-8000 based on the 5th CPC and revised w.e.f. May 1998 with the pay scale of Rs.5500-9000 based on the orders issued by the Chandigarh Bench of this Tribunal vide order dtd.22.5.2003. On completion of 24 years of service he was given the 2nd ACP in the pay scale of Rs.6500-10500 vide order dtd.13.4.2006. This was modified as per the 6th CPC to the pay scale of Rs.9300-34800 with Grade Pay of Rs.4200/-. Subsequently vide the circular issued as at Annexure-R4, the Grade Pay was increased to Rs.4600 and the revised statement is at Annexure-R5. It is clear that the applicant had got one promotion which is adjusted against the 1st ACP and the 2nd ACP on completion of 24 years with the Grade Pay being increased accordingly and also with respect to the clarification which was issued in the year

2009. The main claim of the applicant for Grade Pay of Rs.4600 in the first financial upgradation is with respect to the Frequently Asked Question(FAQ) of MACPs issued by the DoP&T vide Annexure-A9 where in para-27(i), it is stated as follows:

Sl.No.	Doubts	Clarification
27(i)	<p>In a hypothetical situation cadre hierarchy was as follows: Rs.5000-8000(revised GP 4200) Rs.5500-9000 (revised GP 4600) Rs.7450-11500 (revised GP 4600) Rs.10000-15200 (revised GP 6600)</p> <p>What would be the 1st financial upgradation under the ACPS for a Government employee recruited in pre-revised pay scale of Rs.5000-8000, who has completed his 12 years of regular service on 12.04.2007 (between 1.1.2006 and 31.8.2008)</p>	<p>In terms of clarification given on point of doubt no.3 issued vide DOPT's O.M.No.35034/3/2008-Estt.(D) dtd.9.9.2010, the benefits of ACPS would be applicable in the new pay structure adopted w.e.f. 1.1.2006 in the promotional hierarchy (i) Since the pre-revised pay scales Rs.5000-8000 & Rs.5500-9000 have been merged and placed in PB-2 with grade pay of Rs.4200, 1st financial upgradation would be allowed in the grade pays of Rs.4600, subject to fulfillment of promotional norms as stipulated in condition no.6 of Annexure-1 ACPS dated 9.8.1999, in terms of clarification given on point of doubt no.1 of ACPS dated 10.02.2000.</p>

7. The very wording of the clarification makes it clear that it will apply only to the Govt. employees who are recruited in the pre-revised pay scale of Rs.5000-8000 and who have completed 12 years of regular service in a period between 1.1.2006 and 31.8.2008. The applicant is clearly not covered by this particular clarification and therefore he cannot claim 1st financial upgradation with the Grade Pay of Rs.4600. Therefore, it is obvious that the applicant has got all the promotions and upgradations as per the rules and the applicant himself has admitted that since he completed 30 years of service in 2003 but retired from service on 31.12.2007 and therefore has not made any claim for 3rd MACP as the MACP came into force w.e.f. 19.5.2009. The OA has no merit and therefore dismissed. No costs.

(C.V.SANKAR)
MEMBER (A)

/ps/

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

Annexures referred to by the applicant in OA.No.170/00055/2018

Annexure-A1: DOPT OM dtd.9.8.1999
Annexure-A2: 2nd respondent communication dtd.5.1.2000
Annexure-A3: 2nd respondent letter dtd.4.2.2000
Annexure-A4: 2nd respondent communication dtd.8.2.2006
Annexure-A5: Min. of Finance OM dtd.13.11.2009
Annexure-A6: 3rd respondent circular dtd.23.11.2009
Annexure-A7: Pension Payment Order dtd.01.06.2009
Annexure-A8: Representation dtd.24.12.2009
Annexure-A9: DOPT OM dtd.9.9.2010
Annexure-A10: The Director General, AIR, N.Delhi circular dtd.17.1.2013
Annexure-A11: The Director General, AIR, N.Delhi circular dtd.4.9.2013
Annexure-A12: Representation dtd.20.11.2014
Annexure-A13: Standard pay scales of 4th CPC to 7th CPC
Annexure-A14: DOPT OM dtd.12.5.2017

Annexures with reply statement:

Annexure-R1: In-situ promotion order dt.10.1.1995
Annexure-R2: Order dtd.8.2.2006 revision of pay
Annexure-R3: II ACP dtd.13.4.2006
Annexure-R4: 6 CPC Grade Pay 4200
Annexure-R5: GP upgraded order dtd.29.12.2009

Annexures with rejoinder:

Annexure-A15: DOPT clarification dtd.10.2.2000
Annexure-A16: DOPT clarification dt.9.9.2010

Annexures with additional reply statement:

Annexure-A6: Circular dtd.23.1.2009
Annexure-A9: FAQ dt.9.9.2010 (Sl.No.27(1))
Annexure-A11: Directorate letter No.4.9.2013
Document No.1: Statement

Annexures with written arguments note filed by the applicant:

-NIL-

Annexures with written arguments note filed by the respondents:

-NIL-

Annexures with additional written arguments note filed by the applicant:

Annexure-A17: DOPT clarification point No.52
