

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00431-00443/2018

DATED THIS THE 11th DAY OF JUNE, 2019

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

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

1. Sri.Narasimha Murthy R.
Aged about 52 years
S/o Sri.Rajeevalochana V.S.
2. Sri.C.Muniyappa
Aged about 56 years
S/o. Sri.Chikkappaiah
3. Sri.V.Rajashekara
Aged about 56 years
S/o Sri Venkataramanappa
4. Sri. N.Mahadeva
Aged about 51 years
S/o. Late Sri Nanjaiah
5. Sri.Govinda Raju
Aged about 50 years
S/o. Sri.Thirumalaiah
6. Sri.N.Vasuki
Aged about 50 years
S/o. Sri.D.Narasimha Iyengar
7. Sri.Shivalingaiah
Aged about 56 years
S/o. Sri.Kulla Kariyanna
8. Sri.P.Viswakumar
Aged about 66 years
S/o Late Sri.C.Puttanna
Retired Sr.Technical Assistant (SG)
SSTL, CSB, Bengaluru: 560 035.
Residing at No:83, CSB Layout
Kasavanahalli, Carmelram Post
Bengaluru: 560 035.
9. Smt.B.A.Rajashree

Aged about 52 years
W/o. Sri.Varadaiah G.C.

10.Smt. V.K.Rama
Aged about 62 years
W/o. Sri.Reddappa Chetty
Retired UDC
CSB, Bengaluru: 560 068.
Residing at No:1014, 11th Main
"Ramya Sadana" RPC Layout
Hampinagar, bengaluru: 560 040.

11.Sri.G.Sivaraman
aged about 56 years
S/o.Sri.V.Govindaraj

Applicants 1 to 7 & 9 to 11 are working as Upper Division Clerks, CSTRI, Central Silk Board, CSB Complex, BTM Layout, Madivala, Bengaluru: 560 068.

12.Sri.M.Manohara
Aged about 49 years
s/o. Sri.M.Ganganna
Occn: Assistant Superintendent (Admn)
RSRS Central Silk Board
Ananthapura, Andhra Pradesh
Pin Code: 515 001.

13.Sri. C.Venkata Reddy
Aged about 49 years
S/o. Sri. C.Rajagopala Reddy
Occn: UDC
RSRS Central Silk Board
Ananthapura, Andhra Pradesh
Pin Code: 515 001.

....Applicants

(By Advocate Shri P.A.Kulkarni)

Vs.

1. Union of India
Represented by its Secretary
Ministry of Textiles
Udyog Bhavan
New Delhi-110 011.
2. Central Silk Board
Ministry of Textiles
Government of India
CSB Complex, BTM Layout
Madivala, Bengaluru: 560 068
to be represented by its Member Secretary

3. The Secretary
Department of Personnel and Training
Government of India
Lok Nayak Bhavan
New Delhi: 110 001.

...Respondents

(By Advocates Sri Vishnu Bhat for R2)

O R D E R

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

This is a third round of litigation. Earlier the applicants have filed OA.No.452/2009 which was allowed by this Tribunal on 26.11.2012(Annexure-A12). The RA.No.15/2013 filed by the respondents to review the order made in OA.No.452/2009 was dismissed on 24.07.2015(Annexure-A13), against which Writ Petition No.3402/2016(S-CAT) was filed before the Hon'ble High Court of Karnataka by the respondents. The High Court of Karnataka having gone through the case, had dismissed the same on 02.03.2016(Annexure-A14). Again the applicants have filed OA.No.846/2016 which was also allowed on 8.11.2017(Annexure-A15) by this Tribunal. The present OA is filed challenging the order dtd.11.1.2018(Annexures-A16 to 28) issued by the 2nd respondent, Central Silk Board.

2. The applicants submit that the 2nd respondent has reiterated its stand adopted in previous OA.No.846/2016 wherein the respondents contended that the ACP scheme adopted by them w.e.f. 1.9.2007 could not fit in after implementation of the 6th CPC pay scales as there would be no corresponding pay scale and as the MACP scheme came into force, the CSB ACP scheme was to be withdrawn w.e.f. 1.9.2007 only and w.e.f. 1.9.2007 all the eligible officials including the applicants were under the continued extension of benefit of ACP scheme which became the basis for fixation of pay as per 6th CPC pay scales and for the extension of the

benefit of MACP scheme on or after 1.9.2008 and there is no scope for extension of the additional financial benefits accrued under the CSB ACP scheme but whatever is recovered from the applicants was refunded to them in terms of the directions of this Tribunal. The Tribunal allowed the OA.846/2016 holding that the applicants are eligible for benefits of ACP from 1.9.2008 onwards and if it is not made available to the applicants will be made available within two months. The respondents vide order dtd.11.1.2018 again taken a stand that after implementation of the recommendations of the 6th CPC, the CSB ACP scheme introduced by the CSB w.e.f. 1.9.2007 had become redundant in the context of the revised pay structure w.e.f. 1.1.2006 and as per the recommendations of the 6th CPC, the MACP scheme introduced by Govt. of India w.e.f. 1.9.2008 is made available to the employees of the CSB. Applicants submit that the above stand is nothing but repetition of the stand taken by the respondents earlier in OA.846/2016. According to the applicants, they are not supposed to suffer the financial loss in the presence of the orders passed by this Tribunal in favour of them in previous OAs stated above and hence in the present OA they prayed for the following relief:

a) Quash the orders bearing No.:CSB-63(10)/2009-ES-II(Law) dated 11.1.2018 Annexure A16 to A28 passed by Central Silk Board Bengaluru Respondent No.2 herein as against the applicants 1 to 13 herein respectively.

b) Direct the respondents to restore the pay position enjoyed by the applicants viz., PB-2 pay scale of Rs.9300-34800+GP of Rs.4200 (as per the benefit extended under the CSB ACP scheme) prior to withdrawal order bearing No:CSB-63(10)/2009-ES II dtd.5.8.2009 Annexure-A7 with all consequential benefits including the monetary benefits flowing there from as evidenced by the table Ann-29.

3. On the contrary, the respondents submitted in their reply statement that the proposal for introducing time-bound financial upgradation to the Group-B, C & D cadres of the Central Silk Board(CSB) was placed before the Board at its 121st

meeting held at Bangalore on 23.6.2007 and after detailed deliberation, the Board(2nd respondent) approved the recommendations of the Cadre Review Committee and decided to implement the same prospectively. Then the 2nd respondent given effect to the recommendations of the Committee w.e.f. 1.9.2007 implementing the scheme of financial upgradation to the Group-B, C & D cadres which was called CSB ACP scheme. In the mean time, the VI CPC recommendations were accepted by the Govt. of India for CSB employees in November 2008 w.e.f. 1.1.2006. Thus fixation had to be done in the new scales from that date i.e. 1.1.2006 and which were different from the earlier pay scales. Further, pursuant to the recommendation of VI CPC, the Govt. of India has introduced new MACP scheme of 2009 w.e.f. 1.9.2008 vide OM dtd.19.5.2009 and it is stated that the earlier ACP scheme of 1999 will be in force up to 31.8.2008. It is submitted that the CSB ACP were granted just a year before the Govt. of India's letter of November 2008 to give effect to VI CPC recommendations. The whole concept of pay scales has undergone change in the new dispensation which was made retrospectively w.e.f. 1.1.2006. Thus the financial upgradation scheme w.e.f. 1.9.2007 would not fit after implementation of VI CPC pay scales as there would be no corresponding pay scales and in MACP the financial upgradation is to be granted only to the next Grade Pay and not to the next promotional grade and therefore the 01.09.2007 scheme of CSB became negatory as it could not be implemented in view of the fact that new ACP scheme of 2009 came to be applicable to CSB employees w.e.f. 1.9.2008 on the terms and conditions contained therein. It is true that the Tribunal has allowed the OAs filed by the applicants earlier holding that the recovered amount should be refunded to the applicants which the respondents have complied with. But the fact remains that there is no direction with

regard to continue the pay scale benefits given under the CSB ACP scheme or to fix the pay notionally taking into consideration the financial upgradation given under CSB ACP scheme. In a similar case decided by the Hon'ble High Court of Chandigarh, it has upheld the decision of the Board in withdrawing CSB ACP Scheme. However, it was ordered not to recover the excess payment from the applicants in that case(Annexure-R3). They submit that the applicants have been given pay protection by fixing their pay at different levels as per applicability in terms of ACP Scheme 1999 of Govt. of India, VI CPC and MACP Scheme 2008. The additional financial benefits which accrued to them under CSB ACP Scheme have also been refunded to them in compliance to the order of this Tribunal. Hence, the claim of the applicants for pay protection taking into consideration the CSB ACP Scheme holds no water as the scheme itself has been withdrawn and it is a non-existing scheme. As such the OA being devoid of merit is liable to be dismissed.

4. The applicants have filed rejoinder wherein they submit that the contention of the respondents that there is no direction to continue the pay scale benefit given under the CSB ACP Scheme or to fix the pay notionally taking into consideration the financial upgradation given under CSB ACP scheme is emphatically denied. When the OA.452/2009 was allowed by this Tribunal, it goes without saying that the prayers made by them are allowed. The contention of the respondents that 'the applicants have been given pay protection by fixing their pay at different pay levels as per applicability in terms of ACP Scheme 1999 of Govt. of India, 6th CPC and MACP Scheme 2008 and the additional financial benefits which accrued to them under CSB ACP scheme have also been refunded to them in compliance to the orders of CAT Bangalore and the claim of the applicants for pay protection taking into consideration the CSB ACP scheme pay protection holds no water as the

scheme itself has been withdrawn and it is non-existing scheme', is also denied as it is made clear in OM dtd.19.5.2009 that the MACP scheme would be operational w.e.f. 1.9.2008 and the financial upgradations would be granted till 31.8.2008 as per the provisions of the earlier ACP scheme. Similarly it is clarified that no past cases would be reopened. It also states that employees granted financial upgradations under ACP till 1.1.2006 their revised pay will be fixed with reference to the pay scale granted to them under the ACP. The situation enunciated by the CSB in their order dtd.25.10.2007(Annexure-A6) by which the ACP scheme is operational w.e.f.1.9.2007 and another order dtd.5.8.2009(Annexure-A7) by which the MACP scheme notified by Govt. of India on 19.5.2009 is made applicable to the CSB employees from 1.9.2008 by withdrawing the CSB ACP scheme from 1.9.2007 itself i.e., from the date of inception/implementation of that scheme along with the benefits derived by the CSB employees thereunder, was itself the subject matter in OA.No.452/2009. With allowing of the OA.452/2009 in its entirety, none of the contentions urged by the respondents in the reply statement can be sustained in law. Hence, the stand of the respondents is denied.

5. We have heard the Learned Counsel for both the parties and perused the materials placed on record. The genesis of this case relates to the orders passed in OA.No.452/2009 dtd.26.11.2012 by this Tribunal in which the petitioners therein had pleaded for declaring the communications of the respondents dtd.5.8.2009 relating to the withdrawal of CSB ACP Scheme implemented w.e.f. 1.9.2007 as illegal and arbitrary along with a plea for restoring and continuing the said scheme and for an interim order restraining the respondents from making any recovery under the scheme. The details as to how the CSB ACP Scheme came into effect, the change of pay scales as per the VI CPC into pay bands with different grade pays w.e.f.

01.01.2006, the earlier ACP scheme of Govt. of India of 1999 and the subsequent Modified ACP(MACP) of Govt. of India w.e.f. 2008 have all been gone into in detail in the pleadings as well as in the detailed replies given by the respondents in the earlier OA.No.452/2009 and subsequent proceedings. The main contention of the respondents all along as noted in para-7 of the reply in the present OA has been as follows:

"It is also submitted that the financial upgradations under the CSB ACP Scheme were granted in the pre-revised pay scales to the next promotional grade just a year before the Govt. of India's letter of November 2008 to give effect to VI CPC recommendations. The whole concept of pay scales has undergone change in the new dispensation as the revised pay structure which was made retrospectively effective from 01.01.2006 has only 4 primary Pay Bands with 16 Grade Pays and there was no way, but to thoroughly review the entire issue of pay scales to ensure uniform application to all the employees w.e.f. 01.01.2006. Thus the financial upgradation scheme w.e.f. 01.09.2007 would not fit after implementation of VI CPC pay scales as there would be no corresponding pay scales which was envisaged in the recommendations of Cadre Review Committee which was implemented in 2007. Further, as per the modified ACP Scheme of 2009 which is to be implemented to CSB employees also, the financial upgradation after 1.1.2006 is to be granted only to the next Grade Pay and not to the next promotional grade as was the pattern prevailing earlier both under the Govt. ACP Scheme of 1999 and under the CSB financial upgradation Scheme effective from 01.09.2007. Thus the new scales of pay had to be fixed w.e.f. 01.01.2006 and that therefore the 01.09.2007 scheme of CSB became negatory as it could not be implemented in view of the fact that new ACP Scheme of 2009 came to be applicable to CSB employees w.e.f. 01.09.2008 on the terms and conditions contained therein."

6. The respondents have also stated repeatedly in their replies in various proceedings before this Tribunal that the CSB ACP Scheme had become redundant due to the fact that out of 2540 Group-B, C & D employees covered by the said scheme, with respect to 1914 employees who were issued upgradation orders under the CSB ACP Scheme of 2007, they did not get any benefit due to the merger of pay scales under the 6th CPC with Grade Pay system w.e.f. 01.01.2006 and only 626 employees who got benefit under CSB upgradation scheme had to be brought in alignment with the 6th pay commission pay scales w.e.f. 01.01.2006 resulting in

the need for recovery. The respondents have cited various instructions of the Govt. of India including the OM dtd.19.5.2009 which introduced the MACP scheme. The fact that the 6th pay commission pay scales have been implemented in the Board w.e.f. 01.01.2006 and the MACP scheme w.e.f. 01.09.2008 is not in dispute. It is also not in dispute that as per the Central Silk Board Act,1948 which covers the employees of the Board, as per Section 13(2)(xiv), the Central Government has the authority to fix the pay and allowances, leave and other conditions of service of officers and other employees of the Board. As such the Central Silk Board before the introduction to the CSB ACP Scheme in the year 2007 should have rightfully obtained the approval of the Govt. of India, Min. of Textiles. However, they claim that they had bonafidely believed that since the ACP benefits were to be given out of savings likely to accrue due to the surrender of a large number of staff, they had not got the approval of the Govt. of India. However, this aspect of not getting the approval of Govt. of India has been dealt with very clearly by this Tribunal as well as the Hon'ble High Court of Karnataka in WP.No.3402/2016(S-CAT) vide order dtd.2.3.2016. The effect of the orders which have reached finality in this regard related to the recovery ordered by the CSB on the withdrawal of their own ACP scheme in 2009. There is no dispute with regard to the finality in this case as these have been dealt with in detail. The question that remains is whether the CSB has implemented the orders of this Tribunal in entirety and there is any scope for the respondents to re-set the pay of the applicants giving them advantage of the CSB ACP Scheme of 2007. For this we need to understand the scope of orders issued by this Tribunal in OA.No.452/2009 dtd.26.11.2012 wherein in para-2, it is very clear that this Tribunal had issued the said order based on the submission that in anticipation of beneficial order made by the Central Government, the CSB had

granted some benefits to their employees which was at that time without the approval of the Ministry. This Tribunal had considered whether the beneficiaries of the benefit have to refund the benefit for one year which they have received and the Tribunal came to the conclusion that it should not be recovered. Even though this order speaks that 'the OA is therefore allowed', the interpretation of this allowing the OA can only mean that the Tribunal had considered the MACP of 2008 as a continuation to the CSB ACP Scheme. This is apparently not correct since the CSB ACP Scheme was based on the cadre review done by the CSB itself and it had given upgradations to a number of pay scales etc., based on the 5th pay commission recommendations. However, this scheme became totally redundant when the Govt. of India accepted the 6th pay commission recommendations and the pay scales were modified and several pay scales were merged into new Pay Bands with Grade Pay. The earlier ACP scheme of 1999 which ran its course till 31.08.2008 had provided for a different basis for upgradations with the upgradation being given in the higher pay scales of the promotional post. The MACP introduced by the Govt. of India w.e.f. 1.9.2008 was on a different footing and therefore the contention of the applicants that the allowing of the OA.452/2009 by this Tribunal would only mean that the upgradations granted under the CSB ACP Scheme should also be allowed to the employees in addition to the fixation made under the 6th pay commission recommendations as well as the financial upgradations granted under MACP of 2008 cannot be accepted. This is also apparent in the orders issued by this Tribunal in RA.No.15/2013 dtd.24.7.2015 wherein the Tribunal had continued with the understanding that the MACP introduced by the Govt. of India w.e.f. 1.8.2008 is a continuation of the earlier CSB ACP Scheme of 2007 stating very clearly that when the factum of the decision had been approved, there is no reason

for the DoPT to hold that it must be dated back after one year. As has been consistently stated by the respondents the CSB had never sought the approval from the Govt. of India for its ACP Scheme and therefore the question of DoPT approving it with effect from the date after one year does not arise at all. In that order in the RA, the Tribunal had made a mention that the pay scales will take effect only from 01.09.2008. This particular sentence is clearly not in the interest of the applicants as can be made out from their various pleadings elsewhere. The Writ Petitions filed in the Hon'ble High Court had also concentrated themselves solely on the issue relating to the recovery ordered from the employees. As we have already noted, that issue has become final and the recovered amount as stated by the respondents has also been refunded. At this juncture, it is also advantageous to look at the orders passed by the Hon'ble High Court of Punjab & Haryana at Chandigarh in WP.No.644/2013 vide dtd.15.1.2013 where the Bench had clearly upheld the order of the CAT, Chandigarh Bench (Circuit at Jammu) relating to validating the impugned action of the respondents in cancelling the CSB ACP Scheme. Therefore, the action of the respondents in issuing the letters at Annexure-A16 to A28 cannot be assailed and therefore, the OA stands dismissed. No order as to costs.

(C.V.SANKAR)
MEMBER (A)

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

/ps/

Annexures referred to by the applicants in OA.No.170/00431-00443/2018

- Annexure-A1: Copy of the Central Silk Board Act 1948
Annexure-A2: Copy of the Central Silk Board Rules 1955
Annexure-A3: Copy of the note dtd.23.6.2007
Annexure-A4: Copy of the 121st minutes of the CSB dtd.23.6.2007
Annexure-A5: Copy of the CSB ACP Scheme
Annexure-A6: Copy of the order dt.25.10.07 implementing CSB ACP scheme to applicants
Annexure-A7: Copy of the order dtd.5.8.2009 withdrawing the financial benefit granted under CSB ACP Scheme
Annexure-A8: Copy of the order dtd.18.8.2009 withdrawing the financial benefit granted under CSB ACP scheme
Annexure-A9: Copy of the order dtd.26.8.2009 intimating the withdrawal of benefits granted under CSB ACP scheme
Annexure-A10: Copy of the OA.452/2009
Annexure-A11: Copy of the written submission filed by applicants in OA.452/2009
Annexure-A12: Copy of this Hon'ble Tribunal's order dtd.26.11.2012 passed in OA.452/2009
Annexure-A13: Copy of the order dtd.24.7.2015 passed by this Tribunal in RA.15/2013
Annexure-A14: Copy of the order dtd.2.3.2016 passed in WP No.3402/2016(S-CAT) of High Court of Karnataka
Annexure-A15: Copy of this Hon'ble Tribunal's order dtd.8.11.2017 passed in OA.846/2016
Annexure-A16: Copy of the impugned order dtd.11.01.2018 applicant No.1
Annexure-A17: Copy of the impugned order dtd.11.01.2018 applicant No.2
Annexure-A18: Copy of the impugned order dtd.11.01.2018 applicant No.3
Annexure-A19: Copy of the impugned order dtd.11.01.2018 applicant No.4
Annexure-A20: Copy of the impugned order dtd.11.01.2018 applicant No.5
Annexure-A21: Copy of the impugned order dtd.11.01.2018 applicant No.6
Annexure-A22: Copy of the impugned order dtd.11.01.2018 applicant No.7
Annexure-A23: Copy of the impugned order dtd.11.01.2018 applicant No.8
Annexure-A24: Copy of the impugned order dtd.11.01.2018 applicant No.9
Annexure-A25: Copy of the impugned order dtd.11.01.2018 applicant No.10
Annexure-A26: Copy of the impugned order dtd.11.01.2018 applicant No.11
Annexure-A27: Copy of the impugned order dtd.11.01.2018 applicant No.12
Annexure-A28: Copy of the impugned order dtd.11.01.2018 applicant No.13
Annexure-A29: Table showing the pay particulars of the applicants 1 to 13

Annexures with reply statement:

- Annexure-R1: Copy of statement of objection filed in OA.no.452/2009
Annexure-R2: A copy of review application filed by CSB
Annexure-R3: Judgment dt.15.01.2013 passed by Hon'ble High Court of Chandigarh in WP No.644/2013

Annexures with rejoinder:

- Annexure-RJ1: Copy of the writ petition 3402/2016 (S-CAT) filed by CSB before the High Court of Karnataka
