

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00755/2017

DATED THIS THE 3rd DAY OF JUNE, 2019

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

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

M.V.Nagaraja
Technical Assistant (S) (Retd)
31, 3rd Main, 3rd Cross
BSK 3rd Stage Bagagiri Nagar
Bangalore-560085.

...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 Director General
Directorate of Field Publicity
Ministry of I & B
5th Floor, Soochna Bhawan
Lodhi Road
New Delhi-110 003.

3. The Director
Directorate of Field Publicity
Kendriya Sadana
Koramangala
Bangalore-560 034.

...Respondents

(By Advocate Sri Vshnu Bhat)

ORDER

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

The case of the applicant is that he joined as Field Publicity Assistant and got promotion as Technical Assistant(S). As per the communication dtd.5.1.2000(Annexure-A2) the posts of Field Publicity Assistants, Technical Assistants and 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 Assistant and Technical Assistant(S) vide communication dtd.4.2.2000(Annexure-A3). A similarly placed employee Shri J.S.Bhullar, 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-A6), the 2nd respondent issued circular dtd.23.11.2009(Annexure-A7) to re-fix the pay of the employees. Based on the above circulars, the 3rd respondent re-fixed the pay of the applicant granting the GP Rs.4600 w.e.f. 1.1.2006 vide order dtd.29.12.2009(Annexure-A8). After attaining the age of superannuation, he retired from service w.e.f. 28.2.2010 vide 3rd respondent order dtd.1.3.2010(Annexure-A9). The 3rd respondent vide order dtd.11.3.2010(Annexure-A10) granted the 3rd MACP with GP Rs.4800. The applicant has completed 30 years of service by 11.6.2008

and entitled for 3rd MACP with GP Rs.5400 w.e.f. 1.9.2008. Hence, the order dtd.11.3.2010 needs to be modified. The 3rd respondent vide order dtd.17.3.2010(Annexure-A11) issued the pay fixation with pay of Rs.20,810 with GP Rs. 4800 which is erroneous and is liable to be set aside since the applicant is entitled for 3rd MACP 1.9.2008 and not from 1.7.2009. He submits that as per the DOPT clarification dtd.9.9.2010(Annexure-A12) 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 and also entitled for the 3rd MACP with GP Rs.5400 w.e.f. 1.9.2008. The applicant further submits that the DOPT vide communication dtd.17.1.2013 & 4.9.2013(Annexure-A13) issued directions to the subordinate offices to revise the Grade Pay of employees which are applicable to the applicant. Consequent on the 7th CPC recommendations, the DOPT vide OM dtd.12.5.2017(Annexure-A12) directed the concerned authorities to revise the pension by notional fixation from 1.1.1986 to 1.1.2016. The applicant submitted a representation dtd.26.12.2014(Annexure-A14) requesting for revision of GP as admissible under the rules. But the respondents have not replied so far. Aggrieved by the same, the applicant has filed the present OA seeking the following relief:

i. To quash Annexure-A8 dtd.29.12.2009, Annexure-A10 dated 11.3.2010 (to the limited extent of Sl.No.15 Shri M.V.Nagaraja Technical Assistant(S)) and Annexure-A11 dated 17.3.2010 (to the limited extent of Sl.No.1. Shri M.V.nagaraja TA(S) (Impugned Orders) incorrect orders, passed by the 3rd respondent.

ii. 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 and 3rd MACP with Gr.Pay of Rs.5400/- w.e.f. 1.9.2008 even after issue of DOPT clarification at Annexure-A8 dtd.9.9.2010.

iii. To direct the respondents to re-fix the Grade Pay of Rs.4800/- w.e.f. 1.1.2006 & grant 3rd MACP with Gr.Pay of Rs.5400 w.e.f. 1.9.2008 with 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 was appointed as Field Publicity Assistant on 11.6.1974. As on 31.12.1996, he was in the pay scale of Rs.4500-7000. He was promoted as Technical Assistant(Sound) on 29.5.1998 in the pay scale of Rs.5000-8000 as per the order dtd.18.7.2001(Annexure-R1). The applicant was given two ACPs in the pay scales of Rs.5500-9000 and Rs.6500-10500 w.e.f. 9.8.1999 vide order dtd.13.4.2006 (Annexure-R2). As on 1.1.2006, the applicant was in Pay Band-2 with GP Rs.4600. The applicant was given 3rd MACP with GP Rs.4800 w.e.f.1.9.2008 as per the order dtd.17.03.2010(Annexure-A11). The applicant is not entitled to GP Rs.5400 w.e.f. 1.9.2008. He retired from service on 28.2.2010. The applicant has completed 30 years of service on 11.06.2004 and within these 30 years he got two regular promotions and 1st and 2nd ACP also. From 01.09.2008, he got 3rd MACP with GP Rs.4800 and all arrears including pensionary benefits. The applicant did not make any representation against the pay fixation of 3rd MACP. As such the applicant is not entitled to any relief. And moreover, the OA is filed after 7 years from the date of his retirement and hence the OA is liable to be dismissed on the ground of delay and laches. The respondents received request on 2.1.2018 from the applicant when the case was already under consideration by this Tribunal.

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 11.6.2004, he is entitled for 3rd MACP in the next GP Rs.5400 w.e.f. 1.9.2008 vide DOPT OM dtd.19.5.2009. He is entitled for 1st ACP in GP Rs.4600 and 2nd ACP in GP Rs.4800 w.e.f.1.1.2006 and 3rd MACP in GP Rs.5400 w.e.f. 1.9.2008. The contention of the respondents that he is not entitled for the 2nd ACP in GP of Rs.4800 and 3rd MACP in GP Rs.5400 is untenable and the Annexure-A10 dtd.11.3.2010 and Annexure-R3 dtd.17.3.2010 granting 3rd MACP with GP Rs.4800 w.e.f. 1.9.2008 is liable to be set aside.

5. 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 case of the applicant is heavily dependent on Annexure-A12 which talks about the effect of the promotion granted in the pre-revised pay scales of Rs.5000-8000, Rs.5500-9000, Rs.6500-10500 & Rs.7450-11500 which have been merged into a single Grade Pay of Rs.4200 and Rs.4600 w.e.f. 01.01.2006. As rightly pointed out by the respondents, the applicant was appointed as Field Publicity Assistant on 11.6.1974 and as on 01.01.1996 he was in the pay scale of Rs.4500-7000. Annexure-A12 would clearly apply only in the case of persons recruited in the pre revised pay scale of Rs.5000-8000 and who had completed 12/24 years in the period between 01.01.2006 to 31.08.2008. The applicant is clearly not in this category. In fact he was promoted on 29.05.1998 as Technical Assistant(Sound) in the pay scale of Rs.5000-8000. Therefore, he was not recruited in the scale of Rs.5000-8000 but

was promoted into this scale and therefore his promotion cannot be ignored for the purpose of ACPS. Further he was given two ACPs to Rs.5500-9000 and further to Rs.6500-10500 w.e.f. 09.08.1999 vide order dtd.13.4.2006(Annexure-R2). As on 01.01.2006, the applicant was in the Pay Band-2 with Grade Pay of Rs.4600 and on completion of 30 years, he was entitled for further upgradation to Grade Pay Rs.4800 which has been granted to him vide order dtd.17.03.2010. Therefore, it is clear that he is not entitled to any further upgradations. The applicant would also rely on Annexure-A18. But a clear interpretation of the order would show that it is meant for promotions given within the merged pay scales and not from a lower pre-revised pay scale to these pay scales which were merged. The applicant was in the pay scale of Rs.4500-7000 and therefore Annexure-A18 would also not be of any help to him. The OA is, therefore, dismissed. However, the respondents are directed to refix the pay, pension etc., if not already done within a period of one(1) month from this order as per their orders already issued. No costs.

(C.V.SANKAR)
MEMBER (A)

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

/ps/

Annexures referred to by the applicant in OA.No.170/00755/2017

Annexure-A1: DOPT OM dtd.9.8.1999
Annexure-A2: The 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: DOPT OM dtd.19.5.2009
Annexure-A6: Min. of Finance OM dtd.13.11.2009
Annexure-A7: 3rd respondent circular dtd.23.11.2009
Annexure-A8: 3rd respondent pay fixation statement dtd.29.12.2009
Annexure-A9: 2nd respondent order dtd.1.3.2010
Annexure-A10: 3rd respondent order dtd.11.3.2010
Annexure-A11: 3rd respondent order dtd.17.3.2010
Annexure-A12: DOPT OM dtd.9.9.2010
Annexure-A13: DG, AIR, Clarification dtd.17.1.2013 to 4.9.2013
Annexure-A14: Representation dtd.26.12.2014
Annexure-A15: Standard pay scales of 4th CPC to 7th CPC
Annexure-A16: The DOPT OM dtd.12.5.2017

Annexures with reply statement:

Annexure-R1: Office order dtd.18.7.2001
Annexure-R2: Office order dtd.13.4.2006
Annexure-R3: Office order dtd.23.11.2009

Annexures with rejoinder:

Annexure-A15: DOPT clarification dtd.10.2.2000
Annexure-A8: DOPT clarification dt.9.9.2010

Annexures with written argument note filed by the applicant:

Annexure-A20: DOPT clarification point No.52

Annexures with written argument notes filed by the respondents:

-NIL-
