

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

Dated the Wednesday 29th day of August Two Thousand And Eighteen

PRESENT:

THE HON'BLE MR. R. RAMANUJAM, MEMBER (A)

THE HON'BLE MR. P. MADHAVAN, MEMBER (J)

O.A./310/01641/2014

M.H. Batcha,
New No. 21, Nehru Colony,
5th Street, Palavanthangal,
Chennai- 600 114.

.....Applicant

(By Advocate : M/s. Akbar Row)

VS.

Union of India Rep. by:

1. The Secretary to Government
Ministry of Urban Development,
Nirman Bhavan,
New Delhi- 110 011;

2. The Directorate of Estates
Directorate of Estate,
Nirman Bhavan,
New Delhi- 110 011;

3. The Joint Secretary Establishment (D),
Department of Personnel & Training,
New Delhi.

... ..Respondents

(By Advocate: M/s. C.Kulanthaivel)

ORAL ORDER

(Pronounced by Hon'ble Mr. R. Ramanujam, Member (A))

Heard. The applicant has filed this OA seeking the following reliefs:

" i) to call for all records pertaining to the orders passed by the 2nd Respondent in File No.D-11022/21/10-Regions Pt. I dated 27.08.2014 denying the grant of MACP benefit to the applicant and quash and set aside the same;

ii) to quash and set aside the impugned rejection note order passed by the 3rd Respondent in Com.No.970893/CR/2014 dated 14/15.07.2014;

iii) to direct the 1st and 2nd Respondents to grant 1st, 2nd and 3rd financial upgradation in the Grade Pay of Rs.4800; Rs.5400 and Rs.6600 with effect from 01.09.2008;

iv) to direct the 1st and 2nd respondents to release all consequential benefits flowing from fixation of pay on 1st, 2nd and 3rd financial upgradation; arrears of salary and re-fixation of pension and revised terminal benefits including arrears of leave salary, gratuity and commutation etc.,

v) to direct the respondents to grant 12% interest on revision of pension including arrears of pension, DCRG, Commutation of pension, leave encashment."

2. It is submitted that the applicant was initially appointed as a Lower Division Clerk on 10.05.1976. On acquiring a law degree, he was appointed on transfer basis as Legal Assistant with effect from 01.10.1987. Thereafter, the applicant was promoted as Assistant Estate Manager, Chennai with effect from 20.07.1995. The applicant was promoted as Estate Manager on regular basis on 16.08.2011.

3. It is alleged that on the implementation of the recommendations of 6th Pay Commission, the feeder post of Legal Assistant and the promotion post of Assistant Estate Manager were granted the same Grade Pay of Rs. 4600/- in the revised scale of Rs. 9300-34800. In terms of Para 5, Annexure-I of MACP Scheme, the promotion to the post of Assistant Estate Manager which now carried the same Grade Pay as Legal Assistant due to upgradation of the later post shall be ignored for the purpose of counting the upgradations under the MACP Scheme.

4. On 09.05.2006, the applicant completed 30 years of service. As the appointment to the post of Legal Assistant was by transfer and not a promotion and the promotion earned from Legal Assistant to the post of Assistant Estate Manager had to be ignored as per para 5 of Annexure I of MACP Scheme owing to their carrying the same Grade Pay of Rs. 4600/- in the scale of Rs. 9300-34800, the applicant had not earned any promotion as on 09.05.2006, the date on which he completed 30 years of service. Hence the applicant is entitled to his first upgradation to Grade Pay of Rs. 4800/-; second upgradation to GP 5400/- and third financial upgradation to GP Rs.6600/- respectively w.e.f. 01.09.2008 as per the MACP Scheme. The respondents having denied the same, applicant has approached the Tribunal seeking the aforesaid relief.

5. Learned counsel for the applicant would submit that the applicant was entitled to three upgradations in his service under MACP Scheme. Even assuming that his appointment as Legal Assistant with effect from

01.10.1987 should be regarded as a promotion, the applicant is entitled to two more upgradations with effect from such date. Accordingly, he should be considered for second financial upgradation with effect from 01.10.1997 and the third with effect from 01.10.2007. As for the promotion granted to him from the post of Legal Assistant to that of Assistant Estate Manager with effect from 20.07.1995, he would argue that in terms of Sixth Central Pay Commission recommendations, the posts of Legal Assistant and Assistant Estate Manager came to be granted the same pay scale and Grade Pay.

6. Reference is made Annexure-A/8, Office Memorandum of the first respondent dated 28.04.2010 wherein it had been clarified that post of Legal Assistant in the Regional Offices of Directorate of Estates would be granted grade pay of Rs. 4600/- in the Pay Band 2 corresponding to the pre-revised pay scale of Rs. 7450-11500/-. As the posts of the Legal Assistant and Assistant Estate Manager came to be granted the same pay scale and Grade Pay, it is contended that the promotion granted to the applicant with effect from 20.07.1995 ought to have been ignored for the purpose of MACP in terms of Para 5 of the scheme, which is reproduced below:-

"5. Promotions earned/upgradations granted under the ACP Scheme in the past to those grades which now carry the same grade pay due to merger of pay scales/upgradations of posts recommended by the Sixth Pay Commission shall be ignored for the purpose of granting upgradations under Modified ACPs."

Accordingly, the applicant must be granted a financial upgradation to the Grade Pay of Rs. 4800/- with effect from 01.10.1997 and another with effect from 01.10.2007 to the Grade Pay of Rs.5400/- on a notional basis with the actual benefit flowing w.e.f. 01.09.2008, the date on which the MACP came into effect, it is submitted.

7. Ld. Counsel for the respondents, however, submits that the respondents consulted the DOP&T in this regard which 'clarified' the matter by a note dated 15.07.2014. It was observed that the subsequent grant of Grade Pay for Legal Assistant at par with Assistant Estate Manager post-implementation of the 6th Central Pay Commission recommendations could not benefit the applicant since the applicant had already been granted three promotions. The contention of the Administrative Ministry was not correct and was not consistent with the extant instructions on the subject, it was noted.

8. On perusal, it is seen that the Administrative Ministry had correctly taken the stand that following merger of the pay scale of Legal Assistant and Assistant Estate Manager, any promotion granted between these two posts should be ignored for the purpose of MACP and the applicant was entitled to an additional upgradation on this count. The DOP&T had also referred to Department of Expenditure OM dated 13.11.2009 wherein it had been stated that the posts in the pre-revised scale of Rs.6500-10500/- which were granted normal replacement structure of grade pay of Rs. 4200/- in PB -II, will be granted grade pay of Rs.4600/- in the pay band-II corresponding to

the pre-revised scale of Rs. 7450-11500/- with effect from 01.01.2006. However, the DoP&T note does not seem to go into the Office Memorandum of the 1st respondent dated 28.04.2010 whereby it was noted that the Ministry of Finance had clarified that the Legal Assistants in the Regional Offices of the Directorate of Estates may be granted the same Grade Pay of Rs. 4600/- in PB II corresponding to pre-revised pay scale of Rs.7450-11500 and consequently pay of Legal Assistant already fixed in Grade Pay of Rs. 4600/- was in line with such clarification of the Ministry of Finance.

9. The applicant had been granted 'Promotion' on regular basis on 16.08.2011 and it is not clear how by virtue of such promotion, the applicant could be denied the benefit of upgradation with effect from 1.9.2008 after he completed 20 years of service from the level of Legal Assistant with effect from 01.10.1987. Accordingly, we are of the view that the DOP&T note which appears to have been written at the level of a Section Officer or below and approved by the Under Secretary, Director and Joint Secretary without any comments could not be held against the claim of the applicant. The applicant is entitled to two financial upgradations after 01.10.1987, one with effect from 01.10.1997 and another w.e.f. 01.10.2007 with the actual benefits flowing from 01.09.2008, the date of coming into effect of the MACP scheme.

10. In view of the above, it is directed that the applicant's pay shall be fixed notionally at Grade Pay of Rs. 4800/- with effect from 01.10.1997 and Rs.5400/- with effect from 01.10.2007, the benefits of which shall be

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granted to the applicant with effect 01.09.2008. Since the applicant has retired, the arrears as well as the revised pension fixation on the basis of this order shall be completed within a period of two months from the date of receipt of copy of this order.

11. O.A. is allowed in the above terms. No costs.