

.1.

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 180/00875 of 2015

Friday, this the 4th day of October, 2019

CORAM

**Hon'ble Mr. E.K.Bharat Bhushan, Administrative Member
Hon'ble Mr.Ashish Kalia, Judicial Member**

Shri K.P.John,
Upper Division Clerk,
Stores Section,
Central Marine Fisheries Research Institute,
(Indian Council of Agricultural Research),
P.B.No.1603, Ernakulam North,
Cochin – 682 018.

... Applicant

(By Advocate Mr. P.K.Madhusoodhanan)

Versus

1. The Indian Council of Agricultural Research,
Represented by its Secretary,
Krishi Bhavan,
New Delhi- 110 001.
2. The Director,
Central Marine Fisheries Research Institute
(Indian Council of Agricultural Research)
P.O. No.1603, Ernakulam North P.O.,
Cochin – 682 018.
3. The Chief Administrative Officer,
Central Marine Fisheries Research Institute,
(Indian Council of Agricultural Research),
P.B.No.1603, Ernakulam North,
Cochin – 682 018.

.2.

4. Union of India,
represented by its Secretary to
Government of India,
Ministry of Personnel Public Grievances and Pensions,
(Department of Personnel and Training),
Central Secretariat, New Delhi – 110 001. Respondents

(By Advocate, Shri N.Anil Kumar, SCGSC for Respondents- 4 and Shri P. Santhosh Kumar for Respondents - 1to3)

This application having been heard on 1st October, 2019, the Tribunal on 4th October, 2019 delivered the following :

ORDER

HON'BLE Mr.E.K.BHARAT BHUSHAN, ...ADMINISTRATIVE MEMBER

OA No.875/2015 is filed by Shri K.P.John, Upper Division Clerk, Central Marine Fisheries Research Institute (CMFRI), Cochin against the action of the respondents in denying him the benefit of higher Grade Pay of Rs.2800/- as compared to another employee, who is admittedly his junior in service. The reliefs sought in the OA are as follows:

- (a) Issue necessary directions to the respondents to grant and disburse to the applicant Grade Pay Rs.2800/- from the date on which the same was granted to his junior in service with all attendant monetary benefits arising therefrom on refixation of his pay accordingly within a time limit to be fixed by this Hon'ble Tribunal.
- (b) Declare that Para 10 of Office Memorandum dated 19.5.2009 and Para 20 of the Annexure-I attached therewith in so far as it holds that *“there shall be no additional financial upgradation for the senior employees on the ground that the junior employee in the grade has got higher pay/grade*

.3.

pay under the MACPs” is contrary to law, rulings on the subject, unconstitutional being highly discriminatory, unreasonable, arbitrary and violative of Article 14 and 16 of the Constitution of India.

- (c) Set aside Annexure A6.
- (d) Issue necessary directions to the respondents to refix his pay on grant of GP Rs.2800/- from the date the same had been granted and paid to his junior Sri.W.Sathyawan Neelraj and fix his retiral benefits accordingly on his retirement from service and grant and disburse to him all consequential benefits arising therefrom, within a time limit to be fixed by this Hon'ble Tribunal.
- (e) Award costs of these proceedings.

AND

- (f) Grant such other and further reliefs as this Hon'ble Tribunal deems fit and proper in the interest of justice.

2. The applicant had joined service of CMFRI on 20.06.1978 as SSG III. He was granted SSG IV with effect from 13.09.1996 in the scale of pay of Rs.825-1200/-. He was granted Assured Career Progression (ACP) Scheme benefits in the scale of Rs.3050-4590 with effect from 20.06.2002. Further, he was appointed as Lower Division Clerk (LDC) with effect from 14.05.2004 without any additional financial benefits. He was promoted as Upper Division Clerk (UDC) on 16.05.2009 in the scale of Pay of Rs.5200-20200 + Grade Pay Rs.2400/-, in which post he is continuing now.

3. Vide office order dated 03.06.2010, a copy of which is produced at Annexure A1, the applicant was granted 3rd MACP benefit with effect from 01.09.2008 and accorded Grade Pay of Rs.2800/-, in line with the MACP

.4.

Scheme announced as per DOPT memorandum, copy of which is at Annexure A2. As a result, his pay came to be revised on 05.06.2010 in the scale of Rs.9360 + 2800 (Grade Pay) with effect from 01.09.2008 to 30.06.2009 in the pay band of PB-1 Rs.5200-20200 + GP Rs.2800/- under Rule 13 of CCS (Revised Pay) Rules, 2008.

4. However, as per orders of Senior Administrative Officer, CMFRI dated 15.09.2010, order at Annexure A1 stood modified by Annexure A3 by which the following change was effected to his emoluments:

“2nd MACP with effect from 01.09.2008 with Grade Pay Rs.2000/-,

3rd MACP with effect from 10.09.2008 with Grade Pay Rs.2400/-”

The applicant was told that his fixation was revised as per rules and he was not eligible for higher Grade Pay of Rs.2800/- which had been granted to him earlier.

5. However, it came to his knowledge that one of his admitted juniors, one Shri W.Satyawan Neelraj, working as UDC at Tuticorin was drawing Grade Pay of Rs.2800/-. A copy of the extract of final seniority list of UDC as on 31.03.2014 is produced as Annexure A4, in which the applicant is at Sl.No.11 while Shri Neelaraj is at Sl.No.12. Faced with this apparent anomaly of a junior drawing a higher Grade Pay, the applicant approached the 2nd Respondent and submitted a representation dated 04.11.2014, a copy of which is produced at Annexure A5. However, the 3rd Respondent

.5.

rejected his prayer by OM dated 09.12.20014, copy of which is at Annexure A6, stating that the financial benefits entitled as per the provisions in the MACP Scheme had been granted and as MACP benefits are purely personal in nature under para-20 of the Scheme, there is no relevance to his claim that a senior should get higher Grade Pay.

6. As grounds, the applicant submits that the discrimination that he has been put to, is violative of the principles of equality that are enshrined in Article 14 of the Constitution. The fact of him being senior to Shri Neelraj in the service of CMFRI is admitted by all. No special circumstances that warrant Shri Neelraj to have been granted higher grade pay than him exist. The fact that the said junior was granted 3rd MACP on a later date while the applicant was granted the benefit earlier would not justify the anomaly. As it is known, the pay drawn in the pay band and the grade pay allowed under the MACPs Scheme would be taken as the basis for determining the terminal benefits in respect of retiring employees. The applicant would suffer in comparison to his junior, who will be receiving a substantially larger sum as pension.

7. Reply statement has been filed on behalf of the Respondents-1to3, wherein the facts mentioned in the OA are admitted. The applicant had joined service on 20.06.1978 and had completed 30 years of total service on 19.06.2008. As he had got only two promotions during his entire service

.6.

period, he was recommended for granting third financial upgradation to the Grade Pay of Rs.2800/- with effect from 01.09.2008 and accordingly Annexure A1 office order dated 03.06.2010 had been issued. However, Internal Audit which re-examined the matter came to the conclusion that as the applicant had been promoted to the post of UDC with effect from 16.05.2009 i.e., after the date of effect of MACP Scheme and he is eligible for two financial upgradations successively with effect from 01.09.2008 instead of one upgradation granted to him. The same was allowed to him as per Annexure A3. This resulted in his Grade Pay being first fixed at Rs.2000/- (2nd MACP) and Rs.2400/- (3rd MACP).

8. In so far as his claim that his junior is getting a higher grade pay is concerned, it is clarified that under MACP Scheme, the upgraded Grade Pay is purely personal to the employee concerned and shall have no relevance to his seniority position. It is specifically made known in the Scheme that there shall be no additional financial upgradation for senior employees on the ground that the junior employee in the grade is getting a higher pay/grade pay under MACP. The applicant had got Grade Pay of Rs.2400/- through MACP Scheme, but his junior got Grade Pay of Rs.2400 as a result of regular promotion as UDC consequent to occurrence of vacancy in the higher post.

9. A comparative statement showing the service details of applicant and

.7.

his junior are furnished in the reply statement.

Service Particulars	Applicant	Shri Sathyawan Neelraj
Initial appointment (Group D Post)	20.06.1978 (SSGr.III) 13.09.1996 (SSGr.IV)	06.09.1982 (SSGr.I) 13.11.1995 (SSGr.II) 17.05.2004 (SSGr.III)
upgradation/ Promotion (equivalent to the GP of Rs.1900/-)	20.06.2002 (through ACP Scheme -on completion of 24 years' service) Regular promotion as LDC w.e.f. 14.05.2004.	<u>Regular promotion</u> as LDC w.e.f. 30.06.2004.
2 nd upgradation	01.09.2008 (2 nd MACP – GP of Rs.2000/-)	<u>Regular promotion</u> as UDC w.e.f. 01.07.2009 (GP of Rs.2400/-)
3 rd upgradation	01.09.2008 (3 rd MACP – GP of Rs.2400/-)	3 rd MACP w.e.f. 06.09.2012 (GP of Rs.2800/-) on completion of 30 years total service.

10. The MACP Scheme envisages merely placement in the immediate next higher grade pay in the hierarchy of the revised pay bands and grade pay of CCS (Revised Pay) Rules, 2008. Although the applicant joined service before four years than his junior, both of them got promotion as LDC during the year 2004. The applicant got Grade Pay of Rs.2000/- (next higher grade pay in the hierarchy) and Rs.2400/- through MACP Scheme, whereas, his junior who was in the grade pay Rs.1900/- got regular promotion to the post of UDC, which carries Grade Pay of Rs.2400/- and 3rd financial upgradation under MACP Rs.2800/- with effect from 06.09.2012 on completion of total 30 years of service. The applicant is not eligible for further upgradation as he has already received three upgradations. As the applicant was in the

.8.

Grade Pay of Rs.1900/- on the crucial date i.e., 01.09.2008, he was eligible for 2nd and 3rd MACPs to the Grade Pay of Rs.2000/- and Rs.2400/- respectively. On the other hand his junior got the Grade Pay of Rs.2400/- through regular promotion and then the benefit of 3rd financial upgradation through MACP to the Grade Pay of Rs.2800/-.

11. Heard Shri P.K.Madhusoodhanan, learned Counsel for the applicant and Shri P.Santhosh Kumar, learned Counsel for the respondents-1to3 and Shri N.Anilkumar, Sr.CGSC for Respondent-4. All pleadings and documentary evidence were examined. The matter revolves around a narrow compass. The applicant is charging the respondents with discrimination in the matter of allowing him only a lower Grade Pay when compared to his admitted junior. He had been granted the higher Grade Pay of Rs.2800/- as per Annexure A1, but the benefit was reviewed and lowered to Rs.2400/-, allegedly due to objection by Internal Audit.

12. The question involved in this case consists of two parts, firstly whether the benefits which were finally granted to him by way of Annexure A3 were less than what he was entitled to. Secondly, whether there has been discrimination in granting him a lower Grade Pay as compared to his junior. In so far as the first question is concerned, there appears to be no impropriety in the stand taken by the respondents as at Annexure A3. The applicant had been the beneficiary of one promotion and two financial

.9.

upgradations i.e., under 2nd and 3rd MACP. The 3rd MACP on the date he completed 30 years of service was granted to him with effect from 01.09.2008. The applicant had got the benefit of 2nd MACP on completion of 24 years of service 20.06.2002, which was ignored while he was promoted as LDC on regular basis on 14.05.2004, that was equated to Grade Pay of Rs.1900/- and Grade Pay subsequently reduced. From thereon with the adoption of MACP Scheme, he got the benefit of two upgradation (2nd and 3rd) with effect from 01.09.2008. He went on to get further promotion as UDC in 2009. Having already obtained three financial upgradation one by promotion and the other two by financial upgradation, there is no scope for him to get his Grade Pay enhanced.

13. The position is clearly made known in the communication sent on behalf of the respondents, copy at Annexure A8.

“The MACPS envisages merely placement in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay as given in Section 1, Part-A of the first Schedule of the CCS (Revised Pay) Rules, 2008. Thus, the grade pay at the time of financial upgradation under the MACPS can, in certain cases where regular promotion is not between two successive grades, be different than what is at the time of regular promotion. In such cases, the higher grade pay attached to the next promotion post in the hierarchy of the concerned cadre/organization will be given only at the time of regular promotion. Therefore, as per MACPS guidelines, your client is eligible only for 2nd and 3rd financial upgradation with a Grade Pay of Rs.2000/- and Rs.2400/- respectively with effect from 01/09/2008 instead of Rs.2800/- as claimed by your client.”

Secondly when we consider his contention that his junior getting higher Grade Pay amounts to discrimination against him, we find that the allegation has no basis. The MACP Scheme had been introduced as an anti-stagnation measure. Its ultimate goal was to ensure that employees who do not get the benefit of regular promotion do not stagnate at the same level. From this perspective, at the stage when the applicant as well as his junior were completing 20 and 30 years of service, they were both eligible for 2nd and 3rd MACP upgradation and they were granted the same. However, as the junior got the promotion when he was enjoying higher Grade Pay as compared to the applicant, it resulted in the junior going on to higher Grade Pay of Rs.2800/- with effect from the date of he completed 30 years of service. MACP Scheme under para-20 as referred to in the OA specifically states that the upgradation under MACP would be purely personal to the employee and it has no relevance to the seniority question.

20. Financial upgradation under the MACPS shall be purely personal to the employee and shall have no relevance to his seniority position. As such, there shall be no additional financial upgradation for the senior employees on the ground that the junior employee in the grade has got higher pay/grade pay under the MACPS.

Being an anti-stagnation measure, the prayer contained in the OA to set aside the particular clause as unconstitutional is not found to be a valid claim.

.11.

14. After considering all aspects, we come to the conclusion that OA lacks merit. Accordingly, dismissed. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

sd

List of Annexures in O.A. No.180/00875/2015

1. Annexure A1 - True copy of the Office Order dated 3.6.2010 of the Senior Administrative Officer, CMFRI, Kochi.
 2. Annexure A2 - True copy of the Office Memorandum No.35034/3/2008-Estt(D) dated 19.5.2009 of Ministry of Personnel, Public Grievances and Pensions, DOPT.
 3. Annexure A3 - True copy of the Office Order dated 15.9.2010 of the Senior Administrative Officer of the CMFRI, Kochi.
 4. Annexure A4 - True copy of the relevant extract of the final seniority list of U.D.Clerks as on 31.3.2014 of the CMFRI.
 5. Annexure A5 - True copy of the representation dated 4.11.2014 submitted to the 2nd respondent.
 6. Annexure A6 - True copy of the Office Memorandum dated 9.12.2014 of the 3rd respondent.
 7. Annexure A7 - True copy of the lawyer notice dated 30.6.2015 on the 2nd respondent.
 8. Annexure A8 - True copy of the reply notice dated 5/8/15, by 2nd respondent.
 9. Annexure R2(a) - True copy of Office Memorandum dated 16.11.2009 issued by the 4th Respondent.
 10. Annexure R2(b) - True copy of Standard pay scales as per CCS (Revised Pay) Rules, 2008.
 11. Annexure R2(c) - Copy of letter No.33(3)/2009-Estt.I Dated 02.03.2010
-