

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE
ORIGINAL APPLICATION NO.170/00536/2019**

DATED THIS THE 27th DAY OF NOVEMBER, 2019

**HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER
HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER**

A.R.Suresh
S/o Rudrappa
Age 59 years
Working as Graphic Artists
At Doordarshan Kendra Bangalore &
r/o No.16, 1st Floor, 2nd Cross
Rainbow School bldg.
Modi Garden, J.C.Nagar
Bangalore-560006.

...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 Chief Executive Officer
Prasar Bharati, "C" Tower
Doordarshan Bhavan
Copernicus Marg
Mandi House
New Delhi-110 001.
3. The Director General
Doordarshan, Doordarshan Bhavan
Copernicus Marg, Mandi House
New Delhi-110 001.
4. The Addl.Director General /Head of Office
Doordarshan Kendra, J.C.Nagar
Bangalore-560 006.Respondents

(By Advocate Sri M.Vasudeva Rao, Sr.PC for CG)

ORDER

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

Brief facts of the case are that the applicant joined the service as Graphic Artist on 19.12.1983 in the pay scale of Rs.425-750 which is revised to Rs.1140-2300 in 4th CPC and in 5th CPC it is revised to Rs.5000-8000. As per DOPT OM dtd.9.8.1999(Annexure-A2), he is entitled for 1st ACP w.e.f.9.8.1999 after completion of 12 years of service in the hierarchical promotional pay scale of Rs.6500-10500. Whereas the 4th respondent without granting the 1st ACP, had granted 2nd ACP to the applicant vide order dtd.5.10.2010(Annexure-A7) in the pay scale of Rs.6500-10500 instead of next hierarchical promotional pay scale of Rs.8000-13500 with Grade Pay Rs.5400 w.e.f. 19.12.2007 after completion of 24 years of service. As per DOPT OM dtd.19.5.2009(Annexure-A3), the applicant who has completed 30 years of service by 19.12.2013 is entitled for 3rd MACP with Grade Pay of Rs.6600/- w.e.f. 19.12.2013 whereas the respondents have not granted the same. It is submitted that the Min. of Finance vide OM dtd.13.11.2009(Annexure-A4) merged the pay scales of Rs.5000-8000, Rs.5500-9000 & Rs.6500-10500 in to a single upgraded pay scale of Rs.7450-11500 with Grade Pay of Rs.4600 w.e.f. 1.1.2006. The DOPT vide clarification dtd.10.2.2000 had clarified the admissibility of ACP in the existing hierarchy ignoring the promotions if already granted in the merged pay scales w.e.f. 1.1.2006(Annexure-A5). The DOPT in OM dtd.18.7.2001 vide clarification point No.52 has further clarified that consequent on the recommendation of the CPC, merging 3 pay scales to one single pay scale, the ACP is admissible above the merged scales and the promotion/upgradations already granted in the merged pay scales need to be ignored for the purpose of ACPs(Annexure-A6). The

DOPT by clarification on Frequently Asked Questions(FAQ)

dtd.9.9.2010(Annexure-A8) clarified that consequent on the merger of 3 pay scales, for the merged pay scale of Rs.6500-10500 revised to Rs.7450-11500, the Grade Pay is Rs.4800 w.e.f. 1.1.2006.

2. The applicant submits that the respondents have granted the promotion to the applicant as Graphic Supervisor vide Memorandum dtd.13.8.2015 and the applicant joined the said post vide joining report dtd.17.8.2015(Annexure-A9) at Doordarshan Kendra, Chennai. Since the applicant has already got the 2nd ACP, there shall not be any pay fixation for the promotional post of Graphic Supervisor. Accordingly, the respondents have not re-fixed the pay of the applicant in the promotional post. The representation dtd.9.12.2015(Annexure-A10) submitted by the applicant for 3rd MACP is neither considered nor replied to. It is submitted that the Director General, Doordarshan, New Delhi vide order dtd.17.5.2017(Annexure-A11) directed the 4th respondent to grant 3rd MACP to the applicant in the Grade Pay of Rs.5400 after completion of 30 years of service, which is totally incorrect and illegal. As per Annexure-A3 dtd.19.5.2009, the applicant is entitled for 3rd MACP in the Grade Pay of Rs.6600. But the 4th respondent vide Pay fixation statement dtd.2.6.2017(Annexure-A12) fixed the pay of the applicant with Grade Pay of Rs.5400 w.e.f. 19.12.2014 which is incorrect and contrary to the ACP and MACP orders dtd.9.8.1999 & 19.5.2009 respectively. Aggrieved by the same, the applicant has filed the present OA seeking the following relief:

- a. *Call for the records leading to not issuing the 1st ACP order w.e.f. 9.8.1999 and to issue of 2nd ACP order vide Annexure-A7 dtd.5.8.2010 & 3rd MACP order at Annexure-A11 No.21/2/2016/S-I(A)/600 dtd.17.5.2017 and pay fixation statement at Annexure-A12 dtd.2.6.2017 No. BNG/DDK/14(5)/17A to produce before this Hon'ble Tribunal to extend all consequential service and financial benefits to the applicant.*

- b. *To quash the order No.14(5)2010-A dtd.5.8.2010 at Annexure-A7 dtd.5.8.2010 (to the limited extent name of the applicant A.R.Suresh at Sl.No.1) (Impugned order) and the 3rd MACP order No.21/2/2016/S-I(A)/600 dtd.17.5.2017 at Annexure-A11 (to the limited extent name of the applicant A.R.Suresh of Sl.No.3)(impugned order) and pay fixation order No.BNG/DDK/14(5)/17A dtd.2.6.2017(Annexure-A12)(Impugned order).*
 - c. *Pass any other order or direction that this Hon'ble Tribunal may deem fit and necessary in the facts and circumstances of the present case and in the interest of justice and equity, including the order as to the cost.*
 3. Per contra, the respondents have submitted in their reply statement that the applicant joined the service as Graphic Artist on 19.12.1983 in the pay scale of Rs.5000-150-8000. The ACP Scheme was introduced in 9.8.1999. Accordingly, the applicant is entitled to 1st ACP w.e.f. 9.8.1999 after completion of 12 years of regular service in the pay scale of Rs.6500-200-10500 which is granted as per the records at Annexure-R1 dtd.26.4.2001. Further as the applicant was entitled to 2nd ACP after completion of 24 years of service, he was granted the same w.e.f. 19.12.2007 in the pay scale of Rs.9300-34800(PB 2) with Grade Pay of Rs.4800 vide order dtd.18.8.2010(Annexure-R2) which is in order. After receipt of 2nd ACP, the applicant did not raise any objections to the order at Annexure-R2 with regard to pay scale and grade pay. Now he is saying that he is entitled to 2nd ACP w.e.f. 19.12.2007 with pay scale of Rs.8000-13500 with Grade Pay of Rs.5400 which is totally false and he is not entitled to the said scale under 2nd ACP. Thereafter, the applicant was offered with promotion to the post of Graphic Supervisor vide order dtd.27.7.2012 and posted him to DDK, Aizwal. Further the applicant himself submitted a representation dtd.9.12.2015 requesting for grant of 3rd MACP. Then the Directorate vide order dtd.17.5.2017 has granted 3rd MACP in the pay scale of PB-2 with Grade Pay of Rs.5400 w.e.f. 19.12.2013 after completion of 30 years of service, which is also in order. The applicant's

contention that he is entitled to Grade Pay of Rs.6600 in 3rd MACP is totally wrong. He has not submitted any representation to the concerned authorities raising objections to grant of that Grade Pay. As per para 2 of OM dtd.10.2.2000(Annexure-A5), the cases where the ACP scheme has already been implemented shall be reviewed/rectified if the same are not found to be in accordance with the scheme. The respondents have implemented the ACP scheme according to the DoPT instructions.

4. The respondents submit that in the clarification issued by the DoPT at Annexure-A8, it is clearly mentioned that it is applicable to isolated cases in terms of para 5 of Annexure-I of MACPs dtd.19.5.2009. As per para-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 6th CPC shall be ignored for the purpose of granting upgradations under MACP'. In the present case, the applicant was appointed to the post of Graphic Artist in the pay scale of Rs.5000-8000 which is not isolated post in the department. Further he is entitled to promotions in the hierarchy in the department. As such he is not entitled to Grade of Rs.4800 w.e.f. 1.1.2006. The applicant has misunderstood the ACP and MACP instructions. According to his entitlement, he received 1st & 2nd ACP and 3rd MACP respectively which is in order. A revised pay fixation statement was issued to the applicant on 2.6.2017 and he was paid arrears etc. The applicant has never raised any objections with regard to Grade Pay etc. to the orders of the respondents. He was silent in all these years. Now he filed the OA by mis-quoting the contents of ACP/MACP and demanding Grade Pay of Rs.6600 under 3rd MACP to which he

is not entitled actually. Therefore, the OA being devoid of merit is liable to be dismissed.

5. The applicant has filed rejoinder reiterating the submission already made in the OA and submits that he was granted 1st ACP in the pay scale of Rs.6500-10500 w.e.f. 9.8.1999 vide Annexure-R1 and hence entitled the Grade Pay of Rs.4800 as per DoPT clarification dtd.9.9.2010(Annexure-A8) at Sl.No.26. When the applicant got promotion to the post of Graphic Supervisor vide order dtd.27.7.2012, he is not granted any pay fixation on promotion by the respondents saying that he has already got the 2nd ACP with the same Grade Pay of Rs.4800 w.e.f. 19.12.2007 instead of Rs.5400(GP). When the applicant has completed 30 years of service by 19.12.2013, he is entitled for 3rd MACP with Grade Pay of Rs.6600 which has not been granted by the respondents so far. Hence, the respondents cannot evade from their responsibility of granting correct ACP and MACP as per the schemes. Therefore, he is entitled for the benefits as stated above with all consequential benefits.

6. We have heard the Learned Counsels for both the parties and perused the materials placed on record in detail. The issue in this case relates to clarification given by the DoPT vide Annexure-A8 wherein certain Frequently Asked Questions were answered. The applicant would state that since he had already got the 1st ACP in the pay scale of Rs.6500-10500 w.e.f. 9.8.1999 vide Annexure-R1, any upgradation given earlier should be ignored for the purpose of granting of ACPs due between 1.1.2006 and 31.8.2008. In this case, he had completed 24 years in December 2007 and therefore he is eligible for being considered as noted in Annexure-A8. A correct reading of Annexure-A8 would reveal that since two scales i.e. Rs.6500-10500 and Rs.7450-11500 have been merged into a

single Grade Pay of Rs.4600 w.e.f. 1.1.2006, the 2nd financial upgradation under ACPs should be allowed with the Grade Pay of Rs.4800 in PB-2. The applicant seems to be under the impression that he is eligible for this Grade Pay of Rs.4800 w.e.f. 1.1.2006 itself and therefore, based on the clarification given in Annexure-A8, he should be entitled for a Grade Pay of Rs.5400 w.e.f. 19.12.2007 for the 2nd ACP. This is clearly wrong since the only purpose of the clarification is to show that since two scales of pay have been merged, if somebody is promoted from one scale of pay to other earlier, then obviously that promotion should be ignored and they should be uniformly considered for the Grade Pay related to the higher pay scale. In this case, the applicant has been correctly given the Grade Pay of Rs.4800 with effect from December 2007 and consequently in the 3rd MACP, he has been given the Grade Pay of Rs.5400. The action of the respondents is perfectly in tune with the objective of the scheme and various instructions issued therein.

7. The OA is dismissed. No costs.

(C.V.SANKAR)
MEMBER (A)

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

/ps/

Annexures referred to by the applicant in OA.No.170/00536/2019

Annexure-A1: The Standard pay scales of 4th CPC to 6th CPC

Annexure-A2: DOPT OM No.35034/1/97-Estt (D) dtd.9.8.1999 ACP for 12/24 years of service

Annexure-A3: DOPT OM No.35034/3/2008-Estt (D) dtd.19.5.2009 MACP for 10/20/30 years of service

Annexure-A4: Min. of Finance OM No.F/1/1/2008-IC dtd.13.11.2009 merger of pay scales

Annexure-A5: Clarification issued by DOPT file No.35034/1/97-Estt(D) Vol.IV dtd.10.2.2000

Annexure-A6: DOPT OM No.35034/1/97-Estt (D) dtd.18.7.2001 ACP clarifications

Annexure-A7: Order No.14(5)2010-A dtd.5.8.2010 granting 1st & 2nd ACP to the applicant

Annexure-A8: DOPT clarification on FAQ dtd.9.9.2010

Annexure-A9: The promotion memorandum No.DDK/BNG/14(5)/2008-A dtd.13.8.2015 & joining report dtd.17.8.2015

Annexure-A10: Representation of the applicant dtd.9.12.2015 for 3rd MACP

Annexure-A11: DG, DD Office Order No.21/2/2016/S-I(A)/600 dtd.17.5.2017 to grant 3rd MACP

Annexure-A12: Pay fixation statement No.BNG/DDK/14(5)/17 A dtd.2.6.2017 for 3rd MACP

Annexures with the reply statement:

Annexure-R1: Letter dtd.26.4.2001

Annexure-R2: Order dtd.18.8.2010

Annexures with rejoinder:

-NIL-
