

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE
REVIEW APPLICATION NO.170/40/2019 IN ORIGINAL APPLICATION
NO.170/1663/2018**

DATED THIS THE 27th DAY OF NOVEMBER, 2019

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

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
All India Radio
Akashvani Bhavan
Parliament Street
New Delhi-110 001.
4. The Dy.Director General (E)/HOO
All India Radio
Raj Bhavan Road
Bangalore-560 001.
5. The Pay & Accounts Officer
IRLA, Min. of I & B,
Soochana Bhavan
CGO Complex, Lodhi Road
New Delhi-110 003.

...Applicants/Respondents

(By Advocate Sri V.N.Holla, Sr.PC for CG)

Smt.Jayashree Narain
Age 66 years
Programme Executive (Rtd.)
R/a No.7, 1st Cross

Kumara Park West
Bangalore-560020.

...Respondent/Applicant

(By Advocate Sri N.Obalappa)

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

This review application has been filed by the respondents in OA.No.1663/2018 seeking review of the order dated 2.4.2019 passed in OA.No.1663/2018 by this Tribunal(Annexure-RA1). In the review application, the review applicants have stated that since the OA was heard finally at the stage of reply statement itself on 22.2.2019, they did not have a reasonable opportunity to assist the Court with a detailed reply on the issues and arguments that would crop in the matter. The respondents in the OA.1663/2018 were in the process of finalizing the reply statement when the case was taken up for final disposal on 22.2.2019 on the plea of the applicant in the said OA. Moreover, against the order dtd.24.7.2018 in OA.253/2017 which formed a basis for the final order in OA.No.1663/2018 dtd.2.4.2019, a WP.No.56294-95/2018(S-CAT) is still pending and has not reached finality. They were not having an opportunity to bring the pendency of the said WP and the interim order dtd.1.3.2019 passed in that (Annexure-RA2) to the notice of this Tribunal, as none of the parties sought to press in to service, the said WP and its outcome, more so, in view of the fact that the OA.1663/2018 was in orders stage and the respondents would be granted time to file a detailed reply in the normal course and proceedings. The applicant in the OA.1663/2018 had earlier suffered an adverse order in OA.388/2017 on similar issue(Annexure-RA3) as sought to be revised in OA.No.1663/2018. Therefore, it needed some time for the respondents to file a detailed reply to the said OA apart from the

legal plea of 'Res judicata', to meet the strategic/ingenious new plea taken by the applicant in OA.1663/2018 to press a decided case again. Hence, the review applicants prays to review the order dtd.2.4.2019 passed in OA.1663/2018 and also to restore the same for a detailed hearing on merits, by giving opportunity to the review applicants/respondents to file reply statement and documents they seek to rely upon, in the interest of justice and equity. They have also filed an MA for condonation of delay of 57 days in filing review application.

2. The respondent in the review application has filed reply statement reiterating the submissions already made in the OA.1663/2018 and submits that the review applicants sought time to file reply in OA.1663/2018 by 22.2.2019. But without making any submissions before this Tribunal, a month before i.e. on 23.1.2019, they filed a Transfer Application No.16/2019 in OA.No.1663/2018 before the CAT, PB, New Delhi and got the orders(Annexure-R4). Whereas the applicant received notices from CAT, PB to appear at Delhi on 1.3.2019 and hence she made submissions on 22.2.2019 vide memorandum at Annexure-R7 requesting not to transfer the OA as the applicant is a retired employee and cannot bear the expenditure like the respondents at Delhi & Bangalore. The respondent submits that in the reply filed in OA.388/2017, the respondents have incorrectly stated that the applicant has already availed two promotions and one upgradation of pay scale but they have not produced any option exercised by the applicant for upgradation of pay scales and the fixation statements granted to the applicant w.e.f. 25.2.1999 or 8.1.1999 from the date of 1st promotion as Programme Executive and submitted that the applicant is not entitled for 3rd MACP. The review applicants have submitted replies contrary to the orders passed by the 3rd respondent granting the 1st & 2nd ACP to the applicant in pursuance of the

Hon'ble High Court of Delhi order dtd.13.7.2017 in WP.No.4151/2003 wherein the name of the applicant is at Sl.No.98(Annexure-R5) and as per which, the applicant has been granted 2nd ACP w.e.f.9.8.1999 with the GP Rs.5400 and hence granting of GP Rs.4800 earlier to the applicant is incorrect. The WP.No.56294-56295/2018(S-CAT) is filed by the respondents before the Hon'ble High Court of Karnataka challenging the orders passed by this Tribunal in OA.No.253/2017 in respect of Shri C.U.Bellakki who has got the upgraded pay scale of Rs.7500-12000 w.e.f. 1.1.1996. Since the review applicants have not granted the upgraded pay scales of Rs.6500-10500 or Rs.7500-12000 to the applicant, the review applicants cannot rely on the pending WP referred above before the Hon'ble High Court. Accordingly, the RA is liable to be dismissed with exemplary costs.

3. The review applicants have filed written arguments/rejoinder stating that in compliance of the Hon'ble High Court of Delhi order dtd.13.7.2017 in WP.No.4151/2003, the applicant who had got promotion as Programme Executive w.e.f. 8.1.1999 in the pay scale of Rs.6500-10500 has been granted the higher scale of Rs.7500-12000 revised to PB-2 with GP Rs.4800 under 6th CPC w.e.f. 1.1.2006. It is evident from the Pension Payment Order dtd.27.5.2014 of the applicant who retired on 31.7.2011. The applicant who got promotion as Programme Executive w.e.f. 8.1.1999 has been granted 2nd ACP w.e.f. 9.8.1999. However, the Ministry of I&B based on DoP&T's advice have clarified vide letter dtd.31.1.2018(Annexure-1) that the upgraded pay scales granted to 11 categories of employees of Prasar Bharati is to be treated as one upgradation against the three upgradations allowed under MACP scheme. The Hon'ble CAT, PB, New Delhi vide its order dtd.1.8.2019 in OA.No.2449/2018 has upheld the

Ministry's order dtd.31.1.2018 and 5.2.2018 for treating the upgraded pay scales granted as one upgradation against the three upgradations allowed under MACP Scheme(Annexure-2). The DG, AIR, New Delhi letter dtd.8.1.2015 and any such orders will not sustain and will be nullified after the issue of MIB's letter dtd.31.1.2018 based on DoP&T's advice.

4. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. The review applicants in the RA have mainly argued that this Tribunal's order dtd.2.4.2019 in OA.No.1663/2018 has mainly relied on the fact that the RA.2/2018 in OA.253/2017 which was challenged before the Hon'ble High Court of Karnataka in WP.No.50820/2018 was dismissed. The review applicants would submit that the said order dtd.24.7.2018 of this Tribunal has been challenged in WP.No.56294-56295/2018(S-CAT) which is still pending before the Hon'ble High Court of Karnataka and therefore, the matter has still not reached finality. The second point they would urge is that as per the Pension Payment Order dtd.27.5.2014 with respect to the respondent, the Grade Pay is mentioned as Rs.4800 which as per the 6th CPC orders is applicable to the pay scale of Rs.7500-12000. Therefore, they would say that the applicant has already been given the benefit of the upgradations vide Ministry of I&B's orders dtd.25.2.1999. They have also cited that this upgradation ordered by the Ministry will have to be treated as one upgradation against the 3 upgradations allowed under the MACP scheme. There is no dispute that the two upgradations given to the Transmission Executives and Programme Executives vide order dtd.25.2.1999 which takes effect from 1.1.1996 needs to be treated as one upgradation as already noted by the order of this Tribunal in the Principal Bench in OA.No.2449/2018 dtd.1.8.2019. The position we have to examine is

whether during the career of the respondent, she has got either promotions or upgradations as per the extant orders relating to the ACP/MACP. Her promotion to the level of Transmission Executive will have to be ignored based on the merger of scales. As per the February 1999 order, this pay scale is to be upgraded to Rs.6500-10500 w.e.f. 1.1.1996. What has been urged by the respondent and the applicant in OA.No.1663/2018 and as evidenced by Annexure-R2 is that she was not given this upgradation to which she is eligible w.e.f. 1.1.1996. Her pay as on 1.1.1996 has to be in the pay scale of Rs.6500-10500. Apparently, as per Annexure-R2, this is not so. Similarly, she gets promoted as Programme Executive w.e.f. 9.8.1999 and this scale is also upgraded with effect from that date. As noted in Annexure-R5, on her promotion as Programme Executive on 9.8.1999, there is no change in the pay fixation as she was already drawing the scale w.e.f. 8.1.1999. The short point is whether she has got the upgraded scale of Rs.7500-12000 for this grade i.e. Grade Pay of Rs.4800. Further as noted in the same Annexure-R5, a 2nd Financial Upgradation under ACP to the post of Assistant Station Director(JTS) level, next post in the promotion hierarchy in PB-3 with Grade Pay of Rs.5400 is granted to her w.e.f. 9.8.1999. As admitted by the review applicants themselves, the Pension Payment Order dtd.27.5.2014 after the retirement of the respondent shows that the Grade Pay was still Rs.4800 whereas as per Annexure-R5, this should have already been fixed as Rs.5400 w.e.f. 9.8.1999. Vide Annexure-R3, the review applicants have given the benefit requested by the respondent to a person who is junior to the respondent. To sum up, the respondent has got one promotion w.e.f.1999 and a further upgradation to the Grade Pay of Rs.5400 w.e.f. 9.8.1999. Quite obviously, she is entitled for 3rd MACP since she had

already got 2 upgradations before. This is what was ordered in OA.No.1663/2018 and based on the above, it is clear that there is no need for any review of the order passed by us in April, 2019. The RA is dismissed. No costs.

(C.V.SANKAR)
MEMBER (A)

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

/ps/

Annexures referred to by the applicants/respondents in RA.No.40/2019

Annexure-RA1: Hon'ble CAT, Bangalore order dt.2.4.2019 in OA.170/01663/2018

Annexure-RA2: Hon'ble High Court of Karnataka interim order dtd.1st March, 2019
in WP.No.56294-95/2018

Annexure-RA3: Order dtd.14.8.2018 in OA.No.388/2017

Annexures with reply filed by the respondent/applicant:

Annexure-R1: Copy of the OM dtd.25.2.1999

Annexure-R2: Copy of the draft pay fixation of the respondent

Annexure-R3: Copy of the pay fixation statement of Sri.R.Venkatesh Babu,
Librarian & Information Assistant

Annexure-R4: Copy of the transfer application filed by the petitioner Hon'ble CAT
PB, New Delhi

Annexure-R5: Copy of the order No.04/35/2017-S-I(B)/dtd.30.10.2017

Annexure-R6: Copy of the order dtd.12.10.2017 issued by the petitioners

Annexure-R7: Copy of the memorandum submitted by the respondent expressing
difficulty to attend the Hon'ble Tribunal at CAT Bangalore and PB
New Delhi

**Annexures with written argument-cum-rejoinder on behalf of the review
applicants:**

Annexure-1: MIB letter dtd.31.1.2018

Annexure-2: Hon'ble CAT, PB, New Delhi order dtd.1.8.2019
