

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00054/2016

Tuesday, this the 26th day of November, 2019

C O R A M :

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

Tessy Tom, aged 52 years,
W/o. Tom Joseph,
Stenographer Gr. II,
Area Accounts Office (Navy),
Perumanoor PO, Thevara,
Ernakulam District, Cochin – 682 015.
Residing at : Taliyan House,
Thuravoor PO, Angamaly,
Ernakulam District - Pin – 683 572.Applicant

(By Advocate Mr.T.C. Govindaswamy)

v e r s u s

1. Union of India, represented by the Secretary to the Government of India, Ministry of Defence (Finance), New Delhi – 110 001.
2. The Controller General of Defence Accounts, Ulan Batar Road, Palam, Delhi Cantt – 110 010.
3. The Principal Controller of Defence Accounts (Navy), No. 1, Cooperage Road, Mumbai – 400 001.
4. The Deputy Controller of Defence Accounts (Navy), Area Accounts Office (Navy), Perumanoor PO, Thevara, Cochin – 682 015.Respondents

(By Advocate Mr.V.A. Shaji, ACGSC)

This application having been heard on 18th November, 2019, the Tribunal on 26th November 2019 delivered the following :

ORDER

HON'BLE Mr. ASHISH KALIA, JUDICIAL MEMBER

The brief facts of the case are : the applicant who was working as a Stenographer D in the scale of pay of Rs.4000-6000/- in the Central Secretariat Stenographer Service (CSSS) with effect from 1.7.1991. On completion of 12 years of service she was granted the first financial upgradation under the Assured Career Progression Scheme (ACPS) with effect from 1.7.2003. The above financial upgradation was in the scale of pay of Rs.5500-9000 attached to the promotional post of Stenographer C in CSSS. While so, the applicant was transferred on her own request as Stenographer III in the scale of pay of Rs.4000-6000 to the office of the Deputy Controller of Defence Accounts (Navy), Kochi. The applicant has joined the respondents' office on 30.5.2005. The Department has in the acceptance (Annexure A-4) issued certain terms and conditions which reads as follows :

“She will not get benefit of his/her past service for the purpose of seniority. She will be treated as fresh entrant for all purposes and her seniority in the DAD would commence from the date of her joining this department. However, counting of past service for fixation of pay, pension, carry forward of leave etc. will be considered in accordance with the extant orders/rules.”

2. On joining the office of the 4th respondent, the respondents ought to have protected the financial upgradation in scale Rs.5500-9000, but after several representations vide order dated 21.8.2008 the 3rd respondent granted the applicant the benefit of the first financial upgradation in scale Rs.5000-8000 with effect from 30.5.2005. In the Naval Department the cadre structure of Stenographers consisted of Stenographer I in scale Rs.5500-9000,

Stenographer II in scale Rs.5000-8000 and Stenographer III in scale Rs.4000-6000. In implementation of the recommendations of the 6th CPC, the scales of pay and the posts of Stenographer II and that of Stenographer I in scale Rs.5000-8000 and Rs.5500-9000 respectively were merged to constitute the post of Stenographer I in PB-2 + GP Rs.4200/- and the designation of the post of Stenographer III was revised as Stenographer II (in PB I plus GP Rs.2400/-). Since the applicant was enjoying the pay scale of Rs.5000-8000 as on 31st December 2005 she was granted GP of Rs.4200/- with effect from 1.1.2006. In terms of the same she is entitled to be considered and granted second financial upgradation in Pay Band 2 + GP Rs.4600/- with effect from 1.7.2011 counting 20 years from the date of commencement of her approved service on 1.7.1991. The applicant has made representation to the respondents in this regard on 25.10.2012 which is not answered. She made another representation on 4.11.2013 to the 3rd respondent. The applicant has also given a reference to the decision of this Tribunal in O.A.No.1100/2011 dated 28.8.2013 filed by one Smt.Sujatha Rajan. Since no response is received the applicant made another representation dated 24.9.2014 pointing out another decision in O.A.No.205/2010. Thereafter also she keeps making representations and lastly she has filed this O.A seeking the following reliefs :

- (i) Call for the records leading to the issue of A1 and quash the same;
- (ii) Declare that the applicant is entitled to be granted the scale of pay of Rs. 5500-9000 with effect from 30.5.2005, duly protecting the scale of pay drawn by the applicant in the CSSS; or in the alternative,
- (iii) Direct the respondents to continue to grant the applicant the financial upgradation in scale Rs. 5000-8000 as if A1 had not been issued at all;
- (iv) Call for the records leading to the issue of A2 and quash the same;

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(v) Direct the respondents to grant the applicant the 2nd financial upgradation under the MACPS in PB-2 + GP Rs. 4,600/- with effect from 1.7.2011 or at least with effect from 15.1.2012 and direct further to grant all the consequential arrears of pay and allowances arising therefrom;

(vi) Award costs of and incidental to this application;

(vii) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.

3. Notices were issued and reply statement has been filed by the learned counsel for the respondents Shri.V.A.Shaji wherein it is submitted that the applicant joined Defence Accounts Department as Stenographer II on 30.5.2005 in the pay scale of Rs.4000-6000/- as against the scale of pay of Rs.5500-9000/- drawn by her in the previous office ie. UPSC. On her joining as Stenographer II her basic pay was fixed at Rs.5700/- in the pay scale of Rs.4000-6000/- giving pay protection. Later she was granted first financial upgradation in the pay scale of Rs.5000-8000/- with effect from 30.5.2005 and her pay was fixed at Rs.5750/- purely on provisional basis pending clarification from the office of the CGDA Headquarters, New Delhi.

4. On implementation of the 6th CPC her pay was placed in PB-2 Rs.9300-34800/- plus GP Rs.4200/- with effect from 1.1.2006 corresponding to the pre-revised scale of Rs.5000-150-8000/-. It is further submitted that the applicant's pay was fixed in accordance with the Headquarters Office letter dated 25.6.2015 which states that in case of an employee after getting promotion/ACP seeks unilateral transfer to a lower post or lower scale, he/she will be entitled only for second/third financial upgradation as the case may be

on completion of 20/30 years of regular service respectively. Accordingly, the department has correctly fixed her pay at Rs.5700/- in the pay scale Rs.4000-6000/- after giving pay protection. On implementation of 6th CPC her grade pay was to be fixed at Rs.2400/- corresponding to her scale of pay with effect from 1.1.2006 in accordance with the CCS (RP) Rules. The respondents have also distinguished the case of the applicant with Smt.Lalithamma Subran and submitted that the judgment in her case is not applicable in the case of the applicant.

5. Heard learned counsel for the parties at length and perused the records as well as legal position. During the course of the argument, learned counsel for the applicant, Shri.T.C.Govindaswamy has placed on record the judgment passed by this Tribunal in O.A.No.97/2014 and O.A.No.440/2012 in which almost similar issue has been decided by this Tribunal. In our view O.A.No.440/2012 (Rajendran.K v. Union of India & Ors.) has discussed almost identical issue. Paragraphs 8 and 9 of the aforesaid order reads as follow :

8. The protection of pay last drawn by the applicant has to be guaranteed or protected as per the existing rules. *There* is no dispute regrading that fact and so the respondents also contend that the basic pay of the applicant was protected. But according to them the basic pay alone is to be protected and not the grade pay. According to the respondents the grade pay applicable to the applicant is only Rs. 1900/- since he was posted as LDC after he was transferred on his own request. But the learned counsel for the applicant would submit that under Rule 3(8) of the Revised Pay Rules, 2008 pay means, pay in the pay band plus grade pay and so the grade pay last drawn by the applicant is also to be protected. In other words, according to the applicant pay includes grade pay and so any order causing reduction in the grade pay would be violative of the existing rules. The learned counsel for respondents would submit that the applicant cannot have double benefit; one, by getting transfer of his choice to the nearest place/home town and also to enjoy the financial benefits. But the learned counsel for applicant would submit that the applicant would be

losing the entire seniority and would be at the bottom in seniority and that is the loss he suffers on getting a unilateral transfer. But at the same time his pay has to be protected as per the rules. It is also contended that granting regional or inter regional transfer cannot be to the disadvantage of officer like the applicant denying the grade pay which he was drawing and which he has earned because of the 24 years of service he had rendered to the department. The learned counsel for the applicant has drawn our attention to the orders passed by this Tribunal in identical matters; Annexure A 15 order dated 21.10.2011 in OA 205/2010 of this Tribunal, order dated 9.2.2009 in OA 859/2007 of CAT Jabalpur Bench and also order passed by this Tribunal in OA 461/2011 dated 25.11.2011. In all these cases it was held that the the pay includes the grade pay and that the officer on unilateral transfer is entitled to get his pay protected. In other words, the contention raised by the applicant, that the order reducing the grade pay from Rs.4200/- to Rs. 1900/- is unsustainable, gains momentum. In Annexure A-17 order (OA 461/2011) dated 25.11.2011 it was held by this Tribunal :

“The purpose of imposing certain conditions on inter-regional transfer is to protect the interests of the employees in the transferred office, rather than saving some money for the government by squeezing out as much as possible from a hapless employee. Forgetting this aspect, the insistence on saving some amount over and above what has been agreed to by the applicant is not befitting a government wedded to justice and fair play. The respondents are not entitled to unintended advantage, in the facts and circumstances of the case, from the revision of pay as per recommendations of the VI CPC”.

9. There is no case for the respondents that the orders passed by the Tribunal were varied or modified. In other words they have no case it that it was challenged before the Hon'ble High Court. Those orders attained finality. Hence, we have no hesitation to hold that the order passed by the respondents reducing the grade pay of the applicant from Rs.4200/- to Rs.1900/- is liable to be quashed. We do so. The applicant is entitled to the grade pay fixed at Rs. 4200/- . The respondents will pay the amount due to the applicant within two months from the date of receipt of a copy of this order.

6. Since this issue has already been dealt with by this Tribunal at great length and held in favour of the applicant therein that reduction of Grade Pay from Rs.4200 to Rs.1900/- is highly unjustifiable and that the applicant is entitled to the Grade Pay fixed at Rs.4200/-. In the present case the applicant's Grade Pay has been reduced from Rs.4200/- to Rs.2400/- almost on the similar issue that he has been transferred to lower post.

7. Thus, we are of the considered view that this matter squarely covers the case of the applicant. Accordingly, we hold that the applicant is entitled for the second financial upgradation under MACP Scheme in PB-2 plus GP Rs.4600/- with effect from 15.1.2012 with all consequential benefits arising therefrom. However, since the applicant has approached this Tribunal in the year 2016, we restrict the consequential relief relating to arrears to a period of three years prior to the date of filing of the Original Application as per the judgment of the Hon'ble Apex Court in the case of **Union of India & Anr. v. Tarsem Singh in Civil Appeal No.5151-5152 of 2008**. The respondents are directed to comply with the aforesaid directions within a period of three months from the date of receipt of a copy of this order.

8. In the light of the above, the O.A is allowed. No order as to costs.

(Dated this the 26th day of November 2019)

**ASHISH KALIA
JUDICIAL MEMBER**

**E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER**

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List of Annexures in O.A.No.180/00054/2016

1. **Annexure A1** – A copy of order bearing No. Part II O.O. 184 dated 23.4.2015, issued from the office of the 3rd respondent.
2. **Annexure A2** – A copy of order bearing No. Part I O.O. No. 459 dated 14.10.2015, issued from the office of the 3rd respondent.
3. **Annexure A3** – A copy of order bearing No. A-32022/1/03-Admn.I dated 29.10.2003, issued by the Under Secretary (Admn), Union Public Service Commission, New Delhi.
4. **Annexure A4** – A copy of order bearing No. A.20016/9/89-Admn.I dated 26 May 2005, issued by the Under Secretary (Admn) of the UPSC.
5. **Annexure A5** – A copy of order bearing No. Part II O.O. No. 676 dated 21.8.2008 issued from the office of the 3rd respondent.
6. **Annexure A6** – A copy of Office Memorandum bearing No. 35034/3/2008-Estt(D) dated 19th May, 2009 issued by the Department of Personnel & Training.
7. **Annexure A7** – A copy of representation dated 25.10.2012 addressed to the 3rd respondent.
8. **Annexure A8** – A copy of letter bearing No. AN/I/290/MACP/Vol.III dated 7.12.2012 issued from the office of the 3rd respondent.
9. **Annexure A9** – A copy of representation dated 4.11.2013, addressed to the 3rd respondent.
10. **Annexure A10** – A copy of order dated 28.8.2013 in OA No. 1100/2011 rendered by this Hon'ble Tribunal.
11. **Annexure A11** – A copy of letter No. AN/I/290/MACP/Vol.IV dated 13.2.2014 issued by the 3rd respondent.
12. **Annexure A12** – A copy of letter bearing No. K/AN/262/MACP dated 20.2.2014, issued by the 4th respondent.
13. **Annexure A13** – A copy of reminder under letter bearing No. K/AN/262/MACP dated 1.8.2014 issued by the 4th respondent.
14. **Annexure A14** – A copy of representation dated 24.9.2014 along with its enclosures, submitted to the 2nd respondent.
15. **Annexure A15** – A copy of order bearing No. AN/I/290/MACP/Vol.IV dated 4.9.2014 issued from the office of the 3rd respondent.

16. Annexure A16 – A copy of appal dated 20.5.2015 addressed to the 2nd respondent.

17. Annexure A17 – A copy of letter bearing No. K/AN/262/MACP dated 21.5.2015, issued by the 4th respondent.

18. Annexure A18 – A copy of representation dated 17.8.2015 addressed to the 2nd respondent.

19. Annexure A19 – A copy of representation dated 15.9.2015 addressed to the 3rd respondent.

20. Annexure A20 – A copy of OM No. 35034/3/2008-Estt(D)(Vol.II) dated 1.11.2010, issued by the Government of India, Department of Personnel & Training.

21. Annexure A21 – A copy of OM No. 35034/3/2008-Estt(D)(Vol.II) dated 4.10.2002, issued by the Government of India, Department of Personnel & Training.

22. Annexure R1 – A copy of the relevant portion of CCS (RP) Rules.

23. Annexure R2 – A copy of the letter No. AN/XI/11051/MACP/2015 IDT/Vol-1 dated 25.6.2015 from 2nd respondent to the 4th respondent.

24. Annexure R3 – A copy of the letter No. AN/XI/11051/MACP/2011 ID dated 4.6.2012 from 2nd respondent to the 4th respondent.

25. Annexure R4 – A copy of the headquarters office circular dated 25.2.2010.

26. Annexure R5 – A copy of the amended OM by DoP&T dated 1.11.2010.

27. Annexure R6 – A copy of the clarification letter No. AN/XI/11051/MACP/2015/IDT/Vol-I, dated 25.6.2015.

28. Annexure R7 – A copy of the letter No. AN/I/719/Vol.XI, dated 30.7.2015 by the respondent.

29. Annexure MA1 – A copy of Part II O.O. No. 243 dated 20.5.2016 issued from the office of the 3rd respondent.

30. Annexure MA2 – A copy of Part II O.O. No. 261 dated 31.5.2016 issued from the office of the 3rd respondent.

31. Annexure MA3 – A copy of Part II O.O. No. 263 dated 1.6.2016 issued from the office of the 3rd respondent.

32. Annexure MA4 – A copy of letter bearing No. AN.III/2739/PF/Vol.58 dated 16.6.2016, issued by the Sr. Accounts Officer (AN) in the office of the 3rd respondent.
