

(2023) 05 CAT CK 0047

In the Central Administrative Tribunal

Case No : Original Application No. 3324 Of 2015

Dr. Ashim Kumar Dutta

APPELLANT

Vs

UOI & Ors

RESPONDENT

Date of Decision : 16-05-2023

Acts Referred:

Citation : (2023) 05 CAT CK 0047

Hon'ble Judges : Tarun Shridhar, Member (A); Pratima K. Gupta, Member (J)

Bench : Division Bench

Advocate : M.K. Bhardwaj, N.D. Kaushik

Final Decision : Dismissed

Judgement

Pratima K. Gupta, Member (J)

1. Aggrieved by an order dated 02.02.2015 vide which his claim for financial upgradation under the Assured Career Progression (ACP) scheme and subsequently Modified Assured Career Progression (MACP) Scheme has been denied, the applicant has approached this Tribunal seeking the following relief(s):-

" (a) To quash and set aside the impugned order dated 02.02.2015 and direct the respondents to grant to the applicant 1st & 2nd Financial Upgradation in the pay scale of Rs. 15600-39100 with grade pay of Rs. 5400 & 6600 from the date of completion of 12 years of regular service or 01.01.2006 (from the date the CCS (Revised Pay) Rules, 2008 became operative) whichever is later & on completion of 20 years of regular service.

(b) To declare the action of the respondents in not granting the scale of Rs. 15600-39100 with grade pay of Rs. 5400 & 6600 to the applicant, as illegal and arbitrary.

(c) To direct the respondents to count the service of applicant from 29.06.1992 as regular service for determining his eligibility grant financial upgradation under

ACP/ MACP Scheme.

(d) To direct the respondents to grant financial upgradation under ACP/ MACP Scheme as per the pay scale attached to the promotional post, i.e., Assistant Director exists in Central Translation Bureau as on 01.01.2006.

(e) To allow the O.A. with costs.

(f) Pass such other direction or directions order or orders as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice."

2. Briefly taking us through the background and history of the case, Mr. M.K. Bhardwaj, learned counsel for the applicant submits that the applicant was appointed to the post of Hindi Translator on 29.06.1992 by way of direct recruitment through the Staff Selection Commission in the pay scale of Rs. 1400-2300/-. Pursuant to the recommendations of the 5th Central Pay Commission (CPC), the said pay scale was initially revised to Rs. 4500-7000/- thereafter Rs. 5000-8000/-. He clarifies that these were the replacement scales of his original pay scale of Rs. 1400-2300/-. Learned counsel argues that since the applicant completed twelve years of service on 29.06.2004 from the date of his initial appointment on 29.06.1992, he was entitled to the benefit of first financial upgradation under the ACP scheme which stipulated financial upgradation on completion of twelve years of regular service in the same pay scale without any promotion or financial upgradation. Learned counsel further argues that no doubt the applicant got appointed to the post of Senior Hindi Translator on 08.06.1998 by way of direct selection by the Union Public Service Commission (UPSC) in the pay scale of Rs. 5500-9000/- and subsequently to the post of Senior Translator in the pay scale of Rs. 6500-10500/-, these appointment to a higher pay scale are to be ignored in terms of the clarification issued by the DoP&T with respect to the merger of pay scales pursuant to the recommendations of the 6th Central Pay Commission. Learned counsel elaborates that the pay scale of Rs. 5000-8000/- which was the replacement scale of the applicant's original pay scale and the pay scale of Rs. 5500-9000/- to which he was appointed on 08.06.1998 all got merged into a single pay scale of Rs. 6500-10500/, which the applicant was awarded on 15.03.1995. Thus, learned counsel argues, the so called appointment of the applicant on a higher pay scale was nullified on account of merger of three pay scales in terms of the recommendation of the 6th CPC. Learned counsel draws support to this argument from the O.M. of DoP&T dated 10.02.2000 bearing the subject 'Assured Career Progression Scheme for the Central Government Civilian Employees - Clarifications Regarding' (page 42). He specifically draws attention to the annexure, which gives clarification on points of difference and submits that the point at serial numbers 5 and 6 and the clarification thereto elaborately explain the issue and the claim of the applicant gets squarely covered by it. For the sake of clarity the relevant extract is quoted below:-

"

5. Whether a Government servant, who is direct recruit in one grade and subsequently joins another post again as direct recruit, is eligible for first financial upgradation under ACPS after completion of 12 years of service counted from the first appointment or from the subsequent second appointment as direct recruit?

6. An employee appointed initially on deputation to a post gets absorbed subsequently, whether absorption may be termed as promotion or direct recruitment. What will be the case if an employee on deputation holds a post in the same pay -scale as that of the post held by him in the present cadre? Also, what will be the situation if he was holding a post in the parent cadre carrying a lower pay scale?

The benefits under ACPS are limited to higher pay scale and do not confer designation, duties and responsibilities of the higher post. Hence, the basic criterion to allow the higher pay scale under ACPS should be whether a person is working in the same pay scale for the prescribed period of 12/24 years. Consequently, so long as a person is in the same pay scale during the period in question, it is immaterial whether he has been holding different posts in the same pay scale. As such, if a Government servant has been appointed to another post in the same pay scale either as a direct recruit or on absorption (transfer) basis or first on deputation basis and later on absorbed (on transfer basis), it should not make any difference for the purpose of ACPS so long as he is in the same pay scale. In other words, past promotion as well as past regular service in the same pay scale, even if it was on different posts for which appointment was made by different methods like direct recruitment,

Absorption

(transfer)/ deputation, or at different places should be taken into account for computing the prescribed period of service for the purpose of ACPS. Also, in case of absorption (transfer)/deputation in the aforesaid situations, promotions earned in the previous/present organisations, together with the past regular service shall also count for the purpose of ACPS. However, if the appointment is made to higher pay- scale either as on direct recruitment or on absorption (transfer) basis or first on deputation basis and later on absorbed (on transfer basis), such appointment shall be treated as direct recruitment and past service/promotion shall not count for benefits under ACPS.

3. Learned counsel also argues that the subsequent clarification titled Modified Assured Career Progression Scheme, which is at Annexure A1 to the O.M. of DoP&T, in para 5, leaves absolutely no scope for doubt. For the sake of clarification the same is reproduced as under :-

" 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.

Illustration:

The pre-revised hierarchy (in ascending order) in a particular organization was as under:-

Rs. 5000-8000, Rs. 5500-9000 & Rs. 6500-10500.

(a) A Government servant who was recruited in the hierarchy in the pre-revised pay scale Rs. 5000-8000 and who did not get a promotion even after 25 years of service prior to 1.1.2006, in his case as on 1.1.2006 he would have got two financial upgradations under ACP to the next grades in the hierarchy of his organization, i.e. to the pre-revised scales of Rs. 5500-9000 and Rs. 6500-10500.

(b) Another Government servant recruited in the same hierarchy in the pre-revised scale of Rs. 5000-8000 has also completed about 25 years of service, but he got two promotions to the next higher grades of Rs. 5500-9000 & Rs. 6500-10500 during this period.

In the case of both (a) and (b) above, the proinotions/financial upgradations granted under ACP to the pre-revised scales of Rs. 5500-9000 and Rs. 6500-10500 prior to 1.1.2006 will be ignored on account of merger of the pre-revised scales of Rs. 5000-8000, Rs. 5500-9000 and Rs. 6500-10500 recommended by the Sixth CPC. As per CCS (RP) Rules, both of them will be granted grade pay of Rs. 4200 in the pay band PB-2. After the implementation of MACPS, two financial upgradations will be granted both in the case of (a) and (b) above to the next higher grade pays of Rs. 4600 and Rs. 4800 in the pay band PB-2.

4. Mr. N.D. Kaushik, learned counsel for the respondents, strongly rebuts the arguments put forth by the learned counsel for the applicant. He submits that the provisions governing the ACP and MACP schemes are abundantly clear. He argues that the claim for ACP gets established only if the person continues in the same pay scale for twelve long years. In the instant matter, the applicant had already got one financial upgradation on 08.06.1998 by virtue of appointment to a higher scale of pay and thereafter appointment on another higher grade on 15.03.1999.

5. He submits that the applicant completed twelve years of service from his initial appointment on 29.06.2004 and on that date he had already been granted two financial upgradations prior to 01.01.2006, when the recommendations of the 6th Central Pay Commission were implemented. Hence, his claim for benefit under the ACP scheme is highly misplaced. Learned counsel, besides laying reliance on the averments made in the counter reply, draws attention to the sur-rejoinder filed by him specifically the reply in paras 4.32-4.9, which read as under :-

" 4.3 to 4.9. That the contents of corresponding Paras No. 4.3 to 4.9 of the rejoinder are false wrong and hence denied, except what is matter of record. It is respectfully submitted that the applicant is demanding financial upgradation on

the basis of Grade Pay of Promotional hierarchy. The applicant has joined the Central Government services as Hindi Translator w.e.f 29.06.1992 in the pre-revised pay scale of Rs 1400- 2300 revised as Rs 9300-34,800+ Grade Pay Rs 4200 in the 6th Central Pay Commission.

The Applicant further joined the post of Senior Translator w.e.f. 08.06.1998 in Small Industry Services Institute on direct recruitment basis in the pre revised scale of Rs. 5500-9000. He further joined as Senior Translator w.e.f. 15.03.1999 in Central Translation Bureau on direct recruits basis in the pre-revised pay scale of Rs. 6500-10500. The 6th Central Pay Commission had placed Senior Translators in the revised pay scale of Rs 9300-34800+ Grade Pay Rs. 4600 w.e.f. 01.01.2006. Therefore, the applicant is a Senior Translator at present in Central Translation Bureau in pay scale of Rs 9300-34800 + Grade Pay Rs. 4600. Since the applicant, prior to his joining as Senior Translator in Central Translation Bureau was working on the same post i.e. Senior Translator in another Central Government department, as per the extant instructions of GOI his service as Senior Translator is to be reckoned from his initial date of joining the post of Senior Translator in the Government of India i.e. from 08.06.1998.

The Government had in place a scheme called Assured Career Progression (ACP) Scheme which ensured grant of financial upgradation to the officials stagnating on the same post in more than 12 years. Under this scheme the financial upgradation was to be granted in the pay of Promotional hierarchy. The applicant was maturing for benefit of financial upgradation under this scheme w.e.f. 08.06.2010.

However, the 6th CPC, w.e.f 1.9.2008 replaced the erstwhile ACP Scheme and introduced in its place Modified Assured Career Progression (MACP) Scheme which envisaged grant of financial upgradation after 10 years of stagnation at the same grade. Under this scheme, the financial upgradation is to be given in the hierarchy of next higher Grade pay and Not in the Grade Pay of Promotional hierarchy. The applicant was completing 10 years of regular service in the grade of Senior Translator on 08.06.2008 and since the MACP Scheme was applicable w.e.f. 1.9.2008, the applicant was granted financial upgradation in the hierarchy of next higher Grade pay i.e. Rs 9300-34800+ Grade Pay Rs. 4800 w.e.f 1.9.2008. Thus, the applicant has been granted benefits in accordance with the existing schemes and instructions of GOI.

It is further submitted that in a recent judgment dated 28.04.2016 passed by Hon'ble CAT, Calcutta Bench in OA No 351/00195/2014 filed by Shri S.H.K Murti & other vs Union of India, the copy of the same is annexed herewith and marked as Annexure. R-1 for the kind perusal of this Hon'ble Tribunal, the Hon'ble Tribunal... en has held that the MACP benefit would be given in the hierarchy of next higher Grade Pay and not in Grade Pay of Promotional hierarchy which will be payable on actual promotion."

6. He further quotes from the DoP&T O.M. dated 17.05.2006, which clarifies that

the benefit of MACP is to be given in the hierarchy of next higher grade of pay, not in the promotion hierarchy of grade pay that the applicant is seeking by way of relief in paragraph 8(d) as the grade pay on a promotional post is not admissible in terms of the DoP&T circular.

7. Learned counsel for the respondents reiterates that the impugned memorandum has been passed on the advice of the DoP&T, which is the nodal department on the subject, and the advice of DoP&T is unambiguous, hence the contention of the applicant for demanding a higher grade pay is not correct.

8. Heard the learned counsel for the parties and gone through the pleadings on record.

9. For the sake of brevity, it is imperative to reiterate that there are two issues involved in the present case.

a. Counting of service rendered by the applicant as Hindi Translator from 29.06.1992 till 06.06.1998 with the All India Radio, Ministry of Information and Broadcasting, Government of India, for the purpose of grant of financial up-gradation under the ACP/MACP Scheme.

b. Post the merger of the pay scales, to which scale of pay and grade pay is the applicant entitled to, while extending the benefit MACP Scheme.

10 With respect to the first issue, it would be relevant to refer back to the clarifications issued by the DoP&T dated 10.02.2000. The said clarifications are amply clear and state that benefits under ACP scheme are limited to higher pay scale and do not confer designation, duties and responsibilities of the higher post. It further clarifies that if appointment was made to a higher pay scale either by direct recruitment or on absorption (transfer) or first on deputation basis and later on absorbed (on transfer basis), the said appointment shall be treated as direct recruitment and past service/promotion shall not count for benefits under the ACPS. In the present case, the journey of the applicant is detailed below:-

29.06.1992

The applicant was appointed as Hindi Translator in All India Radio in the pay scale of Rs. 1400-2300

01.01.1996

Post the recommendations of the 5th CPC, the pay scale was revised to Rs. 4500-7000/- and then to Rs. 5000-8000/-.

08.06.1998

He got selected to the post of Senior Hindi Translator in Small Industry Service Institute in the pay scale of Rs. 5500-9000/-.

15.03.1999

The applicant was appointed to the post of Sr. Translator in Central Translation Bureau, Department of Official Language in the pay scale of Rs. 6500-10500/-.

01.01.2006

CCS (Revised Pay) Rules 2008, came into existence and merged the pay scales of Rs. 5000-8000/-, Rs. 5500-9000/- and 6500-10500/- and replaced them by the revised Pay Band-2 of Rs. 9300-34800/- with a Grade Pay of Rs. 4200/-.

24.11.2008 and 27.11.2008

Department of Expenditure replaced the pay scales of Rs. 5500- 9000/- and Rs. 6500-10500/- with Rs. 7450-11500/- w.e.f. 01.01.2006 with an enhanced Grade Pay of Rs. 4600/- with retrospective effect from 01.01.2006.

13.11.2009

Vide Department of Expenditure OM dated 13.11.2006 the pay scale of Rs. 6500-10500/- with Grade Pay of Rs. 4200/- was revised to Rs. 7450-11500/- with Grade Pay of Rs. 4600/- w.e.f. 2006.

11. Admittedly, as explicitly clear from the sequence of events tabulated above, the applicant was granted the replacement scale in pursuance of the recommendations of the 6th CPC and the subsequent DoP&T O.M. Therefore, the applicant was deemed to be in the pay scale of Rs. 9300-34800/- with the grade pay of Rs. 4200/- w.e.f. 29.06.1992 and then from 01.01.2006 in the pay scale of Rs. 7450-11500/- with grade pay of Rs. 4600/-. The MACP Scheme came into effect from 01.09.2008 and the applicant became eligible for the financial upgradation on 15.03.2009 on completion of 10 years in grade pay 4600/- and was granted the same while extending a grade pay of Rs. 4800/-.

It would be worthwhile to quote the judgment of the Hon'ble Supreme Court dated 22.08.2022 in SLP No. 16442/2021 titled Union Of India And Others

12. In view of the aforesaid discussion, the appeals filed by the Union of India are partly allowed and impugned judgments, to the extent they hold that the MACP Scheme applies with effect from 1.1.2006 and that under the MACP Scheme the employees are entitled to financial upgradation equivalent to the next promotional post, are set aside. MACP Scheme is applicable with effect from 1.9.2008 and as per the MACP Scheme, the entitlement is to financial upgradation equivalent to the immediate next grade pay in the hierarchy of the pay bands as stated in Section 1, Part A of the First Schedule to the Central Civil Services (Revised Pay) Rules, 2008. The third issue, which relates to the fulfilment of pre-promotional norms for grant of financial upgradation, is decided against the appellant-Union of India to the extent that this would not be insisted in the case of the Central Armed Forces personnel where, for administrative or other reasons, they could not be sent or undergo the pre-promotional course. All pending applications are disposed of."

12. It is seen that the applicant was rightly granted the grade pay of Rs. 4800/ in

the pay scale of Rs. 9300-34800/- and the claim of the applicant has been denied on correct and valid grounds.

14. For the reasons stipulated in the preceding paragraphs, the guidelines detailed by DoP&T, the judgment of the Hon'ble Supreme Court in Union Of India And Others Versus EX. HC/GD Virender Singh read with the MACP Scheme, we find no merit in the O.A. Accordingly, the same is dismissed.