

(2023) 09 CAT CK 0009

In the Central Administrative Tribunal

Case No : Original Application No. 180, 00233 Of 2016

Dr. P.R Hareendra Sarma Assistant Director (Official
Language) (In-charge) Doordarshan Kendra,
Thiruvananthapuram ? 695043

APPELLANT

Vs

Deputy Director General (E) Doordarshan Kendra
Thiruvananthapuram ? 695043 & Ors

RESPONDENT

Date of Decision : 08-09-2023

Acts Referred:

Central Civil Services (Revised Pay) Rules, 2008 — Section 1(A)

Citation : (2023) 09 CAT CK 0009

Hon'ble Judges : K. Haripal, Member (J); K.V. Eapen, Member A

Bench : Division Bench

Advocate : Vishnu S Chempazhanthiyil, N.Anilkumar

Final Decision : Disposed Of

Judgement

K.Haripal, Member J

1. The applicant is a Hindi Translator in the Doordarshan Kendra, Thiruvananthapuram, commenced service on 10.12.2001. According to him, he has put in more than 14 years of service. The existing Recruitment Rules provided that Hindi Translator with 8 years regular service becomes eligible for the post of Hindi Officer/Assistant Director (Official Language). Even after putting in more than 14 years of service, though he has been put in charge of the Hindi Officer/Assistant Director (O.L) with effect from 19.9.2012, he has not been granted regular promotion as Assistant Director nor financial benefits were given. He is also aggrieved by non-granting of higher Grade Pay of Rs.5400/- even after granting him first MACP with effect from 10.12.2011. Thus, he has approached this Tribunal praying to direct the respondents to consider granting Grade Pay in PB-3 with GP of Rs.5400/-, on grant of first financial upgradation under MACP, to direct the respondents to consider regularly posting the applicant as Hindi Officers/Assistant Director (O.L), in view of his qualification and entitlement

under the Recruitment Rules and to sanction appropriate wages for working as Hindi Officer (In Charge)/Assistant Director (O.L) (In Charge) i.e. GP of Rs.5400/- in PB-3.

2. The applicant had evidently commenced service as Hindi Translator on 10.12.2001. He is a Post Graduate with Doctorate in Hindi. According to him, he had a brilliant academic background, that he has completed 25 research papers in various seminars, published a book in Hindi and also worked as resource person/faculty member of various Central Government Offices in various parts of the country and has received 15 literary awards etc. But his qualifications and merits have not been reckoned and he has not been posted as Assistant Director, he is still continuing as in-charge Assistant Director without any financial benefits. On the merger of three pay scales, Rs.5000-8000, Rs.5500-9000 and Rs.6500-11500 into one scale, he ought to have been granted Grade pay of Rs.4600/- and thereafter on granting the first MACP, he is entitled to get the next Grade Pay of Rs.5400/- which has been denied and that prompted him to approach the Tribunal with the above stated reliefs.

3. The respondents filed reply statement disputing the claims of the applicant. Accordingly to them, the applicant had commenced service as Hindi Translator on 10.12.2001 in the scale of pay of Rs.5000-8000. Under the CCS (Revised) Pay Rules, 2008, the applicant's pay was fixed in the Pay Band of Rs.9300-34800 with Grade Pay of Rs.4200/- with effect from 1.1.2006. As per the recommendations of the 6th Central Pay Commission and decision of the Government, pre-revised pay scales Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 were merged and replaced with revised pay structure with Grade Pay of Rs.4200 in Pay Band 2. Later vide Ministry of Finance, Department of Expenditure (Implementation Cell) OM dated 13.11.2009, revised grade pay of Rs.4600/- was granted to posts that existed in the pre-revised scale of Rs.6500-10500/-. Thus according to the respondents, those who held pre-revised scale of Rs.6500-10500 alone are entitled to get Grade pay of Rs.4600/-. The applicant who held pre-revised scale of Rs.5000-8000 was entitled to get revised scale of Rs.9300-34800 with Grade pay of Rs.4200/- only.

4. Moreover, according to them, no posts of Hindi Officer/Assistant Director exists and such posts can be filled up only by following procedural formalities and availability of vacancies, circulation of seniority lists, constitution of Departmental Promotion Committee etc. Here, no such vacancy exists and the claim of the applicant cannot hold good. He cannot claim promotion on the basis of the qualifications unless there are vacancies. Moreover, the comparison drawn by the applicant with regard to the Doordarshan Kendra or All India Radio has no basis. As per the DoP&T instructions on the subject, MACP is granted only in the hierarchy of the pay scale as mentioned in the Section 1, Part A of first Schedule of CCS (RP) Rules, 2008. In this connection, he has also relied on Annexure R1(b), the First Schedule. Thus, the respondents have sought for dismissal of the Original Application.

5. The applicant filed a rejoinder reiterating the contentions. According to him, similar claims have been upheld by this Tribunal. A Full Bench of this Tribunal in O.A No.656/2012 and 953/2012 held that Hindi Translators are entitled to get Grade Pay of Rs.4600/- w.e.f 1.1.2006 which had been affirmed by the Hon'ble High Court in O.P(CAT) No.142/2014 and later by the Hon'ble Supreme Court in SLP(CC) No.23053 of 2016. Therefore, the claim of the applicant that he is entitled to get Grade Pay of Rs.5400/- is supported by valid reasons. Moreover, non-granting of the scale of Hindi Officer/Assistant Director, as the case may be, violates the principles of equal pay for equal work. Therefore, he is entitled to get the scale of pay of Hindi Officer or Assistant Director in DDK, Thiruvananthapuram with Grade Pay of Rs.5400/-.

6. The respondents filed an additional reply statement re-iterating the contentions in the earlier reply statement.

7. We heard the learned counsel on both sides. Shri.Vishnu S Chempazhanthiyil representing learned counsel for the applicant as well as Shri.N.Anilkumar, learned Senior Panel Counsel have reiterated their respective contentions. We have also been shown that by order dated 30.6.2023, the applicant stands promoted on regular basis as Assistant Director and therefore, in fact the second relief has become redundant. Now the questions remain to be considered are whether the applicant is entitled to get higher grade pay of Rs.5400 on grant of MACP with effect from 10.12.2011 and whether he is entitled to get the benefits of scale of pay and Grade Pay of the Assistant Director following his putting in charge of Hindi Officer/Assistant Director with effect from 19.9.2012.

8. The first question can be considered now. Relying on Annexures A7, A8 and A9 representations the learned counsel for the applicant submitted that even though the respondents were addressed on numerous occasions high-lighting his legitimate claim, that has not been considered and that prompted him to approach this Tribunal.

9. Evidently, the applicant had started his service as Hindi Translator on 10.12.2001. His initial posting was in Pondicherry and thereafter he was transferred to Thiruvananthapuram in 2004. While so, on completion of 10 years service without any promotion, he was granted the first MACP with effect from 10.12.2011. The grievance of the applicant is that despite the fact that the scales of Rs.5500-9000 and Rs.6500-10500 were merged and a higher pre-revised scale was fixed, he was granted Grade Pay of Rs.4600/- only, which is incorrect. At that time, he should have been granted Rs.4600/- and then on grant of first MACP with effect from 10.12.2001, he should have been granted the next Grade Pay, but in Annexure A-4, despite the fact that he was granted 1st MACP, his Grade Pay is remaining the same at Rs.4600, which is illegal. On the other hand, the learned Standing Counsel pointed out that as he was drawing the scale of pay of Rs.5400/-, as per the CCS (Revised) Pay Rules, he should have been granted only Rs.4200/- as Grade Pay, but he was erroneously granted Grade Pay of Rs.4600/- and that was how, even when MACP was granted with effect from

10.10.2011, the Grade Pay was not enhanced.

10. Both the parties agree that the pre-revised scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 were merged and given a replacement scale of Rs.7450-1500. In this connection, Annexure A-11/Annexure R1(a) clearly indicate that as a result of the merger, the replacement scale should have been Rs.7450-11500 with Grade Pay of Rs.4600/-. In this connection relevant portions of Annexure A-11/Annexure R1(a) reads thus:

"Sixth Pay Commission recommended merger of the three pre-revised scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 and replaced them by the revised pay structure of grade pay of Rs.4200 in the pay band PB-2. Vide para 2.2.21 (v) of its Report, the Commission recommended that on account of the merger of these 3 scales, some posts which constituted feeder and promotion grades would come to lie in an identical grade. The Commission gave specific recommendations in its Report granting higher grade pay of Rs.4600 to some categories of these posts. As regards the other posts, the Commission recommended that it should first be seen if the posts in these 3 scales can be merged without any functional disturbance and if possible, the same should be done. Further, the Commission recommended that in case it is not feasible to merge the posts in these pay scales on functional consideration, the posts in the scale of Rs.5000 -8000 and Rs.5500-9000 should be merged with the posts in the scale of Rs.6500-10500 being upgraded to the next higher grade in the pay band PB-2 with grade pay of Rs.4600 corresponding to the pre-revised scale of Rs.7450-11500.

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3. Consequent upon the Notification of CCS (RP) Rules, 2008, Department of Expenditure has received a large number of references from administrative ministries/departments proposing upgradation of the posts which were in the pre-revised scale of Rs.6500-10500 as on 1.1.2006 by granting them grade pay of Rs.4600 in the pay band PB-2. The matter has been considered and it has now been decided that the posts which were in the pre-revised scale of Rs.6500-10500 as on 1.1.2006 and which were granted the normal replacement pay structure of grade pay of Rs.4200 in the pay band PB- 2, will be granted grade pay of Rs.4600 in the pay band PB-2 corresponding to the pre-revised scale of Rs.7450-11500 w.e.f. 1.1.2006. "

11. That means, even though there was an initial contemplation to keep the pay scales of Rs.5000-8000 and Rs.5500-9000 separately, ultimately, it was merged with scale of pay of Rs.6500-10500 and decided to grant the Grade Pay of Rs.4600/-. In the light of Annexure A-11 O.M, it does not leave any doubt that the revised Grade Pay of the applicant should have been Rs.4600/- with effect from 1.1.2006. There cannot be any doubt with regard to this aspect which has been reiterated by this Tribunal, which stands confirmed by the Hon'ble High Court as well as the Hon'ble Supreme Court.

12. Secondly and more importantly, the respondents have repeatedly stated that grant of Rs.4600/- as Grade Pay to the applicant was an error, it was a mistake on the part of the respondents. Even though such a mistake had happened with effect from 1.1.2006, it is not explained as to why such an error was not tried to be rectified so far. That means, the claim of the applicant that it was not a mistake, on the other hand, it was his due entitlement, is liable to be upheld.

13. Moreover, it is the definite case of the applicant that this question was considered earlier on numerous occasions and once the matter was referred to a Full Bench of this Tribunal in O.A Nos.656/12 and 953/12 and the Full Bench held that persons similarly placed are entitled to get Grade Pay of Rs.4600/-. Paragraphs 21 and 22 of the order of the Full Bench reads thus:

"21. Thus, it has to be accepted that the question, as to whether the JHTs are entitled for Grade pay of Rs. 4,600/- on the basis of the OM dated 13.11.2009 was answered positively in OA No. 107/2011 and was confirmed by the Hon'ble High Court in OP (CAT) No. 467 of 2012.

22. In the circumstances, the reference as to whether JHTs in the subordinate offices of the Central Government are entitled to Grade Pay of Rs. 4,600/- from 1.1.2006 on the basis of OM dated 13.11.2009 or not has to be held to be in favour of the applicants and in the circumstances of the case there is no necessity of again referring the matter to the Division Bench for deciding the matter on facts. We hold that both the OAs are liable to be allowed and the same are accordingly allowed."

14. As stated by the applicant, this was agitated before the Hon'ble High Court and the High Court confirmed the same. The Hon'ble Supreme Court also dismissed the SLP and therefore, the question is no more res integra.

15. Moreover, it is the settled proposition of law as held by various decisions like reported in *Inderpal Yadav and Others v. Union of India and Others* [(1995) 2SCC 648], *State of Karnataka and Others v. C.Lalitha* [(2006) 2 SCC 747] that whenever the Court or Tribunal lays down a law, the reliefs therein should be extended to similarly placed persons. Various instances have been pointed out by the learned counsel for the applicant to say that in all such cases, the applicant and similarly placed persons were granted Grade Pay of Rs.4600/-with effect from 1.1.2006. But the respondents are still holding that it was a mistake. We have already noticed that such a mistake remains un-rectified, for reasons best known to them. That means, the respondents also are conscious that that was not a mistake and the applicant is entitled to get Grade Pay of Rs.4600/-from 1.1.2006 on implementation of the 6th Central Pay Commission.

16. Our attention has also been drawn to the orders of this Tribunal in O.A No.668/2016 dated 10th January, 2023, in which one of us (the learned Administrative Member) is a party. Moreover, this Bench had occasion to consider such a plea in O.A No.407/2020 where also we upheld the claim of a similarly placed person and held that he is entitled to get Grade Pay of Rs.4600/-with

effect from 1.1.2006. The applicant in O.A 407/2020 also had come into service in 2001. On these lines, we have no doubt in our mind that the applicant is entitled to get Grade Pay of Rs.4600/- with effect from 1.1.2006. Held Accordingly.

17. Turning to the other aspect, it has come out that the applicant was granted 1st MACP with effect from 10.12.2011. Therefore, he should have been granted immediate higher Grade Pay in the hierarchy of the recommended Pay Bands and Grade Pay on granting the first MACP as envisaged in the MACP Scheme. That means, on grant of the first MACP, he should have been granted the Grade Pay of Rs.4800/- with effect from 10.12.2011. We declared accordingly.

18. Turning to the second question as to whether he is entitled to get promotion as Hindi Officer or Assistant Director (Official Language), we have no doubt that the claim has no basis. As rightly pointed out by the learned Standing Counsel, promotion cannot be granted, as a matter of course, after completion of 8 years of service. It may be true that a Hindi Translator having 8 years of service is entitled to get promotion as Hindi Officer or Assistant Director who possesses necessary qualifications, but there is no such promotion as a matter of right. It is not a time bound promotion. That depends upon various other factors like existence of vacancies, seniority, qualifications and clearance given by the Departmental Promotion Committee etc. Here, the applicant was put in charge of the Hindi Officer, but it is to be seen that there is only one post of Hindi Translator in Doordarshan Kendra, Thiruvananthapuram. Therefore, it is too much to claim that he should be promoted as Hindi Officer/Assistant Director taking into account his qualification and academic brilliance.

19. There is also no substance in the claim of equal pay for equal work. He was only holding additional charge of the Hindi Officer/Assistant Director as the case may be. That does not ipso facto enable him to claim the higher scale of the Assistant Director. But now, by order dated 30.6.2023, he stands promoted Assistant Director. Therefore, this part of the claim is rejected.

20. In the result, the Original Application is allowed in part. The respondents are directed to grant the applicant Grade Pay of Rs.4600/- with effect from 1.1.2006 and Rs.4800/- with effect from 10.12.2011. The respondents shall work out the arrears and disburse within a period of 90 days from the date of receipt of a copy of this order.

21. The Original Application is disposed of as above. No costs.

(Dated this the 8th day of September, 2023)