

(2019) 01 CAT CK 0115
In the Central Administrative Tribunal
Case No : Original Application No. 2623 Of 2017

Sharda Malhotra

APPELLANT

Vs

Union Of India through And Ors

RESPONDENT

Date of Decision : 07-01-2019

Acts Referred:

Central Civil Services (Revised Pay) Rules, 2008 — Rule 8(1), 13(i), 13(ii)
Central Civil Services (Conduct) Rules, 1964 — Rule 4

Citation : (2019) 01 CAT CK 0115

Hon'ble Judges : Praveen Mahajan, Member (A)

Bench : Single Bench

Advocate : S.M. Garg, Manish Kumar

Final Decision : Dismissed

Judgement

1. Briefly stated, the facts of the current O.A. are that the applicant joined Directorate General of Quality Assurance (Electronics) as Assistant Foreman in 1983. The applicant was promoted to the post of Foreman in 1996. According to VIth CPC, cadres of Assistant Foreman and Foreman had been merged. The applicant was promoted to the post of Junior Scientific Officer, Class-B gazette post, on 17.01.2006. On the recommendation of DPC for grant of MACP, the applicant was granted 2nd MACP in the pay scale of Rs. 9300-34800/- with Grade Pay of Rs.5400/- in PB-2 w.e.f. September, 2008. In January, 2011, the applicant was promoted as Senior Scientific Officer-II, Class-A gazette post in PB-3 in the pay scale of Rs.15600-39100/- with Grade Pay of Rs.5400/-.

2. The applicant Controller of Quality Assurance, (Electronic Warfare), Ministry of Defence on 16.05.2012, on approval of pay fixation on promotion by CDA, Secunderabad of two officers as SSO, granted annual increment @3% of present PB+GP presumably in terms of Rule-13(ii) of CCS (Revised Pay) Rules, 2008.

2.1 It is submitted that as per O.M. dated 07.01.2013 of Government of India, Ministry of Finance, Deptt. of Expenditure, it has been prescribed that:-

"3. In view of the provisions which existed prior to 01.01.2006, the matter has been considered and the President is pleased to decide that in cases of promotion from one post of another where the promotional post carries the same Grade Pay as the feeder post, the fixation of pay in such cases will be done in the manner as prescribed in Rule-13(i) of the CCS (RP) Rules, 2008....."

A clarification received in this regard dated 08.09.2014, from the office of the Principal Controller of Defence Accounts, Bangaluru stipulates that:-

"Officers who were granted 3rd MACP and placed in the Grade Pay of Rs.5400/- in Pay Band 2 and on promotion carrying the same Grade Pay but placed in Pay Band 3 can be granted one increment under the provisions contained in Rule 13(i) of CCS (RP) Rules 2008 subject to fulfillment of other criteria."

3. The applicant avers that Ernakulam Bench of this Tribunal in OA-09/2012 vide order dated 01.01.2013 has held as under:-

"8.1 Consequent upon the implementation of Sixth CPC's recommendations, grade pay of Rs.5400 is now in two pay bands viz. PB-2 and PB-3. The grade pay of Rs.5400 in PB-2 and Rs.5400 in PB-3 shall be treated as separate grade pays for the purpose of grant of upgradations under MACP Scheme."

Since in the case of the applicant on promotion to the post of SSO-II there is change of Pay Band from PB-2 to PB-3 and Group-B to Group-A and also the change in the pay scale from Rs. 9300-34800/-to Rs.15,600-39100/- the issue of fixation of pay on promotion of the applicant as per Rule 13(i) of CCS (RP) Rules, 2008 was taken up with the Controller of Defence Accounts, Delhi Cantt., who subsequently referred the case to PCDA, Chandigarh. However, vide letter dated 12.11.2014, PCDA, Chandigarh advised for no further fixation of pay at the time of regular promotion as per DoP&T letter No. 35034/3/2008-Estt.(D) dated 19.05.2009.

3.1 The applicant states that this letter stands clarified vide OM dated 07.01.2013, which clearly lays down the criteria regarding fixation of pay on promotion to a post carrying higher duties and responsibilities but carrying the same Grade Pay.

4. The applicant has submitted that similarly placed officers like Mr. A.B. Biswas, SSO-II and Mr. R.V. Deshmukh, SSO-II from CQA (EW) Secunderabad, Mr. V.L. Pranjeepay, SSO-II from SQAE(L&S), Chandigarh and Mr. B. Veerbhadrappa from CQA)R-Bangalore were granted promotional increment. On his (the applicant) representation dated 08.01.2016 to respondent No.2, the respondent No.3 asked respondent No.4 to re-examine the case with reference to clarification issued vide OM dated 07.01.2013 and to take immediate action as prescribed in Rule-13(i) of CCS (RP) Rules, 2008. Para-8.1 of DoP&T O.M. dated 19.05.2009 was also referred to.

4.1 Thereafter, the applicant was granted the increment benefit of 3%, and paid arrears. However, due to a representation of one Sh. Taposh Kumar Bose,

Kolkotta vide communication dated 04.10.2016, respondent No. 3 directed respondent No.4 to review the pay fixation of the applicant. Resultantly, vide the impugned communication dated 18.10.2016, the incremental benefit of 3% granted to the applicant was withdrawn.

4.2 The applicant again represented on 27.10.2016 to respondent No.2 for reexamining her case. Vide communication dated 11.01.2017 sent to respondent No.3, respondent No. 4 opined that since 3% incremental benefit has already been granted on account of financial upgradation in grade pay of Rs.5400/- under MACP w.e.f. 01.09.2008, no case exists for grant of similar incremental benefit at the time of regular promotion to the grade of SSO-II with grade pay of Rs.5400/- (PB-3) from the post of JSO with grade pay of Rs.5400/- in PB-2.

4.3 The applicant again represented on 31.01.2017 to respondent No.2 referring to decisions of the Tribunal including the order dated 01.01.2013 in the case of G.R. Mahesh and O.M. dated 07.01.2013. However, respondent No.3 vide impugned order dated 10.03.2017 rejected applicant's representation dated 31.01.2017. Respondent No.2 vide impugned communication dated 03.04.2017 rejected her representations stating that the issue has thoroughly been examined by PCDA (WC) Chandigarh and the stand taken explained by their office as elaborated in letter dated 10.03.2017.

5. Aggrieved, the applicant has filed this O.A. seeking the following relief:-

"(a) quash and set aside impugned communications dated 04.10.2016, 18.10.2016, 11.01.2017, 10.03.2017 and 03.04.2017.

(b) pass an order directing respondents to restore to the applicant the incremental benefit of 3% w.e.f. 03.01.2011 on her promotion to SSO-II, earlier granted to her consequent to proposal dated 07.04.2016 of Respondent No.4 and concurrence dated 05.05.2016 of Respondent No.3 but subsequently withdrawn after impugned communication dated 04.10.2016 of Respondent No.3.

(c) pass an order directing respondents to pay all arrears with appropriate interest to the applicant arising from the grant of incremental benefit of 3%."

6. In the counter affidavit without disputing the facts of the case, the respondents have submitted that the applicant was promoted as SSO-II (Rs.15600-39100) with GP of Rs.5400/- w.e.f. January, 2011. After being promoted to the post of SSO-II, she claimed and got increment @3%, which is in contravention to Rule-4 of DoP&T O.M. No. 35034/3/2008-Estt.(D) dated 19.05.2009. On complaint of a similarly placed officer (Sh. T.K. Bose), the issue was re-examined and pay fixation of the applicant was nullified/cancelled.

7. I have gone through the facts of the case carefully and considered the rival contentions of both sides. The applicant in the OA was granted second MACP in PB-2 with pay scale of Rs.9300-34800/- in the Grade Pay of Rs.5400/- in September, 2008. Subsequently, the applicant was promoted as Senior Scientific Officer-II (SSO-II), a Class-A gazette post in PB-3 with pay scale of

Rs.15600-39100/- in Grade Pay of Rs.5400/-.

7.1 The applicant relies heavily on Rule 8.1 of O.M. dated 19.05.2009 (Annexure-I) wherein it is laid down that:-

"The grade pay of Rs.5400 in PB-2 and Rs.5400 in PB-3 shall be treated as separate grade pays for the purpose of grant of upgradations under MACP Scheme."

The contention of the applicant is that since both in PB-2 and PB-3 the Grade Pay of Rs.5400/- has been held as "separate Grade Pay" for the purpose of grant of upgradation under MACP, she is entitled to the incremental benefit of 3% w.e.f. 03.01.2011 on her promotion as SSO-II.

7.2 The applicant avers that she is entitled for fixation of pay as per Rule-13.1 of CCS (RP) Rules, 2008 and grant of incremental benefit of 3% irrespective of the fact that she had got the said benefit with Grade Pay of Rs.5400/- under MACP. Rule-13(i) of the Revised Pay Rules of Notification dated 29.08.2008 stipulates that:-

"One increment equal to 3% of the sum of the pay in the pay band and the existing grade pay will be computed and rounded off to the next multiple of 10. This will be added to the existing pay in the pay band. The grade pay corresponding to the promotion post will thereafter be granted in addition to this pay in the pay band. In cases where promotion involves change in the pay band also, the same methodology will be followed. However, if the pay in the pay band after adding the increment is less than the minimum of the higher pay band to which promotion is taking place, pay in the pay band will be stepped to such minimum."

8. In my view, Rule-8.1 of MACP and Rule-13(i) of the Revised Pay Rules relied upon by the applicant do not really come to the aid of the applicant in view of Rule-4 of O.M. dated 19.05.2009. The aforementioned Rule, clearly lay down that:-

"There shall, however, be no further fixation of pay at the time of regular promotion if it is in the same grade pay as granted under MACPS. However, at the time of actual promotion if it happens to be in a post carrying higher grade pay than what is available under MACPS, no pay fixation would be available and only difference of grade pay would be made available. To illustrate, in case a Government Servant joins as a direct recruit in the grade pay of Rs.1900 in PB-I and he gets no promotion till completion of 10 years of service, he will be granted financial upgradation under MACPS in the next higher grade pay of Rs.2000 and his pay will be fixed by granting him one increment plus the difference of grade pay (i.e. Rs.100). After availing financial upgradation under MACPS, if the Government servant gets his regular promotion in the hierarchy of his cadre, which is to the grade of Rs.2400, on regular promotion, he will only be granted the difference of grade pay between Rs.2000 and Rs.2400. No additional

increment will be granted at this stage."

In the instant case, the applicant got her regular promotion to the grade pay of Rs.5400/- on regular promotion from PB-2, which carried the same grade pay of Rs.5400/-. In other words, there is no difference of grade pay in PB-2 and PB-3. Hence, no additional increment can be granted to her at this stage. It has rightly been contended that Rule-13(i) of the Revised Pay Rules, 2008, which is the basis of grant of promotional increment only deals with methodology of fixation of pay on promotion on or after 01.01.2006 from one grade pay to another and not for grant of incremental benefit on promotion in the same grade pay.

8.1 The applicant has also stated that some other similarly placed persons have been granted this benefit, namely, Mr. A.B. Biswas, SSO-II and Mr. R.V. Deshmukh, SSO-II from CQA (EW) Secunderabad, Mr. V.L. Pranjeepay, SSO-II from SQAE(L&S), I presume that the respondents are taking steps to rectify the error, if any, in case these officers are similarly placed.

9. In view of the aforesaid discussions, the relief sought by the applicant to restore the incremental benefit of 3% on her promotion to SSO-II earlier granted to her cannot be accepted. The cancellation of erroneous pay fixation in respect of the applicant is correct in terms of Rule No.4 of Annexure-I of DoP&T O.M. No. 35034/3/2008-Estt.(D) dated 19.05.2009. O.A. is accordingly dismissed. No costs.