

(2018) 09 CAT CK 0084

In the Central Administrative Tribunal

Case No : Original Application No. 1988 Of 2014

Shashi Kumar Sharma And Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 20-09-2018

Acts Referred:

Citation : (2018) 09 CAT CK 0084

Hon'ble Judges : V. Ajay Kumar, J;A.K. Bishnoi, Member (A)

Bench : Division Bench

Advocate : S.K. Gupta, D.S. Mahendru

Final Decision : Dismissed

Judgement

A.K. Bishnoi, Member (A)

1. Briefly stated, the facts of the case as per the applicants are as follows:-

(i) The applicants were recruited as Stenographer Grade- III initially in the office of respondents in the pay scale of Rs.4000-6000 but on different dates.

(ii) On completion of 12 years of service, some of the applicants were not promoted as Stenographer Grade-II and given the pay scale of Rs.5000-8000 as a result of 1st financial upgradation while some of the applicants were promoted as Stenographer Grade-II. The promotional scale of the applicants was the same as that of the 1st financial upgradation.

(iii) Some of the applicants were given 2nd financial upgradation as on 09.08.1999 on completion of 24 years of service in terms of the Assured Career Progression (ACP) Scheme dated 09.08.1999.

(iv) The applicants have given details joining, promotion, grant of 1st upgradations as also the dates superannuate. of dates of birth, and 2nd financial on which they

(v) The applicants have cited para-5 of Annexure-I of the MACP Scheme dated

19.05.2009, which is relating to ignoring or considering promotions/upgradations under the earlier ACP Scheme in determining grant of benefits under the MACP Scheme. The claim of the applicants is that due to the merger of certain pay scales as per the recommendations by the 6th Central Pay Commission (CPC), the promotion and financial upgradation that they have got under ACP Scheme are to be ignored and they are entitled to get 1st, 2nd and 3rd financial upgradations. As per this claim through 1st financial upgradation they should be placed in the grade pay of Rs.4600/-, by the 2nd financial upgradation in the grade pay of Rs.4800/-and by the 3rd financial upgradation in the grade pay of Rs.5400/-, since they are, at present, in the grade pay of Rs.4200/-. In this regard representations were submitted but no relief has been granted.

(vi) The applicants have cited an order of Ernakulam Bench of this Tribunal in the case of T.P. Leena v. Union of India & Ors., [OA No.107/2011, dated 27.09.2011], as affirmed by the Hon"ble High Court of Kerala at Ernakulam [O.P. (CAT) No.467/2012 decided on 21.06.2012] and the Hon"ble Supreme Court in Union of India & Ors. v. T.P. Leena, [SLP (Civil) No. 28536/2012, decided on 15.10.2012].

2. The applicants have in their grounds stated that:

2.1 The impugned order dated 02.07.2013 is bad in law and fact.

2.2 As per Modified Assured Career Progression (MACP) Scheme they are entitled to get financial upgradation ignoring the promotion/financial upgradation already received under the ACP Scheme.

2.3 The applicant"s have further referred to the judgment in the case of T.P. Leena (supra), as affirmed by the Hon"ble High Court of Kerala and subsequently by the Hon"ble Apex Court.

3. In view of the above, the applicants have sought the following reliefs:

"(i) Quash and set aside the impugned order dated 02.07.2013 (Annexure A-1) and also quash and set aside the action of the respondents in not placing the applicant in the grade pay of Rs.5400/- towards 3rd financial upgradation w.e.f. 01.09.2008 and thereafter in respect of each of the applicants on completion of 30 years of service;

(ii) Direct the respondents to place the applicants in grade pay of Rs.5400 towards 3rd financial upgradation on completion of 30 years of service as on 01.09.2008 or thereafter in respect of each of the applicant and award all consequential benefits like difference of pay and arrears and also revision of pension in respect of retired applicants."

4. The respondents in their counter-affidavit made the following submissions which, in brief, are as under:

4.1 Initially on the recommendations of 6th CPC, the pre-revised pay scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 were merged into a single

grade pay of Rs.4200/-. Subsequently, the Ministry of Finance vide OM dated 13.11.2009 decided that the posts which were in the pre-revised scale of Rs.6500-10500 as on 01.01.2006 and were granted the normal replacement pay structure in the grade pay of Rs.4200/- in PB-2 will be granted grade pay of Rs.4600/- in PB-2 corresponding to pre-revised pay scale of Rs.7450-11500 w.e.f. 01.01.2006.

4.2 After introduction/implementation of MACP Scheme, the benefits of 1st, 2nd and 3rd financial upgradation under the MACP Scheme have been allowed to the applicants w.e.f. 01.09.2008 or on completion of 10/20/30 years of continuous regular service, whichever is later in the grade pay of Rs.4200/-/Rs.4600/-/Rs.4800/- in PB-2 respectively in terms of para-5 of the Scheme.

4.3 The applicants have been allowed the benefit of financial upgradations under the ACP/MACP Schemes from time to time and they have not been deprived in granting of due benefits.

4.4 Regarding the case of T.P. Leena (supra), it has been submitted that she joined on 30.09.1990 as Hindi Translator in Cochin Base of Fishery Survey of India in the pre-revised pay scale of Rs.1400-2300 (Rs.5000-8000 5th CPC) which was an isolated post - a "stand alone" post with no post of feeder or promotional grade.

After completing 12 years of service she was granted 1st financial upgradation under the ACP Scheme on 30.03.2002 in the pay scale of Rs.5500-9000. However, she was granted the grade pay of Rs.4800/- in PB-2 as 1st financial upgradation, ignoring the grade pay of Rs.4600/- in compliance of the judgment of the Ernakulam Bench/Hon"ble High Court/Hon"ble Supreme Court. In this regard it is also submitted that the DoP&T has not issued any instructions/rules on the basis of the said judgment so far.

4.5 It is submitted that the claims of the applicants for grant of 1st, 2nd and 3rd financial upgradations under MACP Scheme in the grade pay of Rs.4600/-, Rs.4800/- and Rs.5400/-, ignoring Rs.4200 (granted as 1st financial upgradation under MACP Scheme) keeping in view the ratio laid down by the Tribunal in the case of T.P. Leena (supra) as affirmed by Hon"ble High Court and Hon"ble Apex Court are not correct in the eyes of law, as the applicants herein are not working in the "stand alone" post and they have been granted all the due benefits of financial upgradation under the ACP/MACP Schemes.

5. The applicants have filed rejoinder to the reply filed on behalf of the respondents therein they have more or less reiterated their averments made in the OA.

6. Heard the learned counsel for both the parties and perused the pleadings on record.

7. The main point of determination in the present case is whether the case of the applicant is covered by Para-5 of Annexure-1 of the Scheme dated 19.05.2009,

which is reproduced as below:-

"5. Promotions earned/upgradations granted under the ACP Scheme is 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-I

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 promotions/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."

8. A plain reading of the provision makes it clear that it is confined to those situations where two or more scales have been merged into one scale and in such cases any promotion or financial upgradation from any of these scales, which are now merged, to the other would have to be ignored for the purpose of grant of benefit under MACP Scheme.

The illustration fully brings out the underlying logic and that is that when two or more scales are merged, persons who moved from one to a higher one stand on the same footing as those who did not. Hence such movement cannot be viewed as promotion and would be ignored for grant of further benefits under MACP.

9. In the case of the applicants, they were initially recruited in the pay scale of Rs. 4000-6000 and subsequently some of them were given 1st financial upgradation on completion of 12 years of service and some were given 2nd

financial upgradation on completion of 24 years of service. It is clear that the scale of Rs.4000-6000 in which the applicants were initially recruited has not been merged with the pay scale of Rs.5000-8000. Thus, financial upgradation from the scale of Rs.4000-6000 to Rs.5000-8000 is definitely not covered by the provision of Para-5 of MACP Scheme referred to above. This being the case the 1st financial upgradation cannot be ignored for the purpose of giving benefits under the MACP Scheme. Hence, grant of grade pay of Rs.4200/- has to be taken as 1st financial upgradation. The 2nd & 3rd financial upgradation would be to Rs.4600/- and Rs.4800/- respectively and the claim of the applicants for grant of 3rd financial upgradation in the grade pay of Rs.5400/- w.e.f. 01.09.2008 is totally devoid of merit.

10. As far the case law cited it is based on an entirely different set of facts. Hence no reliance can be placed for determining the outcome of the present matter.

11. In view of the above, the OA stands dismissed accordingly. No order as to costs.