

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.864/2014

Wednesday, this the 12th Day of March of 2014

Hon'ble Mr. G George Paracken, Member (J)
Hon'ble Mr. Shekhar Agarwal, Member (A)

1. Shri Om Prakash
S/o Sh. Naidar Singh
R/o 3/76, NCERT Campus
NCERT, Sri Aurobindo Marg, New Delhi-16
2. Shri Sunil Kumar
S/o Shri Mehkaar Singh
R/o 30/9-A, Hari Om Gali No.1
Babar Pur, Shahadara, Delhi 110032
3. Shri Prakash Veer Singh
S/o Shri Jai Singh
R/o M-2618, Gali No.8
Bihari Colony, Shahadra
Delhi-32.

.Applicants

(By Advocate: Shri M.K. Bhardwaj)

VERSUS

1. Secretary (NCERT)
Sri Aurobindo Marg
New Delhi 110016.
2. The Secretary
Ministry of Human Research & Development
Shastri Bhawan, New Delhi.
3. The Secretary
DOP&T
North Block, New Delhi.

..Respondents

(By Advocate: Shri Anand Nandan)

Order (Oral)

Shri G. George Paracken:

The applicants in this Original Application are aggrieved by the alleged, arbitrary and discriminatory action of the respondents in not giving them the pay scale of Rs.9300-34800 with grade pay of Rs.5400/- as given to similarly placed persons/counterparts who were appointed as Production Assistants by following the same method of recruitment and the same rules as applicable to them. They have, therefore, made several representations to the Respondents to grant them also the same benefits. In response to their last representation dated 19.09.2013, the Respondents have issued the impugned Office Memorandum dated 26.11.2013. Both the said representation and Office Memorandum are reproduced as under:-

To
The Under Secretary
E-III Section
NCERT, New Delhi.

Subject: **Grant of MACP on Promotional Hierarchy.**

Sir,

Kindly acknowledge my correspondence(s) dated 23.09.2010, 7.2.2011, 1.3.2011 & 15.6.2011.

Now, the Hon'ble Supreme Court has dismissed the Petition(s) for Special leave to Appeal (Civil) (CC 7467/2013) filed by the Government, and upheld the judgement passed by the Punjab and Haryana High Court in CWP No. 19387/19.10.2011 and Hon'ble CAT, Principal Bench, New Delhi in OA No.904/2012 dated 26.11.2012. Hon'ble CAT, Chandigarh Bench, in OA No.1038/CH/2010 dated 31.05.2011 and has issued the following Order on dated 14.09.2013.

“the eligible government servants are to be placed in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay and not merely in the next higher pay scale of pay as per the recommendations of the 6th Pay Commission.”

(Copy of all the Orders from Supreme Court/High Court are enclosed herewith for reference.)

In my earlier correspondences, I have already mentioned that my other colleagues have been placed in their next attached grade of Rs.5400/- after grade pay of Rs.4,200/- i.e. the promotional hierarchy of a Production Assistant lies in the next grade pay of Rs.5,400/-. (This has already been explained in detail in my earlier correspondences.)

Accordingly, I also represent my case that I too be placed in my next attached promotional hierarchy, which is Rs.5400/- and not Rs.4,600/- (as recommended in the 6th Pay Commission). Since the said post of Production Assistant is next attached to their promotional hierarchy Rs.5400/- which is an Assistant Production Officer Grade (Promotional hierarchy).

Establishment Section is requested to kindly grant me the next promotional hierarchy grade pay of Rs.5,400/- as per the Order of Honble Supreme Court dated 14.09.2013, which is explained above.

Thanking you,

Yours faithfully,

(Om Prakash)
Production Assistant
Publication Division (PW)

No.F.14-3/2011-E.III/MACP(Pt.)
National Council of Educational Research & Training
Sri Aurobindo Marg, New Delhi 110016

New Delhi, the 26th November, 2013

Office Memorandum

Reference his application dated 19th September, 2013 for grant of financial up-gradation in the promotional hierarchy as per the judgement of Punjab and Haryana High Court in CWP No.19387 of 2011 and upheld by the Supreme Court in SLP (CC 7467/2013) and not in the next higher pay as per 6th Central Pay Commissions recommendation.

No clarification/circular for compliance of the said judgement is received from DOP&T till date. Hence, his request for grant of financial up-gradation under MACPS in the hierarchical post as per the judgement cannot be acceded to.

This issue with the approval of the Competent Authority.

(S.D. Singh)
Under Secretary, E.III

Shri Om Prakash,
Production Assistant
Publication Division, NCERT.

2. The applicants have, therefore, filed this OA seeking the following reliefs:-
 - (a) To declare the action of the respondents in not granting the scale of Rs.9300-34800 (PB-2) with Grade Pay of Rs.5400 as given to similarly placed persons to the applicants as illegal and arbitrary.
 - (b) To direct the respondents to grant scale of Rs.9300-34800 with Grade Pay of Rs.5400 as 1st financial up-gradation to the applicants under MACP from due date with all arrears of pay.
 - (c) To declare the OM/MACP dated 19.05.2009 as unconstitutional to the extent the same deny the next promotional scale attached to the promotion post as 1st, 2nd & 3rd financial up-gradation as illegal, arbitrary and unjustified.
3. In our considered view, once an order has been passed by this Tribunal and it has also been upheld at the level of the Supreme Court, there is no question of waiting for an approval from any Govt. department for implementation of the same. The respondents, therefore, should have considered the representations of the applicants on merits.
4. In view of the above position, we dispose of this OA at the admission stage itself with the direction to the respondents to consider the representations of the applicants in the light of the judgment of Punjab and Haryana High Court in CWP No.19387/2011 (supra) as upheld by the Apex Court in SLP (CC) No.7467/2013(supra) and decide their cases under intimation to them. The aforesaid exercise shall be completed within a period of one month from the date of receipt of a copy of this order. There shall be no order as to costs.

(Shekhar Agarwal)
Member(A)

(G. George Paracken)
Member (J)