

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 4070/2015

Reserved on: 10.08.2016
Pronounced on: 19.08.2016

Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)

S.K. Dasgupta, aged 60 years
S/o Late Shri S.C. Dasgupta
Sr. Engineering Assistant
O/o ADG (E-NZ)
All India Radio & Doordarshan
Jamnagar House, New Delhi
R/o Flat No.S-3, Plot No.4, Sector-6
Vaishali, Ghaziabad-201010

.... Applicant

(By Advocate : Shri Yogesh Sharma)

Versus

1. Union of India through the Secretary,
Ministry of Information and Broadcasting
Govt. of India, Shastri Bhawan,
New Delhi-110001
 2. Director General
All India Radio,
Akashvani Bhawan, Sansad Marg
New Delhi
 3. The Additional Director General (E) (NZ)
Akashwani & Doordarshan
Jamnagar House, Shahjahan Road,
New Delhi
 4. The Senior Accounts Officer
O/o Additional Director General (E) (NZ)
Akashwani & Doordarshan
Jamnagar House, Shahjahan Road,
New Delhi
- Respondents

(By Advocate : Shri Subhash Gosain, for Respondent 1
Shri Suvesh Kumar, for Respondents 2 to 4

ORDER

Mr. P.K. Basu, Member (A)

The applicant was appointed as Technician with effect from 16.10.1978 in Akashvani/ Doordarshan. He was subsequently promoted to the post of Senior Technician/ Engineering Assistant with effect from 29.01.1990 and further to the post of Senior Engineering Assistant with effect from 12.01.2004. He retired on attaining the age of superannuation on 31.10.2015.

2. The Engineering Assistants were placed in the grade of Rs.6500-10500 and the Senior Engineering Assistants in pay scale of Rs.7450-11500. The case of the applicant is that the pay scales of Rs.6500-10500 and Rs.7450-11500 have been merged by the 6th Pay Commission and granted the pay grade of PB-II plus Grade Pay of Rs.4600/-. According to the applicant, he completed 30 years of service with effect from 30.06.2008 and, therefore, he is entitled to third upgradation under Modified Assured Career Progression (MACP) Scheme as the pay scales of Engineering Assistants and Senior Engineering Assistants have been merged and para 5 of the MACP guidelines is quoted below:

"5. Promotions earned/upgradation 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."

3. Learned counsel for the applicant argued that in view of para 5 of MACP guidelines, the promotion from Engineering Assistant to Senior Engineering Assistant has to be ignored for the purpose of MACP and he should be granted third financial upgradation in the Grade Pay of Rs.4800/-. In fact, vide order dated 5.05.2010, the respondents had granted him third financial upgradation in Grade Pay of Rs.4800/- but withdrew it later vide order dated 28.10.2015. Hence, this OA has been filed seeking relief to quash the impugned order dated 28.10.2015, declaring it illegal, arbitrary and discriminatory and declaring to the effect that the applicant is entitled to Grade Pay of Rs.4800/- from due date with all consequential benefits, including refund of any recovered amount with interest.

4. Learned counsel for the respondents states that originally Engineering Assistants and Senior Engineering Assistants were in the pay scale of Rs.5000-8000 and Rs.5500-9000. The scales of these posts were, however, upgraded to Rs.6500-10500 and Rs.7450-12000 by the Ministry of I&B order dated 25.02.1999 and government employees currently in service of Prasar Bharati were given an option whether they would like to continue in Prasar Bharati in upgraded scale or revert as government servants, in which situation they will not be entitled to upgraded scales.

5. The applicant was promoted as Senior Engineering Assistant in the upgraded pay scale of Rs.7450-12000 through DPC vide order dated 26.12.2003. It is stated that the

Department of Expenditure vide order dated 13.11.2009 provided that posts which were in the pre-revised scale of Rs.6500-10500 as on 1.01.2006 and which were granted the normal replacement pay structure of grade pay of Rs.4200 in pay band PB – 2 will be granted grade pay of Rs.4600/- in pay band – 2 corresponding to the pre-revised scale of Rs.7450-11500 with effect from 1.01.2006 and in case a post already exists in the pre-revised scale of Rs.7450-11500, the posts being upgraded from the scale of Rs.6500-10500 should be merged with the post in the scale of Rs.7450-11500. The respondents have clarified that in this regard no order of merger of posts has been issued by them. In fact, the respondents have drawn our attention to letter dated 8.09.2014 (Annexure R-4) in which, Ministry of I&B has clarified as follows after obtaining DoP&T's advice:

"3. In this connection, it is informed that in another case referred to DoP&T for seeking advice as to whether the benefits under the MACPS are allowed in the Grade Pay hierarchy, any up-gradation availed during their career would be counted against the three up-gradation permissible under the MACPS, DoP&T vide its ID No.47539/13/CR dated 10.07.2013 had opined that 'as the benefits under the MACPS are allowed in the Grade Pay hierarchy, any up-gradation availed during their career would be counted against the three up-gradation permissible under the MACPS'."

6. Learned counsel for the applicant has placed before us copy of order of this Tribunal in OA 1118/2015, which was disposed of on 31.03.2016. That OA was filed by similarly placed person who was an Engineering Assistant, promoted as Senior Engineering Assistant. She was seeking first and second

financial upgradations under ACP Scheme in Grade Pay Rs.4800/- and Rs.5400/- and third upgradation under MACP Scheme primarily on the ground that since pay scales of Engineering Assistant and Senior Engineering Assistant were merged vide Ministry of Finance letter dated 13.11.2009, that should be ignored for the purpose of MACP upgradation. The Tribunal held that since the pay scales were merged, it should be ignored for the purpose of MACP. We find that the Tribunal in its order had also considered letter dated 8.09.2014, pointed out by the learned counsel for respondents.

7. We have heard the learned counsel for the parties and gone through the pleadings available on record.

8. In view of the decision of the Coordinate Bench of the Tribunal in OA 1118/2015 (supra) in exactly the same issue, the OA is allowed and the impugned order dated 28.10.2015 is quashed and set aside with a direction to the respondents to grant applicant the benefit of 3rd MACP in the Grade Pay of Rs.4800/-. In case any recovery has been made from the applicant, the same shall be refunded. We fix a time frame of 90 days from the receipt of a certified copy of this order for implementation of our directions. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

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