

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

OA 1118/2015

Reserved on: 28.03.2016
Pronounced on: 31.03.2016

Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Smt. Syamali Biswas, aged 60 years
W/o Shri Avijit Biswas
Retired from the post of Sr. Engineering Assistant
All India Radio, Parliament Street, New Delhi
R/o H2/14/G-1/2nd Floor, Bengali Colony,
Mahavir Enclave – I, New Delhi ... Applicant

(Through Shri Yogesh Sharma, Advocate)

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,
Akashwani Bhawan, Sansad Marg,
New Delhi
3. The Deputy Director General (P)(I/C)
Prasar Bharati, All India Radio
Akashwani Bhawan, Sansad Marg,
New Delhi
4. The Senior Accounts Officer
Pay & Accounts Office,
All India Radio,
Akashwani Bhawan, Sansad Marg,
New Delhi-110001
5. The Deputy Secretary,
Department of Personnel & Training,
Establishment (D), North Block,
Govt. of India, New Delhi ... Respondents

(Through Shri B.S. Rawat, Advocate)

ORDER

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

The applicant was appointed as Engineering Assistant (EA) on 3.11.1980 in the pay scale of Rs.5000-8000. She was promoted to the post of Senior Engineering Assistant (SEA) with effect from June 1993 in the pay scale of Rs.5500-9000 and retired from that post on superannuation on 31.12.2014. The pay scales of EA and SEA were upgraded as Rs.6500-10500 and Rs.7450-11500 respectively vide Ministry of Information and Broadcasting (MIB) order dated 25.02.1999. However, these pay scales were applicable not as government employees per se but as government employees currently in service of Prasar Bharati and as and when the employees working in All India Radio and Doordarshan are asked to exercise their option, those who do not opt for Prasar Bharati, will revert as government servants and will no longer be entitled to higher scales. They will also have to refund all benefits availed of by them as a result of grant of higher scales of pay. This is in accordance with their agreement with the government to avail these upgraded scales on this condition only. In fact, due to the above upgradation, these employees were not entitled for Assured Career Progression (ACP). The pay scales of Rs.6500-10500 and 7450-11500 were merged with effect from 1.01.2006 vide Ministry of Finance letter dated 13.11.2009.

2. The applicant was granted second Modified Assured Career Progression (MACP) (as he was granted one upgradation/

promotion from EA to SEA) in the Grade Pay of Rs.4800/- with effect from 1.09.2008 and third MACP (on completion of 30 years of service) in the Grade Pay of Rs.5400/- with effect from 1.07.2010.

3. The controversy arises as a result of the order dated 9.01.2015 issued by the respondents, re-fixing the pay of the applicant in the Grade Pay of Rs.4600/- with effect from 1.01.2006, thus withdrawing the second and third MACP benefits given to her. Challenge has also been made to order dated 29.12.2014 regarding recovery of overpaid amount of pay and allowances. The applicant has prayed for the following reliefs:

“8. (i) That the Hon’ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 9.1.2015 (Annex.A/1) and order dt. 29.12.2014 and consequently pass an order directing the respondents to restore and to grant the first & second financial up-gradations to the applicant w.e.f. 1.1.2006 in Grade Pay of Rs.4800/- and Grade Pay of Rs.5400/- respectively under ACP Scheme and 3rd financial up-gradation under MACP Scheme w.e.f. 3.11.2010 in Pay Band of Rs.15600-39100 + GP 5400 with all consequential benefits including the fixation of pay and retirement benefits and arrears of difference of pay and allowances with interest and refund of recovered amount with interest.”

4. In fact, letter dated 8.09.2014 was written by the MIB to the Chief Executive Officer, Prasar Bharati, stating that the benefits under MACP Scheme are allowed in the Grade Pay of hierarchy and any upgradation availed by an individual during his career would be counted against the three upgradations

permissible under the MACP Scheme. This was as a result of clarification dated 10.07.2013 issued by the Department of Personnel and Training (DoP&T). The bone of contention lies here.

5. The respondents case is that since the applicant got one promotion from EA to SEA and thereafter two upgradations namely 6500-10500 and 7450-11500, she has, in effect, received three upgradations and as per MACP clarification mentioned above, these upgradations will be counted towards MACP. Therefore, the applicant is not entitled to second and third MACP upgradations in the Grade Pay of Rs.4800/- and 5400/-.

6. Per contra, the applicant's argument is that she had opted for Prasar Bharati and given an undertaking which is filed along with the counter affidavit of the respondents that in case she does not opt to become an employee of Prasar Bharati, she will revert to her old pay scales and refund the amount. Her case is that she has now retired from Prasar Bharati and, therefore, there is no question of any recovery. In any case, learned counsel for the applicant states that as per judgment of the Hon'ble Supreme Court in **State of Punjab and others Vs. Rafiq Masih (White Washer) etc.**, 2014 (8) SCALE 613, no recovery could be made in view of para 12 of the judgment, which is reproduced below:

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly

been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

7. On the substantive issue of whether upgradation in pay scales of 6500-10500 and 7450-11500 should be treated as upgradations for the purpose of MACP, it is stated that the Government of India issued Clarification in 2012, which reads as follows:

Doubts	Clarification
27 (iii) If a Government servant recruited in the pre-revised pay scales of Rs.5000-8000 has been promoted in the promotional hierarchy in the pre revised pay scale of Rs.5500-9000 prior to	(iii) the pre-revised pay scales Rs.5000-8000 and Rs.5500-9000 have been merged and placed in PB-2 with grade pay of Rs.4200/- with effect from 1.1.2006. Hence the promotion would be ignored as he has completed his 12 years of regular service and the benefits of 1 st ACP would accordingly be allowed in the promotional

1.1.2006 and he has put in 12 years of regular service, then would there be any claim for financial upgradation under ACPS?	hierarchy in the grade pay of Rs.4600/- w.e.f. 1.1.2006.
(iv) If the above Government servant has put in 22 years as on 31.8.2008, then what would be the entitlement in MACP?	(iv) As given above, the 1 st ACP would be in PB-2 grade pay of Rs.4600/- after ignoring the previous promotion. Thereafter, since employee has completed more than 20 years of regular service on 1.09.2008, he would be entitled for 2 nd financial upgradation under the MACPS in the immediate next higher grade pay of Rs.4800/- in PB-2 subject to fulfillment of conditions as stipulated in Para 17 of Annexure - 1 of MACPS dated 19.5.2009.

It is thus argued that as per Clarification No.27 (iii), the promotion of the applicant in pay scales of 6500-10500 and 7450-11500 should be ignored and she should be granted at least second financial upgradation with effect from 1.01.2006 in Grade Pay of Rs.4800/- under ACP Scheme and third financial upgradation with effect from 3.11.2010 in Grade Pay of Rs.5400/- under MACP Scheme. In this regard, the applicant also relies on order dated 11.03.2015 in OA 3038/2013, **D.S. Rawat and others Vs. Union of India and others** where the Tribunal held as follows:

"4.2 A mere reading of this para makes it clear that till 31.08.2008 the earlier ACP Scheme was to remain in operation. Under that Scheme on granting financial upgradation, the beneficiaries had to be placed in the scale of the next promotional post. In the case of the applicants that happens to be the post of Engineer in the PB-3 with Grade Pay of Rs.5400. Hence, the applicants No.1 to 6, who completed 12 years of service prior to 01.01.2006, deserve to be placed in PB-2 with Grade Pay of Rs.5400 w.e.f. 01.01.2006. Applicant No.7, who completed 12 years on 29.12.2007, would first be placed in PB-3 with Grade Pay of Rs.4200 on 01.01.2006 and will be granted first financial upgradation under the ACP Scheme to PB-2 + Grade Pay of Rs.5400 on 29.12.2007. This view has also been taken by Chandigarh Bench of this Tribunal in

the judgment mentioned above. Further, on completion of 20 years of service on 01.09.2008 or later the applicants will be eligible for upgradation to Grade Pay of Rs.6600 as second MACP benefit.”

The applicant also relied on order dated 7.09.2009 in O.A.514/2002, **Akashvani & Doordarshan Diploma Engineers Association through its President Shri Brij Kishore Roy Vs. Union of India & others**, decided by the Patna Bench of the Central Administrative Tribunal. It was an OA filed by Engineering Assistants, Senior Engineering Assistants and Assistant Engineers in the Prasar Bharati. Relying on clarification received from the DoP&T that in case of mergers promotion given from lower scale to higher scale would be ignored for the purpose of MACP, the Tribunal allowed the aforesaid OA. The applicant seeks to apply the same logic in the present case.

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

9. Clearly the applicant has got one promotion from the post of EA to SEA. The higher pay scales of Rs.6500-10500 and Rs.7450-11500 the applicant got, was as a result of the order dated 25.02.1999 of upgradation of pay scales to certain category of employees working in Prasar Bharati. This was allowed only to those employees who were working in Prasar Bharati and the pay scales were accepted by the employees on the undertaking that if they revert to the Government of India, they would have to refund the amount. Such situation, however,

does not arise in the case of the applicant herein as she continued to work in Prasar Bharati till her retirement.

10. The question is whether upgradation of pay scales would be counted under MACP or not. There is no dispute that the applicant got one promotion from EA to SEA. Being in Prasar Bharati, she enjoyed the higher pay scales of Rs.6500-10500 and Rs.7450-11500 as a result of the order dated 25.02.1999 of upgradation. Thereafter these two pay scales got merged. In effect, what happened was that Prasar Bharati introduced new pay scales for the existing posts of EA and SEA. It is a kind of pay revision and, therefore, in our view, it cannot be treated as upgradation. Moreover, with the merger of pay scales of Rs.6500-10500 and Rs.7450-11500, in any case, it would not be considered upgradation from Rs.6500-10500 to Rs.7450-11500.

11. Therefore, we are of the opinion that grant of upgraded Grade Pay of Rs.4800/- with effect from 1.09.2008 and Rs.5400/- with effect from 1.07.2010 was in order. This is also consistent in view of the decisions of the Tribunal in D.S. Rawat (supra) and Akashvani & Doordarshan Diploma Engineers Association (supra). In fact, the order in Akashvani & Doordarshan Diploma Engineers Association (supra) has been upheld by the Hon'ble High Court of Patna in C.W. No.6451/2010 and SLP against that has also been dismissed by the Hon'ble Supreme Court. In view of that, impugned orders dated 9.01.2015 and 29.12.2014 are quashed and set aside. The respondents are directed to restore the second and third

financial upgradations to the applicant with effect from 1.09.2008 in the Grade Pay of Rs.4800/- and with effect from 1.07.2010 in the Grade Pay of Rs.5400/-. In any case in accordance with the judgment of the Hon'ble Supreme Court in Rafiq Masih (supra), the respondents are restrained to make any recovery from the applicant. The OA is thus allowed with the above directions. No costs.

(Raj Vir Sharma)
Member (J)

(P.K. Basu)
Member (A)

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