

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

(Under Sec.19 of the Administrative Tribunals Act, 1985)

O. A. NO *qbh* OF 2009

1. S.PRABHU-II
Assistant Accounts Officer,
O/o The Accountant General(A&E).
361-Anna Salai, Teynampet, Chennai 600 018
And 15 others ... Applicants

Vs

Union of India
Rep. by Secretary to Government
Ministry of Personnel, Public Grievances & Pension
(Department of Personnel & Training)
North Block, New Delhi
And 66 others ... Respondents

SYNOPSIS

Conferment of higher status and higher grade pay to the party respondents who are holding lower posts and denying the higher grade pay, status and rank to the applicants by erroneous implementation of the MACP (Modified Assured Career Progression Scheme) scheme - new concept of grade pay and pay band was introduced - second and third respondents implementing the M.A.C.P. scheme have refixed the grade pay of the party respondents at Rs.5400 in Pay Band 2. The action of the second and third respondents in fixing the party respondents in the grade of Rs.5400 and in not conferring the benefits of the said scheme in favor of the applicants is wholly arbitrary and illegal. The resultant position is that the applicants who have been promoted on a regular basis as S. Os and some of them thereafter as A. A. Os and carrying out supervisory functions are continued to remain in the grade pay of Rs, 4800, while the party respondents who continued in the lower post of Senior Accountants have been elevated to the grade pay of Rs.5400. In the above circumstances the applicants are filing this Original Application seeking for the various relief's mentioned

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DETAILS OF APPLICATION

1) PARTICULARS OF THE ORDER AGAINST WHICH THIS APPLICATION IS MADE:

- i) Office Order No. ... 82 issued - Estt./GI. VI/MACPS/2009-10/63
- ii) Date of the order ... 03-08-2009
- iii) Authority by whom passed ... DAG Admn), O/o the AG(A&E),
Tamil Nadu (Third respondents)

SUBJECT IN BRIEF:

Conferment of higher status and higher grade pay to the party respondents who are holding lower posts and denying the higher grade pay, status and rank to the applicants by erroneous implementation of the MACP scheme.

2) JURISDICTION: The applicants humbly submit that the subject matter in this application is well within the jurisdiction prescribed under Sec.3 (q) of the Administrative Tribunals Act, 1985.

3) LIMITATION: The Applicants further submit that his application is filed within the limitation period stipulated under Sec.21 of the Administrative Tribunals Act, 1985.

4) FACTS OF THE CASE:

i) The Applicants are employed in the office of the third respondent and holding the post of Asst. Accounts Officer (hereinafter referred to as A.A.O) and functioning as such in the said office. The Applicants entered the service of the third respondent as clerks, which is the lowest entry level post. After having served in that capacity, for some time, they came to be promoted as Accountants and later as senior Accountants.

ii) The next higher post in the hierarchy was the post of Section Officer (hereinafter referred to as S.O) to which promotions were made from persons who had passed the Section Officers Grade Examination (hereinafter referred to as S.O.G.E). Promotions to the said post of S.O was based on passing S.O.G.E batch seniority.

iii) The applicants had passed the S.O.G.E and therefore came to be promoted as S.Os based on their batch seniority as and when vacancies arose. The Applicants submit that candidates who did not pass the S.O.G.E were not entitled for promotion to the post of S.O and the higher post that they could reach is the post of Supervisor on promotion from the category of Senior Accountant. The Applicants submit that the next higher post to the post of S.O. is the post of A.A.O which carries a higher scale of pay and rank and formed part of Group B Gazetted status. The Applicants respectfully submit that the conditions of service of persons like the applicants serving in the Indian Audit & Accounts Department is prescribed by rules made by the President of India after consultation with the second respondent viz., Comptroller and Auditor General of India, in terms of art. 148(5) of the Constitution of India. In terms of the said Article, the President of India after consultation with the second respondent has made rules and regulations, the method of recruitment to various posts in the department including the posts of A.A.Os & S.O. (Accounts). All the appointments/promotions of the applicants were made in terms of the above statutory rules.

(iv) The Applicants submit that in the year 1999, a scheme known as Assured Career Progression scheme was introduced by the Central Government pursuant to the recommendation of the Vth Pay Commission. The said scheme was evolved to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. The scheme contemplated two financial upgradations, one on completion of 12 years and

another on completion of 24 years of regular service from the date of entry. Such financial upgradation was permissible only if no regular promotions during the above prescribed period of 12 years and 24 years have been availed of by the personnel. The grant of such financial upgradation is subject to the fulfillment of the normal promotional norms. The financial upgradation was given in the next higher grade in accordance with the hierarchy of posts.

(v) The Applicants submit that as per the above A.C.P. scheme, the personnel were entitled to the first benefits of upgradation after 12 years of service subject to their not having got any promotion during the said period. They are further entitled to the second financial upgradation after completion of 24 years of service subject to their not having got the 2nd promotion. The upgradation was to the next higher grade in the hierarchy of posts. The financial upgradation is restricted only to two stages referred to above.

(vi) The Applicants submit that so far there had not been any problem in the implementation of the various orders referred to above. In the year 2009, the Govt. of India introduced a modified A.C.P. scheme known as Modified Assured Career Progression Scheme on the recommendations of the VI Central Pay commission with effect from 1.9.2008. The salient features of the scheme which has given rise to the issues involved in this O.A are as follows:

(A) Grant of 3 financial upgradations on completion of 10, 20 and 30 years of continuous regular service.

(B) The scheme was to be admissible whenever a person has spent 10 years continuous service in the same grade pay.

(C) Financial upgradation was to be done strictly in accordance with the hierarchy of grade pays in the pay band as provided in the C.C.S Revised Pay Rules 2008.

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(ix) The Applicants submit that the implementation of the VI Pay Commission's recommendation resulted in the Revised Pay Rules of 2008 but a new concept of grade pay and pay band was introduced. The said recommendations of the Pay Commission provided for the grade pay in the post of Senior Accountants as Rs.4200/- which was accepted and implemented by the Govt. of India and the said post was included in Pay Band 2.

(vii) The Applicants submit that on account of the implementation of the VI Pay commission recommendations and the revised pay rules, the applicants who were holding the post of A.A.O after having been promoted as such as well as the applicants who were holding the post of S.Os having been promoted as such and came to be integrated and known as A.A.Os and were fixed in the grade pay of Rs.4800 in Pay Band 2.

(viii) The Applicants submit that while matters stood thus, the second and third respondents, while implementing the M.A.C.P. scheme have refixed the grade pay of the party respondents at Rs.5400 in Pay Band 2. The action of the second and third respondents in fixing the party respondents in the grade of Rs.5400 and in not conferring the benefits of the said scheme in favour of the applicants is wholly arbitrary and illegal. The resultant position is that the applicants who have been promoted on a regular basis as S.Os and some of them thereafter as A.A.Os and carrying out supervisory functions are continued to remain in the grade pay of Rs,4800, while the party respondents who continued in the lower post of Senior Accountants have been elevated to the grade pay of Rs.5400. The Applicants submit that the applicants holding supervisory posts and are functional A,A.Os supervising the party respondents. The grade pay determines the rank and status of the personnel including the perquisites and benefits. In the above circumstances the applicants are filing this Original Application seeking for the various reliefs mentioned in the relief column for the following among other grounds

(ix) The Applicants submit that they, being aggrieved by the action of the respondents have made representations to the second and third respondents seeking for the issue of appropriate orders granting them the pay grade of Rs.5400 and maintain the status of the applicants as compared with the party respondents. However no action has been taken on the said representations and hence the applicants are before this Hon'ble Tribunal seeking justice.

5) GROUNDS WITH LEGAL PROVISIONS:

a) The Applicants submit that the party respondents were all recruited as Accountants in the pre-revised scale of Rs.4500 -125-7000. The said party respondents all came to be promoted as Senior Accountants in the pre-revised scale of Rs.5500 -175-9000. The said respondents have not passed the S.O.G. examination and therefore were ineligible for promotion as Section Officers and continued as Senior Accountants. While implementing the A.C.P. scheme, which was in vogue prior to 2008, the party respondents who had completed 24 years of service were entitled to second upgradation and were accordingly upgraded in the scale of Rs.6500-200-10500. The VI Pay Commission recommended grade pay for Senior Accountants as Rs.4200.(Serial no.12/S-11 of Revised scales of pay statement.) The upgradation granted to them under the A.C.P. Scheme in the pre-revised scale of Rs.6500-200-10500 was to be fixed in the revised scales of pay in the grade pay of Rs.4600/- in Pay Band 2. After coming into force of MACP Scheme providing for third financial upgradation on completion of 30 years, they would be entitled to be fixed in the grade pay of Rs.4800/- in Pay Band 2. But contrary to the above principles, the respondents 2 and 3 have treated the erstwhile ACP scheme scale of pay of the party respondents of Rs.6500-200-10500 as equivalent to the scale of the integrated post of SO and AAO and fixed the grade pay of 4800/- and consequently while implementing the

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MACP scheme have advanced them to the pay scale of Rs.5400/-. The above action of the official respondents is clearly inconsistent and contrary to both the revised pay Rules as well as the MACP scheme and hence deserves to be rectified.

b) The Applicants submit that as referred to already, admittedly they are holding the position of Asst. Accounts officers in the regular hierarchy and are supervising the work of their subordinates including the party respondents. The party respondents were holding the post of Senior Accountants which are two stages lower than the post held by the applicants and continued to be so. The implementation of the revised Pay Rules and the MACP scheme by the official respondents is wholly illegal and has resulted in serious anomalies and prejudice to the applications by the applicants being fixed in the grade pay of Rs.4800/- while the party respondents have been fixed in the grade pay of Rs.5400 with all perquisites etc.

c) The applicants submit that as per the Revised Pay rules, 2008, the rules implementing the VI Pay Commission's recommendations, admittedly the grade pay of Senior Accountants is Rs.4200, while the grade pay of Section Officer and Asst. Accounts Officers integrated is Rs.4800/-. The pre-revised pay scales of the above post of Senior Accountant was Rs.5500-175-9000 while that of the Section Officers was 6500-200-10500 and A.A.Os carried the scale of Rs.7450-225-11500. While giving effect to the ACP scheme, in the pre-revised pay scales the Senior Accountants were entitled to Rs.6500-200-10500 on account of second financial upgradation and the corresponding grade pay in the revised pay band would be only Rs.4600. It is on account of the serious infirmity and error committed by the official respondents, the subordinates of the

applicants have been placed in higher grade of pay which is illegal and deserves to be rectified.

d) The Applicants submit that in any event having regard to the fact that the party respondents who were holding the position of Senior Accountants functionally inferior than the applicants cannot be fixed in a grade pay higher than the applicants. The principles laid down in F.R. 22 which provides for removal of anomalies by stepping up the pay of seniors when their juniors happen to draw more pay on promotion will apply in greater force since in the present case the party respondents who are functionally inferiors to the applicants have not even been qualified to be promoted to the position held by the applicants. The Applicants submit that the revised pay rules to the MACP scheme in the manner impugned has resulted in functionally superiors and holding supervisory position to be fixed at a grade pay which is lesser than the grade pay fixed for the party respondents who have not been promoted to the position held by the applicants and who are performing the duties and functions which are supervised by the applicants. The above action cannot be but characterized as wholly arbitrary and irrational and therefore liable to be interfered with by this Hon'ble Tribunal.

e) The Applicants submit that the Office Order No.82 which confers the grade pay of Rs.5400 to the party respondents Nos 4 to 68 who are holding the post of Senior Accountants is therefore wholly illegal and liable to be quashed.

6) EXHAUSTION OF DEPARTMENTAL REMEDIES:

The Applicants declare that there is no other statutory remedy available under relevant service rules.

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7) MATTERS PENDING BEFORE ANY OTHER TRIBUNAL COURTS:

The applicants hereby declare that they had not previously filed any application, writ petition, or suit regarding the matter in respect of which this application has been made before any Court of Law or any other authority or any other bench of the Tribunal nor any such application, writ is pending in any of them.

8) RELIEF SOUGHT FOR:

For the reasons given in paras 4 & 5 above, the Applicants humbly pray before this Hon'ble Tribunal that this Hon'ble Tribunal may be pleased to call for the records related to the impugned office order No.82 Dated 3.8.2009 issued by the 3rd respondent and to quash the same and to direct the respondents to grant the benefit of the MACP scheme in favour of the applicants by fixing their grade as Rs.5400 with effect from the appropriate date and to pass such other order/orders as this Hon'ble Tribunal may deem fit and proper and thus render justice.

9) INTERIM ORDER, IF ANY:

Pending finalization of the above application, it is prayed that this Hon'ble Tribunal may be pleased to stay all further proceedings pursuant to the 3rd respondents proceedings made in office no.82 dated 3.8.2009 so as to enable the applicants to retain the higher status/rank than the party respondents

10) IN THE EVENT OF THE APPLICATION BEING SENT BY RPAD:

Not applicable.

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11) Particulars of the I.P.O:

No. of I P O:

Date of I P O

Payable at:

12) LIST OF ENCLOSURES:

As given in the index to this original application.

VERIFICATION


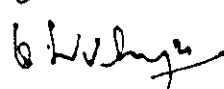
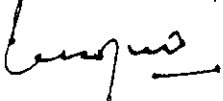
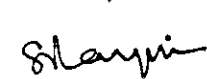
We,

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2. K. SANKARANARAYANAN
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O/o The Accountant General(A&E),
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9. K. JAYASREE
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 10. T.L.SHARADA
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361-Anna Salai, Teynampet, Chennai - 600 018
 16. M.VAIRAMUTHU
Assistant Accounts Officer,
O/o The Accountant General (A&E),
361-Anna Salai, Teynampet, Chennai - 600 018

Do hereby verify that the contents in paras 1 to Except para 5 are true to the best of my knowledge and that in para 5 is believed to be true on legal advice and that we have not suppressed any material facts.

Dated at Chennai on this the 12th day of September 2009.

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|----|--|----------------------|
| 1. |  | S. PRABHU |
| 2. |  | K. SANKARANARAYANAN. |
| 3. |  | A. MUNEEER AHMED |
| 4. |  | S. RANJARAJAN |