

GAHC010186132014



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3818/2014

LALKUMAR EK and 17 ORS
SENIOR DRAFTSMAN, GS 169927, HQ 47 BRTF GREF, C/O 99 APO

2: DALBIR SINGH
SENIOR DRAFTSMAN
GS 157075 L
HQ CE P PUSHPAK
C/O99APO

3: MONYLAL KE
SENIOR DRAFTSMAN
GS 171306 F
HQ CE P SWASTIK
C/O99APO

4: BANARASI DAS
SENIOR DRAFTSMAN
GS 171333 L
HQ CE P SWASTIK
C/O 99 APO

5: JAYANTHAKUMARAN L

SENIOR DRAFTSMAN
GS 171661 Y
HQ 21 BRTF GREF
C/O 56 APO

6: N VELAPPAN
SENIOR DRAFTSMAN
GS 170423 A
HQ CE P DEEPAK
C/O 56 APO

7: VINOD KUMAR GAUR
SENIOR DRAFTSMAN
GS 171725 Y
HQ CE P DEEPAK
C/O 56 APO

8: MOHAN NAIR M
SENIOR DRAFTSMAN
GS 171583 M
HQ CEP HIRAK
C/O 56 APO

9: SUKHDEV SINGH
SENIOR DRAFTSMAN
GS 1716858 Y
HQ DGBR
SEEMA SADAK BHAWAN
RIMNG ROAD
DELHI CANTT
NEW DELHI-10

10: KUSHLA NAND
SENIOR DRAFTSMAN
GS 157074 H
HQ CE P SAMPARK
C/O 56APO

11: TRILOCHAN PRASAD BAHUGUNA
SENIOR DRAFTSMAN
GS 171338 K
HQ CE P SAMPARK
C/O 56 APO

12: PRAKASHAN UN
SENIOR DRAFTSMAN
GS 171741 W
HQ DGBR
SEEMA SADAK BHAWAN
RIMNG ROAD
DELHI CANTT
NEW DELHI-10

13: MANJINDER SINGH
SENIOR DRAFTSMAN
GS 171724 W
HQ CE P VIJAYAK
C/O 56 APO

14: S GOPINATHAN PILLAI
SENIOR DRAFTSMAN
GS 171774 F
HQ CE P ARUNANK
C/O 99 APO

15: RAM KUMAR
SENIOR DRAFTSMAN
GS 171662 F
HQ 1445 BCC GREF
C/O 56 APO

16: GAJENDRA SINGH PAL
SENIOR DRAFTSMAN
GS 171817 L
HQ CE P BACON
C/O 56 APO

17: MONGA PYARE LAL
SENIOR DRAFTSMAN
GS 169934 X
HQ 13 BRTF GREF
C/O 56 APO

18: DARSHAN LAL
SENIOR DRAFTSMAN
GS 158805 X
HQ DGBR
SEEMA SADAK BHAWAN
RIMNG ROAD
DELHI CANTT
NEW DELHI-1

VERSUS

THE UNION OF INDIA and ANR
REP. BY SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF SHIPPING,
ROAD TRANSPORT and HIGHWAYS, BORDER ROADS DEVELOPMENT
BORAD, B WING, 4TH FLOOR, SENA BHAWAN, NEW DELHI

2:THE DIRECTOR GENERAL BORDER ROADS
SEEMA SADAK BHAWAN
RIMNG ROAD
DELHI CANTT NEW DELHI-1

Advocate for the appellants : Mr. U. K. Nair, Senior Advocate
Mr. A. Chakravorty, Advocate.

Advocate for the Respondents : Mr. K. Gogoi, Asstt. S.G.I.

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 06.01.2023

Date of Judgment : 06.01.2023

JUDGMENT AND ORDER (ORAL)

Heard Mr. U. K. Nair, the learned senior counsel assisted by Mr. A. Chakravorty, the learned counsel for the petitioners and Mr. K. Gogoi, the learned Government Advocate appearing on behalf of the respondent Nos.1 & 2.

2. Eighteen writ petitioners have jointly filed the instant writ petition challenging the action of the respondent authorities in not granting them the Grade Pay of Rs.4600-4800 with effect from 01.09.2008 upon implementation of MACPS as well as to grant all consequential service benefits. The petitioners, by way of the instant writ petition, have also sought for a direction upon the respondents to re-fix the pay of the petitioners at the appropriate level after grant of Grade Pay of Rs.4600/- and Rs.4800/- along with a prayer for payment of interest at the rate of 12% against the accrued amount and/or the difference in pay due to deliberate discriminatory action on the part of the respondents.

3. The brief facts of the instant case is that the petitioners herein, except the petitioner Nos.2, 10 & 18, were appointed on various dates in the year 1988. The petitioner No.2 & 10 were appointed on 28.08.1981 and the petitioner

No.18 was appointed on 21.10.1982. All these petitioners were initially appointed as Draughtsman Grade-II. It can also be seen from the record that all these petitioners were also promoted to the post of Draughtsman Grade-I on various dates. The Pay Scale of the petitioners in pursuance of the recommendation of the Fifth Central Pay Commission were revised to Rs.5000-150-8000 with effect from 01.01.1996. It is the case of the petitioners that the Sixth Central Pay Commission recommended for maintaining the relativities of Senior Draughtsman with the post of Junior Engineer (both the posts require Diploma in Engineering or equivalent) and the Chief Draughtsman with direct recruit Engineering Graduate or 100% promotion from Senior Draughtsman. Accordingly, the 6th Pay Commission recommended Pay Scale of Rs.6500-10500 in Pay Band-2 with Grade Pay of Rs.4200/- for the post of Draughtsman Grade-II/Senior Draughtsman which was merged to the Head Draughtsman in the Pay Scale of Rs.5500-9000. Subsequent thereto, in pursuance of the recommendation of the 6th pay Commission, the Government of India published the Central Civil Service (Revision of Pay) Rules, 2008 (hereinafter for short, referred to as the Rules of 2008). In terms with the Rules of 2008, the Pay Scale of Rs.5000-150-8000 was revised to Rs.9300-34800 plus Grade pay of Rs.4200/- with effect from 01.01.2006. Accordingly, the petitioners got the Grade Pay of Rs.4200/- with effect from 01.01.2006. Thereupon, the Government of India, Department of Personnel, Public Grievances and Pension (Department of Personnel and Training) issued an Office Memorandum vide No.35034/3/2008-Estt.(D) dated 19.05.2009 in the name and style of "Modified Assured Career Progression Scheme for the Central Government Employees" to deal with the problem of genuine stagnation and hardships faced by the employees due to the lack of adequate promotional avenues. In terms with the said scheme, there

were three financial upgradations as per the recommendation of the Sixth Pay Commission counted from the direct entry grade on completion of 10 years, 20 years and 30 years service respectively. In terms with the said scheme financial upgradation would be admissible whenever a person has spent 10 years continuously in the same Grade Pay.

4. At this stage, this Court finds it relevant to take note of Annexure-I to the said Office Memorandum dated 19.05.2009 and more particularly to Clause 5. The same being relevant for the purpose of deciding the instant dispute is reproduced herein below:-

“5. Promotions earned/upgradations granted under the ACP Scheme in the past to those grades which now carry the same grade pay due to merger of pay scales/ungradations of posts recommended by the Sixth Pay Commission shall be ignored for the purpose of granting upgradations under Modified ACPS.

The pre-revised hierarchy (in ascending order) in a particular organization was as under:-

(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 01.01.2006, in his case as on 01.01.2006 he would have got two financial ungradations 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 01.01.2006 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."

5. It is the case of the petitioners relying upon the said Office Memorandum dated 19.05.2009 that the respondent authorities had only granted them one financial upgradation as on 01.09.2008 to the Grade pay of Rs.4600/- after completion of 20 years of service whereas the petitioners ought to have been granted two financial upgradations of Rs.4600/- and Rs.4800/- in the Pay Band-2. The petitioners have also referred to in the writ petition that the respondent authorities have discriminated the petitioners in as much as two similarly situated persons, i.e. Sri Raman R. and Sri Vijay Pal Sharma who are much junior to the petitioners in the cadre of Draughtsman were granted two financial upgradations of Rs.4600/- and Rs.4800/- as on 01.09.2008 after completion of 20 years of service. The petitioners have also relied upon another Office Memorandum dated 10.06.2009 issued by the Ministry of Personnel, Department of Expenditure thereby clarifying the paragraph No.5 of the MACP Scheme and stated that the said Office Memorandum dated 10.06.2009 had clarified an identical situation in the Accounts Cadre in the case of Stenographers providing for ignoring the promotion/financial upgradation granted to the Stenographers, i.e. Stenographer Grade-II to Grade-I and from Grade-I to P.S. prior to 01.01.2006. It is the further case of the petitioners that the Office Memorandum dated 10.06.2009 would further show that it provides

for granting of financial upgradation in the next higher pay grade of Rs.4600/-, Rs.4800/- and Rs.5400/- and accordingly, the petitioners should also get the same financial upgradation as on 01.09.2008 in the Grade Pay of Rs.4600/-, Rs.4800/- and Rs.5400/- upon completion of 10 years, 20 years and 30 years of service ignoring promotional/financial upgradation prior to 01.01.2006. The petitioners have also enclosed a document to their writ petition, namely, the Amendment on Grant of MACP to Non-Diploma Overseers who filed Court cases for extending the benefit at par with the Diploma Holder Overseers Superintendent Branch-II and JE (Civil) and the judgment delivered in their favour. Reference was made to the person at Sl. No.189 to show that the said person who was initially appointed on 1982 as an Overseer was promoted to Draughtsman Grade-II on 20.07.1998 and further promoted Draughtsman Grade-I on 22.05.2004. However, the said person was granted financial upgradation of Rs.4600/-, Rs.4800/- and Rs.5400/- on completion of 10 years, 20 years and 30 years respectively. In the above premises, the petitioners have approached this Court seeking the relief as already mentioned herein above.

6. The respondents have collectively filed an affidavit-in-opposition. In the said affidavit-in-opposition, it has been mentioned that the grades of Senior Draughtsman and Head Draughtsman stood merged consequent to the implementation of Sixth Pay Commission with a view of relativities of Senior Draughtsman with the post of Junior Engineer as both the posts required Diploma in Engineering or equivalent. It was mentioned that in the Border Roads Organization there is no post of Border Roads Organization Grade-III. However, the post of Draughtsman Grade-II was in the Pay Scale of Rs.4500-7000 as per the Fifth Pay Commission which was re-designated with Draughtsman corresponding Pay Band-1 of Rs.5200-20200 with Grade pay of

2800/-. It was mentioned that the entry level in the Draughtsman Grade-II does not necessarily required Diploma in Engineering. The post of Draughtsman Grade-I and the Senior Draughtsman held the Department has already been merged and re-designated as Senior Draughtsman vide an order dated 13.05.2010 and the post has been placed in Pay Band-2 of Rs.9300-34800- with Grade pay Rs.4200/-. The respondents further stated in the affidavit that all the petitioners were initially appointed as Draughtsman Grade-II in the Pay Scale of Rs.4500-7000 corresponding to Pay Band-1 of Rs.5200-22200 with Grade pay of Rs.2800/- under the Sixth Pay Commission and further promoted to the promotional post of Draughtsman Grade-I in the Pay Scale of Rs.5000-8000/- corresponding to Pay Band-2 of Rs.9300-32800/- with Grade Pay of Rs.4200/- as per the Sixth Pay Commission. It has been mentioned that as per the recommendation of the Fifth Pay Commission, the Assured Career Progression (ACP) Scheme was introduced for the Central Government Civilian Group B, C and D with effect from 09.08.1999 with two financial upgradations on completion of 12 years/ 24 years of service counted from the direct entry in the Government employment subject to fulfillment of all promotional norms. It was stated that as per the recommendation of the Sixth Pay Commission, the MACP Scheme was introduced to all Central Government civilian employees vide Government of India, Ministry of Personnel/Grievances and Pension DoPT dated 19.05.2009 with effect from 01.09.2008. Under such circumstances there shall be three financial upgradations counted from the direct entry grade on completion of 10 years, 20 years and 30 years of continuous regular service and the Scheme will also be admissible whenever a person has spent 10 years continuously in the same grade. It is the further case of the respondents in the affidavit that the petitioner at Sl. Nos.3 to 15 & 18 had already been granted the

first financial upgradation on completion of 12 years service in the Pay Scale of Rs.5000/-8000 corresponding to the Pay Band-2 of Rs.9300-34800 with Grade Pay of 4200 under the 6th Pay Commission. Further, the petitioners mentioned at Sl. Nos.1, 2, 16 & 17 have been promoted before completion of 12/24 years, they are not entitled for ACP benefits. However, considering 20 years of service in the Draughtsman cadre, all the petitioners have been granted the second financial upgradation in the Pay Band-2 of Rs.9300-34800 with Grade pay of Rs.4600/- under the MACP Scheme which came into effect from 1st September, 2008. It further transpires from the said affidavit that the specific stand of the respondents is that all the petitioners have earned one promotion to the higher Grade Pay of Rs.4200/- from the initial Grade Pay of Rs.2800/- corresponding to the pre-revised Pay Scale attached to the post of Draughtsman Grade-II which is now merged with the Pay Scale of Rs.5000-8000 or 5500-9000. Therefore, the claim of the petitioners that they are to be granted the second MACP in Grade Pay of Rs.4800/- is not tenable as per the Rules is in vague.

7. On the question of discrimination, in paragraph No.19 of the said affidavit-in-opposition, it has been mentioned that the persons, namely, Sri Raman R. and Sri Vijay Pal Sharma were initially appointed to the post of Overseers and further promoted to Draughtsman Grade-II on acquiring Diploma in Draughtsman Estimating and Design from the College of Military Engineering, Pune. By virtue of similarly situated Non-Diploma Holder Overseers, they have been placed in the Pay Scale of Rs.5000-8000 with effect from 01.01.1996 and thus they became eligible for 1st and 2nd MACP with Grade Pay of Rs.4600/- and Rs. 4800/- respectively on completion of 10/20 years service with effect from 01.09.2008.

8. To the said affidavit-in-opposition filed by the respondents, an affidavit in reply has been filed by the petitioners reiterating the stand which has been taken by the petitioners in their writ petition.

9. In the backdrop of the aforementioned pleadings, let this Court consider the respective submissions made by the learned counsel for the parties.

10. Mr. U. K. Nair, the learned senior counsel drawing the attention of this Court to the Office Memorandum dated 09.05.2009 and more particularly to the Annexure-1 of the said Office Memorandum submitted that perusal of the Clause 5 as well as the Illustration mentioned therein would clearly show that the promotion/financial upgradation so granted prior to 01.01.2006 will have to be ignored on account of the merger of the pre-revised scale of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 as recommended by the Sixth Pay Commission. He, therefore, submitted that as the petitioners pursuant to the Sixth Pay Commission were put in the Pay Band-2 of Rs.9300-34800 with Grade Pay of Rs.4200/- taking into account that the petitioners rendered service for a period of more than 20 years, the petitioners ought to have been granted the financial upgradation of Rs.4600-4800 in the Pay Band-2 which is clearly stipulated in the Illustration to Clause 5 of the Annexure-1. The learned senior counsel for the petitioners, therefore, has also drawn the attention of this Court to Annexure-4 of the writ petition wherein at Sl. No.189, the respondent authorities have applied a different yardstick in the case of the individual mentioned in Sl. No.189, but have discriminated the petitioners herein by not granting the two financial upgradations.

11. Mr. K. Gogoi, the learned Government Advocate appearing on behalf of the respondents, on the other hand, submitted that the petitioners have already been granted promotion, and as such, they cannot be granted two financial

upgradations in as much as the Scheme in terms with the Office Memorandum dated 09.05.2009 has been brought into effect in order to remove the stagnation and thereby granting financial upgradation after completion of 10 years, 20 years and 30 years respectively. He, therefore, submitted that as the petitioners have already promoted and there has been no stagnation beyond the period of 10 years, the question of the petitioners getting two financial upgradations, does not arise.

12. I have perused the materials on records and heard the respective submissions made by the learned counsel for the parties. The question as to whether the petitioners would be entitled to two financial upgradations can be found from Clause 5 of the Annexure-I of the Office Memorandum dated 19.05.2009 which has already been quoted herein above. In terms with Clause 5 of Annexure-I, the promotion earned/upgradations granted under the MACP Scheme in the past to those Grades which now carry the same Grade Pay due to the merger of the Pay Scale of the upgradation post recommended by the Sixth Pay Commission shall be ignored for the purpose of granting upgradation under the MACP Scheme. Admittedly, in the instant case, there has been a merger of the pre-revised Scale of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 and accordingly, the petitioners having been promoted from the post of Draughtsman Grade-II to Grade-I, i.e. from the Pay Scale from 5000-8000 to Rs.5500-9000 has to be ignored for the purpose of granting the upgradation under the MACP Scheme. This aspect of the matter is further clarified from the Illustration-I of Clause 5 of the Annexure-1 of the Office Memorandum dated 19.05.2009. A perusal of the said Illustration-I stipulates two contingencies. The first such contingency is a Government servant who was recruited in the hierarchy in the pre-revised Pay Scale of Rs.5000-8000 and who did not get

promotion even after 25 years of service prior to 01.01.2006 and in his case as on 01.01.2006, he would have got two financial upgradations under the ACP in the hierarchy of his organization, i.e. to the pre-revised Scale of Rs.5500-9000 and Rs.6500-10500. At this stage, it may also be relevant to take note of that in terms with the ACP Scheme, the financial upgradation took place with the completion of 12 years/24 years.

13. Now coming to the second contingency is of Government servant recruited in the same hierarchy in the pre-revised scale of Rs.5000-8000 and had completed about 25 years of service but he has got two promotions to the next higher grade in the Scale of Rs.5500-9000 and Rs.6500-10500 during this period. In terms with the Illustration, it has been mentioned that in both the contingencies, the promotion/financial upgradation under the ACP to the pre-revised Scale of Rs.5500-9000 and Rs.6500-10500 prior to 01.01.2006 will have to be ignored on account of the merger of the pre-revised Scale of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 recommended by the Sixth Pay Commission. It was mentioned that CCs (RP) Rules, both of them would be granted grade pay of Rs.4200/- in the pay band PB-2. Upon 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.

14. The natural corollary of the above Illustration if applied to the facts of the instant case would therefore show that the petitioners who were appointed on various dates in the year 1988 except the petitioner Nos.2, 10 & 18 who were appointed in the year 1981, 1981 and 1982 respectively were promoted to the post of Draughtsman Grade-I, i.e. in the Pay Scale of Rs.5500-9000. It is also seen that in terms with the ACP Scheme, some of the petitioners got financial

upgradation in the year 2000 except the petitioner Nos.10 & 18 who got the second financial upgradation in the years 2005 and 2006 respectively. However, in spite of granting the promotion and the financial upgradation, the petitioners' Scale of Pay remained within the pre-revised Scale of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500. This pre-revised Scale of Pay in terms with Clause 5 and the Illustration has been merged, and accordingly, the same was required to be ignored. In that view of the matter upon the implementation of the Office Memorandum dated 19.05.2009, the petitioners would, therefore, be entitled to two financial upgradation to the next higher Grade Pay of Rs.4600/-, Rs.4800/- and Rs.5400/- upon completion of 10, 20 & 30 years of continuous regular service thereby calculating the period from the date of the initial appointment in respect to each of the petitioners.

15. Having observed above and explained Clause 5 along with illustration thereto to the Office Memorandum of Annexure-I dated 19.05.2009, this Court, therefore directs, the respondent authorities to refix the pay of the petitioners without taking into consideration the promotion given to the petition to the post of Draughtsman Grade-I and the financial upgradation granted under the ACP. The said exercise be done within a period of 3 (three) months from the date a certified copy of this order is served upon the respondent No.1.

16. With the above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant