

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Decided on: 25.04.2017**

+ **W.P.(C) 109/2016 & C.M. No. 488/2016**

UNION OF INDIA & ORS Petitioners

Through: Mr. Sanjeev Narula, CGSC for UOI.

versus

V.K. SHARMA & ORS Respondents

Through: Ms. Nisha Priya Bhatia, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE DEEPA SHARMA

HON'BLE MS. JUSTICE DEEPA SHARMA (ORAL)

1. The petitioners have challenged the order of the Central Administrative Tribunal dated 18.09.2015 passed in the O.A. No. 1622/2014 filed by the respondents. Vide this order the Tribunal quashed the communication no. 1/2/2009-Pers.6-6028 dated 18.04.2012 and directed the petitioners to implement their orders dated 22.10.2009 and 10.11.2009 and 12.02.2010.

2. The brief facts of the case are that the respondents belong to Central Secretariat Stenographer's Service (CSSS) and they joined the Cabinet Secretariat (SW) in 1970s (also known as Research and Analysis Wing (R&AW). They joined as Personal Assistants and were superannuated in the

ranks of Private Secretary (PS)/Principal Private Secretary (PPS)/ Under Secretary (US) at different points of time. During their tenure, they earned one promotion to the rank of PS and were given a pay scale equivalent to PB-2 with Grade Pay Rs. 4800/- before the Assured Career Progression Scheme (ACP) was introduced by the Government w.e.f. 09.08.1999. They were given 2nd financial upgradation on completion of 24 years of service as per the ACP scheme and were placed in the pay scale equivalent to present PB-3 with Grade Pay of Rs. 6600/-. As per the recommendations of the 5th Central Pay Commission (CPC), at the time when they were given the 2nd financial upgradation to the rank of PPS/US under the ACP scheme, there was no concept of Grade Pay and the financial upgradation under the ACP scheme was to the next higher rank available in the hierarchy.

3. Upon the implementation of the Modified Assured Career Progression Scheme (MACP), 3rd financial upgradation was given to them vide order No. 09/3/2009-Pers5-15172 dated 22.10.2009 placing them in PB-3 in the scale of Rs. 15,600-39,100 with Grade Pay of Rs. 7600/-. However, subsequently vide communication no. 1/2/2009-Pers.6-6028 dated 18.04.2012, the 3rd financial upgradation under the MACP scheme to the Grade Pay of Rs. 7600/- in PB-3 was withdrawn.

4. Vide the present O.A, the respondents challenged the said communication dated 19.04.2012. The only issue before the Tribunal was, whether in view of the fact and circumstances of the case, the respondents were entitled for the Grade pay of Rs. 7600 on implementation of the MACP scheme on completion of 30 years. The stand of the petitioners before the Tribunal was that the grant of financial upgradation to the PB-3 with Grade Pay of Rs. 7600 was a mistake, which was pointed out by the Pay & Accounts Officer (PAO). Subsequently, the matter was referred to Department of Personnel & Training (DOP&T), who also advised that the officer appointed as Assistant/PA by direct recruitment in the Grade of Rs. 4600 can only be granted 3rd MACP upto Grade Pay of Rs. 6600/- and not beyond that.

5. The petitioners also raised the contention before the Tribunal that the Grade of Rs. 7600/- in PB-3 was given to the applicants (herein respondents) assuming that none of them were granted Non-Functional Scale (hereinafter referred to as “NF Scale”) of Rs. 5400/- in PB-3 and therefore, they were entitled to 3rd upgradation to the Grade Pay of Rs. 7600/- in PB-3 under the MACP scheme.

6. The respondents had contended before the Tribunal in their rejoinder that they were never granted NF Scale of Rs. 5400/- and this fact was admitted by the petitioners themselves, therefore, denial of 3rd financial upgradation to the Grade Pay of Rs. 7600/- was wrong. In their sur-rejoinder, the petitioners had taken further plea before the Tribunal that according to the hierarchical pattern of Assistants/SOs & PSs of R&AW are at par with that of Assistants/SOs & PSs of CSS/CSSS cadres. Therefore, they have to be treated at par with the CSS and CSSS cadre. The Tribunal had rejected all the contentions of the petitioners on the ground that the benefit of NF Scale was never introduced for the CSSS to which the respondents never belonged, nor had the respondents ever derived any benefit from the order dated 25.01.2006 of DOP&T. The Tribunal had also rejected the plea of the petitioners that NFSG of the Grade of Rs. 5300/- has to be considered as 2nd financial upgradation for the applicants, and that the 2nd financial upgradation of the Grade Pay of Rs. 5600/- should be considered as 3rd financial upgradation under the MACP scheme, and given the relief to the applicants.

7. The petitioners have challenged the said order on the ground that the finding of the Tribunal that NF Scale Grade of Rs. 5400/- is not to be

considered as 2nd financial upgradation for the applicants (herein respondents) and the second financial upgradation to the Grade Pay of Rs. 6600/- given to them in the year 2009 should not be considered as 3rd financial upgradation under the MACP scheme is wrong in view of the DOP&T advice and the PAO communication.

8. It is also urged that the Tribunal has also erred in holding and observing that the benefit of Non-Functional Pay Scale was not extended to the official of CSSS Cadre. Rather, the benefit of NF Pay Scale was granted to the officers of CSSS Cadre vide DOP&T OM No. 10/3/2004-CS-II(Pt.1) dated 24.06.2005 w.e.f. 03.10.2003, and the same benefits were extended to SOs/PSs of R&AW vide Order No. 21/5/2007-E.A. 11I dated 19.01.2009. It is also submitted that the similar issue is also pending decision before the Supreme Court.

9. It is further submitted that respondents were already in the pre-revised scale of Rs.100000-15200/- i.e. Grade Pay of Rs. 6600/- on completion of 24 years of service and thus the benefits of Rs. 8000-275-13500/- was not extended to them and, therefore, their plea does not survive. On these grounds, it is submitted that the impugned order of the Tribunal be set aside.

10. We have heard the arguments and given thoughtful consideration to the rival contentions of the parties.

11. As per the admitted facts of the case, the respondents were covered under the ACP scheme when it was introduced. Since they had already earned one promotion, they were given 2nd ACP on completion of 24 years of the service. As per the scheme of the ACP, they were put in the next scale in the hierarchy. After the 5th Pay Commission, their existing scales were revised and as per their existing scale, the 5th Pay Commission put them in the category of PB-3 in the scale Rs. 15600-39100 with the Grade Pay of Rs. 6600/-. It, therefore, is clear that they earned the Grade Pay of Rs. 6600 by virtue of their existing pay scale at the time when the 5th Pay Commission was implemented. They had earned that Pay Scale by virtue of grant of 2nd ACP. The MACP scheme was introduced w.e.f. 01.09.2008. Under MACP scheme, the employees covered under the scheme became entitled for upgradation to the next Grade Pay after 10 years, 20 years and 30 years of the service. The respondents, who were already in the category of PB-3, demanded the benefits under 3rd MACP to which they become entitled after completion of 30 years of their service. First it was granted, and then it was withdrawn on the advice of PAO and DOP&T.

12. The plea of the petitioners is that since the Pay Band Scale PB-3 starts with the Pay Band Scale Rs. 15600-39100- with the Grade Pay of Rs. 5400/- , therefore, when their scale was revised, it should be presumed that they were entitled for the Grade Pay of Rs. 5400 on grant of 2nd ACP is totally fallacious. It is equally fallacious for the petitioners to claim that the grant of Grade Pay of Rs. 6600/- tantamounted to grant of the benefits of 3rd MACP.

13. Admittedly, on the grant of 2nd ACP, the respondents were put in the Pay Scale of Rs. 10,000-15200/- (5th CPC) and under the 5th Pay Commission, the corresponding scale that was given to them in PB-3 was Rs. 15,600-39,100 with the Grade Pay of Rs. 6600/-. It, therefore, is clear that they were getting the Grade Pay of Rs. 6600 by virtue of them being placed in the said corresponding Pay Scale equivalent to Rs. 10000-325-15200 pursuant to grant of 2nd ACP. They, therefore, has earned Grade Pay of Rs. 6600/- on revision of their pay by virtue of 5th Pay Commission and without reference to upgradation of 3rd MACP. The respondents, therefore, were entitled for the benefits under 3rd MACP after they become eligible for it.

14. Learned counsel for the respondents has drawn our attention to the Notification of Ministry of Finance, G.S.R. 622 (E) dated 29.08.2008, the First Schedule, Part-A, Section I which clearly shows that PB-3 which contains the Pay Scale Rs. 15600-39100 also contains the next Grade Pay of Rs. 7600. Therefore, it is clear that the respondents, under 3rd MACP, were entitled for upgradation to the next Grade Pay which is Rs. 7600/-. It is also a fact that initially the petitioners had given the Grade Pay of Rs. 7600/- to the respondents, but subsequently on the basis of communications of PAO and advice of DOP&T, it was withdrawn, which act of petitioners was illegal and unjustified.

15. Thus, we find no error in the impugned order. The writ petition has no merit and the same is dismissed.

**DEEPA SHARMA
(JUDGE)**

**VIPIN SANGHI
(JUDGE)**

APRIL 25, 2017

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