

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE
ORIGINAL APPLICATION NO.170/01160/2019
DATED THIS THE 12th DAY OF FEBRUARY, 2020
HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER
HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER**

Sri Ananda
S/o. Late A.Subraya
Aged about 61 years
Master Gazetted (Retd)
Rashtriya Military School (RMS)
Residing at No.B2-402
BDA Apartment
Kaniminike, Phase-2
Mysore Road
Kumbalagodu
Bangalore-560 074.

....Applicant

(By Advocate Shri K.Hanifa)

Vs.

1. Union of India
Rep by its Secretary
Room No.101, South Block
Ministry of Defence(Govt. of India)
New Delhi-110 011.
2. Joint Secretary(Trg & CAO)
E-Block, Dalhousie Road
Ministry of Defence (Govt. of India)
New Delhi-110 011.
3. Under Secretary
Room No.101, DI Wing, Sena Bhavan
Ministry of Defence (Govt. of India)
New Delhi-110 001.
4. Deputy Chief of Army Staff (T&C)
Dte. Gen. of Mil. Trg.
General Staff Branch
Integrated Head Quarters (Army)
DHQ PO
New Delhi-110 011.
5. The Director (MT-7)
Dte. Gen. of Mil. Trg.
General Staff Branch

Integrated Head Quarters (Army)
DHQ PO
New Delhi-110 011.

6. The Principal
Rashtriya Military School (RMS)
Bangalore-560 025.

...Respondents

(By Advocate Sri S.Sugumaran, ACGSC for R1)

O R D E R

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The brief facts of the case are that the applicant who joined as Assistant Master on 4.10.1988 was promoted as Master Gazetted on 16.8.2005 and retired from service on superannuation on 31.3.2018 completing active service of 29 ½ years vide PPO dtd.1.4.2018(Annexure-A9). He was granted upgradation as per Chattopadhyaya Scheme on completion of 12 years service, which became null and void due to merger of pay scales i.e. Rs.5000, Rs.5500 & Rs.6500 to a new pay scale in VI CPC as per DOPT OM dtd.19.5.2009(Annexure-A1) implementing MACP Scheme. Min. of Defence had already issued order dtd.20.5.2009(Annexure-A2) for implementing MACP Scheme for the Central Govt. Civilian employees. Further, MACP scheme is implemented to Sainik School Society by Min. of Defence, New Delhi letter dtd.27.5.2015(Annexure-A4). The Min. of Defence has conveyed the sanction of the President of India vide order dtd.4.10.2017(Annexure-A6) regarding implementation of MACP for Asst.Masters and Masters Gazetted in Rashtriya Military Schools(RMS) in compliance of this Tribunal's order in OAs.No.72& 74/2015 dtd.22.2.2016(Annexure-A5). The respondent No.5 vide orders dtd.10.10.2017(Annexure-A7) and 7.3.2018(Annexure-A8) requested all the Principals of RMS to take action for implementation of MACP to Asst.Master and

Master Gazetted as per the provisions of DOPT OM dtd.19.5.2009 and informed the approval of the competent authority for screening committee to consider the cases for grant of financial upgradation under MACP scheme to Master Gazetted of all RMSs. Further the 5th respondent intimated vide letter dtd.4.12.2018(Annexure-A11) to all RMSs that the competent authority has given approval to implement scheme w.e.f. 4.10.2017 i.e. date of issue of Govt. letter for implementation which is contrary to the OM dtd.19.5.2009 as per which the date of implementation of MACP scheme is 1.9.2008. The applicant submitted representation dtd.16.1.2019(Annexure-A12) to the 2nd respondent against the said order dtd.4.12.2018. He submits that as per the order in WP.No.1763/2013 dtd.15.10.2018 of the Hon'ble High Court of Bombay(Annexure-A10), the benefit of MACP affects not only the pay but also the pension of an employee and therefore the same is not allowance but a part of the pay itself. In response to the applicant's representation, the 5th respondent vide letter dtd.25.2.2019(Annexure-A13) informed that the competent authority has accorded approval for grant of benefits under MACP from the date of issue of the Govt. letter in this regard i.e. 4.10.2017 in terms of provisions of DOPT OM dtd.19.5.2009. Again the applicant sent a representation dtd.18.6.2019(Annexure-A14) to the Prime Minister of India raising the same points as raised in his earlier representation at Annexure-A12. The respondent No.1 vide letter dtd.1.7.2019(Annexure-A15) directed the respondents to give suitable reply to the applicant. Accordingly, the 5th respondent has given reply vide letter dtd.26.8.2019(Annexure-A16) stating that the competent authority has given approval to implement MACP w.e.f. 4.10.2017 i.e. date of issue of Govt. letter for implementation of this Tribunal's order. As per this letter, the very aspiration and earnest desire of introducing MACP scheme by

GOI to mitigate the hardship faced by employees like the applicant not getting promotional avenues and to avoid long stagnation is defeated. The 5th respondent has failed to take note of the motive of the 6th CPC in introducing the MACP scheme as per which the applicant should get 1st MACP on 4.10.1998 and 2nd MACP on 4.10.2008 by saying that the MACP scheme would be implemented w.e.f. 4.10.2017 in case of the applicant though the RMS is under the control of MOD which amounts to discrimination. Hence, the impugned order at Annexure-A16 is arbitrary, unjust and bad in law. Therefore, the applicant has filed the present OA seeking the following relief:

- a. *Call for the relevant records leading to the issuances of the impugned order No.A46235/Grievance/misc/GS/MT-7 dt.26.08.2019 at Annexure-A16 issued by the R-5 and on perusal quash the impugned order No.A46235/Grievance/misc/GS/MT-7 dt.26.08.2019 at Annexure-A16 issued by the R-5 as arbitrary, unjust, unfair and violation of Articles 14 and 16 of the Constitution of India.*
 - b. *Direct the respondents to grant II MACP and III MACP to the applicant as per DOP&T OM at Ann-A1 and to draw all consequential benefits counting the service of the applicant from the time of joining till superannuation. And*
 - c. *Pass any other order or direction as deemed fit by this Hon'ble Tribunal including an order for award of cost of this application in the interest of justice and equity.*
2. The respondents, on the other hand, have submitted in their reply statement that although MOD had issued order dtd.20.5.2009 for implementation of MACP scheme for civilian employees, the same was not implemented for the teaching staff of Military Schools as they were not given the benefit of ACP scheme of 1999 because the teachers of Rashtriya Military School(RMS) were governed by the benefit as per the recommendation of Chattopadhyaya Commission as per which the teachers of RMS were granted upgradation on completion of 12 and 24 years of service. The orders applicable for Sainik School Society is not applicable for Military Schools because Sainik School Society is an autonomous body

whereas Military Schools are directly under Ministry of Defence(MOD). The MOD has conveyed the sanction of the President of India vide order dtd.4.10.2017 regarding implementation of MACP scheme(Annexure-R1) as per which the provision of Chattopadhyaya Commission is discontinued. It is only after this Tribunal's order dtd.22.2.2016 in OA.No.74/2015, the competent authority has given the approval to implement the MACP scheme to the Military School Teachers w.e.f. 4.10.2017, the date of issue of Govt. letter and till that date the provisions of Chattopadhyaya Commission were applicable as per order dtd.9.9.2019(Annexure-R2). Employees of Sainik Schools cannot be compared with the employees of Military Schools as they come under different cadre. That apart, the applicant got one upgradation in the year 2000, a promotion on 16.8.2005 and retired on 31.3.2018 before accrual of 3rd MACP and therefore, he is not entitled to any benefits claimed by him. Therefore, the OA is liable to be dismissed.

3. The applicant has filed rejoinder reiterating the submission made in the OA and submits that subsequent to DOPT order dtd.19.5.2009, MOD issued order dtd.20.5.2009 to implement MACP to all civilian employees paid out of Def.Services Estimates which was forwarded to Military Schools as well. The benefit available under Chattopadhyaya Commission recommendation is meagre with only two upgradations, senior scale after 12 years and selection scale after 24 years, being restricted to overall 20% teachers in senior scale. Though Sainik Schools are autonomous bodies, the MACP is implemented to their teachers by MOD whereas the same is denied to the Military Schools which is a clear discrimination. Nowhere in the letter dtd.4.10.2017(Annexure-A6) it is said that MACP is to be implemented in RMS w.e.f. 4.10.2017 as submitted by the

respondents which is wrongly interpreted by the 5th respondent in his order at Annexure-A7 in order to deny the benefits of MACP to the applicant which is bad in law. As per the illustration-1 of DOPT order dtd.19.5.2009, the upgradation given to the applicant on completion of 12 years as on 4.10.2000, due to merger of pay scales, shall be ignored for the purpose of granting upgradations under MACP scheme. As such he is entitled to get 2nd MACP as he got one promotion as Master Gazetted on 16.8.2005 and retired on 31.3.2018. Other civilian employees are enjoying the MACP benefits as per DOPT OM at Annexure-A1 whereas the same action is not taken by the 5th respondent to implement the MACPs as per the said DOPT OM though the RMS is under the control of MOD which amounts to discrimination. Hence, the Annexure-A16 order is liable to be quashed as arbitrary and bad in law.

4. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. The issue in this case is in a very small compass. The applicant has been in service since 1988 and got one upgradation as per the Chattopadhyaya Scheme on completion of 12 years of service as was available in the respondent organisation. The applicant states that this upgradation also became null and void due to the merger of the pay scales of Rs.5000, Rs.5500 & Rs.6500 to a new pay scale in 6th CPC. The Ministry of Defence had already issued order vide Annexure-A2 for implementing the MACP scheme for the employees coming under the Ministry of Defence. The same has been extended to the Sainik School Society vide Annexure-A4. For the Masters and others in the Rashtriya Military School, the sanction has been conveyed only on 4.10.2017(Annexure-A6). In this order, it is clearly mentioned that the scheme is to be implemented vide provisions under the DOPT OM No.35034/3/2008-Estt.

(D) dtd.19.5.2019 and subsequent clarifications issued in this regard by DOPT. This wordings are exactly similar to what was given to the Sainik School Society employees vide Annexure-A4. The respondents would claim vide Annexure-A16 that the competent authority has given approval to implement MACP scheme w.e.f. 4.10.2017. This is clearly a wrong interpretation of the provision of the MACP scheme and the Annexure-A6 order itself mentions that this scheme is to be implemented in the Rashtriya Military Schools as per the instructions of the DOPT OM dtd.19.5.2009. Therefore, there is no question of saying that the MACP is to be implemented in the respondent organisation only w.e.f. 4.10.2017. Annexure-A16 is therefore quashed and the respondents are directed to implement the MACP scheme as per the DOPT OM cited and also admitted to be implemented vide Annexure-A2. The applicant claims that the one upgradation he has been given should be ignored due to the merger of the scales and therefore he is entitled to get 2nd MACP as he got his promotion in 2005. The respondents shall issue necessary orders to grant the benefit as per the scheme within a period of two(2) months from the date of issue of this order.

5. The OA is allowed as above. No costs.

(C.V.SANKAR)
MEMBER (A)

/ps/

(DR.K.B.SURESH)
MEMBER (J)

Annexures referred to by the applicant in OA.No.170/01160/2019

Annexure-A1: DOPT OM dtd.19.5.2009

Annexure-A2: MOD ID dtd.20.5.2009

Annexure-A3: Seniority roll: Master Gazetted dtd.9.9.2014

Annexure-A4: Letter dtd.27.5.2015 issued by MOD, Delhi

Annexure-A5: Order dtd.22.2.2016 in OA.72&74/2015 by Bangalore Bench

Annexure-A6: Letter dtd.4.10.2017 issued by R5

Annexure-A7: Letter dtd.10.10.2017 issued by R5

Annexure-A8: Letter dtd.7.3.2018

Annexure-A9: PPO dtd.1.4.2018

Annexure-A10: Order dtd.15.10.2018 in WP.1763/2013 of Bombay High Court

Annexure-A11: Letter dtd.4.12.2018 issued by R5

Annexure-A12: Representation dtd.16.1.2019

Annexure-A13: Letter dtd.25.2.2019 issued by R5

Annexure-A14: Representation dtd.18.6.2019 to PM

Annexure-A15: PMO ID dtd.1.7.2019

Annexure-A16: Letter dtd.26.8.2019 of R5

Annexures with reply statement:

Annexure-R1: Order dtd.4.10.2017

Annexure-R2: Order dtd.9.9.2019

Annexures with rejoinder:

Annexure-A17: Chattopadhyay Pay Fixation particulars
