

CENTRAL ADMINISTRATIVE TRIBUNAL**CUTTACK BENCH****OA No. 318 of 2016**

Present: **Hon'ble Mr. Gokul Chandra Pati, Member (A)**
 Hon'ble Mr. Swarup Kumar Mishra, Member (J)

1. Sri Bimalendu Sekhar Senapati, aged about 57 years, son of Bhudhar Chandra Senapati, at present working as Technical Officer – A (TO – A) in Proof & Experiential Establishment, Ministry of Defence, Chandipur – 756025, Dist. Balasore.

.....Applicant.

VERSUS

1. Union of India, represented through the Secretary, Ministry of Defence, South Block, New Delhi – 110011.
2. Department of Defence Research & Development, Ministry of Defence, represented through its Secretary-cum-Director General, DRDO & Scientific Adviser to Rakshya Mantri, DRDO Bhawan, Rajaji Marg, New Delhi - 110105.
3. Director, Directorate Human Resource & Development, DRDO Bhawan, Rajaji Marg, New Delhi – 110105.
4. Director, Directorate of Personnel, Room No. 266, DRDO Bhawan, Rajaji Marg, New Delhi – 110105.
5. Director, Proof & Experiential Establishment, Ministry of Defence, Chandipur – 756025, Dist. Balasore.
6. Secretary, Ministry of Personnel, Public Grievances & Pension (Department of Personnel & Training), 3rd Floor, Loknayak Bhawan, Khan Market, New Delhi – 110003.

.....Respondents.

For the applicant : Mr. B. P. Satpathy, counsel

For the respondents: Mr. M. R. Mohanty, counsel

Heard & reserved on : 27.02.2020

Order on : 16.03.2020

O R D E R

Per Mr. Swarup Kumar Mishra, Member (J)

The applicant by filing this OA, has prayed for the following reliefs under section 19 of the Administrative Tribunals Act, 1985:-

- (i) *Let the action of the Respondents in rejecting the claim of the applicant for grand of 2nd MACP w.e.f. 10.03.2015 vide the impugned order dated 07.04.2015 under Annexure-A/6 be declared as illegal and as such liable to be set aside.*

- (ii) *Let the Respondents be directed to extend the benefit 2nd MACP in shape of financial up-gradation of Grade pay from Rs. 4,600/- to Rs. 5,400/- w.e.f. 10.03.2015 within a stipulated time;*
- (iii) *Let the Respondents be directed to sanction and disburse the arrear entitlements on such sanction of 2nd MACP within a stipulated time;*
- (iv) *Let any other appropriate order/orders, direction/directions may kindly be passed which would be deemed fit and proper in the facts and circumstances of the case.*

2. The case of the applicant as averred in brief is that the applicant joined on 10.03.1995 in his initial appointment as JSA-II. Subsequently the post of JSA-II/JSA-I was re-designated as STA-A w.e.f. 25.08.1995. The applicant was then promoted to STA-B w.e.f. 01.09.2000 and to the post of STA-C w.e.f. 01.09.2010. Applicant submits that as per the order dated 10.05.2013 of the department the post of STA-C was re-designated as TO-A with Grade Pay of Rs. 4,600 and he was allowed the same grade pay w.e.f. 01.09.2010, but as per the OM dated 19.05.2009 (Guidelines for sanction of benefits under MACP) issued by the Respondent No. 6 he found himself eligible to get benefit of 1st MACP in shape of financial up-gradation of Grade Pay of Rs. 4,200/- to Rs. 4,600/- w.e.f. 15.09.2008. The applicant submitted his claim for 1st MACP w.e.f. 01.09.2008 before Respondent No. 4 through Respondent No. 5 on 18.09.2014 which was rejected by Respondent No. 5 vide order dated 25.09.2014. The applicant challenged the said order in OA No. 932/2014 and during pendency of the OA he moved another application on 26.03.2015 seeking grant of 2nd MACP w.e.f. 10.03.2015, which was again rejected by Respondent No. 5 vide order dated 07.04.2015.

3. Respondents in their counter inter alia averred that the applicant is working as Technical Officer 'A' in the Defence Research & Development Organisation Technical Cadre (DRTC) of Defence Research & Development Organisation (DRDO) and the cadre is governed by DRDO Technical Cadre Rules 2000 (DRTC Rules). And as per Rule 6 of DRTC Rules, 2000 the promotion from one grade to another grade in DRDT Cadre is to be made under the Flexible Complementing System through assessment. They also submitted that Directorate of HRD, DRDO HQ, New Delhi vide their letter No. DHRD/76213/MACPS/C/M/01 dated 22.12.2009 and letter dated 23.07.2014 has specifically clarified about the

applicability of MACPS to DRTC Cadre and it states that “ACP scheme promulgated in 1999 has not been made applicable to DTC due to merit based promotion under Limited Flexible Complementing Scheme. Therefore, the MACPS is also not applicable to DRTC.” The respondents further states that in view of the facts mentioned above, the claim of the applicant for grant of financial benefit under MACP is wrong and hereby denied as the applicant is coming under Defence Research & Development Organisation Technical Cadre Recruitment Rules, 2000. On the other hand, it is submitted that the Scheme is opened for all Group ‘A’, ‘B’ and ‘C’ of Admin & Allied categories and are eligible for financial up-gradation through MACP Scheme in DRDO, Ministry of Defence as the promotion of these categories are coming under post vacancies.

4. The respondents vide order dated 25th September, 2014 while rejecting the applicants representation dated 18.09.2014 stated the following:

‘Reference your representation dated 18th Sep 2014 received vide Weapon Wing I.O.N No. PXE/WW/1/33/G dt. 19.09.2014.

2. In this connection it is to inform you that, the matter regarding grant of financial up-gradation under MACPS to DRTS personnel was referred to DOP (Pers AA-1), New Delhi recently seeking their prior permission. However, a reply in this connection has been received from DHRD vide their letter No. DHRD/76237/DRTC/MISC/C/M/01 dated 23rd July 2014 and the contents of the letter is re-produced below:-

“ACP Scheme promulgated in 1999 has not been made applicable to DRTC due to merit based promotion under limited flexible complementing scheme. After VIth CPC, the ACP scheme has been modified named as MACP scheme. Hence it is not applicable.”

3. Henceforth, as clarified above, no representation regarding MACP matter will be accepted in future.’

5. The respondents vide order dated 07th April, 2015 while rejecting the applicants second representation dated 27.03.2015 stated the following:

“Reference your representation dated 26th Mar 2015 received vide Weapon Wing I.O.N No. PXE/W.W./1/33/G dt. 27.03.2015.

2. In this connection your attention is invited to this Section I. O. No. No. PXE/CC/1/26/MACPS/V-09 dt. 25 Sep 2014 vide which the reply has already been sent to you against your earlier

representation dt. 18.09.2014 received vide Weapon Wing I.O.N No. PXE/WW/1/33/G dt. 19.09.2014. However, it is once again reiterated that, representation for grant of financial up-gradation under MACPS to DRTC personnel has been referred twice to DRDO HQrs (DOP) but, on both the occasions it has not been considered by them. The reply of DRDO HQrs to the representations earlier forwarded to them has already been communicated to you vide our I.O.N referred in para-02 above.

3. As such, no further action can be taken on you representation. This is for favour of your information please.”

6. In view of the above, the only issue to be decided in this OA is whether the ground taken by the respondents to reject the claim for the MACP benefit is sustainable under law.
7. It was submitted by the applicants' counsel at the time of hearing, that the above mentioned point has already been decided in the case of Kunja Bihar Dasbabu vrs The Secretary, Ministry of Defence & Others in the OA No. 915 of 2014 vide order dated 14.05.2019.
8. We have perused the order dated 14.05.2019 of this bench of the Tribunal passed in OA No. 915 of 2014. The reliefs claimed and facts of that OA are discussed in para 8 of the order, which is as under:-

“ The applicant has prayed for the following reliefs in this OA:-

- (i) Let the action of the respondents in rejecting the claim of the applicant for grant of 2nd MACP w.e.f. 07.08.2009 to 31.08.2012 vide the impugned order dated 25.06.2014 under Annexure A/5 be declared as illegal and as such liable to be set aside.*
- (ii) Let the respondents be directed to extend the benefit of 2nd MACP in shape of financial upgradation of Grade Pay from Rs. 4600/- to Rs. 5400/- w.e.f. 7.8.2009 to 31.8.2012 within a stipulated time.*
- (iii) Let the respondents be directed to sanction and disburse the arrear entitlements on such sanction of 2nd MACP for the period of 7.8.2009 to 31.8.2012 within a stipulated time.*
- (iv) Let any other appropriate order/orders, direction/directions may kindly be passed which would be deemed fit and proper in the facts and circumstances of the case.*

2. The brief facts of the case are as follows:

The applicant was appointed under the DRDO s JSA-II w.e.f. 07.08.1989. He was promoted as JSA-A, then as STA-C and was also promoted as TO-A w.e.f. 1.9.2007. He was allowed financial upgradation from Grade Pay Rs. 4600/- to Rs. 4800/- w.e.f. 5.6.2009 after merger of pay scales relating to promotional scales w.e.f. 1.1.2006. Then the applicant was promoted to the grade of TO-B w.e.f. 1.9.2012. On 10.5.2013, the financial upgradation benefit to the GP of Rs. 4800/- granted to the applicant on 5.6.2009, was withdrawn. Hence, the claim of the applicant is for the 2nd MACP benefit w.e.f. 1.9.2008 from the GP Rs. 4600/- to the GP Rs. 5400. The applicant claims eligibility for the benefit of higher GP, if 2nd MACP is allowed to him, as prayed for, from 1.9.2008 till 31.8.2012 as he was promoted as TO-B w.e.f. 1.9.2012. The representation dated 13.05.2014 (Annexure –A/4) of the applicant in this regard has been rejected by the respondents vide order dated 25.06.2014 (Annexure-A/5), which has been impugned in this OA”

9. The Tribunal, while passing the order dated 14.05.2019, has followed the earlier order of this Tribunal in OA No. 1098/2014 and order passed by Bangalore Bench in OA No. 1020/2013, which has been upheld by Hon’ble Karnataka High Court. Accordingly, this Bench of the Tribunal disposed of the OA No. 915 of 2014 vide order dated 14.05.2019 with the following directions:

“In view of the discussion above, the impugned order dated 25.06.2014 (Annexure-A/5) of the OA No. 915/2014 rejecting the representation of the applicant for MACP benefit and the impugned orders in the other OAs in this batch are quashed and the respondents are directed to re-examine the claim of the applicants in these OAs in the light of the guidelines of the MACP Scheme and consider the case of the applicants for financial upgradation under the MACP Scheme within a period of three months from the date of receipt of this order. All four OAs are disposed of accordingly with no order as to costs”.

10. After carefully going through above mentioned order dated 14.05.2019 in OA No. 915 of 2014 and in three other cases, this Tribunal is satisfied that facts and circumstance in the present OA is squarely covered by above mentioned order.

11. Accordingly this Tribunal finds that MACP scheme will be applicable to the applicant of this OA who is official in Defence Research & Development Organisation Technical Cadre (DRTC) of Defence Research & Development Organisation (DRDO) and the ground taken by the respondents to refuse MACP benefits to the applicant are not sustainable under law.
12. In view of the discussion made above, the impugned order dated 07.04.2015 vide Annexure A/6 rejecting representation of the applicant for MACP benefits is quashed. The respondents are directed to re-examine the representation of the applicant of this OA in light of the guidelines of MACP Scheme and consider the case of the applicant for financial upgradation under MACP scheme within a period of three months from the date of receipt of this order.
13. The OA is accordingly disposed of with no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)