

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.971 of 2012

Jabalpur, this Wednesday, the 4th day of March, 2020

**HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER**

Raja Ram Dubey, S/o Late Lalji Prasad Dubey,
Aged about 61 years, R/o Saraswati Colony,
Cherital, District Jabalpur (M.P.)-482001 -Applicant

(By Advocate –Shri Vijay Tripathi)

V e r s u s

1. Union of India, through its Secretary,
Ministry of Defence, Department of Defence Production
South Block, New Delhi 110011
2. The Chairman, Ordnance Factory Board,
10-A, Saheed Khudiram Bose Marg,
Kolkata (W.B.)-700001
3. Senior General Manager, Gun Carriage Factory,
Jabalpur (M.P.)-482075
4. Additional Controller (Finance & Accounts)
Accounts Office, Gun Carriage Factory,
Jabalpur (M.P.)-482075

-Respondents

(By Advocate –Shri Manish Chourasia)

(Date of reserving the order:-30.04.2019)

ORDER

By Ramesh Singh Thakur, JM:-

By way of this Original Application the applicant is challenging the inaction of the respondents in not

providing him 3rd up-gradation under MACP Scheme in spite of the order dated 25.09.2011 (Annexure A-1).

2. The applicant has sought for the following reliefs in this Original Application:

“8.Relief sought:

(i) Summon the entire relevant record from the possession of respondents for its kind perusal.

(ii) Direct the respondents to execute the order dated 25.09.2011 (Annexure A-1) and provide the benefit of MACP Scheme to the applicant w.e.f. 1.9.2008 with all consequential benefits.

(iii) Direct the respondents to revise retiral dues and pension of the applicant accordingly and pay the arrears arising thereto along with interest.

(iv) any other order/orders, direction/directions may also be passed.

(v) Award cost of the litigation to the applicant.”

3. Precisely the case of the applicant is that the applicant was initially appointed as Labour on 17.12.1971. While working as labour he participated in the examination conducted for the post of Checker. The applicant was found suitable therefore appointed as

checker on 25.04.1973. The post of checker was abolished in the year 1980, therefore the applicant was converted as LDC on 01.04.1980. While working as LDC the applicant was promoted as UDC on 18.02.1998. The applicant was further promoted as Assistant in the pay scale of Rs. 5000-8000/- on 31.03.2008. The applicant has completed his 24 years of service on 01.04.2004 and was not given the benefit of ACP-II. The DoPT has introduced MACP Scheme whereby the employees are entitled for three promotions during the entire service career. As the applicant has already got two promotions therefore he was entitled to get 3rd promotion under the MACP Scheme with effect from 01.09.2008.

4. The applicant has preferred representation dated 31.01.2011 (Annexure A-3) whereby he requested to promote him under the ACP/MACP Scheme. The respondent department ultimately issued order whereby the applicant was given 3rd promotion under MACP

Scheme. However, the order dated 25.09.2011 (Annexure A-1) has not been given effect to by the respondent department. The applicant has further preferred representation dated 05.07.2012 (Annexure A-4) to give effect to the order dated 25.09.2011. Again on 26.07.2012 (Annexure A-5) he submitted a reminder. However, no heed has been paid by the respondent department. The persons who were initially appointed along with the applicant as Checker and later on converted as LDC have been given benefit under the MACP Scheme in the grade pay of Rs. 4600/-. A copy of which is annexed as Annexure A-6. Hence this Original Application.

5. The respondents have filed their reply to the Original Application. In the preliminary submission the respondents have submitted that SRO for checker post, dated 14.08.1976 mentions the mode of recruitment as “By Promotion, failing which by direct recruitment” and the feeder posts are mentioned as “Records Supplier,

Barco Operator on the Non-Industrial Establishment, Overseer "A" and Muccadum "A" on industrial establishment with three years service in the grade. The SRO does not prescribe for LDCE. Copy of the relevant service book are enclosed as Annexure R-2 and R-3.

6. On abolition of checker post, the applicant got promotion to the post of LDC on 01.04.1980 in the pay scale of Rs. 260-6-290-EB-326-8-366-EB-8-390-10-400. Copy of which is annexed as Annexure R-4. As a consequent action of MACP, order pay fixation were forwarded by this Factory to Local Accounts Office. The Local office referred the matter to Principal Controller of Finance & Accounts (Fys.), vide its letter dated 27.03.2012 and had issued the instructions regarding MACP entitlement in respect of erstwhile Checkers. Based on the instructions of PC of A(Fys.) Kolkata, Local Accounts/Audit had not concurred the pay fixation proposals. Copy of letter dated 27.03.2012 is annexed as Annexure R-5.

7. In para wise reply the respondents have submitted that during the audit of applicant's service books, it was found that the applicant was promoted to the post of Checker w.e.f. 25.04.1973. No such document found in the service record, which reveals that, the applicant had appeared in the examination of Checker along with the outside candidates. The Checkers were promoted as LDC/SK after the post was decided to be abolished. Such promotion to LDC/SK was in stages and they have been given the benefit of pay fixation at the time of such promotion.

8. It would be relevant to refer OFB letter dated 10.08.2000, which states that on selection to the post of LDC in respect of Checkers, after the post was decided to be abolished with reference to OFB letter dated 06.03.1980, promotion to LDC will be done in order of seniority list in three phases w.e.f. 01.04.1980, 01.06.1980 and 01.09.1980 and shall be counted as promotion. As such, such Checkers have already availed

of one promotion to be counted against ACP and are eligible for second ACP only, if otherwise in order. Accordingly, the applicant had got three promotions from Checker to LDC, LDC to UDC and UDC to Assistant within 24 years of his service period thus the applicant was entitled for ACP-II. Copy of the letter dated 18.02.2000 and letter dtd. 06.03.1980 is enclosed herewith as Annexure R-7 & R-8.

9. As per MACP Scheme introduced under 6th CPC, an employee may be given three financial up gradation under the MACP counted from the direct entry grade of completion of 10,20& 30 years of service respectively. Financial up gradation under the scheme will be admissible whenever a person has spent 10 years continuously in the same grade. In the instant case, applicant has already got three promotions and as such further MACP III could not be granted to him. After implementation of 6th CPC, Ministry of Defence, OFB has issued guidelines regarding MACP Scheme vide

O.M. No. 01/6th CPC/2008/(PCC/A/A). Copy of above O.M. is enclosed herewith as Annexure R-9.

10. So far as the persons who were initially appointed along with the applicant is concerned, it is pertinent to mention here that in view of the provisions of SRO of Checker and the fact that they appeared for written test and no DPC was held for promotion, the employees/applicant appointed to the post of Checker were treated as Direct Appointment irrespective of entries in the service books, except in cases where the age of candidates/employees was more than 25 years i.e. upper age limit in respect of Checker as per SRO. Accordingly, the length of service was counted from the date of holding the post of Checker and MACP entitlements were calculated and processed accordingly.

11. In the instant case, the applicant was initially appointed as Labour “B”, subsequently he got promoted to the post of Checker. Whereas, Smt. Clera Mark and Smt. Yashodhara Nair whose names are indicated in

Annexure A-6 were appointed (not promoted) to the post of Checker and their pay fixation have been processed as per Factory order dated 08.03.2011 and Local Account Office has approved the pay fixation proposal in both the cases. Accordingly both of them have got the benefit of financial up-gradation under MACP Scheme. Copy of the relevant page of service book are enclosed as Annexure R-10 & R-11.

12. The applicant has filed rejoinder to the reply filed by the respondents, wherein the applicant has re-iterated its earlier stand taken in the Original Application. The applicant has submitted that the applicant has participated for the post of Checker and got selected. Therefore the appointment of the applicant in the post of Checker can not be termed as promotion. The SRO does not prescribe the mode of promotion to fill up the post of Checker. Since the applicant has participated in the examination, therefore, his appointment on the post of Checker is direct recruitment not the promotion. Copy

of the relevant portion of the SRO is marked herewith as Annexure RJ-1.

13. The applicant further submits that the applicant has participated for the post of Checker and when he was found suitable, he was appointed as Checker vide order dated 25.04.1973 (Annexure A-2). Therefore the appointment of the applicant as Checker can not be termed as promotion. Apart from this, there are so many persons working in the respondent department who are holding the post of Checker along with the applicant and they were absorbed as LDC on abolishing the post of Checker and they have given 2nd and 3rd up-gradation under MACP Scheme. The respondents have issued factory order dated 08.03.2011 whereby near about 12 candidates were up-graded for 2nd and 3rd promotion under MACP Scheme. The persons whose names have been mentioned in the order dated 08.03.2011 have already been given promotion of UDC and thereafter Assistant like applicant. Thus, the applicant is also

entitled to get the same treatment along with similarly situated persons.

14. Heard the learned counsel for the parties, perused the pleadings and the documents annexed therewith.

15. From the pleadings it is admitted fact that the applicant was initially appointed as Labour on 17.12.1971 and while working as labour the applicant participated in the examination conducted by the respondent department and was found suitable therefore appointed as checker. Thereafter the post of checker was converted as LDC on 01.04.1980. While working as LDC the applicant was promoted as UDC on 18.02.1998. The applicant was further promoted as Assistant in the pay scale of Rs. 5000-8000/.

16. The controversy in the instant case is that whether the applicant was promoted as LDCE on 01.04.1980 or the post of checker was up-graded as LDCE.

17. The respondent department has specifically replied in their reply that the applicant was initially appointed

as a labour 'B' on 17.12.1971. He was promoted to the post of checker. As per SRO for checker post, mentioned the mode of recruitment as "By Promotion, failing which by direct recruitment" and the feeder posts are mentioned as "Records Supplier, Barco Operator on the Non-Industrial Establishment, Overseer "A" and Muccadum "A" on industrial establishment with three years service in the grade. SRO also provides for holding DPC III for effecting promotion to the post of Checker. The SRO does not prescribe for LDCE. A copy of the relevant service book is enclosed as Annexure R-2 and R-3.

18. On abolition of checker post, the applicant got promotion to the post of LDC on 01.04.1980 which is Annexure R-4. Consequent action of MACP, order of pay fixation was forwarded by the respondents to Local Accounts Office. The Local office referred the matter to Principal Controller of Finance & Accounts (Fys.) and had issued the instructions regarding MACP entitlement

in respect of erstwhile checker post. Based on the instructions of PC of A(Fys.) Kolkata, Local Accounts/Audit had not concurred the pay fixation proposals. Copy of letter dated 27.03.2012 is annexed as Annexure R-5.

19. During the audit of applicant's service books, it was found that the applicant was promoted to the post of checker with effect from 25.04.1973. No such document found in the service record, which reveals that, the applicant had appeared in the examination of checker along with the outside candidates. The checkers were promoted as LDC/ASK after the post was decided to be abolished. Such promotion to LDC/ASK was in stages and they have been given the benefit of pay fixation at the time of such promotion.

20. As per OFB letter dated 10.08.2000, which states that on selection to the post of LDC in respect of Checkers, after the post was decided to be abolished with reference to OFB letter dated 06.03.1980,

promotion to LDC will be done in order of seniority list in three phases w.e.f. 01.04.1980, 01.06.1980 and 01.09.1980 and shall be counted as promotion. As such, such Checkers have already availed of one promotion to be counted against ACP and are eligible for second ACP only, if otherwise in order. Accordingly, the applicant had got three promotions from Checker to LDC, LDC to UDC and UDC to Assistant within 24 years of his service period thus the applicant was entitled for ACP-II. Copy of the letter dated 18.02.2000 and letter dtd. 06.03.1980 is enclosed herewith as Annexure R-7 & R-8.

21. As per MACP Scheme introduced under 6th CPC, an employee may be given three financial up gradation under the MACP counted from the direct entry grade of completion of 10,20& 30 years of service respectively. Financial up gradation under the scheme will be admissible whenever a person has spent 10 years continuously in the same grade. In the instant case,

applicant has already got three promotions and as such further MACP III could not be granted to him. After implementation of 6th CPC, Ministry of Defence, OFB has issued guidelines regarding MACP Scheme vide O.M. No. 01/6th CPC/2008/(PCC/A/A). Copy of above O.M. is enclosed herewith as Annexure R-9.

22. From the reply of the respondent department it is very clear that in view of the provisions of SRO for checker post the applicant appeared for written test and no DPC was held for promotion. The employees/applicant appointed to the post of Checker were treated as Direct Appointment irrespective of entries in the service books. Accordingly, the length of service was counted from the date of holding the post of Checker and MACP entitlements were calculated and processed. But later, on the reference of Principal Controller of Accounts (Fys) vide letter dated 27.03.2012 (Annexure R-5) the case of the applicant was re-looked and it was noticed that the applicant has

been given wrong MACP due to the fact that the concept of promotion from post of checker to UDC has been ignored.

23. Our attention has been notified to Annexure R-8 dated 06.03.1980 under the subject Up-gradation of Checkers. The eligibility criteria for promotion to LDC/ASK has been shown which are as under:

“Eligibility criterion for promotion to LDC/ASK

2.0 The existing incumbents of the posts of Checker who fulfill either of the two following conditions are eligible for promotion to LDC/ASK Either: Those who possess the prescribed minimum educational qualification for direct recruitment to the posts of LDC/ASK i.e.

- (a) Matriculation or equivalent;
- (b) School Final or equivalent ;
- (c) Possessing class-X pass certificate from a recognized Higher Secondary School; irrespective of their length of service in the grade.

OR: Those who do not possess the prescribed minimum educational qualification for direct recruitment as LDC/ASK but have rendered at least three years' continuous service as Checker as on 01.04.80.”

24. From this Annexure which specifically prescribed that those who do not possess the prescribed minimum

educational qualification for direct recruitment as LDC/ASK for atleast three years continuous service as checker as on 01.04.1980, which is the eligibility criteria for promotion to LDC/ASK.

25. In the instant case, admittedly the applicant was checker and for UDC, the feeder category is checker with atleast three years continuous service. The respondent department has specifically submitted in their reply that the applicant was promoted from checker to UDC and on receiving the clarification from the Principal Controller of Accounts (Fys) vide letter dated 27.03.2012 when the matter of the applicant was re-looked the said error was noticed.

26. So, it clearly established the case of the respondent department that the promotion of the applicant has been done from checker to UDC which is also clear as per Annexure R-8 as discussed above.

27. In this Original Application this is the only issue raised by the party to the fact that whether the post of

UDC is promotion post? But as per Annexure R-8 it clearly spelt out that checker is a feeder category for promotion to UDC and the order passed by the respondent department is valid and legal in view of the specific prescribed criteria as per Annexure R-8.

28. In view of this we do not find any reasons to interfere with the action taken by the respondent department.

29. Resultantly, the Original Application is dismissed.

No order as to costs

(Ramesh Singh Thakur)
Judicial Member
rn

(Navin Tandon)
Administrative Member