

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

...

OA No.290/00292/2013

Pronounced on : 10.01.2020
(Reserved on : 02.01.2020)

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CORAM: HON'BLE SMT. HINA P. SHAH, MEMBER (J)
HON'BLE SMT. ARCHANA NIGAM, MEMBER (A)

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1. Bharat Kumar Pant S/o Late Shri Anand Ballabh Pant, aged about 49 years R/o House No.759 Bhagwan Pura Industrial Area, Rani Bajar, Bikaner, Rajasthan.
2. Kishan Ram S/o Late Shri Alphu Ram, aged about 55 years, Village Lai, Post Office Kheduli, Via Mertaroad District Nagaur, Rajasthan.
3. Laxmi Narayan S/o Late Shri Ram Lal, aged about 48 years, R/o Kamal Niwas, Bramano Ka Mohlla, Bhinasar, Bikaner, Rajasthan.

...APPLICANTS

BY ADVOCATE : Mr.S.K. Malik.

VERSUS

1. Union of India, through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. The Commander Works Engineer (Air Force) Bikaner.
3. The Garrison Engineer (AF), Nal Bikaner, Rajasthan.

RESPONDENTS

BY ADVOCATE: Mr. B.L. Tiwari, for R1 to R3

ORDER

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Hon'ble Smt. Archana Nigam, Member (A):-

1. The present Original Application (O.A.) has been filed by the applicants under Section 19 of the Administrative Tribunals Act, 1985, wherein the applicants are seeking the following reliefs:

- "(i) By an appropriate writ, order or direction respondents may be directed to grant 3rd MACP with Grade Pay of Rs.4600/- w.e.f. 20.05.2013 along with arrears of pay and allowances etc with interest @ 12% per annum.
- (ii) By an order or direction applicant be allowed to file joint application as the subject matter and relief prayed is identical.
- (iii) Any other relief which is found just and proper in the fact and circumstances of the case may kindly be granted in the interest of justice."

2. The factual matrix of the present case as narrated by the applicants No.1 to 3 in the OA are that the applicant No.1 was initially appointed on the post MPA (Skilled) with effect from 22.02.1988, the applicant No.2 was initially appointed on the post of peon with effect from 29.05.1980, thereafter reclassified on the post of MPA w.e.f. 21.01.1984, and the applicant No.3 was initially appointed on the post of MPA (Skilled) with effect from 24.02.1988. All the applicants were thereafter promoted as HS-II with effect from 28.07.1995 and HS I with effect from 31.01.2010. The post of HS-II & HS-I were merged and made as HS with effect from 01.01.1996 in the pay scale of Rs.4000-6000.

3. After recommendations of 5th CPC, the cadre of Artisan Staff was restructured vide letter dated 20.05.2003 (Annexure A/4). It is also stated that under restructuring post of MCM is treated as HS and made

placement in the grade of MCM shall be effective from 01.01.1996. Respondents placed the applicant being HS to MCM with effect from 01.01.1996 vide their letter dated 22.05.2007 (Annexure A/5). 6th CPC introduced in 2008 and made effective from 01.01.2006, and thereafter, respondents adopted the MACP Scheme issued by DOPT OM dated 19.05.2009 (Annexure A/6). The respondents vide letter dated 28.08.2009 (Annexure-A/7) revised pay scale of HS & MCM in the pay scale of Rs.4500-7000 and 5000-8000 and granted grade pay of Rs.2800/- and 4200/-.

4. The applicants were granted Grade Pay of Rs.4200/- with effect from 01.01.2006. The respondents vide their letter dated 17.11.2009 (Annexure A/8) has ordered that since the Grade Pay of MCM has been revised as Rs.4200/- as per letter dated 28.08.2009 (Annexure A/7). So the cadre of MCM will get the Grade Pay of Rs.4600/- on financial upgradation under MACP Scheme. The respondents issued clarification on MACP vide letter dated 09.02.2010 (Annexure A/9), and intimated that placement of HS to MCM was not treated as promotion for the purpose of ACP. So prior to implementation of MACP with effect from 01.09.2008, the induction from HS to MCM is not to be treated as promotion for the purpose of financial upgradation under MACP Scheme.

5. It is also stated that thereafter a circular dated 12.12.2011 (Annexure A/10) issued by the respondents with regard to clarification for MACP to MCM and it is clarified that MCM is eligible for 3rd MACP with Grade Pay of Rs.4600/- after 30 years of service or on completion of required period of service as illustrated in Para 28 of Annx. 1 of MACP order dated 19.05.2009. Accordingly, respondent no.3 vide Part II

order dated 09.04.2012 (Annexure A/11) granted 3rd MACP to the similarly situated employees to that of applicants with Grade Pay of Rs.4600/-.

6. It is further stated that since applicants have completed more than 10 years of service after getting the placement in MCM with effect from 20.05.2003 were not granted 3rd MACP with Grade Pay of Rs.4600/-. Thereafter they made representations dated 15.04.2013 (Annexures A/12, A/13 & A/14) to respondent no.3 for grant of 3rd MACP. Their representations were rejected by respondent No.3 vide impugned order dated 29.06.2013 (Annexures-A/1, A/2 and A/3). Aggrieved of impugned orders, the applicants have no other alternate except to approach this Tribunal for redressal of his grievance. Hence this OA.

7. In the written statement filed on behalf of the respondents, it has been stated that the applicants are not eligible for the grant of 3rd MACP in terms of DOPT ID No.7680/12/CR dated 13.07.2012 (Annexure R/1). The existing MACP Scheme has been modified by DOPT vide letter dated 13.07.2012 (Annexure R/2), pursuant to the said letter, the applicants are not eligible for the Grade Pay of Rs.4600/-. The applicants were appointed as MPA with effect from 22.02.1988 and were granted three promotions viz. HS-II with effect from 02.08.1995, HS-I with effect from 31.01.2000 and placed as MCM with effect from 20.05.2003. It is stated that the Para 8 of the Annexure R2, existing MACP Scheme of DOPT OM No.35034/3/2008 dated 19.05.2009, provides that the promotion earned in the post carrying same Grade Pay in the

promotional hierarchy as per the Recruitment Rules shall be counted for the purpose of MACP Scheme.

8. It is further stated that the applicants were placed on the post of MCM with effect from 20.05.2003. In terms of DOPT ID No.7680/12/CR dated 13.07.2012, the placement of Highly Skilled Grade as Master Craftsman, (MCM), prior to 01.01.2006 is to be treated as one promotion for the purpose of the grant of MACP benefits. As per the recommendation of 6th CPC, the applicant has been granted the Pay Scale of Rs.9300-34800 (Pay Band-2) Plus Grade Pay of Rs.4200/- with effect from 01.01.2006. The Grade Pay as per the recommendations of 6th CPC are as under:-

S.No.	Post	Pay Band	Scale	Grade Pay
1.	HS-II	PB-1	4000-6000	Rs.2400/-
2.	HS-I	PB-1	4500-7000	Rs.2800/-
3.	MCM	PB-2	5000-8000	Rs.4200/-

The applicants were granted the Pay Scale of Rs.5000-8000 with GP of Rs.4200/- with effect from 01.01.2006 as per their entitlement. It is not agreed in the terms of MACP Scheme modified by DOPT vide ID No.7680//12/CR dated 13.07.2012. Since Maximum Grade Pay applicable to MCM category as per the ibid letter is of Rs.4200/-, hence the applicants are not entitled for the Grade Pay of Rs.4600/-.

9. It is further stated that Para 8 of the Annexure R2, existing MACP Scheme of DOPT OM dated 19.05.2009, provides that the promotion earned in the post carrying same grade pay in the promotional hierarchy as per the Recruitment Rules shall be counted for the purpose of MACP Scheme. The financial upgradation under MACP Scheme in respect to Master Craftsman will be in the same grade pay of Rs.4200/-

as that of promotional post of Chargeman. In terms of DOPT OM dated 13.07.2012, the placement of Highly Skilled Grade as Master Craftsman (MCM) prior to 01.01.2006 is to be treated as one promotion for the purpose of the grant of MACP benefits.

10. It is also stated that on the restructuring of Artisan Staff in the Ministry of Defence as per letter dated 14.06.2010, clarification was sought from the DOPT regarding the Grade Pay of Rs.4600/- in MCM category. DOPT vide ID No.7680/12/CR dated 13.07.2012 (Annexure R/1) circulated vide MoD ID No.11(5)/2009-D(Civ-I) dated 23.07.2012 (Annexure-I), clarified that there is no provision for the grade pay of Rs.4600/- to MCM. The recovery of all those who are already in receipt of the GP of Rs.4600/- shall be made by the department. The applicants are already in receipt of three promotions (HS-II, HS-I & MCM) and are already in receipt of the financial benefits. No Grade Pay of Rs.4600/- is admissible in the light of DOPT ID No.7680/12/CR dated 13.07.2012.

11. In the rejoinder filed on behalf of the applicants, it has been stated that as per the MACP Scheme introduced by Govt. of India and adopted by respondents department wherein three financial upgradations under the Scheme are admissible after completion of 10, 20 and 30 years of service in case a person has spent 10 years continuously in the same grade pay. Respondents themselves admitted in their reply that applicants have been placed on the post of MCM with effect from 01.01.2006 and accordingly after the 6th CPC applicants were granted GP of Rs.4200/- w.e.f. 01.01.2006 in the pay scale of Rs.9300-34800. Since there is no further promotional avenue and no

grade pay is prescribed then applicants are entitled for the GP of Rs.4600/- i.e. the next grade pay in hierarchy.

12. It is further stated that the respondents in consultation with department issued a circular dated 05.02.2014 wherein the position has been clarified that since the post of MCM was not in hierarchy of the Artisan Staff cadre upto 31.12.2005, the Highly Skilled Worker/MCM who were already drawing the pay scale of Chargeman (Rs.5000-8000) i.e. the promotion post upto 31.12.2005 under ACPs may be considered for further financial upgradation if due in the next grade pay of Rs.4600/- in the hierarchy grade pay. The applicants were initially appointed as MPA Skilled w.e.f. 22.02.1988 and further they were promoted as HS-II w.e.f. 28.07.1995 and HS-I w.e.f. 31.01.2000. The posts of HS-II and HS-I were merged and made as HS w.e.f. 01.01.1996 in the pay scale of Rs.4000-6000 and applicant was placed on the post of MCM w.e.f. 20.05.2003 vide Annexure A/3 under restructuring cadre after recommendation of 5th CPC. Therefore, the applicants got only one promotion as per the Scheme merged and post will be ignored for the purpose of MACP. Therefore, the applicants are entitled to get Grade Pay of Rs.4600/- after completion of 10 years service or from the date of commencement of MACP Scheme i.e. with effect from 01.09.2008.

13. Heard Shri S.K. Malik, learned counsel for the applicants and Shri B.L. Tiwari, learned counsel for respondents no.1 to 3 and perused the material available on record.

14. The dates of promotions of the applicants in so far as they are relevant for the grant of 3rd MACP are stated to be as below:-

- i) Appointment as MPA w.e.f. 22.02.1988.
- ii) Promotion as HS-II w.e.f. 02.08.1995 and
- iii) Promotion as HS-I w.e.f. 31.01.2000

During the hearing, the learned counsel for the applicants submitted that the post of HS-II and HS-I were merged in terms of the order restructuring the cadre of Artisan Staff in Defence Establishment in modification of recommendations of 5th CPC vide order dated 20.05.2003 (Annexure A/4). As per Para 2 of the OM quoted *ibid*:-

“2. The grade structure in the industrial as well as in the non-industrial trades, wherever already available and the pay scales of the Defence artisan staff shall stand modified w.e.f. 01.01.1996 as under:-

- i) Skilled : Rs.3050-4590
- ii) Highly Skilled : Rs.4000-6000
(HS-I + HS-II)
- iii) Master Craftsman : Rs.4500-7000.

15. Learned counsel repeatedly drew attention of the Bench to the fact that as per this order the post of Master Craftsman shall not be part of the hierarchy and the placement in this grade will not be treated as promotion for Highly Skilled Grade either under normal promotion rules or under ACP Scheme. Learned counsel drew our attention to notification dated 28.08.2009 (Annexure A/7) in terms of which amendments were issued to the Civilians in Defence Services (Revised Pay) Rules, 2008 and the pay scale were accordingly restructured. These have been notified on 09.09.2008. He also drew our attention to Annexure A/8 dated 17.11.2009 on the subject of grant of financial upgradation under MACP Scheme Industrial / Non-Industrial Personnel. Learned counsel drew our attention to Sub Paras 'c', 'g' and 'h' of this order which states as below:-

“(c). All those individuals whose scales have now been merged as PB-I with grade pay of Rs.1800 are naturally entitled to get 1st,

2nd and 3rd financial upgradtion under Modified ACP Scheme in PB-I with grade pay of Rs.1900/-, 2000/- and 2400/- respectively.

(g) As per Modified ACP Scheme there is a provision of only three financial upgradations at the end of 10th, 20th and 30th year of service. There is no provision for any other financial upgradations. Those who have already got three promotions on or before 31 Aug 2008 within laid down period are not eligible for grant of MACP Scheme as ACP Scheme is meant for those only who do not get promotion in time.

(h) As per new Ministry of Defence /D-Civ-I No.11(5)/2008/D(Civ-I) dated 28 Aug 2009 the grade pay of MCM has been revised as Rs.4200/- So, MCM will get the grade pay of Rs.4600/- on financial upgradation under Modified ACP Scheme."

16. Learned counsel also submitted that the enabling amended provisions as described above have also been endorsed by the Office of Ordnance Factory Board where it has been clarified vide their letter dated 09.02.2010 (Annexure-A/9) that the *placement of HS to MCM was not treated as promotion for the purpose of ACP. So prior to implementation of MACP w.e.f. 01.09.2008 the induction from HS to MCM is not be treated as promotion for the purpose of financial upgradation under MACP Scheme.* These amendments have also been endorsed by the Audit Office.

17. Learned counsel for the applicants challenges the Part II order dated 09.04.2012 (Annexure A/11) in terms of which financial upgradation has been granted. However, it has been denied to the applicants on the grounds that three promotions have already been given to them. The applicants have also challenged the impugned order dated 29.02.2013 (Annexure-A/1 to A/3) whereby representations of the applicants for grants of 3rd MACP with grade pay of Rs.4600/- has been rejected.

18. It is the case of the learned counsel for the applicants that in view of the statutory rules on the subject as endorsed by Audit there is a clear case for grant of 3rd financial upgradation with GP of Rs.4600/- to applicants.

19. Per contra, the learned counsel for the respondents drew our attention to the DOPT OM dated 19.05.2009 which makes provision of the Modified Assured Career Progression Scheme (MACPS) for Central Government employees. Particularly, the provisions of Para 8 of the OM in terms of which "*Promotions earned in the post carrying same grade pay in the promotional hierarchy as per Recruitment Rules shall be counted for the purpose of MACPS*".

20. Learned counsel also drew our attention to Ministry of Defence OM on the subject of Restructuring of Cadre of Artisan staff in Defence Establishments in modification of recommendations of 6th CPC- clarifications placed at Annexure-I, which is as below:-

"2. DOP&T have clarified the points as under:-

(a) Para 8 of Annexure I of DOP&T OM No.35034/3/2008-Estt.(D) dated 19.05.2009 of MACPS provides that promotion earned in the post carrying same grade pay in the promotional hierarchy as per recruitment rules shall be counted for the purpose of MACPS. Financial upgradation under MACPS in respect of Master Craftsman will be in the same grade pay of Rs.4200/- as that of the promotional post of Chargeman."

21. It is also submitted that similar controversy has already been decided by this Tribunal in the case of Smt. Lalita Chhimpa and Anr. Vs. Union India and others in OA No.290/2013 on 20.12.2019.

22. After issuing of Notification dated 28.08.2009 (Annexure A/7) by which amendments were also issued to the Civilians in Defence Services (Revised Pay) Rules, 2008 and the pay scale were accordingly restructured, which have been notified on 09.09.2008 and as per Annexure A/8 dated 17.11.2009 on the subject of grant of financial upgradation under MACP Scheme, we are of the opinion that the relief sought by the applicant is justified. Accordingly, the respondents are directed to grant 3rd MACP with the Grade Pay of Rs.4600/- with effect from 20.05.2013 and make payment of the pay and allowances & arrears due to the applicants within three months from the date of receipt of a copy of this order. The relief sought regarding payment of interest is not granted.

23. Accordingly, the OA is allowed. No order as to costs.

(ARCHANA NIGAM)
MEMBER (A)

(HINA P. SHAH)
MEMBER (J)

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