

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

...

OA No.290/00301/2013

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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Bhartendu Gaur S/o Shri Dev Saran, aged about 49 years, R/o Behind Orphanage Vivek Nagar, Bikaner. Presently working on the post of HS in the office of GE (AF), Nal Bikaner, Rajasthan.

...APPLICANT

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 applicant under Section 19 of the Administrative Tribunals Act, 1985, wherein the applicant is seeking the following reliefs:

- “(i) By an appropriate writ, order or direction impugned order dated 29.06.2013 at Annexure.A/1 be declared illegal and be quashed and set aside.
- (ii) By an appropriate writ, order or direction respondents may be directed to grant 3rd MACP with Grade Pay of Rs.4600/- after completion of 30 years of service from the due date.
- (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 applicant are that the applicant was initially appointed on the post Diesel Engine Static (DES) with effect from 21.09.1983. The applicant was granted 1st ACP in the pay scale of Rs.4000-6000/- w.e.f. 09.08.1999 after completion of 12 years of service. Applicant was promoted as HS-II with effect from 08.04.2002 in the same pay scale of 1st ACP ie. In the scale of Rs.4000-6000/-. Thereafter, after completion of 24 years of service applicant was granted 2nd ACP in the pay scale of Rs.4500-7000/- i.e. the next pay scale of MCM as per hierarchy of artisan persons in defence establishment vide GOI MAD letter dated 20.05.2003.

3. Sixth 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/2). The respondents vide letter dated 28.08.2009 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 was granted Grade Pay of Rs.4200/- with effect from the date the date of 2nd ACP. The respondents have granted 3rd MACP to their employees after completion of 30 years of service who

were MCM in the grade pay of Rs.4200/- vide Part II order dated 09.04.2012 (Annexure A/3) as per MACP scheme. Since the similarly situated persons have been granted 3rd MACP after completion of 30 years of service, applicant made representations through proper channel dated 15.04.2013 before respondents requesting therein that after completion of 30 years of service, he may be granted 3rd MACP in the grade of Rs.4600/- (Annexure-A/4).

5. According to para 6 of MACP Scheme dated 19.05.2009 the screening committee which recommended for MACP has to meet twice in a financial year for advance processing of the cases maturing in that half. Cases maturing during the first half (April to September) of a particular financial year shall be taken up for consideration by the screening committee in the first weeks of January. Similarly the screening committee meeting in the first week of July of any financial years shall process the cases that would be maturing during second half (Oct. to March) of the same financial years. Since the case of applicant was maturing in September, was not considered by the respondents for 3rd MACP.

6. Instead of considering the case of applicant for 3rd MACP after completion of 30 years of service, respondents contrary to the scheme of MACP rejected the representation of the applicant vide impugned order dated 29.06.2013 (Annexure-A/1). Aggrieved of impugned order dated 29.06.2013, 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 applicant is 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 applicant is not eligible for the Grade Pay of Rs.4600/-. The applicant was appointed as DES(Diesel Engine Static) with effect from 21.09.1983 and was granted the 1st ACP after completion of 12 years w.e.f. 09.08.1999 in the pay scale of Rs.4000-100-6000 and the 2nd ACP was granted after completion of 24 years service w.e.f. 21.09.2007 in the pay scale of Rs.5000-150-8000 and not in the pay scale of Rs.4500-7000/- as mentioned by the applicant. Subsequently, the Grade pay of Rs.4200 was also granted to the applicant w.e.f. 21.09.2007 i.e. the scale of pay band -2 9300-34800/-

8. It is further stated that 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 21.09.2007. 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/- |

It is submitted that the maximum grade pay as applicable i.e. Rs.4200/- was already granted to the applicant w.e.f. 21.09.2007 under the 2nd ACP.

9. 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. Therefore, no Grade Pay of Rs.4600/- is admissible in the light of DOPT ID No.7680/12/CR dated 13.07.2012.

10. DOPT has modified the existing policy for the grants of benefits under MACP Scheme vide DOPT letter No.ID No.7680/12/CR dated 13.07.2012. The Financial Up-Gradation under MACP Scheme is respect to Master Craftsman will be in the same grade pay of Rs.4200/- as that of promotional post of Chargeman. The ACP/MACP scheme have been introduced by the Government in order to mitigate the stagnation faced by the employees due to lack promotional avenue. The Financial Up-Gradation under ACP/MACP Scheme cannot be more than what can be allowed to an employee on his normal promotion. The applicant is already receiving the Maximum Grade Pay of Rs.4200/- which is applicable to the MCM category.

11. 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.

12. 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 DES w.e.f. 21.09.1983.
- ii) 1st ACP was granted after completion of 12 years of service w.e.f. 09.08.1999,
- iii) 2nd ACP was granted after completion of 24 years w.e.f. 21.09.2007

13. During the hearing, the learned counsel for the applicant 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. 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 (HS-I + HS-II) | : Rs.4000-6000 |
| 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 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 letter 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 upgradation 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 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 applicant challenges the impugned order dated 29.06.2013 (Annexure-A/1) whereby representation of the applicant 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 applicant 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 applicant.

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 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/- after completion of 30 years of service from the due date 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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