

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

...

OA No.290/00290/2013

Pronounced on : 20.12.2019
(Reserved on : 16.12.2019)

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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. Smt. Lalita Chhimpa W/o Late Sh. Sampat Lal Chhimpa, aged about 48 years, R/o Chhimpo-Ka-Mohalla, Ganga Shahar Road, Laxmi Plaza Cinema Ke Samne, Bikaner, Rajasthan.
2. Manoj Chhimpa S/o Late Sh. Sampat Lal Chhimpa, aged about 24 years, R/o Chhimpo-Ka-Mohalla, Ganga Shahar Road, Laxmi Plaza Cinema Ke Samne, Bikaner, Rajasthan.

LRs of Sh. Sampat Lal Chhimpa S/o Late Sh. Moda Ram.

...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 (AF) Bikaner, Rajasthan.
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. 01.09.2008 along with arrears of pay and allowances etc with interest @ 12% per annum.
- (ii) 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 (LRs of Sh. Sampat Lal Chhimpa) in the OA are that the applicant was initially appointed after due selection on the post of Diesel Engine Static (DES) Skilled with effect from 30.03.1987. Thereafter, he was promoted as HS-II with effect from 22.03.1995 and thereafter again promoted as HS-I with effect from 31.01.2000. 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 A1). 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 A2). 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 A3).

4. The applicant was granted Grade Pay of Rs.4200/- with effect from 01.01.2006. The respondents vide their letter dated 17.11.2009 (Annexure A5) has ordered that since the Grade Pay of MCM has been revised as Rs.4200/- as per letter dated 28.08.2009 (Annexure A4). 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 A6), 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 A7) 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 Anxx. 1 of MACP order dated 19.05.2009. Accordingly, respondent no.3 vide Part II order dated 09.04.2012 (Annexure A8) granted 3rd MACP to the similarly situated employees to that of applicant with Grade Pay of Rs.4600/-.

6. It is further stated that since applicant has completed more than 10 years of service after getting the placement in MCM with effect from 01.01.1996 was not granted 3rd MACP with Grade Pay of Rs.4600/-. Thereafter he made a representation dated 12.04.2013 (Annexure A9)

to respondent no.3 for grant of 3rd MACP. He was not given any reply by respondent no.3 rather he was told to approach the competent Court. Aggrieved of illegal action/omission on the part of respondents, applicant has no other alternate 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 R1). The existing MACP Scheme has been modified by DOPT vide letter dated 13.07.2012 (Annexure R2), 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 30.03.1987 and was granted three promotions viz. HS-II with effect from 23.03.1995, HS-I with effect from 31.01.2000 and placed as MCM with effect from 01.01.1996. 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 applicant was 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 applicant was granted the Pay Scale of Rs.5000-8000 with GP of Rs.4200/- with effect from 01.01.2006 as per his 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 R2) 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 applicant is already in receipt of three promotions (HS-II, HS-I & MCM) and is 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 applicant, 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 applicant has been placed on the post of MCM with effect from 01.01.2006 and accordingly after the 6th CPC applicant was 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 applicant is 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 applicant was initially

appointed as DES Skilled w.e.f. 30.03.1987 and further he was promoted as HS-II w.e.f. 22.03.1995 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. 01.01.1996 vide Annexure A2 under restructuring cadre after recommendation of 5th CPC. Therefore, the applicant got only one promotion as per the Scheme merged and post will be ignored for the purpose of MACP. Therefore, the applicant is 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 (LRs of Shri Sampat Lal Chhimpa S/o Late Sh. Moda Ram) and Shri B.L. Tiwari, learned counsel for respondents no.1 to 3 and perused the material available on record.

14. At the outset learned counsel for the applicants stated that the applicant had expired on 04.02.2015 vide order dated 13.10.2015, the MA No.127/2015 for bringing the legal representatives on record has been allowed and the cause title duly amended.

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

- i) Appointment as Diesel Engine Static (DES) w.e.f. 30.03.1987.
- ii) Promotion as HS-II w.e.f. 23.03.1995 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 A1). 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.

16. 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 A4) 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 A5 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."

17. Learned counsel also submitted that the enabling amended provisions as described above have also been endorsed by the Office of Ordnance Factory Board vide Annexure A6 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 vide Annexure A6 & A7.

18. Learned counsel for the applicants challenges the Part II order dated 09.04.2012 (Annexure A8) in terms of which financial upgradation has been granted. However, it has been denied to the applicant on the grounds that three promotions have already been given to applicant Shri Sampat Lal Chhimpa. Immediately, thereafter on 12.04.2013, the representation was made for grant of 3rd MACP.

19. 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 applicant Shri Sampat Lal Chhimpa.

20. 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*".

21. 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."

22. Upon query by the Bench as to whether it is correct to state that the MACP Scheme provides for three promotions the counsel for the respondents admitted that it was correct position. He also admitted that subsequent to the merger of HS-I and HS-II grades it could not be said that three promotions were already awarded to the applicant as has been done while refusing his 3rd MACP vide Part II order dated 09.04.2012 (Annexure A8).

23. Learned counsel for the respondents initially sought time to respond to the query raised by the Tribunal, but admitted at the case is made out for the grant of 3rd MACP with GP of Rs.4600/- in view of the provisions of OM dated 17.11.2009 Annexure A5 and the endorsement

by the Audit Annexure A6 & A7 quoted ibid by the learned counsel for the applicants during arguments put forth by him.

24. In view of the discussions hereinabove and based on the pleadings available on record as well as during the final hearing, 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 01.09.2008 and make payment of the pay and allowances & arrears due to the applicant/LRs within three months from the date of receipt of a copy of this order. The relief sought regarding payment of interest is not granted.

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

(ARCHANA NIGAM)
MEMBER (A)

(HINA P. SHAH)
MEMBER (J)

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