

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

Original Application No. 290/00047/2015

RESERVED ON : 23.01.2020
PRONOUNCED ON: 11.02.2020

CORAM:

**HON'BLE MRS. HINA P.SHAH, MEMBER (J)
HON'BLE MS. ARCHANA NIGAM, MEMBER (A)**

Jummaratti S/o Samamiya, aged 60 years, R/o Qtr No.28/11, Abohar Military Station, Fazilka (Punjab) Presently working under Garrison Engineer, MES, Abohar, Fazilka (Punjab)

...Applicant

(By Advocate: Shri M.S.Godara)

Versus

1. Union of India, through Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Commander Works Engineer, M.E.S. Sri Ganganagar (Rajasthan).
3. Garrison Engineer, M.E.S., Abohar, Fazilka (Punjab)

...Respondents

(By Advocate: Shri Rameshwar Dave)

ORDER

Per Mrs. Hina P.Shah

By filing the present OA u/s 19 of the Administrative Tribunal Act, 1985, the applicant has prayed that the respondents may be directed to allow the pay scale of MCM

to the applicant i.e. Rs. 4500-7000 (pre-revised) on completion of 30 years of service or from 01.09.2008 and subsequently by allowing the Grade Pay of Rs. 4,200/- per month on account of third benefit under MACP.

2. Facts as stated by the Applicant :

The Applicant was initially appointed on the post of Mazdoor on 20.01.1978 and subsequently he was redesignated on the post of Mate w.e.f. 20.10.1983 in the same pay scale. Thereafter, he was promoted on the post of Wireman (SK) w.e.f. 26.10.1987 in the pay scale of Rs. 950-1680. Subsequently, he was further promoted on the post of Cable Jointer HS-II w.e.f. 01.04.1998 in the pay scale of Rs. 4000-6000. The Applicant has been superannuated on 31.01.2015 on attaining age of 60 years.

It is his contention that by virtue of restructuring of the cadre in pursuance to Government Circulars dated 20.05.2003 and 27.03.2006 as also as per the recommendations of 5th Central Pay Commission (CPC) for Industrial Trade, the applicant falls under three categories namely - Skilled, Highly Skilled and Master Craftsman. The applicant states that these are the promotional posts for the Industrial Staff. It is the contention of the Applicant that he

has completed 36 years of service as on 25th October 2014 and therefore he becomes entitled for the benefits of 3rd MACP in the pay scale of Rs. 4500-7000 (pre-revised) scale which is admissible to Master Craftsman (MCM) on completion of 30 years of service i.e 25th October 2008 or from 1st September 2008 i.e. the date of commencement of MACP Scheme. The applicant states that though he was entitled, but was deprived of the same. Accordingly, he submitted his application to the respondents on 3rd December 2014 which was forwarded by respondent No.3 vide letter dated 9th December 2014 to respondent no.2, but the same has been rejected by respondent No.2 vide letter dated 19th December 2014 denying the claim of the Applicant (Annexure A-1). Therefore, he prays that the respondents be directed to allow pay scale of Rs. 4500-7000 (pre-revised) on completion of 30 years or from 01.09.2008 and grant him benefits of 3rd MACP in the grade pay of Rs.4200/-.

3. On the other hand, the respondents by filing their reply stated that the applicant was appointed on 20.01.1978 as Mazdoor. Accordingly, he has completed 10, 20 and 30 years of service as on 20.01.1988, 20.01.1998

and 20.01.2008 and he has earned three promotions as Wireman on 20.10.1988, C/Jointer HS-II on 01.04.1998 and C/Jointer HS-I on 01.10.2007. It is the submission of the respondents that the MACP is applicable only to those individuals who have not got their promotions before completion of 10, 20 and 30 years of service, whereas the applicant has already earned his three promotions before his due date of MACP. Therefore, the claim of the applicant is baseless and he is accordingly, not entitled for any reliefs.

4. Heard Shri. M.S.Godarra for the applicant and Shri. Rameshwar Dave for the respondents and perused the material available on record.

5. It is the contention of the applicant that after the merger of the scales, there are only three cadres of Industrial Staff i.e. Skilled, Highly Skilled(HS) and Master Craftsman (MCM). The applicant was working on the post of HS after earning two promotions i.e first from Mazdoor/Mate to Wireman (Skilled) and second Highly Skilled. On the other hand, the respondents are counting 3 promotions i.e. i) Wireman (Skilled), ii) HS-II, and iii) HS-I, but after the merger HS-II & HS-I, this does not survive as

there is a combined seniority list as per the Circular dated 27.03.2006. Therefore counting of HS-II & HS-I as two different promotions is erroneous and in fact both HS-II & HS-I should be treated as one promotion. Therefore, the applicant is entitled for benefit of 3rd MACP on completion of 30 years of service and also for Grade Pay of Rs.4200/- from 01.09.2008 i.e. the date of commencement of MACP Scheme.

6. The applicant also relied on the judgement of Chandigarh Bench in OA No. 1274/PB/2011 in case of Shri. Mohindar Singh & Ors. V/s. Union of India and Ors. decided on 23.8.2013 as the issue of the said case is similar to that of his case. Therefore, he prays that he is entitled for 3rd MACP w.e.f. 01.09.2008.

7. The respondents on the other hand state the applicant after being appointed as Mazdoor/Mate got his first promotion on the post of Wireman w.e.f. 26.10.1987 with Grade Pay as Rs. 1900/-, second promotion as C/Jointer HS-II w.e.f 01.04.1998 with GP as 2400/- and third promotion as HS-I C/Jointer w.e.f. 01.10.2007 with GP as 2800/-. The applicant is not entitled for 3rd MACP as he has

availed all three promotions. Therefore, there is no question of his getting GP of Rs.4200/-.

8. Considered the rival contentions of the parties.

9. The sole question in this OA to be adjudicated is with regard to treating promotion from the HS-II Grade Pay of Rs. 2400 to Grade Pay Rs. 2800. The contention of the applicant is that since HS-II and HS-I grades have been merged as HS in the scale of Rs. 4000-6000, therefore, the same cannot be treated as promotion or placement. On the contrary, the respondents contended that the applicant has already been given three promotion i.e. first promotion as Wireman w.e.f. 26th October, 1987 with Grade Pay of Rs. 1900, second promotion as C/Jointer HS-II w.e.f. 1.4.1998 with Grade Pay of Rs. 2400 and third promotion as C/Jointer HS-I w.e.f. 1.10.2007 with Grade Pay of Rs. 2800.

10. The issue involved in this OA is not res-integra and the same has already been decided by various benches of this Tribunal. The Principal Bench of this Tribunal vide order dated 13.11.2013 passed in OA No.4101/2012- Satyvir Singh and Ors. vs. Union of India in para 10 and 11 held as under:-

"10. In the present case the placement of workers in Highly Skilled Grade-II and Grade-I does not even stipulate any residency period in the lower scale. Thus the placement in the higher scale is dependent only on the vacancies within the given percentage and on no other condition/qualification/ residency period etc. The learned counsel for respondents has referred to the clause 3 (b) in the letter dated 14.09.2010 stipulating that these placements will be in relaxation of the conditions, if any, i.e. trade test etc. as one time measure to prove that there are conditions to be fulfilled, for placement in the next higher scale. He, however, did not specify what those conditions were. This placement, therefore, cannot be treated as a promotion, notwithstanding the fact that it has been termed so in the Ministry of Defence letter dated 14.09.2010. The MACP Scheme, on the other hand, prescribes grant of scale to which the Government servant would have been promoted in the normal course as the 1st financial upgradation. Since the post of Master Craftsman is a part of hierarchy, it is logical that the 1st financial upgradation of the Highly Skilled worker will be to the grade of Master Craftsman, i.e., the grade pay of Rs.4200/-.

11. Considering the above facts and going by the ratio of F.C. Jains case (supra), we quash and set aside the impugned orders dated 12.05.2012, 01.12.2010 and 20.06.2011 to the extent these letters declare the grade pay of Rs.2800/- as promotion for the purpose of MACP for the workers in the Highly Skilled grade pay of Rs.2400. It is further ordered that the Highly Skilled workers in the grade pay of Rs.2400/2800 will be eligible to the grade pay of Rs.4200/- on the 1st financial upgradation under MACP Scheme. The OA is accordingly allowed. No costs."

The Ernakulam Bench of this Tribunal also came across a similar controversy in OA No.180/00558/2015 in the case of Sri C.Gopinathan vs. Chief Engineer and Ors. and vide order dated 4.1.2019 has held that:-

9. So it is quite clear that HS-II & HS-I is one category in the pay scale of Rs. 4000-6000/- and therefore, upgradation to HS-II to HS-I shall not be treated as promotion/upgradation. Hence, respondents are at error in treating it as upgradation from HS-II to HS-I. In the case of applicant it is part of restructuring benefit which is given to everybody. The placement in the grade of MCM (Master Craftsman) shall also not be either treated as promotion or upgradation under ACP Scheme. Resultantly it can be said that the respondents have committed serious error by not granting the 3rd upgradation to the applicant under MACP Scheme, though he is entitle to it.

The reason given by the respondents that he has not reached before retirement to the pay scale of Rs. 5000-8000/- also is a erroneous belief. No rules to this effect had been placed on record.

10. In the conspectus of the circumstances of the present case, we hold that the applicant is entitle from 2nd ACP in pay scale of Rs. 5000-8000 in the year 1999 and 3rd financial upgradation under the MACP in Grade Pay of Rs. 4600/- from the due date in 2003. Since the applicant only approached only after retirement in year 2016, he shall be granted the same from the due date i.e. completion of 30 years of his service notionally and the monetary benefits shall be granted to him 3 years prior to the filing of this Original Application. He is also entitled to get his pension re-fixed accordingly. The present OA is allowed. There shall be no order as to costs."

11. In view of above, it is clear that when the posts in HS-II and HS-I were merged, the same cannot be treated as promotion. Therefore, the impugned order dated 19.12.2014 is quashed and we hold that the applicant is entitled to the benefit under MACP scheme in the Grade Pay of Rs. 4200/- on completion of 30 years of service. The respondents are directed to extend the said benefit from the due date. Since the applicant has approached the Tribunal only after retirement in the year 2015, the benefit shall be granted to him from the due date i.e. on completion of 30 years of his service notionally and the monetary benefits shall be granted to him 3 years prior to filing of this OA. He is also entitled to get his pension re-fixed accordingly. This exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

12. The OA stands allowed in above terms with no order as to costs.

(ARCHANA NIGAM)
ADMV. MEMBER

(HINA P.SHAH)
JUDL. MEMBER

R/