

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.290/00222/2013

Reserved on : 17.02.2020

Jodhpur, this the 28th February, 2020

CORAM

Hon'ble Smt Hina P. Shah, Judicial Member

Hon'ble Ms Archana Nigam, Administrative Member

Veera Ram S/o Shri Shera Ram, aged 32 years, Mazdoor in 25 Ammunition Depot., Jassai District Barmer, R/o Village Dhundha, District Barmer.

.....Applicant

By Advocate : Mr Vijay Mehta.

Versus

- 1. Union of India through the Secretary, Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.**
- 2. Commanding Officer, 25 Ammunition Depot., Jassai, Barmer.**

.....Respondents

By Advocate : Mr K.S. Yadav.

ORDER

Per Smt. Hina P. Shah

The present Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking following relief(s) :

“The applicant prays that order ANN A 1 may kindly be quashed and the respondents may kindly be directed to accord benefits of first MACP from 24/1/2012 with all consequential benefits. Interest at the rate of 12% may also be awarded to the applicant on due amount. Any other order, as deemed fit may also be passed. Costs may be awarded to the applicant.”

2. Brief facts of the case are that applicant pursuant to Hon'ble Rajasthan High Court order dated 16.08.2007 (Annex. A/2) in D.B.C.W.P. No. 3243/2003 directing the respondents to consider the case of the applicant for appointment on compassionate grounds with effect from the date person lower in order of merit. As per the said order, the respondents appointed the applicant on the post of Civilian Mazdoor w.e.f. 25.01.2002 vide order dated 19.11.2008 (Annex. A/3). However, vide offer of appointment dated 19.11.2008, respondents mentioned that the applicant will be entitled for the financial effect of the same from the date of physically joining the duty. The grievance of the applicant is that although he completed 10 years' of service from the date of his

retrospective/notional appointment, i.e. 25.01.2002 on 24.01.2012, he has not earned any promotion during this period. The respondents have also not considered his case for financial upgradation under MACP Scheme. He, therefore, submitted representation dated 15.10.2012 (Annex. A/4) for MACP but respondents rejected the same vide order impugned dated 16.11.2012 on the ground that since financial benefits to the applicant pursuant of his appointment have been granted w.e.f. 20.11.2008 (date of actual joining), therefore, he is entitled for MACP w.e.f. 20.11.2018. Aggrieved of the same, the applicant has preferred the present OA challenging order dated 16.11.2012 (Annex. A/1).

3. Respondents filed reply on 26.04.2016 stating therein that the applicant earlier preferred Original Application before this Tribunal seeking appointment on compassionate grounds but the same has been dismissed by this Tribunal vide order dated 12.02.2004. The applicant challenged order dated 12.02.2004 passed by this Tribunal before Hon'ble Rajasthan High Court in D.B.C.W.P. No. 3243/2004. The Hon'ble High Court found that marks allotted to the applicant were not correct, therefore, directed the respondents to consider the applicant for appointment from

the day when persons having lesser marks than the applicant has been given appointment. However, it was also held that the applicant shall not be entitled for pay and emoluments for the intermitted period till the day of actual appointment. The applicant physically joined the duties in pursuance of the appointment order dated 19.11.2008 on the same day, therefore, he is entitled to count his services not before this day for the purpose of MACP in view of the fact that benefit of MACP Scheme ultimately results into increase of pay and emoluments and Hon'ble High Court has already held that the applicant is disentitled for the same prior to the day of actual appointment. Respondents further stated that the MACP Scheme itself provide vide para 9, the definition of regular service which states that for the purpose of MACP 'regular service shall commence from the day of joining of a post in direct entry grade on a regular basis either on direct recruitment basis or on absorption/re-employment basis'. Thus, respondents defended the order impugned as aforesaid and prayed to dismiss the OA.

4. Heard Mr Vijay Mehta, learned counsel for the applicant and Mr K.S. Yadav, learned counsel for the respondents.

5. Learned counsel for the applicant inter-alia reiterating the submissions made in OA argued that the Hon'ble Rajasthan High Court has clearly held that the applicant shall be given appointment with consequential benefits except payment of arrears of salary. Therefore, respondent No. 2 has wrongly held that all financial benefits have been granted to the applicant from the date of his physical joining on duty.

6. On the other hand, learned counsel for the respondents inter-alia submitted that as per offer of appointment dated 19.11.2008 issued to the applicant in pursuance of direction of Hon'ble High Court, it has clearly been mentioned that the applicant will be entitled for financial benefits with effect from physical joining of the duty by the applicant in the depot. Pursuant to the same, no notional increments or any other benefits have been granted to the applicant and only date of appointment has been notionally fixed from the date person lower in order of merit has been granted appointment, i.e. 25.01.2002. Since MACP ultimately results into increase of pay and emoluments, therefore, in view of Hon'ble High Court judgment, applicant is not entitled for counting his 10 years' regular service w.e.f. 25.01.2002 for the purpose of MACP. He further argued that MACP Scheme itself

requires 10 years' regular service whereas the applicant physically joined on 19.11.2008, therefore, applicant is entitled for MACP w.e.f. 20.11.2018. He, thus, submitted that order impugned is just, proper and needs no interference from this Tribunal.

7. We have considered the arguments advanced by learned counsels for the parties and perused the record.

8. Since applicant has been granted appointment from a retrospective date on the directions of Hon'ble High Court passed in D.B.C.W.P. No. 3243/2003 on 16.08.2007, it is worthwhile to reproduce relevant part of the same, which reads as under :

It is not disputed before us that if the reconsideration of merit is to be taken as in 2001, the marks allotted by the unit Board and petitioner's merit position on that basis is correctly determined which ought to have been accepted by the Headquarter Board. If that be so it is clear case in which persons lower in merit has been given appointment. Allowing such a position would amount to perpetuating the hostile discrimination which is writ large on the administrative action of the respondents. It cannot be sustained.

Accordingly, petition is allowed.

The respondents are directed to consider the petitioner's case as per the merit as on 01.05.2001 on the basis of recommendation made by the unit board and if on that basis he is found in order of merit against the available vacancies, he may be given appointment with effect from the date person lower in order of merit with consequential benefit. The order be given effect within three months. However, it will not entail claim to any arrears of emoluments before the date of actual appointment. The petition is according disposed of.

No order as to costs.

It is evident from conjoint reading of judgment that Hon'ble High Court and offer of appointment dated 19.11.2008 (Annex. A/3) that persons lower in merit than the applicant for appointment on compassionate grounds have been given appointment as respondents issued the said offer of appointment appointing the applicant w.e.f. 25.01.2002. This position has also not been disputed by the respondents. The respondents plea is that Hon'ble High Court held that the applicant shall not be entitled for pay and emoluments for the intermitted period till the day of actual appointment and pursuant to that respondents have categorically mentioned the same in condition 1(c) of the appointment letter that "*As per ibid Hon'ble High Court, Jodhpur order dated 16 Aug 2007, the financial effect will be entitled with effect from your physical joining duty in this depot.*" Benefit of MACP ultimately results into increase of pay and emoluments and applicant has already been disentitled for the same prior to the day of actual appointment. Hence, the applicant is not entitled for counting his services w.e.f. 25.01.2002 for the purpose of MACP Scheme. We find that this contention raised by the respondents is misplaced. Hon'ble High Court while granting relief to the applicant with consequential benefits in order to overcome discrimination has passed orders granting him relief from the date

person lower in order of merit was given appointment. At the same time, the Hon'ble High Court only restricted arrears of emoluments from such notional date of appointment. Since the applicant herein is before us seeking benefit of MACP Scheme only, we are not inclined to discuss the issue further as the applicant is seeking benefit of MACP Scheme only on the ground of counting of his 10 years' service from the notional date of appointment. If applicant succeeds in his claim, the applicant in any case would get prospective benefits only, i.e. after date of actual joining 19.11.2008 and this will entail no arrears of emoluments prior to that date. Hence, the aforesaid contention of the respondents is misplaced and cannot be accepted.

9. The main contention of the respondents involving legal issue is that although applicant is appointed notionally from a retrospective date, i.e. 25.01.2002 but he actually or physically joined the services on the post of Civilian Mazdoor at a later date, i.e. 19.11.2008. Therefore, intervening period of notional appointment and actual joining cannot be counted towards regular service for grant of benefits of MACP Scheme in view para 9 of MACP Scheme. Relevant portion of the same reads as under:

9. ‘Regular service’ for the purposes of the MACPS shall commence from the date of joining of a post in direct entry/grade on a regular basis either on direct recruitment basis or on absorption/re-employment basis. Service rendered on ad hoc/contract basis before regular appointment in pre-appointment training shall not be taken into reckoning. XXXXXXXX

In our considered view, the word regular herein will not mean actual as the appointment of the applicant was retrospective pursuant to observation of Hon’ble High Court to correct the wrong committed by the respondents as applicant despite being higher in order of merit, persons lower in merit were appointed by the respondents. If respondents have not erred while considering his case for appointment on compassionate grounds, the applicant would have been appointed much earlier. Para 9 of MACP Scheme relied on by the respondents clearly qualifies that service rendered on ad hoc/contract basis before regular appointment shall not be reckoned. The expression ‘regular service’ herein would mean the appointment to the post on a regular basis in contradistinction to appointment on ad hoc or stopgap or purely temporary basis. It is not the case of the respondents that notional appointment of the applicant w.e.f. 25.01.2002 is illegal or irregular. We are fortified in our view by the judgment of Hon’ble Supreme Court in the case of Union of India & Ors vs K.B. Rajoria (2000) 3 SCC 562. In our considered view, if applicant is denied the right

to be considered for MACP for financial upgradation from the notional date of appointment, it would result in perpetuating the wrong done to him.

10. In view of discussions hereinabove made, it is held that the applicant is entitled for counting of his 10 years' regular service from his notional date of appointment, i.e. 25.01.2002 for the purpose of granting MACP benefits. Accordingly, impugned order dated 16.11.2012 (Annex. A/1) is quashed and set aside. The respondents shall consider the case of the applicant for benefit under MACP Scheme w.e.f. 25.01.2012 taking into account 10 years' regular service from 25.01.2002 as his date of commencement of regular service in the grade and if he found fit, respondents shall grant the applicant financial upgradation with all consequential benefits within 03 months from the date of receipt of a certified copy of this order.

11. In terms of above directions, OA is allowed with no order as to costs.

**[Archana Nigam]
Administrative Member**

**[Hina P. Shah]
Judicial Member**

Ss/-