

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

OA No.290/00313/2014 **Pronounced on : 27.02.2020**
Reserved on : 18.02.2020

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

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1. All India Central Ground Water Board Employees Association (Recognized by Government of India), through President, Ram Niwas Choudhary S/o Shri Bhanwar Lal Ji Choudhary, aged 47 years, resident of H.No. 30, Shri Ram Nagar, Near Ramdev Temple, Nandari, Jodhpur (at present working on the post of Assistant Driller-cum-Mechanic and posted at Division - XI, Central Ground Water Board, Jodhpur).
2. Parvesh Kumar Rana S/o Shri Kashmir Singh Rana, aged 47 years, resident of H.No. 30, Shri Ram Nagar, Near Ramdev Temple, Nandari, Jodhpur (at present working on the post of Assistant Driller-cum-Mechanic and post at Division-XI, Central Ground Water Board, Jodhpur).

...APPLICANTS

BY ADVOCATE : Mr. Vinay Jain proxy counsel for Mr R.N. Choudhary

VERSUS

1. The Union of India, through the Secretary, Ministry of Water Resources, Shram Shakti Bhawan, Rafi Marg, New Delhi.
2. The Chairman, Central Ground Water Board, Bhujal Bhawan, NH-IV, Faridabad.
3. The Director (Finance), Ministry of Water Resources, Shram Shakti Bhawan, Rafi Marg, New Delhi.
4. The Director (Administration), Ministry of Water Resources, Central Ground Water Board, Bhujal Bhawan, NH-IV, Faridabad.

RESPONDENTS

BY ADVOCATE: Mr. B.L. Bishnoi

ORDER

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Smt. Hina P. Shah, Member (J):-

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

"8(i) That applicants may be permitted to pursue the joint application as per Rule 4 (5) of the Central Administrative Tribunals Act , 1985 .

(ii) That Original Application filed by the Applicants may kindly be allowed and the respondent departments be directed to grant the benefit of upgradation of pay on completion of 10,20 and 30 years of service to the members of the association in next promotion post in their hierarchy as per MACP Scheme and the entire benefit should be granted from the date employees are entitled with 18% interest.

(iii) That any other direction or orders may be passed in favour of the applicants, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.

(iv) Costs of this application may be awarded to the applicant."

2. The brief facts of the present case as narrated by the applicants are that the applicants are appointed on the post of Technical Operator (Drilling) vide orders dated 22.07.1988 and 15.07.1988 respectively and thereafter promoted to the post of Assistant Driller-cum-Mechanic vide orders dated 16.01.2012 and 18.09.2011 respectively. The Respondents granted MACP to the applicants on completion of 20 years of service. As per the promotion hierarchy next promotion post from Assistant Driller – cum-Mechanic is Driller-cum-Mechanic and under 6th Pay Commission revised pay scale of Driller-cum-Mechanic runs in the grade of Rs.4200/- . It is further stated that as per the Office Memorandum dated 19.05.2009 (Annex. A/2), the Modified Assured Career Progression Scheme (MACP) was notified in supersession of the earlier ACP Scheme of 1999 . It is the claim of the applicants that the respondents are wrongly interpreting the terms and conditions of MACP Scheme and that they should be placed in the next grade pay of promotional post as per promotional hierarchy. Also, in number of cases, orders passed by various Benches of this Hon'ble Tribunal wherein it has been held that the purpose of introducing MACP Scheme is to grant the benefit of grade pay to the

next promotion post in the hierarchy on completion of 10 , 20 and 30 years of service. Hence, applicants have preferred this OA.

3. In the written statement filed on behalf of the respondents, it has been stated that the applicants approached this Tribunal for seeking the direction to the respondents to confer the grade pay of Rs.4200/- in hierarchy of promotional post and also to confer the grade pay of Rs.4200/- instead of Rs.2800/- in favour of the applicants. A further direction is also sought to grant the pay band and grade pay in the promotional post. It is further stated that on the recommendations of the 6th CPC, Govt. of India has taken a conscious decision to accept the Modified Assured Career Progression Scheme (MACPS) with further modification to grant three financial upgradations under the Scheme at intervals of 10, 20 and 30 years of continuous regular service in the immediate next higher grade pay in the hierarchy of recommended revised pay bands as given in CCS (Revised Pay) Rules, 2008. The MACP Scheme has come into force w.e.f. 01.09.2008 vide DOP&T's OM dated 19.05.2009. This Scheme is applicable to all regularly appointed Groups A, B & C Central Government civilian employees except officers of the organized Group 'A' service. It is also stated that the 6th CPC has given a new pay structure consisting of four running pay bands which are sufficiently long and provide smooth progression without stagnation. It is further stated that the MACP has replaced the ACP w.e.f. 01.09.2008. The prime difference between the two schemes is that the ACP Scheme envisaged two financial upgradations in the higher pay scale in the promotional hierarchy after regular service of 12 years and 24 years, if no regular promotions were availed by an employee during this period. Whereas the MACPS envisages three

financial upgradations in the next immediate grade pay hierarchy in recommended revised pay bands and grade pay as per CCS (RP) Rules, 2008 on completion of 10, 20 and 30 years of service. ACP/MACP Schemes issued by the department is applicable to all Central Government civilian employees. Allowing the relief sought by the applicants and granting undue benefits to certain employees contravening the policy provisions will be discriminatory and would be violating Article 14 of the Constitution of India in respect of all other category of employees whose cases have been decided in accordance with the above provision. Hence, the relief sought by the applicants is totally against the Government policy and the provisions of the MACP Scheme. Thus, the OA filed by the applicants deserves to be dismissed even without going into the merits of the case.

4. Heard Shri Vinay Jain , learned counsel for the applicant and Shri B.L. Bishnoi, learned counsel for respondents no.1 to 4 and perused the material available on record.

5. During the course of hearing, learned counsel for the applicant relied upon the judgment in the case of D.M. Nagesh Vs. Assistant Superintendent Post Offices, Bangalore to fortify his argument that in the scenario where there is conflicting judgments of various Benches of CAT and even at times judgments of High Courts, it would be difficult to rely on these as precedent. In the judgment at Para 12, reference has been made to case S.I. Roop Lal & Anr. Vs. Lt. Governor AIR 2000 SC 594 wherein the Hon'ble Apex Court opined as follow:-

"12. At the outset, we must express our serious dissatisfaction in regard to the manner in which a Coordinate Bench of the Tribunal has over-ruled, in effect, an earlier

judgment of another Coordinate Bench of the same Tribunal. This is opposed to all principles of judicial discipline. If at all, the subsequent Bench of the Tribunal was of the opinion that the earlier view taken by the Coordinate Bench of the same Tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two Coordinate Benches on the same point could have been avoided. It is not as if the latter Bench was unaware of the judgment of the earlier Bench but knowingly it proceeded to disagree with the said judgment against all known rules of precedents. Precedents which enunciate rules of law from the foundation of administration of justice under our system. This is a fundamental principle which every Presiding Officer of a Judicial Forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. This Court has laid down time and again precedent law must be followed by all concerned deviation from the said should be only on a procedure known to law."

6. Per contra, learned counsel for the respondents in support of their claim relied upon the judgment passed by this Tribunal in OA No.187/Jodhpur/2014 on 25.01.2017. This Tribunal while adjudicating the matter, had relied upon the decision of the CAT Ahmedabad Bench. The Ahmedabad Bench of this Tribunal has rejected an identical claim in the case of Manubhai Bhagwanji Rathod Vs. Union of India & Ors. (Original Application No. 18 of 2015 decided on 16th day of October, 2015). The co-ordinate Bench at Ahmedabad has held that grievance of the petitioners as made therein, was however, contrary to the fundamental concept on which MACPS introduced through the 6th Central Pay Commission operates. A bare reading of paragraph 2 of the MACPS would make it clear that it is the next higher Grade Pay which has to be given and not the Grade Pay in the next hierarchical post, as was available under the ACP Scheme with reference to the pay scale of the next above hierarchical post. It is further held that "It is not in dispute that MACPS supersedes ACP Scheme which was in force till August 31, 2008. Therefore, after August 31, 2008 any financial up gradation would be confined to

placement in the immediate next higher grade pay in the hierarchy of the recommended revised Pay Band. The use of word 'merely' in para 2 of the Scheme supports this interpretation. Paragraph 2 further clarifies that the higher Grade Pay attached to the next promotional post in the hierarchy of the concerned cadre/organization will be given only at the time of regular promotion. Therefore, the claim that the petitioners should also be placed in the replacement Pay Band applicable to the next promotional post in the hierarchy as was available under the ACP Scheme is misplaced." The decision is reproduced in extenso :-

"14. At para 20 of the said judgment, their Lordships were pleased to note that the very same issue had come up for consideration before this Court in W.P.(C) No. 3420/2010 in the case of R.S. Sengor & Others v. Union of India and Others, decided on 04.04.2011. Their Lordships quoted :

20. This very issue had come up for consideration before this Court in W.P. (C) No.3420/2010 R.S.Sengor & Ors. Vs. Union of India & Ors. decided on April 04, 2011. In said case the petitioners were in Pay Band- 1 and had a corresponding grade pay of Rs. 1900/-. The next hierarchical post was also in Pay Band-1 but had a grade pay of Rs. 2400/-. The petitioners therein claimed that since the next hierarchical post had a pay band of Rs. 2400/-, they should, on financial up gradation, under the MACPS, be granted the grade pay of Rs. 2400/-. However, what the respondents in that case had done was to grant the petitioner therein the grade pay of Rs. 2000/- which was the next higher grade pay though, not the grade pay corresponding to the next hierarchical post. Dismissing the writ petition the Division Bench held as under:-

"10. The question would be whether the hierarchy contemplated by the MACPS is in the immediately next higher Grade Pay or is it the Grade Pay of the next above Pay Band.

11. Whatever may be the dispute which may be raised with reference to the language of paragraph 2 of the MACPS the illustration as per para 4 of Annexure I to the OM, contents whereof have been extracted hereinabove, make it clear that it is the next higher Grade Pay which has to be given and not the Grade Pay in the next hierarchical post and thus we agree with the Respondents that Inspectors have to be given the Grade Pay after 10 years in sum of Rs. 4800/- and not Rs. 5400/- which is

the Grade Pay of the next Pay Band and relatable to the next hierarchical post. To put it pithily, the MACPS Scheme requires the hierarchy of the Grade Pays to be adhered to and not the Grade Pay in the hierarchy of posts."

15. By referring to the fact that the view in *R.S. Sengor* was followed by another Division Bench of this Court in the decision reported as 193 (2012) DLT 577, *Union of India Vs. Delhi Nurses Union (Regd.) and Anr.*, at Para 22 of the said judgment, it was held as under :

22. Therefore, merely because others who have been granted financial up gradation in the pay scale of the promotional post in the hierarchy under the ACP Scheme and by operation of para 6 of MACPS, their pay is fixed with reference to the pay scale granted to them under the ACP Scheme, the petitioners would not get any right to be placed in such scales, since the language of the scheme makes it clear that the financial up gradation under ACP/MACPS are different than regular promotions in the grade.

*The claim of the petitioners before the Hon'ble High Court of Delhi in *R.S. Sensor and Others* (supra) and *Saran Pal Singh and Others* (supra) is identical to that of the claim of the applicant in this O.A, as such, in view of the findings of the Hon'ble High Court of Delhi on the issue at hand, one has to agree with the argument of Sheri B. Mishap, learned counsel for the respondents.*

16. Before agreeing with the argument of Sheri B. Mishap, learned counsel for the respondents, it is necessary for us to deal with the argument of Sheri B.A. Vaishnav, learned counsel for the applicant. As already observed, in support of the claim of the applicant, he places reliance upon the following orders :

(i) Order dated 31.05.2011 in O.A. No. 1038/CH/2010 in the case of *Raj Pal vs. Union of India and Others* on the file of Chandigarh Bench of the Tribunal;

(ii) Order dated 26.11.2012 in O.A. No. 904/2012 in the case of *Sanjay Kumar vs. Union of India and Others* on the file of Principal Bench of CAT, New Delhi;

(iii) Order dated 11.09.2015 in O.A. No. 101/2015 in the case of *Vikas Bhutani and Others v. Union of India and Others* on the file of Principal Bench of CAT, New Delhi;

(iv) Order dated 08.09.2015 in O.A. No. 1586/2014 in the case of *Vinai Kumar Srivastav v. East Delhi Municipal Corporation and Others* on the file of Principal Bench of CAT, New Delhi.

Shri B.A. Vaishnav also points out that the order of the Chandigarh Bench of this Tribunal in O.A. No. 1038/CH/2010 was subject matter before the Hon'ble Punjab and Haryana High

Court in CWP No. 19387/2011 and the Hon'ble High Court of Punjab and Haryana confirmed the order passed in Raj Pals case. He further points out that the SLP [(CC) 7467/2013] preferred against the order of Hon'ble High Court of Punjab and Haryana was dismissed by the Hon'ble Supreme Court by judgment dated 15.04.2013 and the matter has attained finality. He argues that in view of the fact that the judgment of the Hon'ble High Court of Punjab and Haryana was subject matter before the Hon'ble Supreme Court in the said SLP, which came to be decided by the Hon'ble Supreme Court by judgment dated 15.04.2013, the submission of Shri B. Mishra cannot be entertained. The thrust of Shri B.A. Vaishnav is that the judgment of the Hon'ble High Court of Punjab and Haryana is to be preferred to that of the Hon'ble High Court of Delhi in view of dismissal of SLP. At this juncture, Shri B. Mishra brings to our notice that the order of Hon'ble Supreme Court in SLP [(CC) 7467/2013] is not on merits but on the ground of delay and laches. In this regard, we may also mention that an identical matter to that of Raj Pal (supra) was the subject matter before the Ernakulam Bench of the Tribunal in O.A. No. 816/2012 and the Hon'ble Tribunal allowed the same vide order dated 29.01.2013 by following the order of the Chandigarh Bench dated 31.05.2011 in O.A. No. 1038/CH/2010, affirmed by the Punjab and Haryana High Court in its judgment dated 19.10.2011 in CWP No. 19387/2011. The said order of the Ernakulam Bench in O.A. No. 816/2012 was challenged before the Hon'ble High Court of Kerala in OP (CAT) No. 2000 of 2013 which came to be confirmed vide its judgment dated 24.06.2013. The judgment of the Hon'ble High Court of Kerala in O.P. No. 2000/2013 was challenged by the Union of India before the Hon'ble Supreme Court in S.LP. (C) No. 21813/2014 [CC No. 10791 of 2014] and the Hon'ble Supreme Court by the order dated 08.08.2014 was pleased to stay the judgment of Hon'ble High Court of Kerala and the matter is still pending consideration of the Hon'ble Supreme Court. By referring to this fact Shri B. Mishra argues that it cannot be said that the Hon'ble Supreme Court laid down any law while dismissing the said SLP (CC) 7467/2013 by the judgment dated 15.04.2013. In other words, the order of the Hon'ble Supreme Court in SLP [(CC) 7467/2013] is not on the merits of the matter but is only on the ground of delay and laches. Hence what can be argued is that the judgment of the Hon'ble Supreme Court in Raj Pals case binds only to the parties to the same. It cannot be regarded/treated as a precedent. We are in agreement with the argument of Shri B. Mishra particularly in view of the fact that the Hon'ble Supreme Court was pleased to stay the judgment of the Kerala High Court in O.P. No. 2000/2013 and the matter is still pending.

17. Now the next question before us is that in view of the conflicting view of the Hon'ble High Court of Delhi and the Hon'ble High of Punjab and Haryana, we are in dilemma as to which of the judgments are to be preferred to that of another. Neither of the learned counsel is placing reliance upon any of the judgment of Hon'ble Gujarat High Court in support of their respective claims. To answer this problem, we may usefully

refer to the Full Bench judgment of this Tribunal in O.A. No. 555/2001, Dr. A.K. Dawar v. Union of India and Others, on the file of the Principal Bench of this Tribunal. In Dr. A.K. Dawar, the Principal Bench was considering the situation arising out of conflicting decisions of Hon'ble High Court. It referred to the decisions in M/s East India Commercial C.o. Ltd., Calcutta and Another v. Collector of Customs, Calcutta, AIR 1962 SC 1893, Bhagaban Sarangi (supra) IPCL and Another v. Shramik Sena (2001) 7 SCC 469 and Director General (I&R) v. Holy Angels Schools, 1998 CTJ 129 (MRTPC). It held :

"17. Consequently, we hold :-

1. that if there is a judgment of the High Court on the point having territorial jurisdiction over this Tribunal, it would be binding ;
2. that if there is no decision of the High Court having territorial jurisdiction on the point involved but there is a decision of the High Court anywhere in India, this Tribunal would be bound by the decision of that High Court;
3. that if there are conflicting decisions of the High Courts including the High Court having the territorial jurisdiction, the decision of the Larger Bench would be binding, and
4. that if there are conflicting decisions of the High Courts including the one having territorial jurisdiction then following the ratio of the judgment in the case of Indian Petrochemicals Corporation Limited (supra), this Tribunal would be free to take its own view to accept the ruling of either of the High Courts rather than expressing third point of view."

Thus, in view of the decision of the Full Bench in Dr. A.K. Dawar (supra), by following the judgment in Indian Petrochemicals Corporation Limited (supra) we are free to take our own view to accept the rulings of either the Hon'ble High Court of Delhi and Hon'ble High Court of Punjab and Haryana. At this juncture, we may also observe that among the rulings relied upon by the parties, the judgment of Hon'ble High Court of Delhi in W.P.(C) No. 3420/2010 in the case of R.S. Sengor & Others vs. Union of India and Others is the oldest one, i.e. dated 04.04.2011. The order of the Chandigarh Bench of the Tribunal in the case of Raj Pal vs. Union of India and Others in O.A. No. 1038/CH/2010 was decided later. In other words, as on the date of decision of the Chandigarh Bench of the Tribunal in Raj Pal, the judgment of Hon'ble High Court of Delhi was very much available and if it refers to the issue involved in this O.A, then the judgment in Raj Pal is per incuriam. Hon'ble High Court of Punjab and Haryana did not refer to the judgment of Hon'ble High Court of Delhi in the case of R.S Sengor while dealing with the CWP No. 19387/2011 (supra). In view of this position and also in view of the guidelines of the Full Bench of the Tribunal (Principal Bench) in Dr. A.K. Dawar (supra), we accept the ruling of the Hon'ble High court of Delhi in R.S. Sengor (supra) which was

consistently followed by it in *Swaran Pal Singh (supra)* and also in *Union of India vs. Delhi Nurses Union (Regd.)* and *Another reported at 193 (2012) DLT 577*. We may also observe that the Hon'ble Supreme Court in the case of *Government of Tamil Nadu vs. S. Arumugham & Ors.* held that the Courts cannot substitute their own views for the views of the Government or direct a new policy based on the Courts view. Further, Hon'ble Supreme Court in the case of *Secretary, Govt. (NCT of Delhi) & Others v. Grade-I DASS Officers Association & Others*, 2014 (13) SCC 296, while considering ACP Scheme held that the scheme being a policy decision of the Government, the Court will not interfere with the same.

18. We have also carefully perused the Office Memorandum dated 19.05.2009 by which the Government has introduced the MACP Scheme. Paras 2, 8 and 8.1 of the MACP Scheme are relevant and they are noted as under :

"2. The MACPS envisages merely placement in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay as given in Section I, Part-A of the first schedule of the CCS (Revised Pay) Rules, 2008. Thus, the grade pay at the time of financial upgradation under the MACPS can, in certain cases where regular promotion is not between two successive grades, be different than what is available at the time of regular promotion. In such cases, the higher grade pay attached to the next promotion post in the hierarchy of the concerned cadre/organization will be given only at the time of regular promotion.

8. 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.

8.1 Consequent upon the implementation of Sixth CPC's recommendations, grade pay of Rs. 5,400/- is now in two pay bands viz., PB-2 and PB-3. The grade pay of Rs. 5,400/- in PB-2 and Rs. 5,400/- in PB-3 shall be treated as separate grade pays for the purpose of grant of up gradations under MACP Scheme."

19. Annexure I to the DOPT OM dated 19.5.2009, vide illustration 4 clarifies as under:-

"In case a Govt. servant joins as a direct recruits in the Grade Pay of Rs.1,900/- in Pay Band-I Rs. 5,200-20,200/- and he gets no promotion till completion of 10 years of service, he will be granted financial up gradation under MACP scheme in the next higher Grade Pay of Rs. 2,000/- and his pay will be fixed by granting him one increment + difference of grade pay (i.e. Rs.100/-). After availing financial up gradation under MACP scheme, if the Govt. servant gets his regular promotion in the hierarchy of his cadre, which is to the Grade of Rs. 2,400/-, on regular promotion, he will only be granted the difference

of Grade Pay between Rs. 2,000/- and Rs. 2,400/- . No additional increment will be granted at this stage."

A combined reading of the above stipulations in the MACP Scheme would lead to a irresistible conclusion that it is the next higher Grade Pay which has to be given and not the Grade Pay in the hierarchical post and thus we agree with the respondents that the applicant has to be given the Grade Pay in a sum of Rs. 4800/- and not Rs. 5400/- which is the Grade Pay of the next Pay Band and relatable to the next hierarchical post.

20. In view of the foregoing, we do not find fault with the action on the part of the respondents in granting the Grade Pay of Rs. 4800/- while extending the benefit of 2nd financial up gradation under the MACP Scheme and consequently, the question of any direction as sought by the applicant does not arise. The O.A deserves to be dismissed. Accordingly, the same is dismissed with no order as to costs."

12. In view of the judgments cited above, we are of the opinion that this OA which has parity with the OA decided earlier by this Tribunal on the same issue, i.e. OA No. 290/00475/2013 dated 26.08.2019 (Lalit Dubey & Ors Vs. Union of India & Ors) does not require to be gone into again. The benefits under MACP Scheme would only be available to the applicants in the next higher Grade Pay in heirarchy of pay scales/grade pay of 6th CPC Pay Scale/Grade Pay and not in the heirarchy of Pay Scale/Grade Pay attached to the next promotional post. Accordingly, OA lacks merit and the same is dismissed with no order as to costs.

(ARCHANA NIGAM)
MEMBER (A)

(HINA P. SHAH)
MEMBER (J)

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