



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

O.A. No.350/01565/2013.

Date of Hearing : 12.12.2019

Date of order : 8.1.2020



Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble -Dr.(Ms) Nandita Chatterjee, Administrative

1. Prabir Kr. Roy
S/o Late Lal Mohan Roy,
Aged about 57 years,
At present residing at 32/12,
Matilal Mallick Lane, Flat No. 4,
Kolkata – 700 035.
2. Krishan Lal Sharma
S/o Late Dharam Prakash Sharma
Aged about 57 years,
At present residing at P.O. Gondal Para,
Chandan Nagar,
Dist. Hooghly.
3. Ratan Chatterjee
S/o Late Surendra Nath Chatterjee,
Aged about 56 years,
At present residing at 153/AIB Regent Colony,
Kolkata – 40.
4. Sunil Kumar Patra
S/o Late Kush Behari Patra,
Aged about 58 years,
At present residing at Sarsuna – Sonamukhi Road,
Kolkata – 61.
5. Ashim Banerjee
Aged about 57 years,
At present residing at Army Camp – Rasputja,
Qtr. No. T/61 East Via JOKA 24 Pgs(S)
Kol – 104.
6. Ganesh Ch. Tripathy
Aged about 56 years,
At present residing at KP-1/2 Napier Road,
Kol – 22.
7. Tarun Kr. Das

S/o Late Bidhu Bhusand Das
Aged about 58 years,
At present residing at Acharya Prafulla Ch. Roy
Road,
Near Sri Durga Samity Club,
P.O. Natagarh,
Kolkata - 700 113.

8. Nandulal Jaiswal
S/o Late Sukhlal Jaiswal
Aged about 57 years,
At present residing at 5/6,
Jukilee Line,
Kol - 22.

9. SK. Ibrahim
S/o Late Wazid Ali,
Aged about
At present residing at Vill - Nakul sabinea,
P.O. Nakul,
P.S. Shyampur (Bagnan),
Dist. Howrah.

10. Abdul Aziz
S/o Late Abdul Kadir,
Aged about
At present residing at 2B/H/6, Ekbalpore Lane,
P.O. Kidderpore,
P.S. Ekbalpore,
Dist . Kolkata - 700 023.

..... Applicants.

By Advocate : Mr C. Sinha

Versus

- 1) Union of India
through Secretary,
Ministry of Defence South, Block,
New Delhi - 1.
- 2) Engineering Chief Ministry of
Defence South Block,
New Delhi - 1.
- 3) Chief Engineer HO,
Eastern Command,
Fort William,
Kolkata - 700 021.
- 4) HQ. Chief Engineer Kolkata Zone,
Ballygunge Maidan Camp,
Gurusaday Road,

Kolkata – 700 019.

5) HQ. Commander Works Engineer Kolkata,
1 No. National Library Avenue, Alipore,
Kolkata – 700 027.

6) Garrison Engineer (C) Kolkata,
T/37, Napier Road, Hastings,
Kolkata – 700 027.

7) Garrison Engineer (A) Kolkata,
1 No. National Library Avenue, Alipore,
Kolkata – 700 027.



..... Respondents.

By Advocate Mr M.K.Ghara, Mr B.B. Chatterjee.

ORDER

MS BIDISHA BANERJEE, MEMBER(J)

The applicants who belong to the Artisan Category have sought for the following reliefs :

"8.a) To set aside and quash the Impugned letter No. 7133/MACP/495/EIC(2) dated 28.08.2013 issued by SBSO, Offg. Adm. Officer, for CWE Kolkata.

b) To set aside and quash the Impugned letter No. 11(5)/2009-D (Civil) dated 14.06.2010 issued by under Secretary to Government of India.

c) To direct the respondents to grant financial upgradation under MACP Scheme in Grade Pay of Rs. 4600/- from the date of completion of 30 years of service w.e.f. 21.06.2012 with all consequential benefits.

d) Interest @ 12% p.a. on the arrears so received.

e) Any other order or orders as the Hon'ble Tribunal deems fit and proper.

f) Liberty to be granted under Rule 4(5)(a) under CAT (Procedure) Rules 1987 to file and maintain the O.A. Jointly."

2. The order dated 28.08.2013, which is under challenge in the present O.A, is extracted hereunder for clarity :

"7133/MACP/495/EIC (2)

28 Aug 2013

Shri Chiradip Sinha, Advocate

1/S, Banamali Ghosal Lane
(Near Blind School), Behala
Kolkata - 700 034.

LEGAL NOTICE FOR GRANT OF 3RD MACP ON COMPLETION OF 30 YEARS SERVICE GRADE PAY OF Rs. 4600/- WEF 21.10.2012 WITH ALL CONSEQUENTIAL BENEFITS

Dear Sir,



1. Please refer your legal notice dated 07 Aug 2013 for grant of 3rd MACP on completion of 30 years service for Grade Pay Rs. 4600/- wef 21 Oct 2013 in respect of your clients.
2. In this regard it is intimated that as per Govt orders, Industrial Personnel are not entitled for Grade Pay of Rs. 4600/- on restructuring of Cadre of Artisan Staff in Defence Establishments in modification of the recommendations of 6th Central Pay Commission. In this connection a photocopy of Govt of India, Ministry of Defence letter No. 11 (S) 2009-D (Civ.I) dated 14 Jun 2010 is forwarded herewith for your info and reference please.
3. It has also been clarified by Army HQ, E-in-C/ s Branch that Grade Pay Rs. 4600/- is not admissible to Industrial Personnel.
4. Your clients may please be informed accordingly.

Thanking you,

Yours faithfully

Sd/-

(P. Sengupta)

SBSO

Offg Adm Offr

For CWE Kolkata"

The said order mentions of Ministry of Defence letter dated 14.06.2010 which as we discern, is in regard to restructuring of Cadre of Artisan Staff in Defence Establishments in modification of the recommendations of 6th Central Pay Commission. It envisages the hierarchy upto the highest level which is MCM in the grade pay of Rs.4200/-. The contents of the letter is extracted herein below for clarity :

"No.11(5)/2009-D (Civ.I)
Government of India
Ministry of Defence

New Delhi, the 14th June, 2010

The Chief of Army Staff
The Chief of Air Staff
The Chief of Naval Staff
The DGOF
& all ... (not legible) Service Organizations.

Subject – Restructuring of Cadre of Artisan staff in Defence Establishments in modification of recommendation of 6th CPC

Sir,

The matter regarding revision of pay scale of Master Craftsman in(not legible) Establishments has been under consideration of the Government for(not legible) modification of the 6th CPC(not legible) of its report and amendment made in(not legible) services (Revised Pay) Rules, 2008, vide SRO 11(E)(not legible) I am directed to convey the sanction of the President for restructuring of Cadre of Artisan Staff in Defence Establishments as under:-



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. 1.1.2006 as under:

(i)	Skilled Pay Rs. 1900	-	Pay Band PB-1	Grade
(ii)	Highly Skilled Grade II Grade Pay Rs. 2400	-	Pay Band PB-1	
(iii)	Highly Skilled Grade I Grade Pay Rs. 2800	-	Pay Band PB-1	
(iv)	Master Craftsman Rs. 4200	-	Pay Band PB-2	Grade Pay

.....(not legible) grade structure to the Industrial as well as Non Industrial(not legible) is already existing in the ration 01-05-55, the(not legible) while Skilled and Highly Skilled, and 25% of Highly Skilled in the(not legible) of Master Craftsman, the following will apply:

* 45% of the posts may be granted the pay scale of Skilled Work(not legible) pay of Rs. 1900 in the Pay Band PB-1);

* 25% of the remaining 55% may be granted the pay scale of MCMD Grade Pay of Rs. 4200 in the pay band PB-2) and

* The remaining post may be divided in at ratio of 50:50 and redesignated as Highly Skilled Worker Grade-II (Grade Pay of Rs. 2400 in Pay Band PB-1) and Highly Skilled Worker Grade-I (Grade Pay of Rs. 2800) in Pay Band PB-I).

(b) The placement of the individuals in the posts resulting from the restructuring shall be made w.e.f. 1.1.2006, in relaxation of the conditions, if any, i.e. trade test etc as one time measure.

(c) Highly Skilled Grade I shall be en-bloc senior to Highly Skilled Grad II.

4. (i) The post of Master Craftsman shall be pan of the hierarchy and the placement of Highly Skilled Grade I in the grade of Master Craftsman will be treated as promotion.

(ii) IN the case of Defence Establishments where there is no category of Skilled Workers and direct recruitment is made 100% at

the level of Highly Skilled, the posts of Master Craftsman existing as on 1.1.2006 will be placed in PB-2 + GP - 4200 and the remaining posts of Highly Skilled Workers may be bifurcated in HS-I and HS-II in the ratio of 50:50.

(iii) In view of the above re-structuring, the artisan staff may be allowed to give revised option for pay fixation w.e.f. 1.1.2006 within three months from the date of issue of orders in this regard.

(iv) The existing recruitment rules for the Tradesman may be amended and RRs for the post of MCM may be framed accordingly.

5. The expenditure involved will be debitible to the respective Heads of Defence Services Estimates.

6. To the extent of provisions dedicated in the paragraphs above MoD Letter No. 111/2002-D (Civ.I) dated 20.05.2003 stands amended.

7. This issues with the approval of DOP&T U.O. No. 5358/10/CR dated 25.2.2010 and Ministry of Finance I.D. No.2(16)E.III Desk/2008 dated 10.06.2010 and concurrence of Ministry of Defence (Finance AG/PB) vide their U.O.N. No. 164/AG/PB dated 14.06.2010.

(M.S. Sharma)

Under Secretary to the Government of India
Tele No.23012414."



3. The admitted facts that could be culled out from the pleadings of the parties are that the applicants were appointed on 21.10.1982 in Defence Establishment in Skilled Category in the pay scale of Rs.260-400/- as Artisan staff. They earned 1st ACP in the pay scale of Rs.4000-6000/- w.e.f 17.10.2000 and 2nd financial up-gradation in the pay scale of Rs.9300-34800/- with Grade Pay of Rs.4200/- (the replacement scale of Rs.5000-8000/- of 5th CPC) with effect from 01.07.2008. The applicants have claimed that they should be accorded a 3rd financial up-gradation under MACP scheme in the Pay Band-II of Rs.9300-34800/- with Grade Pay of Rs.4600/- (the next higher grade pay) upon completion of 30 years of service from the date of their initial appointment i.e. 21.10.1982. But their prayers have been turned down.

4. The respondents have refuted their claim on the ground that the highest promotional avenues for Skilled Industrial Staff is to a post carrying a Grade Pay of Rs.4200/- which the applicants have already earned. In terms of the MACP scheme one cannot earn MACP to a Scale or Grade which he is not entitled to in his normal line of promotion. The respondents have categorically averred as under :



"That MOD (CIV-1) ID No. 11(5)/2009-D (CIV-1) dated 23 Jul 2012, wherein it has been clarified by Ministry of Defence vide DOP&T ID No. 7680/12/CR dated 13 Jul 2012 as following: -

(a) Para 8 of Annexure 1 of DOP&T OM No. 34034/3/2008 Estt (D) dated 19 May 2009 of MACP provides that promotion earned in the post carrying some grade pay in the promotional hierarchy as per recruitment rules shall be counted for the purpose of MACPs. Functional up-gradation under MACPs in respect of MCM will be in the same grade pay of Rs. 4200/- as that of promotional post of charge man.

(b) ACP/MACP Schemes have been introduced by the Govt. in order to mitigate stagnation faced by employees due to lack of promotional avenues. Financial up-gradation under ACP/MACP scheme cannot be more than what can be allowed to an employee on his normal promotion. It may be clarified that the placement of Highly Scaled grade as master craftsman prior to 10 Jan 2006 is to be treated as one promotion for the purpose of MACP benefits. Hence after implementation of Sixth Pay Commission the promotional hierarchy of Industrial staff is: -

Mate grade pay	Rs. 1800/-
Skilled grade pay	Rs. 1900/-
Highly Skilled-II grade pay	Rs. 2400/-
Highly Skilled grade-I	Rs. 2800/-
Master Craftsman grade pay	Rs. 4200/-

The maximum grade pay admissible in case no promotion of Mate in entire 30 years, grade pay after III MACP will be 2800 and for skilled category induction it will be 4200 in case there is no promotion till 30 years of service and therefore order issued by DOP&T and MOD is in compliance with basic spirit of MACP scheme introduced by Sixth Pay Commission."

They have further clarified as under :

"That prior to Sixth Pay Commission and on implementation of 5th Pay Commission, the grade structure was Mazdoor - Mate - Skilled - Highly Skilled - Charge Mechanic after Sixth Pay Commission, the equivalent grade pay of Rs. 4200/- was granted to industrial staff drawing pay scale of Rs. 5000-8000 during implementation of ACP scheme prior to introduction of MACP scheme. Subsequent to Sixth Pay Commission and restructuring of artisan Staff, the Mazdoor and Mate were merged into one grade pay and highly skilled were split into two i.e., HS-II and HS-I for promotion purpose. Hence even if an individual drawing grade pay of Rs. 4200/- in Sixth Pay Commission (i.e., scale of Rs. 5000-8000/- as II ACP of Fifth Pay Commission) completes thirty year of service and asks for third

MACP up-gradation in Rs. 4600 grade pay will not be eligible for same due to splitting of grade pay of highly skilled in HS-II (grade pay Rs. 2400) and HS-I (grade pay Rs. 2800). Though in earlier case if he was inducted as skilled level and granted II-ACP after 24 years service (in case no promotional avenue) for charge mechanic (with first ACP of highly skilled trade) will not be eligible for III-MACP in Sixth Pay Commission his III-MACP equivalent grade pay of Rs. 4200/- in Sixth Pay Commission is highest promotional avenue for skilled industrial staff."

5. We heard the learned counsel for the parties and perused the records.



6. The respondents have disclosed a clarificatory letter dated 10.03.2014 which clarifies as under :

"Dte Gen of Personnel/CSCC
Engineer-in-Chief's Branch
Integrated HQ of MoD (Army)
Kashmir House, New Delhi-11

CC-II.B.77030/VI CPC/IND/ 06 /CSCC

10 March 2014

ADG (OF & DRDO), Secunderabad
ADG(D&C), Pune

Headquarters
Chief Engineer, Northern Command
Chief Engineer, Southern Command
Chief Engineer, Western Command
Chief Engineer, South Western Command
Chief Engineer, Central Command
Chief Engineer, Eastern Command

RESTRUCTURING OF CADRE OF ARTISAN STAFF

1. Reference this HQ letter No.CC-II/B/77030/VICPC/IND/84/CSCC dated 24 Feb 2014, vide which a copy of Ministry of defence, D(Civ-I) ID No. 11(5)/2009-D(Civ-I) dated 06 Feb 2014 was forwarded to you for information and necessary action at your end.
2. In this respect queries have been received from lower formations. The case was therefore discussed again with Under Secretary, Min of Defence so that no doubt at all should persist with regard to above mentioned policy.
3. It is hence reiterated that as MoD ID dated 06 Feb 2014 mentioned above, only those Highly Skilled Workers/MCM who were granted the pay scale of Rs. 5000-8000 (pre-revised) upto 31 Dec 2005, may be considered for further financial upgradation, if due, in the next grade pay of Rs. 4600/- in the hierarchy of grade pays.
4. **It is clarified that those Highly Skilled Workers/MCM who got the pay scale of Chargeman (Rs. 5000-8000) on or after 01 Jan 2006 will not be eligible for the grade pay of Rs. 4600/- under financial upgradation, if any.**

5. Above facts should be borne in mind while processing the cases of financial upgradation under ACP/MACP artisan staff.

Sd/-
(Rakesh Sharma, IDSE)
Director (Pers), CSCC"



7. We note that the said letter which explicitly takes away the right of the Skilled Worker from earning any benefit to the Grade Pay of Rs.4600/- by way of MACP, is not challenged by the present applicants and no leave has been sought for to challenge it. In view of such position, we find no infirmity in the action of the respondents and their decision not to grant 3rd MACP in the Grade Pay of Rs.4600/- to the present applicants. The claim of the applicants, therefore, fails. However, since the applicants have failed to challenge the communication dated 10.03.2014, they shall be at liberty to challenge it in a freshly instituted O.A, if so advised.

8. O.A accordingly stands dismissed. No order as to costs.

(DR NANDITA CHATTERJEE)
MEMBER (A)

(BIDISHA BANERJEE)
MEMBER (J)