

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

OA/021/1536/2014

Reserved on : 12.02.2021

Pronounced on : 19.02.2021



**Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member**

C.G.V. Naidu,
S/o. Sri C.N.G. Naidu (late),
Aged about 52 years,
Junior Works Manager/NT, Ordnance Factory,
Yeddumailaram, Medak Dist., Pin-502 205,
Telangana, R/o. Kachiguda, Hyderabad.

...Applicant

(By Advocate: Sri K. Ram Murthy)

Vs.

1. Union of India rep. by its Secretary, Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, North Block, New Delhi – 110 001.
2. The Director General & Chairman, Ordnance Factories, 10A, S.K. Bose Road, Kolkatta – 700 001.
3. The General Manager, Ordnance Factory, Ministry of Defence, Yeddumailaram P.O., Medak Dist. – 502 205.

...Respondents

(By Advocate : Smt. K. Rajitha, Sr. CGSC)

ORDER
(Hon'ble Mr. B.V. Sudhakar, Admn. Member)

Through Video Conferencing:

2. The OA is filed challenging the DOPT memo dated 19.5.2009 in regard to grant of 2nd financial up-gradation under ACP after completion of 24 years of service with grade pay of Rs.5400 in PB-III instead of Rs.4800 in PB-II.

3. Brief facts are that the applicant joined as Chargeman Grade-II in the respondents organization on 18.1.1985 and thereafter, promoted as Chargeman Gr.I, Foreman, Junior works Manager respectively. Applicant claims that he is eligible to be granted the grade pay of Rs.5400, as 2nd financial up-gradation under ACP scheme, on completing 24 years of service, as has been granted to other similarly situated employees. Ld. applicant Counsel drew our attention to the judgments of the Hon'ble Benches of this Tribunal in support of the cause of the applicant. For not having granted 2nd ACP, OA is filed.

4. The contentions of the applicant are that he is fully eligible to be granted the 2nd ACP. Granting the 2nd ACP to others similarly situated and not to the applicant is discriminatory. The DOPT memo under challenge is not valid under law.

5. Respondents, *per contra*, inform that, by the time the applicant completed 24 years of required service, MACP scheme has commenced w.e.f. 01.09.2008 and therefore, he was granted 2nd MACP benefit by allowing the grade pay of Rs.4800 from the said date. Other employees



referred to by the applicant completed the 24 years of service before the introduction of MACP and hence, granted grade pay of Rs.5400 under 2nd ACP. Ld. respondents counsel contended that the judgments referred to by the opposite side have been challenged in the Hon'ble Supreme Court and obtained stay, as the matter relates to a policy issue.



6. Heard both the counsel and perused the pleadings on record.
7. I. The dispute is about non grant of grade pay of Rs.5400 under 2nd ACP to the applicant after completion of 24 years of service as prescribed under the scheme. The applicant challenged the validity of the DOPT Memos dated 19.5.2009.

II. The facts of the case reveal that the applicant joined the respondents organisation on 18.1.1985 and therefore, he would be eligible for the 2nd ACP after completion of 24 years as per the conditions of the ACP scheme. The ACP scheme ended on 31.8.2008 and the MACP scheme commenced on 1.9.2008. As the applicant has completed the 24 years after the origination of MACP, he has been granted grade pay of Rs.4800 as 2nd MACP under the said scheme. The other employees completed the 24 years of service before the end of the ACP scheme and were granted the 2nd ACP grade pay of Rs.5400. The date of completion of 24 years of service rendered by other employees referred to by the applicant lies in the intervening period of 1.1.2006 and 31.08.2008. The grievance of the applicant is that the 6th CPC is effective from 1.1.2006 and therefore, when the others were granted the grade pay of Rs.5400 under ACP Scheme after the date of commencement of the implementation of the 6th CPC, why not him. Therefore, the applicant is challenging DOPT memo cited supra

dealing with the issue on hand. Our view is that this is a policy matter which exclusively lies in the domain of the respondents. Ld. Counsel for the respondents has submitted that the challenge in the Hon'ble Apex Court was mainly on the ground of the intervention of the Tribunals in policy matters.



III. However, Learned counsel quoted the judgment of Hon'ble Principal Bench order dated 26.11.2012 in OA 904/2012, which has been stayed in W.P. No.4662/2013 by the Hon'ble Delhi High Court on 26.07.2013. On a perusal of the order in OA 904/2012, the issue therein was about not granting the next promotional grade pay on account of grant of benefits under MACP Scheme. In the present OA, the applicant challenges the implementation of the MACP Scheme dt.19.05.2009 retrospectively from 01.09.2008 and his consequential prayer is to grant 2nd financial upgradation in PB-3 with GP of RS.5400/- with effect from 19.05.2009 or on competition of 24 years of service. According to him, he completed 24 years of service on 18.01.2009 i.e. after the date of implementation of MACP scheme. Had the MACP Scheme been implemented prospectively i.e. from 19.05.2009, the applicant would have been eligible for 2nd ACP benefit in hierarchy of promotion i.e. PB-3 with GP of Rs.5400/-, instead of grade pay of hierarchy of Rs.4800/-, as contended by him in para 5(d) of the OA. As clarified by the Government and averred by the respondents, those who had completed 24 years of service between 01.01.2006 to 31.08.2008 and got only one promotion by then, were granted 2nd ACP in GP Rs.5400/- and as the applicant completed

24 years service after the said period on 18.01.2019, his case is covered by the DOPT instructions, which allow grant of ACP till 31.08.2008.

IV. This Tribunal cannot interfere with the policy of the Government of India envisaging MACP Scheme and its date of implementation. Even otherwise, the substantive relief the applicant is indirectly seeking is the ACP/MACP benefit in promotional hierarchy, which was available till 31.08.2008. The issue of grant of promotional hierarchy or grade pay hierarchy upon grant of financial upgradation under MACP Scheme w.e.f. 01.09.2008 was subject matter of SLPs before the Hon'ble Supreme Court, as stated by the respondents in their reply statement. The issue has now been settled inasmuch as the Hon'ble Supreme Court has dismissed the CA No. 2016/2020 (arising out of SLP (C) No. 8271/2014:: S.L.P.(C)...CC No. 008271 / 2014) in Union of India v. M.V. Mohanan Nair, by its judgment dt. 05.03.2020 holding that financial upgradation shall be granted only to the next immediate grade pay. By following the same, this Tribunal passed orders in OA No. 1209/2014 dt. 15.10.2020, as under:

*“Moreover, Hon’ble Supreme Court, recently in **Union of India & Others v. M.V. Mohanan Nair in Civil Appeal No. 2016 of 2020 (Arising out of SLP (C) No.21803/2014) & batch**, has observed that in MACP, financial up-gradation shall be granted only in the immediate next higher grade pay. Relevant observations of the Hon’ble Supreme Court are as under:*

“28. The object behind the MACP Scheme is to provide relief against the stagnation. If the arguments of the respondents are to be accepted, they would be entitled to be paid in accordance with the grade pay offered to a promotee; but yet not assume the responsibilities of a promotee. As submitted on behalf of Union of India, if the employees are entitled to enjoy Grade Pay in the next promotional hierarchy, without the commensurate responsibilities as a matter of routine, it would have an adverse impact on the efficiency of administration.

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35. *The prescription of Pay Scales and incentives are matters where decision is taken by the Government based upon the recommendation of the expert bodies like Pay Commission and several relevant factors including financial implication and court cannot substitute its views. As held in Haryana Civil Secretariat Personal Staff Association (2002) 6 SCC 72, the court should approach such matters with restraint and interfere only when the court is satisfied that the decision of the Government is arbitrary. Even in a case where the court takes the view that order/Scheme passed by the Government is not an equitable one, ordinarily only a direction could be given to the State Government or the authority for consideration of the matter and take a decision. In the present batch of cases where the respondents are claiming financial upgradation in the grade pay of promotional hierarchy, no grounds are made out to show that the MACP Scheme granting financial upgradation in the next grade pay is arbitrary and unjust; warranting interference. The implementation of the MACP Scheme is claimed to have led to certain anomalies; but as pointed out earlier, MACP Scheme itself is not under challenge.”*

With the Hon’ble Supreme Court, clearing the mist about the dispute in question, there is nothing further for us to intervene on behalf of the applicant. Hence other averments made by the applicant are not tenable. Respondents have rightly granted 2nd financial upgradation under MACP with grade pay of Rs.4800/- to the applicant. Subsequently, he was also granted the 3rd MACP with GP of Rs.5400/- on completion of 30 years w.e.f. 18.01.2015.

V. In view of the above position, we are of the view that the applicant is not entitled for any relief. As such, the OA is liable to be dismissed and is accordingly dismissed. No order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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