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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.658 of 2013

Cuttack this the 22nd day of JUNE, 2017

Sri Dinabandhu Prusty...Applicant

-Versus-

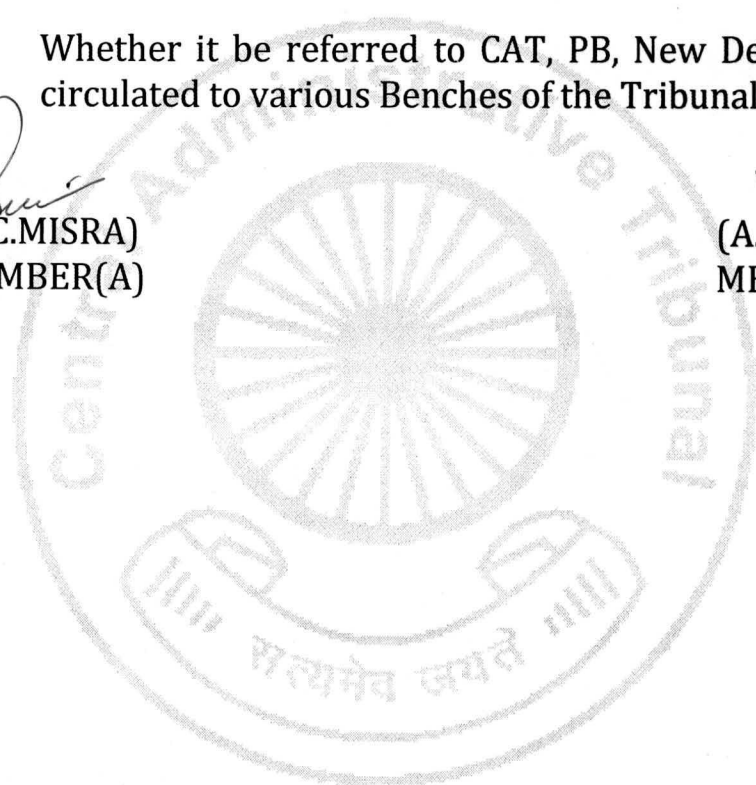
Union of India & Ors.

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? NB
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not NB


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)



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Cuttack this the 22nd day of JUNE, 2017

CORAM:

HON'BLE SHRI A.K.PATNAIK, MEMBER(J)

HON'BLE SHRI R.C.MISRA, MEMBER(A)

Sri Dinabandhu Prusty, aged about ⁵⁷47 years, S/o. of Shri Subal Prusty, resident of Plot No.7074, Bishuddhananda Nagar, Shyampur, Bhubaneswar-751 003, District-Khurda, State-Odisha, retired Draughtsman, Division-I from Odisha Geospatial Data Centre, Survey of India, Bhubaneswar-651 013, Dist-Khurda,

...Applicant

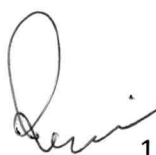
By the Advocate(s)-M/s.K.C.Kanungo
Ms.C.Padhi

-VERSUS-

Union of India represented through:

1. The Secretary to Government of India
Ministry/Department of Science & Technology
Technology Bhawan
New Mehrauli Road
New Delhi-110 016
2. The Surveyor General of India
Survey of India
Hathibarkala Estate
Dehra Dun-248 001
Uttarakhand
3. The Additional Surveyor General
Eastern Zone
Survey of India
15, Wood Street
Kolkata-700 016
West Bengal
4. The Director
Odisha Geospatial Data Centre
Survey of India
02nd Floor
Survey Bhawan
Bhubaneswar-751 013
Odisha

...Respondents


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By the Advocate(s)-Mr.S.Behera

ORDERR.C.MISRA, MEMBER(A):

In this Original Application under Section 19 of the A.T.Act, 1985, applicant who is presently working as Draughtsman, Division-I under the Respondent-Organization, has sought for the following relief.

- i) ...to set aside the order at Annexure-A/6;
- ii) ...to quash the order at Annexure-A/7 and A/8;
- iii) ...to direct the Respondents to grant the Grade Pay of Rs.5400 in PB-3 with all consequential benefits and entitlements as due and admissible with effect from 01.01.2012 in terms of the order at Annexure-A/3;
- iv) ...to pay interest on the arrear that accrues till actual payment is made; and
- iv) ...to issue any other/further order(s) or direction(s) as deemed fit and proper in the circumstances of the case.

2. Shorn of unnecessary details, the relevant facts of the case are that applicant along with others had moved this Tribunal in O.A.No.277 of 2007 questioning the determination of residency period (regular service) for the purpose of financial upgradation under the Assured Career Progression Scheme (ACPS), in which they had claimed that their entry grade should be reckoned from 1.11.1974 instead of 1.1.1982 (date of placement as Draughtsman, Grade II). The point to be decided in that O.A. was as under



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"What is the crucial date of reckoning regular service or residency period for the purpose of granting ACP in line with regular promotion ? In other words, whether the induction training period will be taken into account for counting the regular service or residency period for promotion or ACP, as the case may be ?

3. This Tribunal having elaborately discussed the points urged by both the sides disposed of the said O.A. vide order dated 23.12.2009 by holding that the induction training period will not be taken into account for counting the regular service or residency period for promotion or ACP, as the case may be and accordingly, it was held that the respondents have rightly reckoned the regular service of the applicants w.e.f. 1.1.1982 when they were placed as Draughtsman, Grade-II. In the above background, it is claimed by the applicant that he was granted 1st financial upgradation under the ACP Scheme on 15.10.2004 in the scale of Rs.5500-9000 with effect from 9.8.1999 on completion of 12 years regular service having regard to his entry grade as Draughtsman, Gr.II from 01.01.1982. Subsequently, he was also granted 2nd financial upgradation under the ACP Scheme in the scale of Rs.6500-10,500/- with effect from 1.1.2006 on completion of 24 years regular service as on 01.01.1982 in the same entry grade as Draughtsman-II. However, the respondents have now rejected his claim for 3rd financial upgradation under the MACP Scheme on completion of 30 years' service from 01.01.1982, vide communication dated 29.5.2013(A/6), *inter alia* on the grounds as under.



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"As per the VIth Central Pay Commission's recommendations MACP Scheme has been introduced vide DoP&T's OM No.35034/3/2008-Estt(D) dated 19.05.2009. The pre-revised pay scale of Rs.5000-8000 have been merged with a single grade pay of Rs.4200. Consequently the direction to grant financial upgradation under MACP Scheme in respect of Draftsman cadre i.e., Grade-II Division-II were revised and issued vide SG's letter No.C-2467/1902-MACP (Draftsman_ dated 20.04.2011 and SG's letter No.C-2338/1902-MACP (Draftsman) dated 13.04.2012. In accordance with these orders regular service of 10, 20 and 30 years in the grade of Draftsman cadre are required to be reckoned from the date(s) of granting the pre-revised pay scale of Rs.5000-8000/5500-9000 granted in implementation of CPWD's OM dated 19.10.2994 mentioned above. Accordance with the instruction issued vide above SG's orders MACP benefits to the Draftsman cadre of Survey of India are being given.

As explained above, the applicant completes 30 years of regular service on 01.01.2015 in accordance with above orders instead of 01.01.2012 as claimed by the applicant. Since the applicant has been compulsorily retired w.e.f. 20.6.2012, hence, he is not entitled for grant of said third financial upgradation under MACP Scheme. As per existing rules and policies, the MACP benefits admissible to the applicant have already been granted.

4. We have perused the pleadings and heard Mr.K.C.Kanungo, learned counsel for the applicant and Mr.S.Behera, learned SCGPC for the respondents. We have also gone through the written notes of submissions filed by both the sides.

5. It is needless to mention here that the exactly in a similar matter in O.A.No.79 of 2014 [(Bichitrananda Jena vs. UOI) who



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was also one of the applicants in O.A.No.277 of 2007 (supra)], this Tribunal has exhaustively dealt with the matter as regards the entitlement of the applicant therein to 3rd financial benefit under the MACP Scheme on completion of 30 years' service from 01.01.1982. In the fitness of things the relevant paragraphs are quoted hereunder.

"16. For the purpose of ^{mining} ~~determining~~ the eligibility of an employee to financial upgradation under the MACP Scheme, commencement of regular service is of vital importance. Regular service as provided in Paragraph-9 of the MACP Scheme stipulates that "*Regular service*" for the purpose 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.

18. Indisputably, applicant was granted 1st financial upgradation under the ACP Scheme in the scale of Rs.5500-9000 with effect from 9.8.1999 on completion of 12 years regular service having regard to his entry grade as Draughtsman, Gr.II from 01.01.1982. Similarly, he was also granted 2nd financial upgradation under the ACP Scheme in the scale of Rs.6500-10,500/- with effect from 1.1.2006 on completion of 24 years regular service and, in view of implementation of the 6th CPC, applicant was placed in the revised pay structure in PB-2 with GP Rs.4200/- with effect from 1.1.2006 -.

19. It is the case of the respondents that the eligibility criteria of Division II Grade II of Draftsman cadre of Survey of India was reconsidered and it was decided as per direction issued SG's letter dated 20.04.2011 and dated 13.04.2012 that 1st, 2nd and 3rd financial upgradations under the MACP Scheme are to be given in the Grade Pay of Rs.4600, Rs.4800 and Rs.5400 respectively on completion of 10, 20 and 30 years of regular service to be reckoned from the date

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of grant of pre-revised pay scale of Rs.5000-8000/5000-9000 as per the request of the cadre. According to respondents, in case the date of eligibility is reckoned from the date of Grade II Division II as submitted by the applicant, this cadre was eligible for grant of 1st, 2nd and 3rd financial upgradations in the Grade of Rs.4200, Rs.4600, and Rs.4800 respectively. As such a decision was taken to grant them the financial upgradations under the MACP Scheme in the Grade Pay of Rs.4600, Rs.4800 and Rs.5400 for the whole cadre which are beneficial to them. In case the eligibility of the applicant is reckoned as urged by him, he will be eligible for grant of 3rd MACP in the Grade Pay of Rs.4800, which he has already taken as a second financial upgradation.

20. In the above backdrop, it is the case of the applicant that he has been granted the 1st and 2nd MACP in GP Rs.4600 and Rs.4800/- as per the provisions as stipulated in Paragraph-5 of the MACP Scheme. Paragraph-5 of the MACP Scheme reads as under.

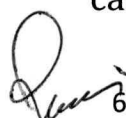
"5. Promotions earned/upgradations granted under the ACP Scheme in the past to those grades which now carry the same grade pay due to merger of pay scales/upgradations of posts recommended by the Sixth Pay Commission shall be ignored for the purpose of granting upgradations under Modified ACPS.

Illustration-1

The pre-revised hierarchy (in ascending order) in a particular organization was as under.

Rs.5000-8000, Rs.5500-9000 &
Rs.6500-10500.

- (a) A Government servant who was recruited in the hierarchy in the pre-revised pay scale Rs.5000-8000 and who did not get a promotion even after 25 years of service prior to 1.1.2006, in his case as on 1.1.2006, he would

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have got two financial upgradations under ACP to the next grades in the hierarchy of his organization, i.e., to the pre-revised scales of Rs.5500-9000 and Rs.6500-105000.

- (b) Another Government servant recruited in the same hierarchy in the pre-revised scale of Rs.5000-8000 has also completed about 25 years of service, but he has got two promotions to the next higher grades of Rs.5500-900 & Rs.6500-10500 during this period

In the case of both (a) and (b) above, the promotions/financial upgradations granted under ACP to the pre-revised scale of Rs.5500-9000 and Rs.6500-10500 prior to 1.1.2006 will be ignored on account of merger of the pre-revised scale of Rs.5000-9000, Rs.5500-9000 and Rs.6500-10500 recommended by the Sixth CPC. As per CCS (RP) Rules, both of them will be granted grade pay of Rs.4200 in the pay band PB-2 after implementation of MACPS, two financial upgradations will be granted both in the case of (a) and (b) above to the next higher grade pays of Rs.4600 and Rs.4800 in the pay band PB-2.

21. From the above, it is clear that due to merger of scale of Rs.5500-8000, 5500-9000 and Rs.6500-10500/-, financial upgradations granted to an employee under the ACP in the scale of Rs.5500-9000 and Rs.6500-10500 and as per CCS(RP) Rules, will be granted GP Rs.4200 in PB-2 and he/she will be granted two financial upgradations to the next higher GP Rs.4600 and Rs.4800 in PB-2. This is the background on which, applicant's pay having been fixed in PB-2 with GP Rs.4200/-, he was granted two financial upgradations to the next higher GP Rs.4600 and Rs.4800 in PB-2.



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22. MACP Scheme lays down that there shall be three financial upgradations counted from the direct entry grade on completion of 10, 20 and 30 years' service respectively. Financial upgradation under the Scheme will be admissible whenever a person has spent 10 years continuously in the same grade-pay. Further the Scheme provides that if a Government has been granted either two regular promotions or 2nd financial upgradation under the ACP Scheme of August, 1999 after completion of 24 years of regular service, then only 3rd financial upgradation would be admissible to him under the MACPS on completion of 30 years of service provided that he has not earned third promotion in the hierarchy. and both the class prior to 1.1.2006 shall be ignored.

23. Admittedly, the direct entry grade or the commencement of regular service of the applicant is Draughtsman, Grade-II which is with effect from 1.1.1982 and the Respondents having reckoned this period have granted 1st and 2nd financial upgradations under the ACP Scheme with effect from 9.8.1999 and 1.1.2006 respectively. In the meantime, applicant has admittedly, not earned any promotion in the hierarchy. Therefore, by no stretch of imagination it could be said that on completion of 30 years' service from 1.1.1982 applicant is not entitled to 3rd financial upgradation under the MACP Scheme. The plea of the respondents that as per direction issued SG's letters dated 20.04.2011 and dated 13.04.2012 that 1st, 2nd and 3rd financial upgradations under the MACP Scheme are to be given in the Grade Pay of Rs.4600, Rs.4800 and Rs.5400 respectively on completion of 10, 20 and 30 years of regular service to be reckoned from the date of grant of pre-revised pay scale of Rs.5000-8000/5000-9000 as per the request of the cadre, is not sustainable in the forefront of the provisions of the MACP Scheme. In view of this, we hold that the applicant is entitled to 3rd financial benefits under the MACP Scheme when he completed 30 years' service from 1.1.1982 as Draughtsman Grade-II.



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24. For the reasons discussed above, we quash the impugned orders at A/6 dated 29.05.2013. However, we do not feel inclined to quash A/7 and A/8 to the O.A. as those are all inter-departmental communications by virtue of which applicant's claim has not been turned down. Consequently, we direct the respondents to grant GP Rs.5400 in PB-3 as 3rd financial upgradation under the MACP Scheme having regard to his 30 years' service from 1.1.1982 as Draughtsman Grade-II, subject to fulfillment of other conditions of the rules/Scheme and in such an eventuality, applicant shall be granted the consequential financial benefits as due and admissible. This exercise the respondents shall completed within a period of 120 days from the date of receipt of this order.

In the result, the O.A. is thus allowed. No costs".

6. The facts of this O.A. are no doubt the same and similar to the facts as set out in O.A.No.79 of 2014 (supra). However, the peculiarity involved in this case, as submitted by the Respondents, is that the applicant has been imposed with the punishment of compulsory retirement from service with effect from 20.06.2012 on account of a disciplinary proceeding being initiated against him. In our considered opinion, since the applicant's regular service of 30 years is to be taken into account from 01.01.1982 for the purpose of 3rd financial upgradation under the MACP Scheme, such 30 years regular service he would complete on 01.01.2012, which undoubtedly is prior to imposition of punishment of compulsory retirement from service. In view of this, we are not inclined to take a divergent view herein. Accordingly, we quash the impugned

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view herein. Accordingly, we quash the impugned orders at A/6 dated 29.05.2013 and direct the respondents to grant GP Rs.5400 in PB-3 as 3rd financial upgradation under the MACP Scheme having regard to his 30 years' service from 1.1.1982 as Draughtsman Grade-II, subject to fulfillment of other conditions of the rules/Scheme and in such an eventuality, applicant shall be granted the consequential financial benefits as due and admissible. This exercise the respondents shall completed within a period of 120 days from the date of receipt of this order.

7. In the result, the O.A. is thus allowed. No costs.

(R.C.MISRA)
MEMBER(A)

Mehta

(A.K.PATNAIK)
MEMBER(J)