

go

CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH, CUTTACK

O.A.NO.1066 of 2014

Cuttack this the 6th day of MARCH, 2017

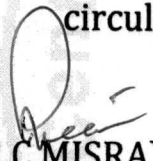
Ananta Kishore Behera...Applicant

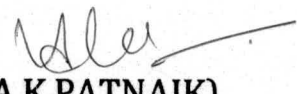
-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

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


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

21

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO.1066 of 2014

Cuttack this the 6th day of MARCH, 2017

CORAM:

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

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

Ananta Kishore Behera, aged about 48 years, S/o. Alekha Chandra Behera, at present working as Junior Armourer, under C.S.D. (Ordnance) Charbatia, At/PO-Charbatia, Dist-Cuttack

...Applicant

By the Advocate(s)-M/s.C.A.Rao

S.K.Behera

S.K.Panda

-VERSUS-

Union of India represented through:

1. Secretary to Govt., Cabinet Secretariat, Bikanir House (Annexe), Sahajahn Road, New Delhi-110 011
2. Directorate General of Security of Cabinet Secretariat, Block-V(East), R.K.Puram, New Delhi-110 066
3. Special Secretary, A.R.C., A.R.C. Headquarters, East-Block-V, R.K.Puram, New Delhi-110 066
4. Joint Director(A), A.R.C., Charbatia-754 028, Dist-Cuttack

...Respondents

By the Advocate(s)-Mr.D.K.Malick

ORDER

R.C.MISRA, MEMBER(A):

Applicant is presently working as Junior Armourer in the Aviation Research Centre (ARC), Charbatia, Cuttack. He has approached this Tribunal being aggrieved by the Office Memorandum dated 8.8.2014(A/3) whereby and whereunder,

P

22

his representation for grant financial benefits under the Modified Assured Career Progression (MACP) Scheme in the promotional hierarchy, i.e., Sub Inspector in ARC, CSD Ordnance cadre under 6th CPC has been rejected. In the circumstances, applicant has, in this Original Application under Section 19 of the A.T.Act, 1985, sought for the following relief.

"Under the circumstances it is, therefore, prayed that the Hon'ble Tribunal may be pleased to admit the case, call for records and after hearing the parties be pleased to quash the order dated 8.8.2014 (Annexure-A/3) and direct the Respondents to grant Revised scale of pay Band-2 (PB-2) Rs.9300-34800/- with grade pay Rs.4200/- as 2nd Financial upgradation to the applicant as available in the hierarchy of next promotional post from the due date with all service and financial benefits including arrear and declare the action of respondents in not granting scale of pay Rs.9300-34800 (PB-2) with grade pay Rs.4200/- as illegal and arbitrary and contrary to settled position of law".

2. The fact in issue runs thus: Applicant joined A.R.C. on 10.11.1986 as Junior Armourer in the scale of Rs.950-20-1150-EB-25-1400 and by now, he is going to complete 27 years' service without being promoted to the next higher grade. As per recruitment rules, on completion of three years regular service, a Junior Armourer is eligible for promotion to Senior Armourer carrying the scale of Rs.5200-20200 with GP Rs.2000/- and on completion of 10 years regular service, a Senior Armourer is eligible for promotion to Sub Inspector carrying the scale of Rs.9300-34800 with GP Rs.4200/-.

23

3. Government of India introduced Assured Career Progression (ACP) Scheme vide DOP&T Office Memorandum dated 9.8.1999, in which it was provided for grant of two financial upgradations in the promotional hierarchy on completion of 12 and 24 years regular service respectively counted from the direct recruitment. Consequently, applicant on completion of 12 years' service was granted 1st financial upgradation under the ACP Scheme with effect from 09.08.2003 in the scale of Rs.3200-85-4900/- which is meant for Senior Armourer. While the matter stood thus, Government of India introduced Modified Assured Career Progression (MACP) Scheme vide DOP&T Office Memorandum dated 19.05.2009 replacing the existing ACP Scheme and it was provided therein that three financial upgradations under the Scheme shall be provided to Central Government Civilian Employees on completion of 10, 20 and 30 years' service to be counted from the direct entry grade in the hierarchy of successive grade pay with effect from 01.09.2008. Based on this, applicant was granted 2nd financial upgradation under the MACP Scheme on completion of 20 years' service in Pay Band-1 (Rs.5200-20200) with Grade Pay Rs.2400/- in the hierarchy of Grade Pay.

4. Grievance of the applicant is that instead of PB-1 (Rs.5200-20200) with Grade Pay Rs.2400/- in the hierarchy of Grade Pay, he should have been granted PB-2 (Rs.9300-34800)

P. K.

24

with GP Rs.4200/- in the hierarchy of promotional grade towards 2nd MACP.

5. It is the case of the applicant that CAT, Chandigarh Bench in O.A.No.1038/CH/2010CAT [Rajpal, S/o.Tilak Ram, Photo Copier vs. UOI and Ors.] decided on 31.05.2011 ordered for grant of MACP in the hierarchy of promotional post. Relying on this decision, CAT, Principal Bench, New Delhi in O.A.No.904/2012 (Sanjay Kumar, UDC & 18 Ors. vs. Union of India & ors.) decided on 26.11.2012 also allowed the similar claim of the applicant for grant of financial benefits under the MACP Scheme in the hierarchy of the promotional posts. Applicant has submitted that the decision of CAT, Chandigarh Bench was the subject matter of challenge before the Hon'ble High Court of Punjab & Haryana at Chandigarh in CWP No.1938/2011. The Hon'ble High Court vide judgment and order dated 19.10.2011 upheld the decision of CAT, Chandigarh Bench. Applicant has brought to our notice that the CAT, Principal Bench, New Delhi in O.A.No.2548/2014 (K.S.Sharma, PPO€ & Ors.) in keeping with the aforementioned judgment, held that the respondents wrongly interpreted MACP Scheme placing the eligible Government servants in the immediate next higher Grade Pay in the hierarchy of the recommended revised pay bands and grade pay and not in the next higher promotional post in the hierarchy and directed to grant scale of pay attached to the promotional post from the due dates to the

25

applicant therein. It has been submitted that after the decision taken by the Hon'ble High Court of Punjab & Haryana at Chandigarh, the matter was carried in appeal to the Hon'ble Apex Court and the same was also dismissed on some other grounds on 15.4.2013 in C.C.7467/2014.

6. Applicant in pursuance of the above decisions, preferred a representation dated 10.06.2014(A/2) to the Deputy Director (Pers.), ARC Headquarters, New Delhi for grant of financial benefits under the MACP Scheme in the hierarchy of the promotional post and not the successive higher grade as has been granted to him. But the authorities rejected the same vide Office Memorandum dated 08.08.2014(A/3) which is impugned and called in question in the instant O.A.

7. In support of his claim for grant of 2nd financial upgradation in the hierarchy of promotional post under the MACP Scheme, applicant has basically relied on the decisions, as referred to above. According to him, it has been held by the ^{in various Benches} Tribunals including the Hon'ble High Court that whereas the benefit under the ACP Scheme is granted on completion of the required years of service in the hierarchy of promotional posts and not in the next higher grade pay, the same principles would have to be made applicable in regard to grant benefits under the MACP Scheme. Therefore, it has been submitted that the applicant is entitled to the benefit under the MACP Scheme in



26

the hierarchy of the promotional post and not in the next higher grade pay.

8. Resisting the claims of the applicant, Respondents have filed a detailed counter. They have not disputed the factual aspects of the matter. However, they have submitted that the judgment/order of the Hon'ble High Court of Punjab & Haryana at Chandigarh was challenged by the Union of India before the Hon'ble Supreme Court. But the Hon'ble Supreme Court did not consider the issue on merit and the SLP filed was dismissed due to insufficient explanation being offered for condonation of delay in filing SLP by the Union of India. However, it has been submitted that as per established policy of the Government of India, benefit flowing out of a particular orders of the Tribunal or Court cannot be automatically extended to a non-petitioner/applicant. Respondents have submitted that the decision of CAT, Principal Bench, New Delhi dated 26.11.2012 in O.A.No.904/12 has been challenged by the Union of India in C.M.No.10680/2013 and vide order dated 26.07.2013, Hon'ble Delhi High Court has stayed the operation of the orders of the CAT, Principal Bench, New Delhi.

9. On the merit of the matter, it has been contended by the respondents that as per Paragraph-2 of DoP&T O.M. dated 19.05.2009 regarding grant of financial benefits under the MACP Scheme, it has been stipulated that ***"financial upgradation under the scheme is to take place in the***

Ruei

27

immediate higher grade pay in the recommended revised Pay band and Grade Pay in terms of CCS(RP) Rules, 2008".

Based on this provision, applicant is entitled to grant of financial upgradation under the MACP Scheme in the successive grade pay in the hierarchy of the recommended revised pay band and grade pay in CCS(RP) Rules and not in the promotional hierarchy.

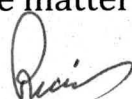
10. Applicant has not filed any rejoinder to the counter.

11. We upon perusal of records have heard the learned counsel for both the sides. We have also gone through the written notes of submissions filed by the parties.

12. The sole question that arises for determination is whether the benefit of financial upgradations under the MACP Scheme could be granted in the next immediate higher grade pay in the hierarchy of the recommended revised Pay Bands and Grade Pay or in the Grade Pay of the promotional post in the next hierarchy.

13. Before proceeding to answer the point in issue, we would, in the first instance, like to note hereunder the relevant part of decision of CAT, Chandigarh Bench in O.A.No.1038/CH/2010.

"Be that as it may, the principle enunciated and settled by the Tribunal/High Court for grant of ACP cannot be changed and the same principle would apply for grant of MACP to him. The only difference is the number of years required to be completed. We find no justification to take a different view of the matter".



14. With the above, the CAT, Chandigarh Bench allowed the prayer of the applicant therein by granting him pay in a hierarchy of post which was drawn on equation with that of Hindi Typist and LDC as Raj Pal was a Photocopier which was an isolated post.

15. The above decision was challenged before the Hon'ble High Court of Punjab & Haryana at Chandigarh in CWP No.19387 of 2011(O&M) and the said Hon'ble High Court vide judgment and order dated 19.10.2011 decided and disposed of the matter in the following terms.

"We have given our thoughtful consideration to the matter. The contentions raised on behalf of the petitioners are wholly misconceived. Respondent No.1 had approached CAT upon an order having passed whereby he had been granted a lower financial upgradation as compared to the one he was entitled to. Not only that, even his representation against such order granting him a lower financial upgradation had been rejected. As such it would not be open for the petitioners to contend that the matter was still under consideration at the hands of the Joint Committee. An order adversely affecting an employee in terms of grant of financial upgradations had already been passed which entailed civil consequences and as such CAT had rightfully proceeded to adjudicate upon the matter. That apart the contention raised by the learned counsel for the petitioners to the effect that the earlier scheme of ACP stood superseded by MACP Scheme is being noticed only to be rejected. The entire objective of introduction of the ACP/MACP Scheme is to alleviate stagnation as regards an employee who has a number of regular years of service on the same post, without any avenue of promotion. It is under such circumstances that a financial incentive is sought to be granted to an employee upon completion of a certain number of years of service on the same post. Under the ACP Scheme of 1999, the financial upgradations were to be granted upon completion

29

of 12 years and 24 years of regular service whereas under the MACP Scheme such financial upgradations are envisaged upon completion of 10/20 or 30 years of service. The contention raised on behalf of the petitioners if accepted would defeat the very objective for which such Schemes have been introduced.

Even otherwise, it is an admitted position of fact that the post of Photocopier stands equated with that of Hindi Typist and LDC in so far as the grant of financial upgradations under the ACP Scheme is concerned. We find that there can be no basis in law to deny such parity between the post of Photocopier and that of Hindi Typist/LDC in so far as grant of financial upgradations under the MACP Scheme are concerned.

We find no infirmity in the order dated 31.05.2011 passed by CAT in O.A.No.1038/CH of 2010. The petition stands dismissed".

16. The CAT, Principal Bench, following the *ratio decidendi* of CAT, Chandigarh Bench, as upheld by Hon'ble High Court of Punjab & Chandigarh vide order dated 26.11.2012 allowed O.A.No.904/2012 (Sanjay Kumar UDC & Ors. vs. UOI & Ors.). Likewise, the CAT, Guwahati Bench in O.A.No.040/000052/2014 (Sri Narayan Kalita, Assistant Engineer(Electrical) and Ors. vs. Union of India & Ors.) relying on the aforesaid decisions passed an order on 25.6.2014 by allowing the MACP benefit in the next promotional hierarchy of the Executive Engineer.

17. At this juncture, we may note that the Hon'ble Delhi High Court taking cognizance of the decision taken by the Hon'ble Punjab and Haryana High Court in CWP No.19387 of 2011, vide order dated 26.7.2013 in WP(C) No.466 of 2013 (arising out of

30

decision of CAT, Principal Bench, New Delhi in O.A.No.904/2014), held as under.

"The decision of the Punjab and Haryana High Court in WP (C) No.19387 of 2011 has prima facie proceeded on a wrong assumption that the only difference between the ACP and MACP was to remove the stagnation in the sense that under ACP Scheme two financial upgradation upon rendering 12 and 24 years of service were envisaged and under MACP three financial upgradations after rendering 10, 20 and 30 years was envisaged. The Punjab and Haryana High Court did not take W.P. (C) No.4662 of 2013 into account that MACP was introduced on the recommendation of the VI CPC where in place of hitherto concept of pay scale came to be replaced by Pay Band and G.P."

18. In the fitness of things, we would like to indicate that CAT, Ernakulam Bench in O.A.No.816 of 2012 (M.V.Mohanan Nair vs. Union of India & Ors.) relying on the decision of CAT, Chandigarh Bench (cited supra) as well as decision of Principal Bench in Ved Prakash allowed the claims of the applicant for Grade Pay in the next promotional scale vide order dated 29.1.2013. This view of CAT, Ernakulam Bench was upheld by Hon'ble High Court of Kerala vide judgment and order dated 24.6.2013 in O.P. (CAT) No.2000 of 2013(Z) (Union of India & Ors. vs. M.V.Mohanan Nair, Photocopier of CAT,Ernakulam Bench). Thereafter, the matter having been carried on appeal, the Hon'ble Apex Court vide order dated 8.8.2014 in Special Leave Appeal No.8271/2014 stayed the operation of the judgment and order dated 24.6.2013 in O.P. (CAT) No.2000 of 2013 passed by the Hon'ble High Court of Kerala at Ernakulam.

[Signature]

31

While the matter stood thus, it has come to the notice that CAT, Ahmedbad Bench in O.A.No.120/000018 of 2015 has dismissed the claim of the applicant for MACP in the promotional hierarchy as has been communicated by the DOP&T O.M. dated 20.1.2016. Similarly, C.A.T., Calcutta Bench vide order dated 28.4.2016 in O.A.No.351/00195/2014 has also dismissed the similar claim of the applicant therein.

19. From the above recital of facts, it is to be noted that applicant, as his main stay of authority, has solely relied on the decision of CAT, Chandigarh Bench in O.A.1038/CH/2010 dated 30.1.2011 which has been upheld by the Hon'ble High Court of Punjab & Haryana High Court at Chandigarh in CWP No.19387/2011 delivered on 19.10.2011 and SLP filed against this judgment has been dismissed by the Hon'ble Supreme Court. On the other hand, it also to be noted that following the same decision of CAT, Chandigarh Bench, CAT, Principal Bench had allowed O.A.No. 904/2012 vide order dated 26.11.2012 this order has been stayed by the Hon'ble Delhi High Court vide order dated 26.7.2013 in WP (C) No.466/13 (arising out of O.A.No.904/2012). In the meantime, the decision of CAT, Ernakulam Bench in line with the decision of CAT, Chandigarh Bench as upheld by the Hon'ble High Court of Kerala at Ernakulam, on being appealed of has been stayed by the Hon'ble Apex vide order dated 8.8.2014 in SLP No.8271/2014. Further, Ahmedbad Bench in O.A.No.120/000018 of 2015 has

P. S. S.

32

dismissed the claim of the applicant for MACP in the promotional hierarchy as has been communicated by the DOP&T O.M. dated 20.1.2016. Similarly, C.A.T., Calcutta Bench vide order dated 28.4.2016 in O.A.No.351/00195/2014 has also dismissed the similar claim of the applicant therein. Further, it is noticed that the order passed by CAT, Guwahati Bench in similar circumstances, has not been implemented because of stay order passed by the Hon'ble High Court of Delhi, as referred to above.

20. In view of the various judicial pronouncements as discussed above, it is easily discernible that the issue for adjudication in this O.A. has not been finally settled. The Hon'ble High Court of Delhi differing from the decision of the Hon'ble Punjab & Haryana High Court ^{by} held that MACP was introduced on the recommendations of VI CPC where in place of hitherto concept of pay scale came to be replaced by Pay Band and Grade Pay and that the Punjab and Haryana High Court did not take into account this important distinction. The decision of CAT, Ernakulam Bench, relying on the decision of Chandigarh Bench, as upheld by the Hon'ble High Court of Kerala has been stayed by the Hon'ble Apex Court vide order dated 8.8.2014 in SLP No.8271/2014.

21. We have in the above context given our anxious consideration to O.M. dated 19.5.2009 of the Department of Personnel & Training by which the MACP Scheme was

33

introduced on the basis of recommendations of the 6th Central Pay Commission. Paragraphs-1 and 2 of the Scheme are quoted below.

- "1. There shall be three financial upgradation under the MACPS, 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.
 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 1, 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".
22. The objective of the Scheme is thus clearly spelt out that it intends to confer three financial upgradations on completion of 10, 20 and 30 years of regular service on the employee. It is further clarified that the grade pay at the time of financial upgradation can in certain cases be different than what is available at the time of regular promotion. The Scheme is a policy decision of the Government, based upon the recommendations of the 6th Pay Commission which also recommended the introduction of Pay Band and Grade Pay in the place of scale of pay. The Scheme was made operational with effect from 1.9.2008. The vires of the scheme have not

34

been unsettled by any judicial pronouncements. We are therefore, of the view that the ACP and MACP are two distinct and different schemes, and the provisions of MACP may be interpreted in the light of the avowed objectives of the scheme itself.

23. The impugned order in this O.A. has been issued on the basis of clarification of the Department of Personnel & Training. According to the terms of the MACP Scheme, any interpretation or clarification of the MACP Scheme shall be given by the Department of Personnel & Training. DOP&T had continued to clarify that financial upgradation under MACPS would continue to be governed in the successive grade pay in the hierarchy of recommended revised pay band and grade pay as prescribed under CCS (RP) Rules, 2008, and not in the promotional hierarchy. Moreover, in the instant case, the respondents were not bound by any judgment or order of any Court or Tribunal on this issue, in view of the conflicting decisions in the matter discussed in this order. Be that as it may, since the Hon'ble Supreme Court is ^{seised} ~~seised~~ of the matter in SLP No.8271/2014, it would be just and expedient, if we dispose of this O.A. by granting liberty to the applicant to agitate his grievance only after the decision is taken by the Hon'ble Supreme Court in the SLP, as referred to above. Ordered accordingly. No costs

(R.C.MISRA)
MEMBER(A)

(A.K.PATNAIK)
MEMBER(J)