

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

**Original Application No. 27/2011**

Jodhpur, this the <sup>27</sup> day of February, 2015

**CORAM**

**Hon'ble Justice Mr K.C. Joshi, Judicial Member  
Hon'ble Ms. Meenakshi Hooja, Administrative Member**

Bhim Bahadur Giri s/o Shri Jhau Lal Giri, aged about 53 years r/o 7-40, 8/4, Near Dhobi Ghat, Air Force Station, Suratgarh, presently working as a UDC in the Department of Anti Malaria Lascar Employee, 35 Wing, 56 APO.

.....Applicant

By Advocate: Mr. Manoj Bhandari

Versus

1. The Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. The Chief of Air Staff, Air Headquarter, Vayu Bhawan, New Delhi.
3. The Air Office Commanding (AOC), 35-Wing, Air force c/o 56 APO
4. The Civilian Gazetted Officer (A) (CGO), Headquarter, WAC, Indian Air force, Subrato Park, New Delhi.
5. Union of India through the Secretary, Ministry of Personnel, Public Grievance and Pension, Department of Personnel and Training, South Block, New Delhi.
6. Station Commander, 35-wing, air Force C/o 56 APO

.....Respondents

By Advocate : Ms. Kausar Parveen

**ORDER**

**Per Justice K.C.Joshi**

By way of filing this OA u/s 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:-

- (i) by an appropriate order or direction, the impugned communication issued by the respondents rejecting the representation of the applicant vide communication dated 12.2.2010,

(ii) by an appropriate order or direction, the impugned circular issued by the respondents dated 11.12.2009 on the basis of Modified Assured Career Progression Scheme dated 19.6.2009 may kindly be declared illegal and be declared untra vires of the constitution of India. And the provision of the Scheme itself may kindly be declared illegal and be quashed and set aside.

(iii) by an appropriate order or direction, the respondents be directed to confer the grade pay of Rs. 4600/- vis-à-vis his junior incumbents in the lower cadre in the pay scale of Rs. 9300-34800 with effect from 21<sup>st</sup> Oct., 2008 along with arrears of salary and interest @ 18% per annum from the date the same had become due till the date of payment.

(iv) Any other appropriate order or direction which this Hon'ble tribunal may deem fit just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.

2. Brief facts, so far as relevant for disposal of the OA, are that the applicant was initially appointed as Anti Malaria Lascar Employee on 1<sup>st</sup> May, 1979 and subsequently as Water Carrier and he was conferred regular pay scale w.e.f. 1<sup>st</sup> November, 1979. After passing the written examination he was promoted as LDC on 1<sup>st</sup> July, 1986 and further promoted as UDC on the scale of Rs. 5200-20200 + Grade Pay Rs. 2400 as on 21.10.1998. The applicant has stated that he has completed 30 years of service as on 1<sup>st</sup> May, 1990 (sic) and he was not conferred benefit of earlier scheme after completion of 12 and 24 years because on completion of 12 years' service in the year 1991, he was already granted promotion as LDC in the year 1989 and on completion of 24 years service in the year 2003, he had subsequently been promoted as Carpenter in the year 1998. He became entitled for conferment of benefit under Modified Assured Career Progression (MACP) Scheme after completion of 30 years of service. The applicant has further stated that in the year 2009 his pay was fixed and was granted 3<sup>rd</sup> MACP on

pay was fixed as Rs. 2800/- . This was in pursuance to the Headquarter letter dated 11.12.2009 (Ann.A/4). It is the case of the applicant that he has been discriminated as the similarly situated persons in other cadres who are much junior to him and getting much lesser pay than him are still working as Group-D employees, yet they have conferred much high pay scale even under the benefit of MACP. Therefore, he filed representation on 12<sup>th</sup> February, 2010 (Ann.A/5) and the applicant received reply and communication on 10<sup>th</sup> May, 2010 (Ann.A/1) by which it was communicated that the said 3<sup>rd</sup> MACP Scheme envisages placement in the immediate higher grade pay in the hierarchy of the recommended pay band and the grade pay, therefore, he has rightly been conferred the benefit of grade pay of Rs. 2800/- under 3<sup>rd</sup> MACP. Thereafter the applicant further made representation dated 23.6.2010 (Ann.A/6) reiterating his stand, but the said representation was rejected after giving details of DOP&T letter dated 19<sup>th</sup> May, 2009 (Ann.A/2). It is stated by the applicant that the respondents have come out with the case that after availing the benefit of financial upgradation under the MACP scheme, if the Government servant gets regular promotion, he will only be granted different of Grade Pay between the existing pay and the future grade pay on conferment of benefit under the MACP, but he has not been conferred the said benefit under the said Scheme subsequent to grant of pay scale under 3<sup>rd</sup> MACP on completion of 30 years of service. The applicant has averred that the similarly situated persons and persons junior to the applicant have been granted benefit of 3<sup>rd</sup> financial upgradation with grade pay of Rs. 4600/-, but he has not been granted the same. In the case of Shri Mool Chand who was appointed as Anti Malaria Lascar in the year 1979

applicant and it is a gross discrimination on the part of the respondents, which violates legal rights of the applicant. Therefore, aggrieved of the action of the respondents, the applicant has filed this OA praying for the reliefs as extracted above.

3. In reply to the OA, the respondents have submitted that mobility under the MACP scheme is to the immediate next higher grade pay in the hierarchy of revised pay bands and grade pay as given in Section-I Part-A of First Schedule of CDS (Resivsed Pay) Rules, 2008 where the promotion post in a cadre carries a grade pay higher than the immediate next higher grade pay of the feeder post, the grade pay attached to the promotion post would be given only at the time of regular promotion. For example – financial upgradation to an LDC (Grade Pay Rs. 1900/-) would be in the immediate next higher grade of Rs. 2000/- and not in the grade pay attached to the post of UDC (Rs. 2400/-). The grade pay of Rs. 2400/- would be admissible to him only at the time of regular promotion to the post of UDC. The applicant joined service in the Indian Air Force as Group-D post in 1979. He was promoted from Group-D to LDC on 1.7.1986 and further to the post of UDC (now grade pay Rs. 2400/-) w.e.f. 21.10.1998 and while implementing the MACP scheme, the applicant has been granted 3<sup>rd</sup> MACP in the grade of of Rs. 2800/- w.e.f. 21.10.2008, having spent 10 years in the same grade/grade pay. The respondents have further submitted that no employee, who is presently in Group-D has been granted financial upgradation under MACP Scheme in the grade pay of Rs. 4200/4600/- and there is no anomaly in granting 3<sup>rd</sup> MACP benefit to some employee who were initially appointed in

entitlement. The applicant was initially appointed as Group-D and cannot compare himself with individuals appointed in Group-C posts and he has been granted MACP benefit w.e.f. 21.10.2008 to the grade pay of Rs. 2800/- as per his entitlement. It has been further submitted that no individual who is junior to the applicant and similarly placed has been conferred with the benefit of 3<sup>rd</sup> MACP to the grade pay of Rs. 4600/- . After implementation of recommendations of the Sixth Pay Commission, the individuals mentioned in letter dated 11.12.2008, who were in the grade pay of Rs. 4200/- as on 1.9.2008 i.e. the date of MACP scheme came into force, have been granted benefit of next MACP to the grade of Rs. 4600/-, whereas the applicant was in the grade pay of Rs. 2400/- on that date. The DOP&T OM dated 19.5.2009 is applicable to all Govt. employees and Painter is categorized as Group-C post whereas the applicant's initial appointment was in Group-D post. Therefore, the claim of the applicant for parity vis-à-vis Shri K.R.Khatri who belongs to Painter trade is not tenable as the post of UDC and Painter belong to separate cadres having different recruitment rules, condition of service and promotion avenues. Therefore, the respondents have submitted that the MACP scheme introduced by the Govt. has been implemented in letter and spirit and the applicant has been granted next higher grade pay of Rs. 2800/- in the hierarchy of revised pay band and grade pay. As such, there is no illegality or infirmity in denying the applicant grade pay of Rs. 4600/- and the OA is liable to be dismissed.

4. Heard both the parties. Counsel for the applicant contended that applicant has been working as UDC for the last more than 12 years and he

benefit of 3<sup>rd</sup> financial upgradation under MACP scheme. It has also been contended that on promotion, the applicant was granted higher pay, but the persons who were not granted promotion, were granted benefit of ACP and on account of grant of dual benefit of ACP and MACP on completion of 30 years of service, these persons who are working as Class-IV employees much lower in the cadre of the applicant are being getting higher pay scale which is clear from fixation order of Shri K.R.Khatri. Counsel for the applicant further contended that the applicant is drawing grade pay of Rs. 2800/- whereas other incumbents who have completed similar number of years and are working in much lower cadre as Painter, Carpenter and Lascar are getting higher grade pay of Rs. 4600/-, which is a clear discrimination being practiced and the provision of MACP (Para 2(b) of the Scheme as at Ann.A/3) which does not provide for stepping up of pay deserves to be declared ultra vires.

5. Per contra, counsel for the respondents contended that the respondents are granting benefit of ACP/MACP to its civilian employees as per their entitlement and strictly as per instructions of the Government in this regard. As regards Shri K.R.Khatri is concerned, the individual is Group-C employee like the applicant and belongs to different cadre and the applicant cannot label the individual employee as junior to him. In normal circumstances, stepping up provision is available within same cadre and not with the employee of another cadre. The applicant has failed to cite any instance where similarly placed junior person appointed as Group-D post and promoted as LDC has been granted higher grade pay under the MACP

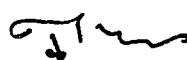
Government instructions and there is no illegality in the action of the respondents.

6. Considered the rival contention of the parties and perused the record.

The applicant was initially appointed as Group-D employee and thereafter he was promoted to the post of LDC, a Group-C post w.e.f. 1.7.1986. He was further promoted as UDC w.e.f. 21.10.1998 and while implementing the MACP scheme, he was granted 3<sup>rd</sup> MACP in the grade pay of Rs. 2800/- w.e.f. 21.10.2008 on completion of 10 years service in the same grade. The stand of the respondents is that no employee similarly placed with the applicant has been granted financial upgradation under MACP in the grade pay of Rs. 4200/4600. Therefore, it appears that the applicant is comparing himself with the persons of different cadres, who were appointed in Group-C and are getting higher grade pay. In our considered view, the respondents have rightly granted next higher grade pay of Rs. 2800/- under MACP scheme and the applicant will be eligible for grade pay of Rs. 4200/- on next regular promotion. In these circumstances, we find no illegality in the action of the respondents and the OA deserves to be dismissed.

7. Accordingly, the OA lacks merit and the same is dismissed with no order as to costs.

  
(MEENAKSHI HOOJA)  
Administrative Member

  
(JUSTICE K.C.JOSHI)  
Judicial Member

R/