

के.प्र.अ. (प्रक्रिया) विभाग, जयपुर, दिनांक: 03-11-2016

**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

ORDERS PRONOUNCED ON: 03-11-2016
(Orders reserved on: 28.09.2016)

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. PRAVEEN MAHAJAN, MEMBER (A)**

(I) O.A.NO.559/2011

1. Om Prakash son of Shri Sukh Ram, aged about 50 years, resident of House No. 184, Nehru Colony, Baggikhana, Ratanada, Jodhpur, at present employed on the post of Mazdoor (T.No. 911) in the office of 19 FAD C/o 56 APO.
2. Kesha Ram son of Shri Kojal Ram, aged about 50 years, resident of Vill-Jajiwala Jakhda Post Jajiwala Kalla Distt. Jodhpur, at present employed on the post of Mazdoor (T.No. 893) in the office of 19 FAD C/o 56 APO.
3. Krishna Ram son of Shri Rgga Ram, aged about 50 years, resident of Village & Post Jajiwala Kalla Distt. Jodhpur, at present employed on the post of Mazdoor (T.No. 897) in the office of 19 FAD C/o 56 APO.
4. Nimbha Ram son of Shri Ashu Ram, aged about 50 years, resident of Sarang Nagar, Ajmer Road, Jodhpur, at present employed on the post of Mazdoor (T.No., 868) in the office of 19 FAD C/o 56 APO.
5. Mohan Lal son of Shri Chandra Ram, aged about 49 years, resident of Village & Post - Jajiwala Kalla Distt. Jodhpur, at present employed on the post of Mazdoor (T.No. 823) in the office of 19 FAD C/o 56 APO.,

6. Mangla Ram son of Shri Pusha Ram, aged about 50 years, resident of Village Jajiwai Brahmana, Post Jajiwai Kalla, Dist. Jodhpur, at present employed on the post of Mazdoor (T.No. 884), in the office of 19 FAD C/o 56 APO.

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Applicants

Versus

1. Union of India through Secretary to the Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. The Secretary to Govt. of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training North Block, New Delhi-110001
3. The Commandant, 19 Field Ammunition Depot, C/o 56 APO.

Respondents

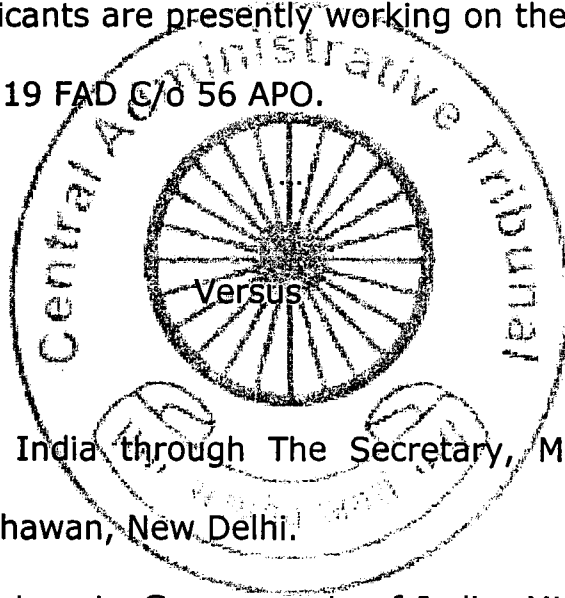
Present: Mr. J.K. Mishra, Advocate, for the applicants.
Mr. K.S. Yadav, Advocate, for respondents.

(II) O.A.NO.576/2011

1. Sh. Fatu Giri S/o Sh. Bhanwar Giri, aged about 50 years, R/o Sojtigate Bilara, District Jodhpur (Raj).
2. Hema Ram S/o Sh. Karnaram, aged about 53 years, R/o Village / Post Sinli, District Jodhpur.
3. Hamira Ram S/o Sh. Haru Ram, aged about 53 years, R/o Village Kohlu Pabuji, Tehsil & Post Phalodi, District Jodhpur.
4. Rakesh Kumar S/o Sh. Achla Ram, aged about 51 years, R/o Maderna Colony, near Khoja Chakki, Jodhpur.

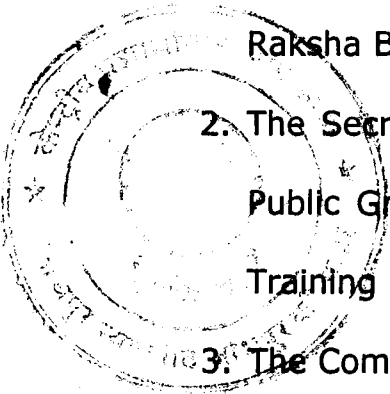
5. Choha Ram S/o Sh. Durga Ram, aged about 51 years, R/o Village Borawas, Post Jajiwalkalan, Distt. Jodhpur.
6. Prakash Chand S/o Sh. Shiv Narayan, aged about 51 years, R/o Balaji Ka Talab, Naion Ka Bas, Jodhpur.
7. Chhaga Ram S/o Sh. Rhugga Ram, aged about 52 years, R/o Village Gujron Ka Bas, Post Banar, District Jodhpur.
8. Ran Niwas S/o Sh. Deva Ram, aged about 53 years, R/o Kilikhana, Kile Ki Ghati, Acharyon Ka Bas, Jodhpur.
9. Abudl Quayam S/o Sh., Abdul Gaffar, aged about 51 years, R/o Sojatigate Bilara, District Jodhpur.

(All the applicants are presently working on the post of Mazdoor in the office of 19 FAD C/o 56 APO.



Applicants

1. Union of India through The Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. The Secretary to Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training North Block, New Delhi.
3. The Commandant, 19 Field Ammunition Depot, C/o 56 APO.



Respondents

Present: Mr. S.K. Malik, Advocate, for the applicants.
Mr. K.S. Yadav, Advocate, for respondents.

ORDER
HON'BLE MR. SANJEEV KAUSHIK , MEMBER (J)

1. The facts of the case and point of law involved in both these cases being common, these have been taken up for disposal by a common order. For facility of reference, facts are being taken from O.A. No. 559/2011 – **Om Prakash & Others Vs. Union of India & Others.**
2. The applicants have filed this O.A. seeking the following reliefs :-

(i) That para 6.1 of Annexure-I to the MACP impugned OM No. 35034/3/2008-Estt. (D) dated 19.5.2009, passed by 2nd respondent (Annexure A/1) may be declared as unconstitutional and the same may be struck down.

(ii) That the impugned notice of recovery dated 23.9.2011, (Annexure A/2) passed by 3rd respondent, may be declared illegal and be quashed and applicants be allowed all the consequential benefits including refund of recovery made.

(iii) The impugned orders dated 31.12.2010 (Annexure A/7 to A/12) issued by 3rd respondent, may be declared illegal to the extent of fixing the pay of the applicants by grant of only one increment and respondents may be directed to re-fix their pay by grant of two increments as has been done in case of similarly situated persons.

3. The facts, which led to filing of the case, are that the applicants were appointed as mazdoors on different dates during 1984 as given in para 4 (2) of the O.A. The respondents introduced Assured Career Progression Scheme (for brevity "ACP Scheme") on 9.8.1999 providing for two financial upgradations to Group B, C and D employees on completion of 12 and 24 years of service. The applicants

were drawing pay in the pay scale of Rs.2650-4000 which was merged along other pay scales (Rs.2550-3200, Rs.2610-3540 and Rs.2750-4400) and it was revised to Pay Band Rs.5200-20200 with grade pay of Rs.1800 w.e.f. 1.1.12006.

4. The applicants, on completion of 12 years of service were granted first financial up-gradation w.e.f. 9.8.1999 in the pay scale of Rs.3050-4590 vide order dated 5.1.2004. On completion of 24 years of service, they were granted 2nd financial up-gradation in pay scale of Rs.4000-6000 vide order dated 14.11.2007 from February/March, 2008. The claim of the applicant is that grant of financial up-gradation is in lieu of promotion and such grants entitles employees to have their pay fixed in terms of FR-22(i)1(a) i.e. they are entitled to two increments instead of one only. They claim that benefits of two increments has been allowed in favour of Mazdoor Chaina Ram vide pay-fixation order (Annexure A-13) whereas they have been allowed only one increments vide Annexures A-7 to A-12 quashing of which is sought for by them.

5. On revision of pay scales w.e.f. 1.1.2006, the applicants opted for revision of their w.e.f. 1.1.2006. Thereafter, the respondents issued Modified Assured Career Progression Scheme "for short "MACP" on 19.5.2009. Para 9 of the same provides that ACP would remain in force till 31.8.2008 only and from 1.9.2008 MACP would come into play. However, para 6.1 of the Scheme provides as under :-

"In the case of ACP upgradations granted between 01.01.2006 and 31.08.2008, the Government servant

has the option under the CCS (RP) Rules, 2008 to have his pay fixed in the revised pay structure either

- (a) w.e.f. 01.01.2006 with reference to his pre-revised scale as on 01.01.2006; or
- (b) w.e.f. the date of his financial up gradation under ACP with reference to the pre-revised scale granted under ACP.

In case of option (b), he shall be entitled to draw his arrears of pay only from the date of his option i.e the date of financial up-gradation under ACP".

6. The claim of the applicants that the para 6.1 of Annexure-I to MACP Scheme takes away the protection granted vide para 9 of the MACP. The respondents issued a notice on 23.9.2011 working out recovery of over payments made to the applicants without issuance of any notice to them. The CGDA has also clarified on 28.4.2011 that benefits granted under ACP Scheme up to 31.8.2008 cannot be taken away in the guise of MACP Scheme. There was no misrepresentation on the part of the applicants and applicants were entitled to benefit under ACP Scheme which cannot be taken away arbitrarily. Reliance is also placed on certain judicial pronouncements to claim that no recovery can be made from them. Hence, the O.A.

7. The respondents have filed a reply. They submitted that the applicants were entitled to second ACP on completion of 24 years of service in February to March, 2008 i.e. after 6th CPC recommendations. In terms of MACP Scheme, the applicants were given opportunity to opt for fixation of their pay in new

pay scale in terms of options (a) and (b) extracted above. The applicants opted for option (b) and as such their pay was re-fixed and recovery was worked out. Out of 140 Mazdoors, 119 Mazdoors had opted to fix their pay as per para (a) and their pay was fixed accordingly.

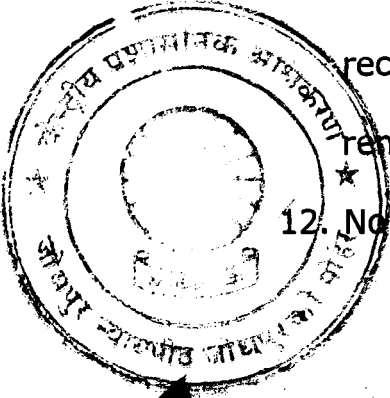
8. We have heard learned counsel for the parties and have examined the material on the file minutely.
9. It is not in dispute that before issuing the impugned orders of recovery and revised fixation of pay the respondents have not issued any show cause notice to the applicants and on this short premise alone the impugned orders of recovery cannot be sustained in the eyes of law.
10. The second issue is regarding grant of FR 22 (1)a(i) while granting financial up-gradations under ACPS scheme to the applicants as is done in promotion cases. The objection taken by the respondents is that as per para 6.1 (b) of Annexure-I to MACP dated 19.5.2009, the pay is to be fixed w.e.f. date of financial up-gradation under ACP due and therefore, the applicants were not eligible for grant of increment due in August, 2008. It is not in dispute that MACP Scheme has come into force vide OM dated 19.5.2009 w.e.f. 1.9.2008 only and ACP has remained in operation upto 31.8.2008. So if something is due to the applicants upto 31.8.2008 under ACP Scheme including fixation of pay on furnishing of option under relevant rule formulation, that has to be granted to the applicants. The Scheme itself makes it clear that it shall come into force w.e.f. 1.9.2008 only and benefits granted upto 31.8.2008 are to be protected. Para 9 of Annexure-I

of Conditions of grant of benefits under the ACP Scheme clearly provides that "On up-gradation under the ACP Scheme, pay of an employee shall be fixed under the provisions of FR 22 (I) a(1) subject to a minimum financial benefit of Rs.100/- as per the Department of Personnel and Training Office Memorandum No. 1/6/97-Pay.I dated July 5, 1999". The fixation of pay chart produced by the applicants shows that they have indeed been denied benefit of option of fixation of pay from the date of grant of next increment under ACP Scheme by grant of only one increment and as such action of the respondents in that regard has to be declared as illegal and not sustainable in the eyes of law. Thus, Annexures A-7 to A-12 to the extent of non grant of one increment claimed by applicant are quashed and set aside.

11. Now in so far as action upon para 6.1 of Annexure I to MACP Scheme is concerned, the applicants have challenged validity of the same. We do not find any illegality in the provision challenged by the applicants. The applicants themselves had given option (b) for fixation of their pay from the date of next increment whereas majority of the employees of their cadre had opted for option (a) being beneficial to them. Thus, now the applicants cannot be allowed to turn around and claim that the rule itself is not tenable in the eyes of law. However, it would be in the fitness of things to remit back this matter to the authorities for a re-consideration of the entire issue by competent authority by giving an opportunity of hearing to the applicants or their representative and then

pass a reasoned and speaking order in accordance with rules and law, within a period of 3 months from the date of receipt of a copy of this order. Till such time a decision is taken, the recovery sought to be made from the applicants shall remain stayed. Ordered accordingly.

12. No costs.

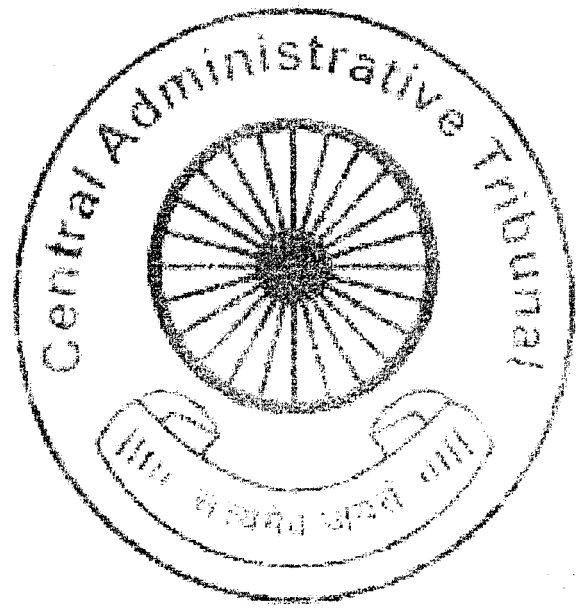


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(PRAVEEN MAHAJAN)
MEMBER (A)

[Signature]
(SANJEEV KAUSHIK)
MEMBER (J)


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CHECKED

[Signature]
Place: JODHPUR
Dated:
HC*



CERTIFIED TRUE COPY
Dated 04/11/2016
[Signature]
Section Officer (Judicial)
Central Administrative Tribunal
Jodhpur Bench

RLC
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Reg

S. K. Malis
Adv
07/11/16