

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Applicaton No.252/2013

TUESDAY this the 24th day of MARCH 2015

CORAM :

**HON'BLE Mr.NARESH GUPTA, ADMINISTRATIVE MEMBER
HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER**

1. K.Soman Pillai,
S/o.N.Kuttan Pillai,
Upper Division Clerk,
Office of the Garrison Engineer (Air Force), Trivandrum.
Residing at Kezhakkavila Puthenveedu,
Vettikkavila, Kottarakkara, Kollam – 691 538.
2. U.K.Nair,
S/o.late P.Krishnan Nair,
Upper Division Clerk,
Office of the Garrison Engineer (P) No.2, Ezhimala,
Naval Academy, Ezhimala P.O., Kannur – 670 310.
Residing at Santhini, Muthappanarkavu,
Kanhangad South P.O., Kasargod, Kerala – 671 531.
3. Nagesh Vithal Gujare,
S/o.late Vital Bapuji Gujare,
Upper Division Clerk,
Office of the Garrison Engineer (P) No.2, Ezhimala,
Naval Academy, Ezhimala P.O., Kannur – 670 310.
Residing at Flat No.13, Parmer Apartment,
155-156, Rasta Peth, Pune – 411 011.
4. Kiyyath Sankaranarayanan,
S/o.late N.Sankaran Nair,
Upper Division Clerk,
Office of the Garrison Engineer (P) No.2, Ezhimala,
Naval Academy, Ezhimala P.O., Kannur – 670 310.
Residing at Flat No.D/4, Lokpriyanagari,
Vishwanath Ph-I, Dhanori Road,
Survey No.110/1, Kalas, Vishrantwadi, Pune – 15.

5. Suseelamma Sam,
W/o.Sam Varghese,
Upper Division Clerk,
Office of the Commander Works Engineers
(Naval Works), Kochi.
Residing at Kuzhiyathu House,
Perumanoor P.O., Thevara, Kochi – 15.

6. Tana Sathees,
W/o.K.N.Satheesan,
Upper Division Clerk,
Office of the Chief Engineer (Naval Works), Kochi.
Residing at Kammankattil House,
Kumbalam Ferry, Kochi – 6.

7. M.Komalavally,
W/o.M.Manoharan,
Upper Division Clerk,
Office of the Commander Works Engineers
(Naval Works) Kochi, Kataribagh,
Naval Base, Kochi – 4.
Residing at Gandhi Nagar,
Kadavanthra, Kochi – 20. ...Applicants

(By Advocate Mr.R.Sreeraj)

V e r s u s

1. Union of India represented by its Secretary,
Ministry of Defence, South Block,
New Delhi – 110 011.
2. The Engineer-in-Chief,
Military Engineer Services,
Army Head Quarters, DHQ PO,
New Delhi – 110 011.
3. The Chief Engineer,
Military Engineer Services,
Head Quarters, Southern Command,
Pune – 411 001.
4. The Chief Engineer (Naval Works) Kochi,
Kataribagh, Naval Base, Kochi – 682 004.



5. The Chief Engineer (Air Force) No.2,
Military Engineer Services, DC Area,
Bangalore – 560 001.
6. The Commander Works Engineers (Naval Works) Kochi,
Kataribagh, Naval Base, Kochi – 682 004.
7. The Garrison Engineer (Air Force),
Military Engineer Services, Trivandrum – 695 011.
8. The Garrison Engineer (P) No.2,
Ezhimala (NAVAC), Ezhimala P.O.,
Kannur – 670 310. ...Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

This application having been heard on 6th February 2015 this
Tribunal on24.03..... 2015 delivered the following :

ORDER

HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER

M.A.No.329/2013 for joining together stands allowed.

2. Applicants are aggrieved by the inaction on the part of the respondents to consider them for 2nd financial upgradation under the Assured Career Progression Scheme (ACP) with effect from 9.4.2009, 1.4.2009, 2.4.2009, 4.4.2009, 30.4.2009, 2.4.2009 and 1.4.2009 respectively on which dates they complete 24 years of service from the date of their direct entry into service. They further state that during this period they got only one promotion as Upper Division Clerks (UDC). According to the applicants, the respondents did not consider them for the 2nd financial upgradation on the pretext that by the time they became due for 2nd ACP, the

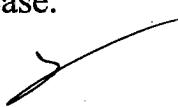


.4.

new scheme viz. Modified Assured Career Progression Scheme (MACP) had come into effect. Applicants further state that if MACP Scheme is to be applied in their case, there would be heavy financial loss causing prejudice to the applicants because they will get the benefits of only on the basis of the financial upgradation they received as 1st ACP.

3. In the reply statement respondents contend that applicants had already been promoted in 2004, 3rd October 2006, 3rd October 2006, 7th November 2007, 2006, 2006 and November 2006. Before they became eligible for the 2nd ACP on completion of 24 years of service, MACP Scheme had been brought in to effect from 1.9.2008. It is also stated by the respondents that 2nd ACP is applicable to employees, those who have completed 24 years of service as on 31.8.2008. But the applicants have completed 24 years of service only on 9.4.2009, 1.4.2009, 2.4.2009, 4.4.2009, 30.4.2009, 2.4.2009 and 1.4.2009 respectively. While praying for dismissing the O.A, respondents state that since MACP has come into vogue from 1.9.2008, applicants come only under the purview of MACP.

4. Heard both sides. Shri.R.Sreeraj, learned counsel for the applicant and Shri.Rajesh representing Shri.Sunil Jacob Jose, learned SCGSC for the respondents argued the case.



5. Learned counsel for the respondents submitted that the case of the applicants in this O.A is in all fours with the decision dated 23.2.2012 of the Chandigarh Bench of this Tribunal in O.A.No.1003/2011. In that case, the Chandigarh Bench held that although the MACP was notified by O.M dated 19.5.2009, the decision of the Government to make the same applicable retrospectively with effect from 1.9.2008 was arbitrary, causing prejudice to the public servant. It was further held that since the applicants before the Chandigarh Bench had received 2nd upgradation under the ACP in the scale of Rs.5000-8000, with the introduction of MACP retrospectively from 1.9.2008 has affected them by reduction of their grade pay from Rs.4200/- to Rs.2800/-. It was also pointed out by the Chandigarh Bench that as per paragraph 11 of the MACP Scheme past cases will not be re-opened. Therefore, the Chandigarh Bench directed the respondents to fix the pay of the applicants after ensuring that they do not suffer any prejudice vis-a-vis the pay scale already granted to them under the 2nd ACP. It was also held by that Bench that the applicants who became eligible for 2nd ACP before 19.5.2009 are to be given the benefits as per rules and their eligibility.

6. Learned counsel for the applicant referred to two decisions of the Madras Bench of this Tribunal. The first decision dated 26.2.2014 was a common order in O.A.Nos.1170/2012 and 437/2013 of Madras Bench. In those cases also the applicants had completed 24 years of service in January



to April, 2009 and the decision of the respondents to take away the rights vested on them to get the 2nd ACP on completion of 24 years of service was an unilateral taking away of the rights vested with them by O.M dated 19.5.2009 fixing the cut off date of 1.9.2008. The Madras Bench in the aforesaid decision directed the respondents to place the case of the applicants before a Screening Committee for consideration for grant of 2nd financial upgradation under the ACP Scheme on completion of 24 years of service. It was also ordered that if the applicants are eligible for the 2nd ACP, the benefits of financial upgradation under the MACP Scheme if extended, would have to be withdrawn.

7. Learned counsel for the respondents also referred to another decision dated 6.11.2013 of the Madras Bench in O.A.No.818/2011 in which one of us (Hon'ble Shri.Naresh Gupta, Member [Administrative]) was a party. In that decision, the applicants who joined service as Lower Division Clerks in April, 1985, after nearly 21 years got promotion as Upper Division Clerks and having completed 26 years of service, got only one regular promotion during their career. They did not get promotion till 1999 when the ACP Scheme was introduced and accordingly they were given ACP with effect from 9.8.1999 and their pay in the next higher pay scale of Rs.4000-6000 (pre-revised) was fixed from the then pay scale of Rs.3050-4590. The next higher pay scale is Rs.6000-8000 which has been merged



with the scale of Rs.5500-9000 (pre-revised). The applicants in that case completed 24 years of service in April, 2009 and were entitled to 2nd financial upgradation under the ACP Scheme and to get fitment in the scale of Rs.5500-9000. Madras Bench of the Tribunal in the order dated 6.11.2013 in O.A.No.818/2011 held :

"7. In the normal course, the applicants would have got benefit of 2nd financial upgradation under the erstwhile ACP Scheme on completion of 24 years of service, that is in April, 2009 [provided they did not get two regular promotions in between], prior to the issue of orders for implementation of MACPs w.e.f 1.9.2008 vide OM of DOP&T dated 19.5.2009 (Annexure R-2). The guidelines pertaining to the ACP Scheme are contained in Annexure I of DOPT's OM No.35034/1/97-Estt.(D), dated 9 August 1999. Para 6.3 of the Guidelines is reproduced below.

6.3. In order to prevent operation of the ACP Scheme from resulting into undue strain on the administrative machinery, the Screening Committee shall follow a time-schedule and meet twice in a financial year, preferably in the first week of January and July for advance processing of the cases. Accordingly, cases maturing during the first half (April-September) of a particular financial year for grant of benefits under the ACP Scheme shall be taken up for consideration by the Screening Committee meeting in the first week of January of the previous financial year. Similarly, the Screening Committee meeting in the first week of July of any financial years shall process the cases that would be maturing during the second half (October-MArch) of the same financial year. For example, the Screening Committee meeting in the first week of January, 1999 would process the cases that would attain maturity during the period April 1, 1999 to September 30, 1999 and the Screening Committee meeting in the first week of July, 1999 would process the cases that would mature during the period October 1, 1999 to March 31, 2000.

Thus in terms of the above Guidelines for ACPs, the Screening Committee could have considered the case of the applicants for grant of 2nd financial upgradation prior to issue of orders for MACPs, and if the ACP benefit had been granted to them at that time, it would have become a past case which could not have been reopened as stipulated in the MACPs guidelines. Administrative delay should not stand in the way of the applicants being considered for grant of 2nd financial benefit under ACPs provided they were otherwise eligible. However, the benefit of 2nd financial upgradation under ACPs would not be available if two prior promotions on regular basis have been received by the employee, as provided for in Annexure II of the aforesaid OM of DOPT:

ANNEXURE -II

CONDITIONS FOR GRANT OF BENEFITS UNDER THE ACP SCHEME

1. The ACP Scheme envisages merely placement in the higher payscale/grant of financial benefits (through financial up-gradation) only to the Government servant concerned on personal basis and shall, therefore, neither amount to functional/regular promotion nor would require creation of new posts for the purpose.

5.1 Two financial up-gradation under the ACP Scheme in the entire Government service career of an employee shall be counted against regular promotions (including in-situ promotion and fast-track promotion through limited departmental competitive examination) availed from the grade in which an employee was appointed as a direct recruit. This shall mean that two financial upgradations under the ACP Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee. If an employee has already got one regular promotion, he shall qualify for the second financial upgradation only on completion of 24 years of regular service under the ACP Scheme. In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him.

8. Learned counsel for respondents submitted that the decision of the Chandigarh Bench of this Tribunal in O.A.No.1003/2011 has been challenged by the department before the High Court of Punjab and Haryana. It was also submitted by learned counsel for respondents that the applicants' claim in the present O.A is no way connected with the O.A filed in above case before the Chandigarh Bench. He pointed out that the applicants before the Chandigarh Bench had already been granted ACP in the pre-revised pay scale before the issue of orders on MACP on 19.5.2009. He submitted that in the present O.A applicants had not been granted the benefits till the Government order on introduction of the new MACP Scheme was issued.



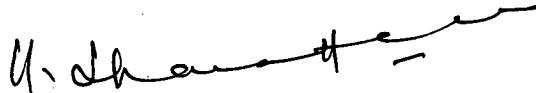
9. In our view, there is a very significant aspect in this case. Annexure A-1 O.M dated 19.5.2009 which introduced the MACP for Central Government civilian employees was brought into force the scheme retrospectively with effect from 1.9.2008. The employees who got financial upgradation after 1.9.2008 - ie. the date on which the MACP was introduced - would suffer monetary loss if the 2nd ACP to which they have acquired a vested right under the old scheme is denied on the premises that by that time the MACP has been brought into effect. We are of the view that in such cases the retrospective application of the Annexure A-1 O.M taking away the vested rights of the applicants under the ACP Scheme will certainly be contrary to the law laid down by the Apex Court that amendments in the rules with retrospective effect affecting prejudicially the persons who had acquired rights are ultra-vires of the Constitution (see *Ex.Capt.K.C.Arora and another v. State of Haryana and others* 1984 (2) SLR 97.) As observed by the Madras Bench of the Tribunal in O.A.No.818/2011, the applicants who have completed 24 years of service becoming eligible for the 2nd ACP by April, 2009 would have been got such benefits had their cases been subjected to the Screening Committee within time.



10. In the instant case the applicants had got only one regular promotion. Therefore, they were eligible to be considered for the benefits of 2nd financial upgradation under the ACP Scheme, even prior to the issue of orders for implementation of the MACP Scheme.

11. In the above circumstances, we direct the respondents to place the case of the applicants before the Screening Committee for consideration for grant of 2nd financial upgradation under the ACP Scheme on completion of 24 years of service provided they had completed this period as claimed by them in April, 2009 ie., prior to issue of Annexure A-1 O.M dated 19.5.2009 by which date the MACP Scheme came to be introduced. If, based on such consideration by the Committee, the applicants are found eligible to get 2nd financial upgradation under the ACP Scheme before the issue of Annexure A-1 O.M, the benefits of financial upgradation under MACP Scheme, if extended would have to be withdrawn. This exercise shall be completed by the respondents within four months from the date of receipt/production of a copy of this order. The O.A stands disposed of as above. No order as to costs.

(Dated this the 24th day of March 2015)


U. SARATHCHANDRAN
JUDICIAL MEMBER

Nash apl
NARESH GUPTA
ADMINISTRATIVE MEMBER

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