

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 267 of 2013

Wednesday, this the 18th day of May, 2016

CORAM:

Hon'ble Mr. Justice N.K. Balakrishnan, Judicial Member
Hon'ble Mrs. P. Gopinath, Administrative Member

S. Ramachandran, aged 56 years, S/o. Sreedharan Channar,
Supervisor B/S, Office of the Commander Works Engineers
(Naval Works), Kochi, Kataribagh, Naval Base PO, Kochi-4,
residing at – Mangalathu Tharayil House, Elippakulam PO,
Pallickal, Alleppey – 690 503. **Applicant**

(By Advocate : Mr. R. Sreeraj)

V e r s u s

1. Union of India, represented by its Secretary to
Government of India, Ministry of Defence, New Delhi – 110 001.
2. The Engineer-in-Chief, Military Engineer Services,
New Delhi – 110 001.
3. The Chief Engineer, Head Quarters, Southern Command,
Military Engineer Services, Pune – 411 001.
4. The Chief Engineer (Naval Works), Military Engineer Services,
Naval Base, Kochi – 4.
5. The Commander Works Engineer (Naval Works),
Military Engineer Services, Naval Base,
Kochi – 4. **Respondents**

[By Advocate : Mr. N. Anilkumar, Sr. PCGC (R)]

This application having been heard on 05.04.2016, the Tribunal on

18.05.2016 delivered the following:



ORDER

Hon'ble Ms. P. Gopinath, Administrative Member -

The applicant is aggrieved by the inaction on the part of the respondents to consider his case for the third financial upgradation under the Modified Assured Career Progression Scheme to the Grade Pay of Rs. 4600/- with effect from 26.10.2008.

2. Applicant argues that the respondents ought to have considered the case of the applicant for 2nd financial upgradation under the ACP scheme to the scale of pay of Rs. 5000-8000/- with effect from 26.10.2002 by ignoring the promotion of the applicant from the category of Storeman to the category of Store Keeper Grade-II in view of the merger of the post of Storeman with the post of Store Keeper pursuant to the recommendations of the 5th Central Pay Commission. In similar circumstances, when Superintendent B/R Grade I and Grade II were merged and redesignated as Junior Engineer, the respondents ignored the promotions from Superintendent B/R Grade II and Grade I and granted them financial upgradation under the ACP scheme. In the case of Industrial staff also, the respondents did the same, when HS Grade II and I were merged and redesignated as HS. The applicant is entitled to be granted financial upgradation under the ACP scheme to the scale of pay of Rs. 5000-8000/- with effect from 26.10.2002. In such an event, the applicant is entitled to have the financial upgradation under the MACP Scheme to the Grade Pay of Rs. 4600/- with effect from 26.10.2008, because the replacement Pay Band of the pre-revised scale of pay of Rs. 5000-8000/- applicable from



1.1.2006 is Rs. 9300-34800/- with Grade Pay Rs. 4200/-. The applicant is also entitled to have the financial upgradation under the MACP Scheme to the Grade Pay of Rs. 4600/- with effect from 26.10.2008 because his promotion as Supervisor B/R is liable to be antedated either to April, 2007 or to April, 2008 in which event also, the next Grade Pay available to him as on 26.10.2008 for financial upgradation would have been Rs. 4600/-.

3. The relief sought by the applicant is:

To direct the respondents to consider the case of the applicant for grant of financial upgradation under the Modified Assured Career Progression Scheme to the Grade Pay of Rs. 4600/- with effect from 26.10.2008 and to grant him the same with all consequential benefits, either by antedating his promotion as Supervisor B/R to April 2007/2008 or by granting him the financial upgradation under the Assured Career Progression Scheme to the scale of pay of Rs. 5000-8000/- with effect from 26.10.2002.

4. The applicant in MA No. 343 of 2013 for condonation of delay submits that the relief sought is for a direction to the respondents to consider his case for grant of financial upgradation under the Modified Assured Career Progression Scheme to the Grade Pay of Rs. 4600/- with effect from 26.10.2008 and to grant him the same with all consequential benefits. The basis for his case is two fold:

(1) that he is entitled to get his promotion as Supervisor B/R antedated to April 2007/2008; and

(2) that he is entitled to get financial upgradation under the Assured Career Progression Scheme to the scale of pay of Rs. 5000-8000/- with



effect from 26.10.2002.

In either of the two events occurring, the applicant will be entitled to get financial upgradation under the Modified Assured Career Progression Scheme to the Grade Pay of Rs. 4600/- with effect from 26.10.2008. Essentially the case involves issues of fixation of pay, financial upgradation, etc. on the one hand and antedating of promotion on the other. Antedating of promotion is an alternative and in the peculiar facts and circumstances of this case it will not affect the rights and interests of any third person. If the period of limitation is counted from the date of claim for antedating of promotion, there is delay of 1825 days in filing the Original Application. The applicant avers that he only came to know of the availability of 281 posts of Supervisor B/S authorized for the Southern Command of MES only from Annexure A3 letter of the Ministry of Defence dated 18.2.2010, on the basis of which only he became aware of his entitlement for promotion even from 2006-07 vacancy year. Then he made further inquiries in the matter and collected details like Annexure A4 letter dated 29.9.2011 to substantiate his case. As regards the other alternative, namely, financial upgradation under the ACP scheme to the scale of pay of Rs. 5000-8000/- with effect from 26.10.2002, the basis for the claim is the Ministry of Defence letter dated 12.2.2009 by which the categories of Supervisor B/S Grade II and Supervisor B/S Grade I had been merged and redesignated as Supervisor B/S with effect from 1.1.2006. If the delay in raising the claim is calculated from that point of time, there is 1137 days delay. The issue is however, one of fixation and thus a recurring cause of action. Applicant is not claiming any other benefit out of financial upgradation under the ACP scheme to the



scale of pay of Rs. 5000-8000 with effect from 26.10.2002 other than a notional fixation so that the substantial prayer for financial upgradation under the MACP scheme to the Grade Pay of Rs. 4600/- with effect from 26.10.2008 is allowed to him. Financial upgradation under the MACP scheme to the Grade Pay of Rs. 4600/- is a recurring cause of action. Had the applicant been promoted as Supervisor B/S in time, i.e. in April 2007/2008, or had been given financial upgradation under the ACP scheme to the scale of pay of Rs. 5000-8000, he would have been granted financial upgradation under the MACP scheme to the Grade Pay of Rs. 4600/-.

5. The respondents have filed an objection to the above MA for condonation of delay and submitted that the applicant is seeking a direction to consider his case for grant of financial upgradation under MACP scheme to the Grade Pay of Rs. 4600/- w.e.f. 26.10.2008 with all consequential benefits either by ante dating his promotion as Supervisor B/S to April 2007/2008 or by granting him financial upgradation under ACP scheme to the scale of pay of Rs. 5000-8000/- w.e.f. 26.10.2002. The applicant has sought condonation of delay of 1137 days in filing the OA. The applicant is trying to tide over the long delay by taking recourse to the claim that it is a recurring cause of action. The applicant himself admitted that he became aware of his entitlement only after he chanced upon the letter of the Ministry of Defence dated 18.2.2010 which is produced as Annexure A3 in the OA. The reasons stated for delay in filing the OA are not cogent and reasonable. Applicant is basing his OA on the presumption that had he been promoted or been given financial upgradation under ACP scheme he would



have been granted financial upgradation under the MACP scheme to the grade pay of Rs. 4600/-. The long delay of 1825 days in raising his claims is not to be ignored. The respondent would argue that the delay occurred is due to the negligence and latches on the part of the applicant alone and that the OA is barred by limitation.

6. Respondents have also filed a reply statement to the main OA wherein it is averred that the applicant joined Military Engineering Service (MES) as Storeman on 26.10.1978, was promoted as SK Grade II on 11.9.1987 and further promoted as SK Grade-I on 9.11.1999. Subsequently, he has been promoted as Supervisor B/s on 11.9.2009 against the vacancy year 2008-09 and hence he has already been granted three promotions. However, on merging of SK Grade II and SK Grade I respondent has considered that he has got only two promotions. Accordingly, the 3rd financial upgradation under MACP Scheme has been granted to him in the Grade Pay of Rs. 2800/- with effect from 26 October 2008 on completion of 30 years of regular service in accordance with MACP scheme. The respondent denies the plea that there was delay in holding the DPC in the year 2007-08. DPC for promotion from SK Grade I to Supervisor B/S Grade II was held on 24th August, 2007 for the vacancy year 2007-08 and panel was issued, vide HQ Chief Engineer, Southern Command letter dated 12th September, 2007, under which 9 individuals were promoted. Since the applicant's name figured at serial No. 11 he could not be promoted as there were only 9 vacancies. The Supervisor B/S Grade II and Supervisor B/S Grade I had been merged and redesignated as Supervisor B/S as per the



recommendations of 6th CPC. The applicant was promoted as Supervisor B/S against vacancies of DPC year 2008-09 and promotion cum posting order was issued vide Annexure A1 letter dated 8th September, 2009. There is no justification for holding review DPC as contended by the applicant since the vacancies in a particular year are to be arrived at after taking into account the held strength, retirement/deaths etc. and promotion to next higher post in the chain during the year of DPC. There were only 9 vacancies in the year 2007-08 for Supervisor B/S Grade II and in that year the combined authorized strength for Southern Command of Supervisor B/S Grade I & Grade II was 288 (111+177) which is more than 281, evident from Appendix A of E-in-C's branch letter dated 16th January, 2007. Therefore, the averments of the applicant are hypothetical and are based on assumptions and surmises.

7. It is also submitted by the respondents that in the 5th CPC, Storeman post was abolished and was not merged with Storekeeper and therefore as per the guidelines on ACP issued by DoP&T, the promotion earned by the applicant from Storeman to SK Grade II is to be treated as promotion/financial upgradation. The applicant was granted regular promotion as under:

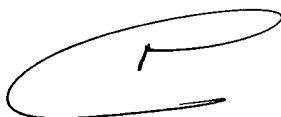
Recruited as Storeman (GP Rs. 1800/-)	:	26.10.1978
Promoted to SK Grade II (GP Rs. 1900/-)	:	11.09.1987
Promoted to SK Grade I (GP Rs. 2400/-)	:	09.11.1999
Promoted to Supervisor B/S (GP Rs. 4200/-)	:	11.09.2009



Applicant prays for ignoring the promotion from Storeman to SK Grade II by treating it as merger. The applicant has submitted an application dated 31.07.2012 addressed to DG (Pers.), E-in-C's Branch, New Delhi. The application was a mere repetition of contentions made out in the OA which have been contested. Hence, the applicant is not entitled for 2nd financial upgradation under ACP scheme w.e.f. 26.10.2002.

8. The respondents have also filed an additional reply statement stating that all suitable matriculate Storeman have been upgraded to SK-II against 311 vacancies of SK-II on the recommendations of the subcommittee constituted for going into the problems of the cadre. No further recruitment to the post of Storeman is being made. Non-matriculate Storeman were not upgraded and remained as Storeman till they retired. But, the applicant who had the qualification was promoted as SK Grade-II, subsequently as SK Grade-I and then to Supervisor B/S. Therefore, he is not eligible for 3rd MACP as per the existing MACP rules.

9. Heard the counsel for applicant and respondent and the written submissions made. Applicant argues that consequent to the implementation of 5th CPC, the post of Storeman has been abolished and merged as SK Grade-II. The respondent argues that this statement is wrong and misleading and the post of Storeman has not been abolished. The Vth CPC in paragraphs 63.194 and 63.196 states:



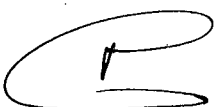
"Para 63-194

We have been informed by the Ministry of Defence that the instance of Vth CPC, a subcommittee had gone into the problems of the Cadre. On its recommendations all suitable matriculate Storeman have since been upgraded to SK-II against 311 vacancies of SK-II, no further recruitment to the post of Storeman is being made.

Para 63.196

The remaining existing non matriculate Storeman should get the replacement scale of Rs. 800-1150 and be provided with one more ACP scale of Rs. 950-1500. Since the grade of Storeman will be a dying grade to which mates will not be promoted, the remaining non matric mates who will at present get replacement scales may be provided the scale of Rs. 950-1500 under the provisions of ACP. Similarly, Packers, who do not get promotion to the Storekeepers may be granted the replacement scales, of Rs. 800-1150 and Rs. 950-1500 which will also be ACP grades for them."

10. The Storeman Grade-II was not abolished or merged. The applicant, while working as Storeman, having possessed requisite educational qualification of matriculate for promotion to SK Grade-II, had been upgraded to SK Grade-II. The applicant had admitted in OA that he was promoted to SK Grade-II in September, 1987 further to SK Grade-I in November, 1999 and subsequently to Supervisor B/S in September, 2009. Hence, before VI CPC applicant had got two promotions to SK Grade-II & SK Grade-I. Thus, his claim for 2nd ACP w.e.f. October, 2002 is not admissible. The analogy drawn by applicant with other cadres of the Department are untenable, argues the respondent, as in these cadres the posts were merged. The applicant has been granted 3rd MACP on 26th October, 2008 on completion of 30 years of regular service with Grade Pay of Rs 2800/- and the applicant when promoted to Supervisor B/S in



September, 2009 was given Grade Pay of Rs. 4200/-.

11. The respondent filed objections to MA for condoning delay of 1825 days if applicant's case is considered for ACP promotion and 1137 days of delay if calculated from the time of raising the claim. Respondent also contests the applicant's plea based on "recurring cause of action", as applicant was aware of his entitlement after he chanced upon the Ministry of Defence letter dated 18.2.2010 which was been produced in OA as Annexure A3. The applicant has been sleeping over the matter. The delay has been due to laches on the part of the applicant. Applicant has already availed three promotions as SK Grade-II, SK Grade-I and Supervisor B/S in 1987, 1999 and 2009 respectively and has been given 3rd MACP in October, 2008 and promoted as Supervisor in September, 2009. He had also earned two promotions before completion of 24 years of regular service as SK Grade-II and SK Grade-I. Further there was no merger of posts in the applicant's case meriting ignoring of any of the above promotions and creating a fresh entitlement.

12. In view of the aforesaid, the Miscellaneous Application No. 343 of 2013 for condonation of delay is dismissed. Consequently, the Original Application is also dismissed. No order as to costs.


(MRS. P. GOPINATH)
ADMINISTRATIVE MEMBER


(N.K. BALAKRISHNAN)
JUDICIAL MEMBER

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