

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 05.03.2014

OA No. 340/2013

Mr. Amit Mathur, counsel for applicants.

Mr. Mukesh Agarwal, counsel for respondents.

Arguments heard.

Order reserved.

म. नाराजान
(M. NAGARAJAN)
JUDICIAL MEMBER

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Kumawat

07/03/2014
OA 340/2013

Order pronounced today is the
open Court by the Honble of said
Bench.

[Signature]
07/3/14

For C.O

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORDER RESERVED ON 05.03.2014

DATE OF ORDER: 7.3.2014

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER
HON'BLE MR. M. NAGARAJAN, JUDICIAL MEMBER

1. ORIGINAL APPLICATION NO. 340/2013

1. Prakash Janjani son of Shri P.S. Janjani, resident of 4/533, Jawahar Nagar, Jaipur.
2. Ram Lal Meena son of Late Shri Umraw Singh Meena, resident of Quarter No. 43/IIIrd CPWD Colony, Sector-7, Vidhyadhar Nagar, Jaipur.
3. Rajendra Prasad Jat son of Late Shri Gheesa Ram Jat, resident of Quarter No. 99/II, CPWD Colony, Sector-7, Vidhyadhar Nagar, Jaipur.
4. Mahesh Kumar Pandey son of Shri Harish Chandra Pandey, resident 1038, Barkat Nagar, Tonk Phatak, Jaipur.
5. Ashok Kumar son of Shri Chiranji Lal Sharma, resident of 22, Bhomiya Nagar I, Kalwar Road, Jhotwara, Jaipur.
6. Ramesh Kumar Pareek son of Late Shri Ramswaroop Pareek, resident of Quarter No. 29/III, CPWD Colony, Sector-7, Vidhyadhar Nagar, Jaipur.
7. Shiv Ram Yadav son of Shri Surja Ram Yadav aged 49 years, resident of 112/11 CPWD Colony, Vidhyadhar Nagar, Jaipur.

(All are posted as Lab Assistant in the office of Health and Family Welfare Department at Jaipur).

... Applicants

(By Advocate: Mr. Amit Mathur)

Versus

1. Union of India through its Secretary, Ministry of Health and Family Welfare, Nirman Bhawan, New Delhi.
2. The Director General, Health Services, Ministry of Health and Family Welfare, New Delhi.
3. The Director, National Vector Borne, Disease Control Programme, Ministry of Health and Family Welfare, 22 Shamnath Marg, New Delhi.
4. The Senior Regional Director, regional Office, Health and Family Welfare Kendriya Sadan, B Block, Sector-10, Vidhyadhar Nagar, Jaipur.

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... Respondents

(By Advocate: Mr. Mukesh Agarwal)

2. ORIGINAL APPLICATION NO. 356/2013

Surjeet Singh Bedi son of Uttam Singh age 49 years, 116 Tara Nagar-E, Jhotwara, Jaipur. Presently posted as Driver in the office of Health and Family Welfare Department, Jaipur.

... Applicant

(By Advocate: Mr. Amit Mathur)

Versus

1. Union of India through its Secretary, Ministry of Health and Family Welfare, Nirman Bhawan, New Delhi.
2. The Director General, Health Services, Ministry of Health and Family Welfare, New Delhi.
3. The Director, National Vector Borne, Disease Control Programme, Ministry of Health and Family Welfare, 22 Shamnath Marg, New Delhi.
4. The Senior Regional Director, regional Office, Health and Family Welfare Kendriya Sadan, B Block, Sector-10, Vidhyadhar Nagar, Jaipur.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

ORDER**PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER**

Since the controversy involved in OA No. 340/2013 (Prakash Janjani & Others vs. Union of India & Others) and OA No. 356/2013 (Surjeet Singh vs. Union of India & Others) is the same, therefore, with the consent of the parties, these OAs are being disposed of by a common order. The facts of OA No. 340/2013 (Prakash Janjani & Others vs. Union of India & Others) have been taken as a lead case.

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2. The applicants have filed this OA praying this OA praying for the following reliefs:-

- “(i) the present Original application filed by the applicants may kindly be allowed and order Annexure-1 dated 5.4.2013 and Annexure A/2 dated 15.3.2013 may kindly be quashed and set aside. The respondents may be directed to allow the applicants benefits of MACP Scheme as per their earlier order dated 14.02.2012. The applicants may be allowed benefit of MACP by treating them the appointee of 1986.
- (ii) any other order or direction which deem fit and proper in the facts and circumstances of the case may also be passed in favour of the applicant.
- (iii) Cost of this Original application also may be awarded in favour of the applicants.”

3. The brief facts of the case as stated by the learned counsel for the applicants are that the applicants were appointed in the year 1986-87 in the Government of India, Regional Office for Health and Family Welfare, Rajasthan. They were given appointment to the post of Laboratory Assistant. Initially the appointment of the applicants was in the pay scale of Rs.260-8-300-EB-8-340-10-380-EB-10-430 alongwith allowances. Their appointment was on regular basis. The copy of the appointment order dated 30.05.1986 is annexed at Annexure A/3.

4. Subsequently, the applicants were extended the benefits of pay revision and allowed increments.

5. The Government of India issued communications dated 29.09.1995 integrating Malaria Operational Field Research Scheme (MOFRS) with National Malaria Eradication Programme (NMEP). The employees who were transferred from MOFRS to NMEP were

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entitled for the same pay & allowances as admissible prior to transfer. The copy of the transfer order dated 08.03.1996 is enclosed at Annexure A/5. This transfer was to be effective from 29.09.1995 (F/N).

6. That after integration of the MOFRS, the applicants continued on the post of Lab Assistant and they are continuously getting the benefits of pay revision.

7. That after the implementation of Advanced Career Progression Scheme, the applicants were allowed the benefits of pay fixation as per FR 22(1) A (1). After the recommendations of the 6th Pay Commission, the MACP Scheme was introduced and the applicants were advanced benefits of MACP Scheme (Annexure A/9). The benefits of second ACP was extended to the applicants by treating them the employees appointed on regular basis w.e.f. 1986 vide order dated 14.02.2012 (Annexure A/9).

8. However, the respondents vide order dated 05.04.2013 (Annexure A/1) have withdrawn the MACP to the erstwhile MOFRS employees. Vide order dated 15.03.2013 (Annexure A/2), it has been mentioned that under the MACP Scheme, the benefits of higher grade are admissible in the case of direct recruitment or in the case of absorption or re-appointment and not otherwise. On the basis of this letter dated 15.03.2013, the respondents have withdrawn the benefits of MACP advanced to the applicants. With

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regard to the recovery, it has been mentioned that the decision would be communicated later on.

9. The learned counsel for the applicant argued that the applicants are aggrieved from the order dated 05.04.2013 (Annexure A/1) as well as 15.03.2013 (Annexure A/2) and hence have filed this OA. He argued that impugned orders are illegal, arbitrary and unlawful. These orders have been passed by the respondents in complete violation of the MACP Scheme. The respondents have partly followed the Clause 9 of the MACP Scheme and they have partly ignored clause 9 of the said policy. Clause 9 of the policy also provides that past continuous regular service in another Central Government Department in a post carrying same grade pay prior to regular appointment in the new Department, without a break, shall also be counted towards qualifying regular service for the purpose of MACP Scheme. The MACP Scheme has been extended to the work charged employees also.

10. The respondents have ignored the services rendered by the applicants prior to the year 1995. They were posted as Lab Assistants in the same capacity wherein they are working now. In the year 1995 after the merger of the MOFRS Scheme in another Government Scheme, the applicants were merged in another department of the Government, in such circumstances the benefits cannot be withdrawn from the applicants.

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11. He further argued that before passing of the impugned order dated 05.04.2013 (Annexure A/1), the respondents have not given any opportunity to the applicants to represent their case. Thus the respondents have violated the principles of natural justice.

12. The learned counsel for the applicant further submitted that the judgment of the Hon'ble Supreme Court in the case of **Union of India vs. C.B. Gangdharia & Others (Civil Appeal No. 444-450 of 2002)** decided on 10.12.2003 is not applicable in the facts & circumstances of the present case as the Hon'ble Supreme Court has examined the scheme of ACP and not the MACP. The provisions of two Schemes are different and, therefore, the ratio decided by the Hon'ble Supreme Court in that case would not be applicable in the present case. Therefore, he prayed that this OA be allowed.

13. On the other hand, the learned counsel for the respondents submitted that the similar controversy has already been decided by the Central Administrative Tribunal, Bangalore Bench, Bangalore in OA No. 366/2013 to 374/2013 vide their order dated 14.08.2013. The respondents have annexed the order of the Central Administrative Tribunal, Bangalore Bench, Bangalore at Annexure MA/1,. Therefore, he submitted that this OA can be decided in terms of the order passed by the Central Administrative Tribunal, Bangalore Bench, Bangalore.

14. He further submitted that the order dated 05.04.2013 and 15.03.2013 (Annexure A/1 & A/2 respectively) have been issued by

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the concerned authorities as per the provisions of MACP and the applicants have no grounds to challenge the same. However, he contested the claim of the applicants that they were regularly appointed. He submitted that as per their appointment letter dated 30.05.1986 (Annexure A/3), it is evident that the applicants were initially appointed purely on temporary/ ad hoc basis being temporary project employee in the pay scale of Rs.260-6-326—EB-8-350.

15. He further submitted that vide order dated 29.09.1995, the transfer was accorded for merger of MOFRS Scheme Staff with NMEP and accordingly vide order dated 08.03.1996, the applicants were absorbed in Government service. He further submitted that Hon'ble Supreme court in the case of **Union of India vs. C.B. Gangdharia & Others (Civil Appeal No. 444-450 of 2002)** decided on 10.12.2003 (Annexure R/1) ruled that with regard to the grant of Assured Career Progression Scheme, the respondent would be entitled to get the benefit only from the date of absorption i.e. 29.09.1995. The present MACP Scheme is for all practical purposes a replacement of ACP Scheme. Therefore, in view of the ratio decided by the Hon'ble Supreme Court, the services of the applicants have been counted from the date of their absorption i.e. 29.09.1995 for MACP as well. He drew our attention to Para 9 of the Scheme which provides that regular service for the purpose of the MACPS is counted from the date of joining of a post in direct entry grade on regular basis either on direct recruitment basis or on absorption/re-employment basis.

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16. The applicants were wrongly given the MACP benefits counting their service from 1986 whereas their services should have been counted w.e.f. the date of their absorption in the Government service i.e. w.e.f. 29.09.1995 only. Therefore, the present OA has no merit and it should be dismissed with costs.

17. The applicants have also filed the rejoinder.

18. Heard the learned counsel for the parties, perused the documents and the case law referred to by the learned counsel for the respondents.

19. The learned counsel for the applicant agreed in principle that the issue before this Bench in the present OA is similar to the issue which has been decided by the Central Administrative Tribunal, Bangalore Bench, Bangalore in OA No. 366/2013 to 374/2013 vide their order dated 14.08.2013 (Annexure MA/1) but he pointed out that the Central Administrative Tribunal, Bangalore Bench, Bangalore in OA No. 366/2013 to 374/2013 vide their order dated 14.08.2013 has not appreciated the MACP Scheme in the right perspective. They have not examined the point that the applicants were appointed in the year 1986 and were subsequently transferred to NMEP in 1995. Therefore, their service from 1986 to 1995 should be taken in to account for the purpose of grant of MACP and this will be as per Clause 9 of the policy of MACP.

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20. It is not disputed between the parties that the facts & law points is similar in both the cases i.e. the present OA before this Bench and the OA Nos. 366/2013 to 374/2013 before the Central Administrative Tribunal, Bangalore Bench, Bangalore. The Central Administrative Tribunal, Bangalore Bench, Bangalore in OA Nos. 366/2013 to 374/2013 vide their order dated 14.08.2013 have decided that the applicants are not entitled to the benefits of the MACP earlier to 29.09.1995. Para 12 and 15 of the order are quoted below:-

"12. After careful consideration of the above mentioned orders, it is evident that the applicants are entitled for the benefits of MACP from 29.09.1995 only. We have carefully considered the impugned orders. The decision taken by the respondents under the impugned order is in accordance with the direction of Hon'ble Supreme Court and the clarification issued by the DOPT supra, we find there is no illegality or violation of instructions or orders of this Tribunal. The applicants are not entitled to the benefit of MACP earlier to 29.9.1995. The benefit has been withdrawn from 15.3.2013, accordingly, Pay Band and Grade Pay of the applicants have been revised as per the order dated 17/18-4-2013 (Annexure A11, A2, A13, A14, A15, A16, A17, A18 and A19). The respondents have justified in their reply statement that the impugned order withdrawing the MACP which was granted w.e.f. 1.9.2008 has been withdrawn. We are of the view, the impugned orders are in accordance with direction of the Hon'ble Supreme Court, there is no illegality as contended by the applicants."

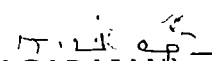
"15. For the forgoing reasons the applicants fail to establish their case for grant of reliefs. The impugned orders are passed on the directions of Hon'ble Supreme Court and on the recommendations of the DPC. The competent authority has issued the order withdrawing the MACP and fixed the MACP in accordance with the clarification issued by the DOPT supra. Regarding recovery of excess amount as held by Hon'ble Supreme in the case of Chandi Prasad Uniyal supra the order of recovery is in accordance with judgment of Hon'ble Supreme Court. The respondents have justified their action in the impugned order following the order of Hon'ble Supreme Court and DOPT instructions supra. Accordingly, OAs are liable to be dismissed."


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21. From the perusal of the order of the Central Administrative Tribunal, Bangalore Bench, Bangalore, it is clear that they have also considered the provisions of MACP Scheme and also the judgment of the Hon'ble Supreme Court in the case of **Union of India vs. C.B. Gangdharia & Others (Civil Appeal No. 444-450 of 2002)** decided on 10.12.2003 (Annexure R/1). The entire issue has been dealt at length by the Central Administrative Tribunal, Bangalore Bench, Bangalore and we have no reason to differ from the decision taken by the Central Administrative Tribunal, Bangalore Bench, Bangalore. Since the facts and the law points of this OA are similar to the facts and law point before the Central Administrative Tribunal, Bangalore Bench, Bangalore, therefore, this OA is decided in terms of the order passed by the Central Administrative Tribunal, Bangalore Bench, Bangalore in OA Nos. 366/2013 to 374/2013 vide their order dated 14.08.2013.

22. Consequently, the OA is dismissed as having no merit with no order as to costs.

23. A copy of this order be kept in the file of OA No. 356/2013 (Surjeet Singh Bedi vs. Union of India & Others).


(M. NAGARAJAN)
MEMBER (J)


(ANIL KUMAR)
MEMBER (A)

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