

CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

O.A.NO. 060/00777/2014 Date of order:-February 25 , 2016.

**Coram: Hon'ble Mr. Sanjeev Kaushik, Member (J)
Hon'ble Mr. Uday Kumar Varma, Member (A).**

1. MES No.370372 Vinod Kumar, Pipe Fitter HS

2. MES No.371338 Yash Pal, Painter HS

3. MES No.506339 Ramesh Chand, Pipe Fitter HS-II

All c/o Garrison Engineer (W) JRC, Jalandhar Cantt.

4. MES No.370927 Kuldip Chand, Pipe Fitter HS

5. MES No.370492 Chaman Kumar, Electrician HS

6. MES No.370526 Gian Chand, Electrician HS

7. Army No.13892507 Jagdev Ram, Valveman.

8. MES No.371188 Balwinder Singh, Electrician HS

9. MES No.506996 Rakeshender Pal, Electrician HS

All c/o Garrison Engineer (E), JRC, Jalandhar Cantt.

10. MES No.370371 Jaswinder Singh, Electrician MCM

11. MES No.370268 Amarjit Sharma, FGM HS I.

12. MES No.192152 Jat Sukhwant Singh, Refg. Mech. HS

13. MES No.370884 Vijay Pal Singh, FGM HS I.

All c/o Garrison Engineer (AF), Adampur.

14. MES No.506006 Balwinder Singh Randhawa, Refg. Mech.

15. MES No.370267 Amrik Singh, Elect. HS I.

16. MES No.506072 Arvinder Singh, FGM HS

17. MES No.370970 Balwinder Singh, FGM HS I.

All c/o Garrison Engineer Kapurthala.

.....Applicants.

(By Advocate :- Mr.Shailendra Sharma)

Versus

1. Union of India through Engineer in Chief, Ministry of Defence, Army HQ, New Delhi.
2. The Engineer in Chief, Army HQ, New Delhi.
3. The Chief Engineer, Western Command, Chandimandir.
4. Commander Works Engineer, Jalandhar.
5. Garrison Engineer (E), Jalandhar.
6. Garrison Engineer (W) Jalandhar.
7. Garrison Engineer (AF), Adampur.
8. Garrison Engineer, Kapurthala.

...Respondents

(By Advocate : Mr. Sanjay Goyal).

ORDER

Hon'ble Mr. Uday Kumar Varma, Member (A):

Seventeen applicants have jointly filed the present Original Application for quashing the impugned letter dated 10.3.2014 (Annexure A-3) with further prayer that the respondents may be directed to grant them grade pay of Rs.4600/- as 3rd MACP on completion of 30 years of service. The applicants have also prayed that the respondents be directed to decide the representation filed by them.

2. Facts of the case are that all the applicants were initially appointed on different dates as per details given in para 4(i) of the OA. They have stated that throughout their service career, they have not been given a single promotion except re-designation. After completion of 12 years of service, the applicants were given 1st ACP from 9.8.1999 and 2nd ACP in the year 2006/2007 on completion of 24 years of service. The applicants have stated that on implementation of

6th Pay Commission with effect from 1.1.2006, the respondents have introduced MACP Scheme from 1.9.2008. As per the said Scheme, the employees were entitled for grade pay on completion of 10/20/30 years of service if they have not received the promotion. The applicants have further stated that they are entitled to 3rd MACP grade pay of Rs.4600/- on completion of 30 years of service from 2012/2013. In this regard, the applicants have jointly made a representation dated 1.5.2014 to respondents and the respondent no.2 vide its letter dated 10.3.2014 have rejected the claim of the applicant for grant of 3rd MACP. Hence the present OA.

3. Pursuant to notice, the respondents have contested the claim of the applicants by filing written statement. They have stated that the present OA is barred under the law of limitation and no cause of action has arisen in favour of the applicants. They have further stated that as per letter dated 14.6.2010 (Annexure R-1) issued by the Ministry of Defence, the grade structure of category of the applicants i.e. Industrial staff has been restructured as per details given below with effect from 1.1.2006:-

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|--------------------------------|--|
| 1. Skilled | Pay band PB-1 grade pay Rs.1900/- |
| 2. Highly Skilled
Grade II. | Pay band PB-1 grade pay Rs.2400/- |
| 3. Highly Skilled | Pay band PB-1 grade pay Grade I
Rs.2800/- |
| 4. Master Craftsman | Pay band PB-2 grade pay Rs.4200/- |

As per para 2 (a) of Government of India, MOD clarification dated 23.7.2012, it was clarified that "financial upgradation under MACPS in respect of Master Craftsman (MCM) will be in the same grade pay of Rs.4200/- as that of the promotional post of Chargeman". Further in

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view of MOD letter dated 6.2.2014, it was clarified that "MCM being the feeder post to Chargeman and since both these posts have identical pay band and grade pay, financial up-gradation under MACPS cannot be to a grade pay which is more than what is admissible in regular promotion". As such, the grade pay of an individual on regular promotion as MCM is Rs.4200/-. IN the said letter, it was further clarified that since the post of MCM was not in hierarchy of artisan cadre upto 31.12.2005, the highly skilled workers/MCM who were already drawing the pay scale of Chargeman (Rs.5000-8000) viz. the promotion post upto 31.12.2005 under ACPS may be considered for further financial upgradation, if due in the next grade pay. Even the Directorate General of Personnel/CSCC, Engineer-in-Chief's Branch, Integrated Headquarters of Ministry of Defence (Army) letter dated 10.3.2014 states that "it is clarified that those highly skilled workers/MCM who got the pay scale of chargeman (Rs.5000-8000) on or after 1.1.2006 will not be eligible for the grade pay of Rs.4600/- under financial upgradation, if any". They have further stated that in view of various judgments passed by the Hon'ble Apex Court, the Tribunals should not interfere in the financial matters as it caused great financial loss to the government.

4. The respondents have further averred that the present OA is premature as the representation of the applicants is still pending with the respondents.

5. The applicants have filed a rejoinder by generally reiterating the averments made in the OA.

6. We have given our thoughtful consideration to the entire matter and perused the pleadings available on record with the able assistance of the learned counsel for the parties.

7. Amongst the reliefs claimed by the applicants, one is about consideration and disposal of their representation to the respondents. While going through this representation, it is noticed that the applicants are claiming the relief in the light of letter no.CO-B/77030/VI CPC/IND/CSCC dated 10.3.2011. However, nowhere the applicants have enclosed this letter. Therefore, we are constrained to take a view as per the available documents on this file.

8. The key issue to be resolved in this matter is whether the stipulation in the letter dated 10.3.2014 issued by the Dte.Gen of Personnel/CSCC Engineer-in-Chief's Branch, Integrated HQ of MoD (Army) Kashmir House, New Delhi, that only those highly skilled workers/MCM who were granted the pay-scale of Rs.5000-8000 upto December 31, 2005 may be considered for further financial upgradation, if due, in the next grade pay of Rs.4600/- in the hierarchy of pay-scale. For convenience, it will be appropriate to reproduce the circular dated 10.3.2014 :-

"Reference this HQ letter No.CC-II/B/77030/VICPC/IND/84 /CSCC dated 24 Feb. 2014, vide which a copy of Ministry of Defence, D(Civ-I) ID No.11(5)/2009-D(Civ-I) dated 06 Feb.2014 was forwarded to you for information and necessary action at your end.

2. In this respect queries have been received from lower formations. The case was therefore discussed again with Under Secretary, Min. of Defence, so that no doubt at all should persist with regard to above mentioned policy.

3. It is hence reiterated that as per MoD ID dated 06 Feb. 2014 mentioned above, only those High Skilled Workers/MCM who were granted the pay scale of Rs.5000-800(pre-revised) upto Dec. 2005 may be considered for further financial upgradation, if due, in the next grade pay of Rs.4600/- in the hierarchy of grade pays.

4. It is clarified that those Highly Skilled Workers/MCM who got the pay scale of chargeman (Rs.5000-8000) on or after 01 Jan. 2006 will not be eligible for the grade pay of Rs.4600/- under financial upgradation, if any.

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5. Above facts should be borne in mind while processing the cases of financial upgradation under ACP/MACP artisan staff".

This circular was issued on the advice of the DoPT which is reflected in the Ministry of Defence, dated 6.2.2014 which is also being reproduced below:-

" Reference Ministry of Defence ID note of even number dated the 23.07.2012 on the above mentioned subject. The entire matter has been reconsidered in consultation with the DoP&T and Department of Expenditure. Their advice in the matter is as under :-

- (i) As per provisions of MACP Scheme introduced w.e.f. 01.10.2008, financial upgradation is admissible in the hierarchy of Grade pay and placement of High Skilled Workers (GP Rs.2400/-) as Master Craftsman (GP Rs.4200/-) is very much considered as ladder in hierarchy of Grade pays. Ignoring the placement of High Skilled in Master Craftsman (non functional) will be deviating the provisions of MACPS. Hence placement of Highly Skilled workers as Master Craftsman (MCM) prior to 01.01.2006 would be offset against one upgradation for the purpose of grant of MACP benefits.
- (ii) MCM being the feeder post to Chargeman and since both these posts have identical pay band and grade pay, financial upgradation under MACPS cannot be to a gradee pay which is more than what is admissible in regular promotion.
- (iii) Financial upgradations earned to non functional post of MCM is to be taken into account as 2nd financial upgradation in so far as MACPS is concerned.
- (iv) ON ground (ii) above i.e. whether MCM is the feeder post to Chargeman, is prima facie a question of fact to be established by the administrative Ministry i.e. Ministry of Defence. The contention of the staff side in this matter that MCM is not a feeder post to Chargeman is, therefore, may be resolved by Ministry of Defence itself.

2. As for the 1(iv) above, the matter has been considered in consultation with Defence Finance and it is further clarified that since the post of MCM was not in the hierarchy of artisan staff cadre upto 31.12.2006, the Highly Skilled workers/MCM who were already drawing the pay scale of chargeman (Rs.5000-8000) viz. The promotion post upto 31.12.2005 under ACPs may be considered for further financial upgradations, if due, in the

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next grade pay (Rs.4600/-) in the hierarchy of grade pays.

3. This issues with the concurrence of Defence Finance vide their ID No.01/AG/PB dated the 5th February, 2014".

The applicants claim that the stipulation making those Master Craftsman/Highly Skilled Workers eligible for consideration for further financial upgradations, who were already drawing the pay scale upto December 31, 2005 is arbitrary and without any legal basis. We are not inclined to agree with this contention. The justification for making this stipulation has come from para (i) to (iv) of the letter issued by the Ministry of Defence which justifies that ignoring the placement of highly skilled as master craftsman(non functional) will be deviating the provisions of MACP. Hence, placement of highly skilled workers as Master Craftsman prior to 1.1.2006 would be offset against one upgradation for the purpose of grant of MACP benefits.

9. So the contention of the applicants that this provision of treating those highly skilled workers/MCM who were given the pay-scale of Rs.5000-8000 prior to 31.12.2005 as eligible for further financial upgradation in the next grade pay of Rs.4600/- is without any basis, is factually incorrect. The applicants' argument that even after getting the pay-scale of Rs.5000-8000 (pre-revised) from later than 31.12.2005, the same should be treated as part of re-structuring of cadre and not as promotion, does not seem to be in line with the extent circulars in this regard.

10. It is also their case that the general circular of MACP provides for 3rd financial upgradation on completion of 30 years service cannot be compromised even though there is a specific order issued by the respondents qualifying the same. In our view, this contention is also not acceptable. Given the complexity of the cadres and the diverse rules and regulations dealing with promotions, cadre re-structuring, re-designation etc., the Government department do have

the right to make special provisions within the over-all scheme of MACP without compromising the basic structure of the scheme and keeping the letter and spirit of the Scheme, particularly if these deviations have been made after getting the concurrence of DoPT, the nodal Ministry for these issues. We need to understand that MACP Scheme is merely a mechanism to make sure that the government employees who miss an opportunity of career advancement for want of promotional opportunities, are compensated in a manner that they get the benefit of financial up-gradation at-least three times in their service career, if no promotion is granted to them throughout their career. It is undeniable that granting the scale of Rs.5000-8000 (pre-revised) with grade pay of Rs.4200/- after 31.12.2005 was deemed to be a financial up-gradation, in the light of circulars dated 6.2.2014 & 10.3.2014, though it came through the mechanism of cadre restructuring which was a package, dealing with diverse kind of cases.

11. At some point of time during arguments, the applicants' counsel did try to make a distinction that these circulars are applicable to MCM and not to Highly Skilled Workers grade, but this is not established by the actual reading of the circulars on this issue.

12. In the light of above discussion, we are not inclined to interfere in this matter. The OA is, accordingly, dismissed, without any costs, to either of the parties.


(UDAY KUMAR VARMA)
MEMBER (A).


(SANJEEV KAUSHIK)
MEMBER (J)

Dated:-February 25, 2016.

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