

RESERVED on 17.01.2018

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

This the 13th day of February, 2018.

PRESENT:

HON'BLE DR MURTAZA ALI, MEMBER- J.

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER- A

ORIGINAL APPLICATION NO. 330/1231/2010

1. Shiv Kumar Singh S/o Late Mulayam Singh U.D.C.
2. Bharat Singh S/o Late Vishal Singh, Supervisor.
3. Sant Ram S/o Late Lala Ram Tailor
4. Dinesh Chandra S/o Shri Durga Prasad, Tailor.
5. Ashok Kumar S/o Shri Kanhaiya Lal, Tailor, HS
6. Indra Bahadur Singh S/o Late Gajraj Singh, Tailor.
7. Radhey Shyam S/o Shri Parmeshwr Dutt Katiyar, Tailor.
8. Deepak Kumar S/o Shri Ram Dularey, O.S.
9. Dinesh Chandra Yadav S/o Late Ganga Prasad, Tailor.
10. Kamal Kishore Kanaujia S/o Late Tapeshwari Prasad Kanaujia, Tailor, H.S.
11. Chandra Bhani Singh S/o Shri Paras Nath Singh, Tailor, HS.
12. Upendra Kumar Singh S/o Shri Suraj Prasad, Tailor, HS.
13. Shan Mohammad S/o Shri Mohammad Ishhaq, Tailor, HS.
14. Krishna Singh S/o Late Jagannath Singh, Taker.
15. Abdul Aziz S/o Shri Abdul Majid, Tailor.
16. Rohitas Singh S/o Late Karan Singh, Tailor.
17. Babu Ram S/o Late Parmu Lal, Tailor.
18. Sanjay Pratap Singh S/o Shri Suraj Pal Singh, Tailor.
19. Jitendra Sahu S/o Late Asharfi Lal Sahu, Tailor.
20. Dinendra Kumar Bajpai S/o Shri Durga Prasad Bajpai, Tailor.
21. Sabbir Babu S/o Shri Abdul Raseed, Tailor.
22. Saran Prakash S/o Late Jai Karna, Tailor.
23. Harkesh Nath S/o Late Shambhoo Nath, Tailor.
24. Shiv Kumar Yadav, S/o Shri Madhusoodan Yadav, Examiner, HS.
25. Ram Narain S/o Late Kalika Prasad, Tailor.
26. Om Prakash S/o Shri Bhikha Prasad, Tailor.
27. Nanhkoo Prasad S/o Late Hira Lal, Tailor.
28. Rakesh Kumar S/o Shri Daya Shanker Dwivedi, Tailor.
29. Ramesh Chandra S/o Shri Nanak Chandra Srivastava, Tailor.

30. Haseen Ahmad S/o Shri Raesh Ahmad, Tailor
31. Ram Babu Verma S/o Shri Ram Swarup Verma, Tailor.
32. Ram Surat Yadav S/o Late Sita Ram, Tailor.
33. Dilip Kumar S/o Late Shyam Singh, Tailor, HS.
34. Rakesh Kumar S/o Shri Ram Dularey, Tailor.
35. Manoj Kumar S/o Shri Suresh Pati, Tailor.
36. Raju Gupta S/o Shri Lakshmi Narain, Tailor.
37. Lal Mani Dhyani S/o Shri Amba Dutt Dhyani, Tailor.
38. Santosh Kumar S/o Shri Mani Ram, Tailor.
39. Pankaj Verma S/o Late Bhagwati Prasad, Tailor.
40. Awadhesh Narain Dwivedi S/o Late Gangadhar Dwivedi, Tailor.
41. Kailash Chandra S/o Shri Raksi Ram, Tailor.
42. Ram Balak S/o Late Hori Lal, Tailor.
43. Jawahar Lal Vishwakarma S/o H.L. Vishwakarma, Tailor.
44. Udhai Bhan Singh, S/o Late Banwari Lal, Tailor.
45. Imam Ali S/o Shri Ali Raza, Tailor.
46. Rajesh Sharma S/o Shri Satya Prakash Sharma, Tailor.
47. Udai Bhan Singh S/o Shri Ram Davan Singh, Tailor.
48. Noor Hasan Ansari S//o Shri Abdul Kasim Ansari, Tailor, HS.
49. Radha Krishna S/o Shri Mata Deen Pal, Tailor.
50. Kirti Anand S/o Shri Sunder Lal, Tailor.
51. Ashok Kumar S/o Shri Devi Dayal, Tailor.
52. Mohd, Murtaza Ansari S/o Mohd. Yusuf, Tailor.
53. Ramesh Chandra S/o Late Badlu Prasad, Tailor.
54. Kalika Prasad S/o Late Bhola Nath, Tailor, HS.
55. Shri Pal Kureel S/o Late Mahngoo Lal, Tailor, HS.
56. Ashok Kumar Kureel, S/o Shri Babu Lal, Tailor.
57. Mewa Lal S/o Late Kaloo, Tailor.
58. Kishan Kumar Bhantu S/o Shri Hari Ram Bhantu, Tailor.
59. Tej Prakash S/o Late Ganga Prasad, Tailor.
60. P.K. Gupta S/o Shri D.L. Gupta, U.D.C.
61. Arvind Kumar Pandey S/o Late Shyam Bihari Pandey, MM – C
62. Anil Kumar Srivastava S/o Shri Lalita Prasad Srivastava, MM-C.
63. Mohd. Afzal Khan S/o Shri F. Mohammad Khan, Tailor.
64. Shyam Kumar Mishra, S/o Shri Rajendra Nath Mishra, U.D.C.

All the applicants are employees of the Ordnance Equipment Factory, the Mall, Kanpur.

...Applicants

VERSUS

1. Union of India through Director General, Ordnance Services, 10A, S.K. Bose Road, Kolkata.
2. Director General, Ordnance Services, 10A, S.K. Bose, Road, Kolkata.
3. General Manager, Ordnance Equipment Factory, The Mall, Kanpur.

.... Respondents

Advocate for applicants : Ms. Saumya Mandhyan
Shri S.J. Isthaque

Advocate for the respondents : Shri S.N. Chaterjee

ORDER

DELIVERED BY HON'BLE MR. GOKUL CHANDRA PATI, MEMBER- A

This applicant has filed this OA seeking the following reliefs:-

- "(i) To issue a writ, order or direction in the nature of certiorari quashing the Factory orders No. 921 dated 27.07.2010, No. 968 dated 03.08.2009 and No. 969 dated 03.08.2009;
- (ii) to issue a writ, order or direction in the nature of mandamus commanding the respondents not to give effect the Factory orders No. 921 dated 27.07.2010, No. 968 dated 03.08.2009 and No. 969 dated 03.08.2009;
- (iii) to issue a writ, order or direction in the nature of mandamus commanding the respondents to clarify the situation with regard to fixing cut off date as 01.0.2008 in O.M. dated 19.05.2009 or declare the same to be unconstitutional and having no rationale basis thereof, otherwise the applicants shall suffer irreparable loss;
- (iv) to issue such other and further order or direction which this Hon'ble Tribunal may deem fit and proper in the nature of circumstances of the present case;
- (iv) Award cost of the petition to the applicants."

2. Facts of this case as per the OA are that the applicants are permanent employees of Ordnance Equipment Factory, Kanpur working on different posts which vary from Tailor, U.D.C., Supervisor, O.S., Line Mistry, Examiner etc. Though the applicants were employed in different grades, none of the applicants were granted any promotion and were stagnated in their initial grade. Government considered the case of the employees in such situations and approved a scheme of Assured Career Progression (referred in short as ACP) whereby the stagnating employees can get benefit of financial upgradation in the pay scale in the next promotional scale initially as first progression after 12 years and as second progression after 24 years from the date of their appointment. The ACP scheme was made applicable with effect from 01.01.1996.

3. The Apex body of the applicants i.e., Ordnance Factory Board vide order dated 13.09.1999 (Annexure A-5) approved ACP Scheme and sent the same to all the concerned departments. Clarificatory circulars were issued by the DoPT as well as Ordnance Factory Board regarding the ACP Scheme from time to time. Initially clarification was issued on 08.05.2000 and another O.M. dated 10.02.2000 clarifying further position was also issued. After order of the Ordnance Factory Board dated 13.09.1999, the A.C.P. was immediately promulgated on all the employees of the Ordnance Factories. The applicants were also granted first ACP benefits on completion of 12 years and all were granted pay

scale/upgradation in the next promotional grade. Later, when the applicants completed 24 years of service, they were granted second ACP vide order of different dates coming in the year 2008, in pursuance of the ACP Scheme as promulgated by the Ordnance Factory Board dated 13.09.1999.

4. Subsequently, Sixth Central Pay Commission (in short CPC) recommended a Modified Assured Career Progression Scheme (hereinafter referred to as MACP) in lieu of ACP vide the DoPT O.M. dated 19.05.2009 (Annexure A-1). Under MACP, three upgradations were allowed after 10, 20 and 30 years of service and upgradation implied fixing in the next grade pay scale, not the next promotional grade as in ACP. Hence, it is submitted in the OA that MACP was detrimental to the interest of the applicants who were yet to get second promotion. In para-9 & 11 of the aforesaid O.M. dated 19.05.2009, it was mentioned that those employees who have been granted ACP earlier, their cases will be not re-opened and the said Scheme was made operational w.e.f., 01.09.2008 limiting the financial upgradation as per provisions of the earlier ACP Scheme till 31.08.2008. It is submitted in the OA that as the MACP Scheme was approved as per the O.M. dated 19.05.2009, therefore, it could not have been implemented prior to 19.05.2009.

5. It was submitted that the date of 01.09.2008 should not be applicable to those already availing benefit of ACP after 2008 for whom the MACP Scheme would be applicable prospectively as it would be detrimental to the employees who were eligible for ACP between 1.09.2008 and 19.05.2009 since getting benefits under the MACP instead of ACP, they would be getting less grade pay.

6. It has been further submitted in the OA that the respondents have snatched away ACP already granted by rescinding the order in their favour earlier granting 2nd ACP only on the ground that MACPs is made effective from 01.09.2008. It has been further submitted that MACP can be implemented after 01.09.2008 on those employees who become entitled to Assured Career Progression due to stagnation on their initial posting in accordance with MACPs, but the applicant who are appointees of 80's cannot be now subjected to provision of MACPs w.e.f. 1.09.2008 since as per the provisions in MACP Scheme past cases would not be reopened.

7. Being aggrieved by the action of the respondents the applicant filed this OA mainly on the ground that the impugned orders withdrawing benefit of ACP already granted to the applicants are illegal and arbitrary.

8. In the counter affidavit (in short CA) it has been stated that as per the recommendations of 5th CPC, the Assured Career Progression Scheme (w.e.f.) 09.08.1999 to 31.08.2008 was introduced, wherein two financial upgradations under the ACP Scheme would be available for the stagnating employees. Later, the Government announced acceptance of the recommendations of 6th CPC on 01.09.2008 with effect from 01.01.2006. In the CPC report, it was indicated that there will be another scheme i.e. MACP and as there was no indication in the CPC report that the old ACP scheme would be discontinued from 01.09.2008. Hence, the respondents continued to grant ACP benefit to their employees in the promotional hierarchy on completion of their 12 and 24 years of service during 2008-2009 till DoPT

issued O.M. no. 35034/3/2008-Estt (D) dated 19.05.2009 making MACP operational in place of ACP retrospectively from 01.09.2008.

9. It has been submitted in the CA that on going through the DoPT OM, it was thought of to cancel all ACP Financial upgradation ordered beyond 01.09.2008 till 19.05.2009. But as per para 11, it was not clear whether these cases would be treated as past cases or not, since as per para 11 of DoPT OM past cases shall not be reopened. The matter was referred to Ordnance Factory Board for clarification vide respondent factory letter dated 17.08.2009. There was objection from the side of the Accounts Office of the respondent factory who pleaded that these ACP beyond 01.09.2008 there by declaring the 300 odd cases of old ACP beyond 01/09/2008 not in order. In turn, Accounts Office/OEFC advised the factory to cancel these cases. Simultaneously, the test audit of the respondent factory also raised this matter directing the respondents to cancel the ACP granted after 1.09.2008 and to recover the excess amount from the affected employees. The respondent factory following the instructions of both the audits cancelled the ACP financial upgradations vide F.O. Part-II, No. 921 dated 27.07.2010 No. 968 dated 03.08.2010 and No. 969 dated 03.08.2010 and started calculating the recoverable amount. The matter of cancellation of ACPs was strongly resented by various employees who requested to seek clarification of Ordnance Factory Board in the matter. In response, the OFB rendered its clarification on the matter vide letter no. 01/6th CPC/MACPS/PCC (A/A) dated 03.09.2010, clarifying that "Factory has granted ACP benefit to some employees beyond 01/09/2008 which is irregular". On receipt of directives of OFB, the respondent factory issued notice to the affected employees vide letter dated 07.10.2010 intimating the due recovery on implementing the cancellation of the F.O. physically. Simultaneous action was also taken for granting them MACPs in the Grade Pay of Rs. 2800/- to mitigate their plight relating to reduction of their Grade Pay from Rs. 4200/- to Rs. 2400/- on cancellation of the ACP benefits.

10. Heard learned counsel for the applicants, who submitted that the dispute here is whether cancellation of the ACP benefit allowed to the employees between 1.09.2008 till 19.05.2009 would be sustainable as per law. He submitted that the matter has already been settled in a large number of cases some of which have been cited in the OA. He stated that in the case of Ex. Capt. K.C. Arora and Another vs. State of Haryana and Others reported in 1987 AIR 1858, Hon'ble Supreme Court has held that every statute is *prima facie* prospective unless it is expressly or by implication made to have retrospective effect and unless it is expressly mentioned to have affected the existing rights of the affected persons, it will be deemed to have prospective effect. Accordingly, he argued that the MACP scheme will be deemed to have prospective effect since it does not expressly provide that the ACP scheme benefits allowed between 1.09.2008 and 19.05.2009 would be withdrawn or disallowed. Rather, the scheme has a provision that the past cases shall not be reopened, implying that the cases of the applicants who were granted 2nd ACP between 1.09.2008 and 19.05.2009 would not be reopened.

11. Learned counsel for the applicant also cited the judgments in following cases which have been decided in support of the employees and copies of the judgments were submitted by him:-

- (i) O.A. No. 1003/PB/2011 dated 23.02.2012 passed by Chandigarh Bench of this Tribunal.
- (ii) O.A. No. 252 of 2013 dated 24.03.2015 passed by Ernakulam Bench of this Tribunal.
- (iii) W.P. No. 33946, 34602 and 27798 of 2014 dated 14.02.2017 passed by Hon'ble High Court of judicature at Madras.

(iv) Ex Capt. K.C. Arora and Another vs State of Haryana and others dated 26.04.1984, 1987 AIR 1858, 1984 SCR (3) 623.

12. Learned counsel for the respondents strongly opposed the contentions of the applicants and submitted that as per the guidelines of MACP vide order dated 19.05.2009 of the DOPT, the MACP scheme will be implemented with effect from 1.09.2008 and as the ACP scheme is discontinued, it implies that ACP scheme is no longer available as on 1.09.2008. He further submitted that as per the clarification issued by Government of India circulating FAQs on MACP scheme, it has been clarified that the ACP sanctioned between 1.09.2008 to 19.05.2009 would have to be reviewed. Hence, there is nothing wrong in cancellation of the orders sanctioning 2nd ACP between 1.09.2008 and 19.05.2009 and the OA lacks merit.

13. The submissions and pleadings of both the parties have been perused and considered by us. The main issue is whether the applicants eligible for ACP can be sanctioned such benefit between 1.09.2008 (date of acceptance of sixth pay recommendation) and 19.05.2009 (date of implementation of MACP Scheme) in view of the fact that vide order dated 19.05.2009 the ACP Scheme was discontinued and MACP Scheme was implemented retrospectively from 1.09.2008.

14. This matter has already been settled as per the copy of the judgments cited by the learned counsel for the applicants. In the case of Union of India and Others vs. S. Ranjit Samuel and Others in Writ Petition Nos. 33946, 34602 and 27798 of 2014, Hon'ble Madras High Court, the writ was filed by Union of India against order of the CAT Madras Bench. Here the cases of the employees were pending for consideration for sanction of 2nd ACP when the order dated 19.05.2009 implementing MACP Scheme was issued with effect from 1.09.2008. The employees were eligible for 2nd ACP from January 2009 to April 2009 and CAT had directed the Government to consider the claims of the employees under ACP. While dismissing the Writ Petitions, Hon'ble High Court has held as under:-

"10. The purpose and spirit of the Career Progression Scheme is only for the benefit of employees, who face stagnation in their career. That purpose and spirit cannot be defeated, if the benefit under the new Scheme is causing detrimental to the interest of the employees. The intention between the Scheme would not be as such. In any event, as a principle of purposive interpretation, it has to be seen that what is more advantageous to the employees is what should be preferred, since the Scheme being a beneficial one, cannot be allowed to result in loss to the employees on its implementation. Therefore, in all fairness and fitness of things, till the introduction of MACP Scheme vide Office Memorandum dated 19.05.2009, the benefit which accrued to the employees under the erstwhile ACP Scheme ought to have been made available.

11. Moreover, it has to be seen that Tribunal itself has allowed similar application and no contra material has been produced before us to take a different view in the matter. The well intended benefit under ACP or MACP cannot be allowed to suffer loss of proper fixation in the higher pay scale as such consequence would not further the purpose and spirit of the Scheme.

12. In these circumstances, we do not find anything wrong in the final direction passed by the learned Tribunal in the impugned orders. Therefore, the Writ Petitions fail and the same are dismissed....."

15. In a similar matter, C.A.T, Ernakulam Bench in its order dated 24.03.2015 passed in O.A No. 252/2013 – K. Soman Pillai & Others vs. Union of India and others has held as under:-

"9. In our view, there is very significant aspect in this case. Annexure A-1 O.M dated 19.05.2009 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 i.e. 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(@) 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 applicant had got only one regular promotion. Therefore, they were eligible to be considered for the benefit 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 i.e. 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 benefit 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."

16. The Chandigarh Bench of this Tribunal vide its order dated 23.02.2012 passed in O.A No. 1003/PB/2011 - P. No. 6965534, Amar Singh & others Vs. Union of India and others allowed benefit of 2nd ACP to the employees during 2008-2009. After introduction of MACP, the authorities withdrew the ACP benefit and allowed 2nd MACP which resulted in loss of pay for the employees. In allowing the OA, this Tribunal in order dated 23.02.2012 has held as under:-

"10. On merits, we find that it is now a well settled principle of law that conditions of service cannot be altered retrospectively to the prejudice of a public servant. The judgments cited by the learned

counsel for the applicants clearly lay down that the applicants cannot be made to suffer on account of any decision applied retrospectively. The DOPT had taken into account this aspect of the matter and in para 11 of their OM no. 35034/3/2008.EStt. (D), dated 19.5.2009, it has been clearly stated as follows:-

It is clarified that no past cases will be re-opened. Further, while implementing the MACP Scheme the differences in pay-scales on account of grant of financial upgradation under the ACP Scheme (of August 1999) and under the MACP Scheme within the same cadre shall not be construed as an anomaly.

This para has not been discussed at all in the speaking order dated 25.8.2011 issued by the respondents.

11. The applicants cases are within the ambit of the provision in the above-mentioned letter dated 19.5.2009, para 11, since these cases would constitute past cases because these were decided before the coming into force of the MACP Scheme. They had been granted the second ACP on different dates in 2008-2009, which are prior to the date of the issue of the MACP Scheme i.e. 19.5.2009. Since these applicants had obtained the said benefits under the old ACP Scheme before 19.5.2009, therefore, they would be covered under the definition of past cases and as provided in para 11 of the Scheme, these cases are not to be reopened. Therefore, we find that the respondents have misinterpreted the provision of this para of the Scheme and have wrongly withdrawn the earlier benefit from the applicants. Therefore, the impugned order dated 25.8.2011 is hereby quashed and set aside and consequently, the respondents are directed to fix the pay of the applicants after ensuring that they do not suffer any prejudice vis-a-vis the pay-scales already granted to them. They are also directed to ensure that all the applicants, who, if they are similarly placed and had all got/were eligible for the 2nd ACP before 19.5.2009, are given similar benefits as per law and rules and their eligibility. Consequently, no recovery is to be made from the applicants. This exercise may be completed within a period of 4 months from the date of receipt of a copy of this order. The applicants have also prayed that para 9 of the OM dated 19.5.2009 may be quashed. For the reasons mentioned in the preceding paras, we find that this is not required since the OM already provides that past cases are not to be re-opened"

17. In the light of the judgments in the cases discussed above, the case of the applicants in this case is similar to the case of the applicants in OA No. 1003/2011 before Chandigarh Bench of this Tribunal. Further, as per the ratio of the judgment of Hon'ble Madras High Court in the case of Union of India and Others vs. S. Ranjit Samuel and Others (supra), the benefit of ACP is permissible to the employees if they are eligible as per the ACP Scheme from 1.09.2008 to 19.05.2009 even if the MACP Scheme is introduced with effect from 1.09.2008.

18. In view of the above discussion, Hence, the OA has merits to succeed. Accordingly, the impugned orders dated 27.07.2010, 03.08.2009 and 03.08.2009, copy at Annexure A-1, A-2 and A-3 of O.A respectively are set aside and quashed. Consequently, the respondents are directed to fix the pay of

the applicants as per the ACP benefit already allowed to them earlier and to refund the amount recovered from the applicants, if any, as a result of cancellation of ACP benefits.

19. OA is allowed as above. No costs.

(GOKUL CHANDRA PATI)
MEMBER-A

(DR. MURTAZA ALI)
MEMBER-J

Anand...

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O.A 330/1231/2010