

**Central Administrative Tribunal
Principal Bench, New Delhi.**

**OA-3655/2012
MA-400/2016**

Reserved on : 18.07.2017.

Pronounced on : 20.07.2017.

Hon'ble Mr. V. Ajay Kumar, Member (J)

Hon'ble Mr. Shekhar Agarwal, Member (A)

AS Vijay Bahadur P No. 8061035 aged about 52 years S/o Late Sh. Tek Bahadur, R/o Staff Quarters Military Farms Pathankot Presently Posted on permanent Transfer to the organization Mily Farm Pathankot from MF Meerut Gp 'C' Employees under Dy. Directorate General MF QMG's Branch AHQ Ministry of Defence, New Delhi.

..... Applicant

(through Sh. VPS Tyagi, Advocate)

Versus

1. The Union of India
(Through Secretary)
Ministry of Defence,
South Block,
New Delhi-110011.
2. The Dy. Director General of Mily Farms
QMG's Branch AHQ
IHQ of MOD (Army)
West Block-III, R.K.Puram,
New Delhi.
3. The Director of Military Farm,
HQ WC Chandimandir,
Chandigarh.
4. The Officer-in-Charge,
Mily Farm Mawana Road,
Meerut Cantt.

5. The Officer-In-Charge,
Mily Farm Pathankot,
(Punjab). Respondents
(through Sh. Duli Chand, Advocate)

ORDER

Mr. Shekhar Agarwal, Member (A)

The applicant was appointed as a Lower Division Store Keeper (LDSK) on 04.03.1982 in the pay scale of Rs. 260-400. On 01.01.1986, this pay scale got revised to Rs. 950-1500 and on 01.01.1996 to Rs. 3050-4590. The Government of India introduced the ACP Scheme w.e.f. 09.08.1999. The applicant was granted benefit of 1st ACP on completion of 12 years of service and was given the pay scale of Rs. 4000-6000. He became due for 2nd ACP on completion of 24 years of service and was granted the same w.e.f. 04.08.2006 in the pay scale of Rs. 5000-8000, which was revised to PB-2 with Grade Pay of Rs. 4200 after award of 6th CPC.

2. The grievance of the applicant is that after a period of 06 years, the respondents issued order dated 27.07.2011 withdrawing the benefit of the 2nd ACP granted to him and also ordered recovery of the excess amount paid to him. Their contention was that this benefit had been granted to the applicant due to an over sight.

3. The applicant challenged this action of the respondents before this Tribunal by filing OA-3543/2011. This was decided by the Tribunal

on 28.09.2011 and directions were given to the respondents to pass a fresh order after giving notice to the applicant and considering his reply thereon. In compliance of the aforesaid directions of the Tribunal, the respondents passed fresh order dated 25.10.2011. This order was challenged by filing OA-1084/2012, which was dismissed by the Tribunal on 04.04.2012. The applicant then approached Hon'ble High Court of Delhi by filing Writ Petition (C)No. 6477/2012. On 15.10.2012, this Writ Petition was dismissed as withdrawn by Hon'ble High Court with liberty given to the applicant to file a fresh OA before the Tribunal and direction was given to the Tribunal to decide the same without being influenced by its order dated 04.04.2012. Accordingly, the applicant has filed this O.A. in which he has sought the following relief:-

- “(a) Quash and set aside the impugned Orders (Annexure A-1 & A-2) issued by Respondent No.2 or under his directions and restore applicants pay and Allowance at the same level he was fixed by grant of 2nd ACP, up-gradation w.e.f. 04.03.2006.
- (b) Direct the Respondents to refund the amount recovered from the Applicants Pay & Allowance on the pretext of over-payment on accord of 2nd ACP benefits pertaining to the period w.e.f. 04.03.2006 to August 2012 upto the date during which applicant has been kept in payment as per 2nd ACP Benefit.
- (c) Pass any order or direction as deemed just and proper in wake of the circumstances the Applicant has been subsequently granted in-situ promotion to the Cadre of Asstt. Supervisor while was 2nd ACP up-gradation already granted to him.

4. His contention is that the respondents have wrongly concluded that the applicant got the benefit of 2nd ACP fraudulently without passing the departmental course. His submission is that the departmental course being referred to by the respondents was for refreshers training and was only required for appointment to the management cadre. It was not mandatory to pass the same for availing of the benefit of ACP.

5. In their reply, the respondents have submitted that the 2nd ACP was granted to the applicant by an oversight as the applicant had not passed the departmental course, (also referred to as intermediate course), which was mandatory for grant of this benefit. This error came to light when one Sh. C.P. Bhatta filed OA-634/2011 before Chandigarh Bench of this Tribunal and claimed ACP benefits on the ground that the same had been granted to the applicant herein without passing of the intermediate course. It was then that the official records were verified and it was found that the applicant had not passed the mandatory intermediate course. Hence, the aforesaid benefit was withdrawn. The applicant was, however, granted 2nd MACP and 3rd MACP as under the MACP Scheme passing of the departmental examination was not a necessary condition.

6. We have heard both sides and have perused the material placed on record. The only issue that we have been called upon to

decide is whether passing of intermediate course was a necessary condition for grant of 2nd ACP benefit. For this purpose, we have perused the ACP Scheme itself. We have looked at the conditions for grant of ACP benefits attached as Annexure-1 to DoP&T O.M. No. 35034/1/97-Estt.(D) dated 09.08.1999 by which the ACP Scheme was launched. Para-6 of these conditions states that for grant of benefits under this Scheme, fulfillment of normal promotion norms, such as, attaining the bench-mark and passing the departmental exam etc. were necessary. Further, in the clarifications to the ACP Scheme issued vide Memorandum of even No. dated 10.02.2000 in point of doubt No.2 it is mentioned that the pay fixation for grant of ACP benefit shall be done in the same manner as is done at the time of promotion. In Clarification No.22, it is mentioned that ACP shall follow the same pattern as is the case with regular promotion and that there shall be uniformity of treatment both in the case of ACP and regular promotion. Thus, it is clear that under the provisions of this Scheme, same norms as were applicable for promotion were to be followed. The reason for this is obvious. ACP benefit is given to an employee in lieu of promotion when promotion cannot be granted due to want of vacancy. If the employee does not meet the eligibility conditions for promotion, he cannot be granted ACP benefit either. It, therefore, follows that if passing of intermediate course was a necessary condition for regular promotion to the pay

scale of Rs. 5000-8000, same condition would apply for grant of ACP Scheme as well.

7. Next, we have perused the Notification dated 27.06.2000, which the respondents have attached with their affidavit at pages 24 to 26 of the paper-book and which contains the recruitment rules for the post in question. A perusal of the same reveals that the pay scale of Rs. 5000-8000 is admissible to Supervisor (Farms). Further, it is found that the quota for promotion to this post is 50%. In Column-12 at page-26 it is also laid down that promotion to Supervisor (Farms) shall be made from Asstt. Supervisor (Farms), who have put in 08 years of service in the grade and who have qualified in Military (Farms) Intermediate course. Thus, it is evident that for promotion to Supervisor (Farms) passing of Military (Farms) Intermediate course was a necessary condition. Consequently, it follows that it was also necessary condition for grant of ACP benefit in the pay scale of Rs. 5000-8000. Admittedly, since the applicant had not passed the aforesaid course, he was not entitled for 2nd ACP benefit. The respondents, therefore, cannot be faulted for withdrawing that benefit by the impugned order. They have rightly granted the 2nd MACP and 3rd MACP benefits as in the MACP Scheme, which is granted in the next grade pay in the hierarchy rather than in the promotional grade, passing of the departmental exam was not a necessary condition.

8. We, therefore, find no merit in this OA and dismiss the same. No costs.

(Shekhar Agarwal)
Member (A)

(V. Ajay Kumar)
Member (J)

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