

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/01138/2014

Monday, this the 12th day of February, 2018

CORAM:

Hon'ble Mr. U. Sarathchandran, Judicial Member
Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member

K.K. Radha Bhai, W/o. Late, aged 62 years,
Retired Upper Division Clerk, O/o. Assistant Garrison Engineer B/R,
Kannur & Calicut, residing at Kaliyattam Kandi House,
Balusseri Post, Calicut, Kerala-673 612. **Applicant**

(By Advocate : Mr. R. Sreeraj)

V e r s u s

1. Union of India, represented by its Secretary to the Government of India, Ministry of Defence, New Delhi - 110 001.
2. The Chief Engineer, Military Engineering Services, Southern Command, Pune-411 001.
3. The Chief Engineer, Military Engineering Services, Chennai Zone, Chennai - 600 009.
4. The Chief Engineer (NW), Military Engineering Services, Naval Base, Kochi - 682 004.
5. The Garrison Engineer, Military Engineering Services, Redfiled, Coimbatore - 641 018. **Respondents**

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

This application having been heard on 24.01.2018, the Tribunal on 12.02.2018 delivered the following:

O R D E R

Per Hon'ble Mr. U. Sarathchandran, Judicial Member -

Applicant is a retired Upper Division Clerk who was working in the office of the Assistant Garrison Engineer, B/R, Cannanore & Calicut. She is

aggrieved by Annexure A1 order dated 11.4.2014 rejecting her claim for 2nd financial upgradation under the MACP scheme. She is approaching this Tribunal for the second time in relation to the 2nd MACP upgradation of pay claimed by her. When she approached this Tribunal with OA No. 1213 of 2013 this Tribunal on 9.5.2013 passed Annexure A5 order. It reads:

"Applicant retired from service while working as Upper Division Clerk in Military Engineering Service. She claims that she ought to have been granted the second financial up-gradation under the Modified Assured Career Progression Scheme when it fell due in 2008. It is pointed out by the applicant that the said benefit was denied to her in view of the then existing clarification issued by the Government, which prescribed a bench mark. However, the said prescription was modified or withdrawn in Annexure A-3 clarification issued by the Department of Personnel and Training on October 4, 2011. The case of the applicant is that by virtue of the said clarification, applicant had become eligible to get financial up-gradation. She had submitted Annexure A-5 representation highlighting the above aspect and requesting for necessary action. However, respondent no.2 has not so far taken any decision on the said representation though more than a year has lapsed. Learned counsel submits that the applicant will be satisfied if a direction is issued to respondent no.2 to take a decision on the above representation without any further delay.

2. The Original Application is disposed of with a direction to respondent no.2 to take a decision on Annexure A-5 representation strictly on its merit and in accordance with the rules/orders, particularly keeping in view Annexure A-3 clarification. This shall be done, as expeditiously as possible, at any rate within three months from the date of receipt of a copy of this order.

3. The Original Application is disposed of in the above terms."

It is in the purported compliance of Annexure A5 order the respondents have issued Annexure A1 speaking order impugned in this OA. The relevant portion of Annexure A1 reads:

"5. Whereas while considering any officer as 'FIT' the Govt. has made it clear the misconception about 'Average' performance that while "Average" may not be taken on adverse remarks in respect of an officer, the same time, it cannot be regarded as complementary to the officer as 'Average' performance should be regarded as routine and undistinguished.

6. Whereas your performance has not been adjudged as 'above average' by the DPC board for MACP hence you were not granted 2nd MACP.

7. And whereas taking into account all the terminology, facts and further considering pros and cons that has emerged in the controversies in the instant matter, your representation dated 27 Dec 2012 has been pursued squarely and sympathetically in accordance with the various rules position instituted by MoD DoP&T.

8. AND THEREFORE Your representation dated 27 Dec 2012 seeking re-consideration of your case for 2nd MACP is not justified and rejected in toto being frivolous, baseless and not admissible under the ruler besides barred by the

"Limitation Act" as ruled by the Apex court as mentioned herein above, with the issue of this reasoned and self contained speaking order, the order of Hon'ble CAT Ernakulam Bench dated 19 Dec 2013 in OA No. 1213/2013 has been fully complied as per the direction of the Tribunal to the respondents."

2. Applicants states that the rejection of her claim for 2nd MACP on the ground that her performance has not been adjudged as "above average" by the DPC board for MACP was absolutely not justified. It is further contended by her that she was promoted as UDC on 18.11.2007 reveals that she was "above average" and later miraculously she was assessed 'not average' in her APAR. She therefore, prays for relief as under:

"1) To quash Annexure A-1 and direct the respondents to consider the claim of the applicant for 2nd financial upgradation under the MACP Scheme with effect from 1.9.2008 and to grant her the same with all consequential benefits such as arrears of pay, revision of pension and pensionary benefits, arrears of pension etc.

2) Such other relief as may be prayed for and this Tribunal may deem fit to grant.

3) Grant the cost of this Original Application."

3. Respondents filed reply statement contending that as per Annexure R1 Modified Assured Career Progression (MACP) Scheme the criteria for granting MACP for the applicant who belongs to pay band PB-1 is "fitness" and not the "bench mark". According to the respondents though the "average" grading of a Government employee cannot be taken as adverse remark, such performance should be recorded as routine and undistinguished. It is only the performance that is above average that is noteworthy which should entitle an officer to recognition and suitable rewards. Respondents further contended that while considering the case of the applicant for grant of 2nd MACP in PB-1 she was found to be "not yet fit". She was not meeting the stipulated fitness requirement based on ACRs

for the period from 2004-2005 to 2008-2009. Respondent No. 2 had communicated vide Annexure A1 to the applicant the reasons for not granting MACP. According to the respondents the ACRs of the applicant for the aforesaid period were taken into account to ascertain the "fitness" as it is the mandatory requirement for grant of MACP within pay band-1.

4. A counsel statement also has been filed by the Senior Panel Central Government Counsel on 30.6.2017 wherein the remarks in the ACRs of the applicant for the period from 2004-2009 were tabulated as follows:

Sl. No.	ACR for the year	Remarks of reporting officer
(a)	2004-05	Average
(b)	2005-06	Sincere LDC
(c)	2006-07	Average LDC
(d)	2007-08	She is habitual of making herself absent from duty. A number of times she was counseled personally by the Reporting Officer but she doesn't improve herself. Though she is a clerk she do not know typing.
(e)	2008-09	She is habitual of making herself absent from duty. She is UDC but she don't know typing she is of no use for the department.

It is further stated that the ACR for the year 2008-2009 was communicated to the applicant vide Annexure R5 communication.

5. We have heard Shri R. Sreeraj learned counsel for the applicant and the learned Senior Panel Central Government Counsel appearing for the respondents. Perused the record.

6. It appears from the impugned order and the pleadings of the

respondents that they have rejected the claim of the applicant for the 2nd MACP upgradation for the reason that she was not found fit in her job. According to them as per paragraph 17 of the MACP scheme, 'fitness' is the requirement for financial upgradation in the Grade Pay hierarchy within PB-1. 'Fitness' according to them, is to be adjudged by looking into the APARs of the incumbent. In this case the respondents say that the board which considered her case for 2nd financial upgradation under MACP rejected the same as she was not found 'fit' in the light of her APAR.

7. We have perused the original ACRs of the applicant produced by the respondents in a sealed cover. Except for the years 2007-2008 and 2009 the applicant was adjudged as "average". It is seen that despite having her performance been found not satisfactory, the applicant was promoted as UDC in November, 2017 against the vacancy year 2006-2007. ACR remark for the year 2008-2009 is as follows:

"She is habitual of making herself absent from duty. She is UDC but she don't know typing. She is of no use for the department."

8. Paragraph 17 of the MACP scheme is extracted below:

"17. The financial upgradation would be on non-functional basis **subject to fitness**, in the hierarchy of grade pay within the PB-1. Thereafter for upgradation under the MACPS the benchmark of 'good' would be applicable till the grade pay of Rs. 6600/- in PB-3. The benchmark will be 'Very Good' for financial upgradation to the grade pay of Rs. 7600 and above."

9. According to the respondents fitness of the applicant has to be evaluated on the basis of the ACR and as she was found to be not above average she could not be treated as fit. Hence, she was rejected for the second financial upgradation under MACP Scheme.

10. However, in Annexure R3 OM dated 4.10.2012 of the DoP&T, Government of India has made it clear that :

" It is now further clarified that wherever promotions are given on non-selection basis (i.e. on seniority - cum - fitness basis), the prescribed benchmark as mentioned in para 17 of Annexure - I of MACP Scheme dated 19.05.2009 shall not apply for the purpose of grant of financial upgradation under MACP Scheme."

11. We feel that in the light of the above clarification the stand taken by the respondents is highly unjustifiable. In paragraph 17 of the MACP scheme no benchmark is insisted upon for financial upgradation within pay band-1. Only 'fitness' is the criterion to be determined in such cases. It has to be noted that the applicant who was an LDC was later promoted as UDC in 2007. Ordinarily if she was found not fit for promotion, though on a non-selection basis (i.e. on seniority-cum-fitness basis), she would not have been promoted as UDC. Therefore, the contention of the respondents that her ACR for the year 2007-2009 to the effect that she is not a useful UDC for the Department as she does not know typing, as a ground for rejection of financial upgradation under MACP, is not justified. It has to be borne in mind that the stringent requirements of bench marks like 'good,' 'very good', etc. are insisted on for the financial upgradation to the employees in the higher pay bands and grade pay, whereas for the different grades within PB-1 such bench marks are not insisted upon because the employees falling in the above pay band are in the bottom rungs of the official hierarchy. Hence, we are of the view that the impugned order is not justifiable and hence cannot be sustained.

12. Therefore, while quashing Annexure A1 order, we direct the respondents to reconsider the case of the applicant in the light of the above observations for granting financial upgradation. We make it clear that since the financial upgradation she was entitled during her service has a cascading effect on her pension also, the respondents shall not reject her application on the ground of limitation.

13. In the result the OA is allowed. Parties shall suffer their own costs.

**(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

**(U. SARATHCHANDRAN)
JUDICIAL MEMBER**

"SA"

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APPLICANT'S ANNEXURES

Annexure A1 - True copy of the order No. 150101/4/MACP/3356/EIB(R-DPC) dated 11.4.2014 issued on behalf of the 2nd respondent.

Annexure A2 - True copy of the CE(NW) Kochi letter No. 130292/MACP/391/E1B(P), dated 2.11.11.

Annexure A3 - True copy of the letter No. 15010/U/MACP/1260/E1B(R-DPC) dated 7 Oct 2011 of the HQ CE Southern Command, Pune.

Annexure A4 - True copy of the representation submitted by the applicant to the Chief Engineer, Southern Command, Pune on 27.12.2012.

Annexure A5 - True copy of the final order dated 19.12.2013 in OA 1213/2013 on the file of this Hon'ble Tribunal.

RESPONDENTS' ANNEXURES

Annexure R1 - True copy of the OM No. 35034/3/2008-Estt(D) of the Govt of India M/o Personnel & Public Grievances and Pensions dt. 19.05.2009.

Annexure R2 - True copy of the OM No. 35034/3/2008-Estt(D)(Vol.II) of the Govt of India M/o Personnel & Public Grievances and Pensions dt. 01.11.2010.

Annexure R3 - True copy of the OM No. 35034/3/2008-Estt(D)(Vol.II) of the Govt of India M/o Personnel & Public Grievances and Pensions dt. 04.10.2012.

Annexure R4 - True copy of the letter bearing No. 150101/4/MACP/3478/EIB(R-DPC) dt. 16.05.2014.

Annexure R5 - True copy of the GE (Maint) Ezhimala letter No. 1016/111/E1C dated 06 Aug 2009 along with acknowledgment obtained from the applicant.

Annexure R6 - True copy of the letter dated 19.05.2009.