

**CENTRAL ADMINISTRATIVE TRIBUNAL,**  
**ERNAKULAM BENCH**

**Original Application No. 180/00303/2014**

**Thursday, this the 26<sup>th</sup> day of July, 2018**

**CORAM:**

**Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member**  
**Hon'ble Mr. Ashish Kalia, Judicial Member**

Mony G., S/o. P.N. Gopala Krishnan,  
MES/187933, Junior Engineer (QS&C),  
O/o. The Garrison Engineer (Army),  
Military Engineer Services, Thirumala PO,  
Trivandrum – 695 006.

..... **Applicant**

**(By Advocate : Mr. P.K. Madhusoodhanan &  
Mr. Binoy Krishna P.M.)**

**V e r s u s**

1. Union of India, through Secretary to Government of India,  
Ministry of Defence, South Block, New Delhi – 110 011.
2. Engineer-in-Chief, Military Engineering Services,  
Army Head Quarters, Kashmir House, New Delhi – 110 011.
3. The Chief Engineer, Head Quarters,  
Southern Command, Pune – 411 001.
4. The Chief Engineer, Chennai Zone,  
Military Engineer Services, Island Grunds,  
Chennai – 600 009.
5. Commander Works Engineers, Wellington,  
Barrack Post, The Nilgiris District,  
Tamil Nadu – 643 231.
6. The Garrison Engineer (Army),  
Military Engineer Services, Thirumala PO,  
Trivandrum – 695 006.
7. The Director, Rajiv Gandhi Centre for Bio Technology,  
Poojappura, Thycaud PO,  
Thiruvananthapuram – 695 014. .... **Respondents**

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

This application having been heard on 23.07.2018 the Tribunal on 26.07.2018 delivered the following:

**ORDER**

**Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member –**

At the outset we find that as far as relief No. (b) is concerned the respondents in their reply statement has made it clear in paragraph 6 that “NOC has already been given to the applicant vide Headquarters Chief Engineer, Chennai Zone letter No. 10120/P/692/E1G, dated 10<sup>th</sup> May, 2014.” Therefore, it is seen that relief No. (b) has been considered and fulfilled by the respondents in favour of the applicant. Further as far as reliefs Nos. (f) and (g) are concerned, this Tribunal vide its interim order dated 15.5.2014 directed that “respondent No. 7 shall allow the applicant to attend the interview without for insisting No Objection Certificate, provisionally and subject to the outcome of the Original Application, in case such interview is held”. However, the selection process has yet not been finalized as contended by the respondents and is subject to the outcome of this Original Application.

2. The short issue remaining for consideration in this case is whether the applicant is entitled to the financial upgradation under the MACP scheme to the next higher scale in the promotional hierarchy or whether his entitlement is only to the next Grade Pay.

3. The applicant joined services of the MES as Junior Engineer (Quantity Survey & Contracts) [JE(QS&C)] under the Commander Works Engineer,

Naval Works, Kochi in the scale of pay of Rs. 5000-150-8000/- on 24.8.1992. He has been granted 1<sup>st</sup> ACP on 24.8.2004 in the scale of pay of Rs. 6,500-200-10,500/- on completion of 12 years service as JE. The applicant became eligible for grant of 2<sup>nd</sup> MACP on completion of 20 years service with effect from 24.8.2012 in the higher Grade Pay and pay band attached to the next promotional post. In this regard he submitted representations citing that in similar cases in OA No. 904/2012 dated 26.11.2012 and in OA No. 864/2014 dated 12.3.2014 the Principal Bench of this Tribunal in line with the decision rendered by the Chandigarh Bench in OA No. 1038/CH of 2010 – *Rajpal v. Union of India*, upheld by the Hon'ble High Court of Punjab and Harayana at Chandigarh in CWP No. 19387/2011 dated 19.10.2011 and also the SLP filed against it which was dismissed by the Hon'ble Supreme Court in CC No. 7467/2013, has granted the financial upgradation in the higher Grade Pay and pay band attached to the next promotional post. The applicant claims that the ratio of the above decisions shall squarely apply to his case as well and instead of granting him the Grade Pay of Rs. 6,600/- i.e. the Grade Pay attached to the next promotional post in the hierarchy, he has been granted 2<sup>nd</sup> MACP in the Grade Pay of Rs. 4,800/-.

4. The applicant submits that the hierarchy of promotional posts in MES applicable in his case are Junior Engineer in Grade Pay of Rs. 4,200/-, Assistant Engineer (QS&C) in Grade Pay of Rs. 4,600/- (both in PB-2 in scale of Rs. 9,300-34,800/-) and Executive Engineer in Grade Pay of Rs. 6,600/- in PB-3 in scale of Rs. 15,600-39,100/-. Therefore, the applicant

claims that he should have been granted 2<sup>nd</sup> MACP in the hierarchical promotional Grade Pay of Rs. 6,600/- on completion of 20 years of service. The applicant submits that non-consideration of his grievance, in the light of the ratio settled by the decisions of the Principal Bench relying on the coordinate Bench at Chandigarh as upheld by the Hon'ble High Court of Punjab and Harayana at Chandigarh vide order dated 19.10.2011 in CWP 19387/2011, is highly erroneous, perverse, arbitrary and contrary to law.

5. By way of reply statement, the respondents contend that the Government of India discontinued the Assured Career Progression Scheme and introduced Modified Assured Career Progression Scheme with effect from 1.9.2008. As per the new scheme financial upgradation is granted only on completion of 10, 20 and 30 years of regular service in the immediate next higher Grade Pay in the hierarchy of the recommended revised pay bands and Grade Pay as given in Section 1 Part-A of the first schedule of the CCS (Revised Pay) Rules, 2008. Therefore, the respondents contend that as per existing MACP policy, the applicant is not entitled to get 2<sup>nd</sup> MACP in the hierarchy of promotion but only in the next Grade Pay in the hierarchy of the recommended revised pay bands and Grade Pay.

6. The applicant has filed a rejoinder where he has reiterated the contentions made in the O.A. We have heard Shri. Binoy Krishna, learned counsel appearing for the applicant and the learned Sr. Central Government Standing Counsel (Retainer) appearing for the respondents.

7. The issue to be considered in this O.A has already been adjudicated and decided by this Tribunal in a batch of matters in OA No. 180/387/2014 & connected matters dated 17.01.2017. This Tribunal while disposing of the batch matters observed as under:

“The common issue that arises for consideration in all these cases is whether the applicants are entitled to the financial up-gradation under the MACP Scheme to the next higher scale in the promotional hierarchy or whether their entitlement is only to the next grade pay. Since the decision in all these cases are to rest on the decision to be taken by the apex court on a similar case pending before them on that issue, all these cases are taken up together and this common order is passed.

2. According to the applicants the financial up-gradation under the MACP Scheme should be by granting or fixing the pay in the promotional hierarchy. The respondents on the other hand contend that going by the terms and conditions stipulated in the Scheme itself, the financial up-gradation under the MACP Scheme should only be to the next grade pay which has been repeatedly stated in the Scheme. Some of the Benches of this Tribunal have decided the issue in favour of the applicants holding that the financial up-gradation under the MACP Scheme should be to the next higher scale in the promotional hierarchy and not to the next grade pay as contended by the respondents. Some of those decisions were confirmed by the respective Hon'ble High Courts. But some other Tribunals have taken the view that the financial up-gradation under the MACP Scheme can only be to the next grade pay as has been stated in the Scheme and that the claim for financial up-gradation to the next promotional higher scale is untenable. Some of those decisions were also confirmed by the Hon'ble High Courts. Therefore, it is a case where conflicting decisions of the Tribunals and of the High Court are available on this issue. Now the issue is pending before the Hon'ble Supreme Court. Once a final verdict is given by the Hon'ble Supreme Court all the parties would be bound by that judgment.

3 Therefore, we do not now venture to decide on the issue as to whether the financial up-gradation claimed by the applicants under the MACP Scheme should be to the next grade pay or to the next higher scale in the promotional hierarchy.

4 If we are to decide the issue now and if the applications are allowed then certainly the respondents would challenge the same before the High Court in which case the applicants will be driven to another round of litigation. They may have to appear before the High Court to resist contentions that may be taken by the respondents. Similarly if the decisions are taken against the applicants, then certainly the applicants may have to approach the High Court.

5 The National Litigation Policy envisages reducing or minimising of litigation. Hence, the endeavour should be to avoid unnecessary and avoidable litigation. Unnecessary litigations can be avoided if all these applications are now closed with a rider that all the parties would be bound by the judgments that may be rendered by the Hon'ble Supreme Court; once the judgment is pronounced by the Hon'ble Supreme Court, if it is in favour of the applicants then all the applicants in these cases will certainly be entitled to the benefit of the judgment so rendered by the Hon'ble Supreme Court. In other words, for the purpose of granting the benefits under the MACP Scheme all these applications should be treated as revived and the order will then stand reviewed so as to grant the reliefs to the respective applicants. If on the other hand the verdict goes against the applicants then all the aforesaid O.As shall be treated as dismissed. In that way there would be a quietus to the litigation.

6 The aforesaid course suggested has been accepted by the learned counsel appearing for the applicants and also by the learned counsel appearing for the respondents in the respective cases. Hence it is ordered as above. It is made clear that if the Original Applications are to be revived and the orders reviewed as stated above then the claim made by the applicants are to be decided as if the Original Applications are alive as on the date of the judgment that may be rendered by the Hon'ble Supreme Court. All these applications are disposed of as above. No order as to costs.”

8. Therefore, we are of the view that the decision in OA No. 180/387/2014 & connected matters dated 17.01.2017 shall squarely apply to the present case as well, so far as relief Nos. (c), (d) and (e) are concerned. Ordered accordingly. The respondents are directed to finalize the selection process and publish the results.

9. The Original Application is disposed of as above. No order as to costs.

**(ASHISH KALIA)**  
**JUDICIAL MEMBER**

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

“SA”

**Original Application No. 180/00303/2014****APPLICANT'S ANNEXURES**

- Annexure A1** – True copy of the certificate of the faculty of Engineering and Technology issued to the applicant.
- Annexure A2** – True copy of the certificate in Master of Science in Engineering by research from IIT, Madras.
- Annexure A3** – True copy of the certificate of membership issued to the applicant from Institution of Civil Engineer (India).
- Annexure A4** – True copy of the certificate issued to the applicant in Diploma of Associate Member by the Institution of Engineers (India).
- Annexure A5** – True copy of the representation dated 2.4.2014 submitted to the 3<sup>rd</sup> respondent.
- Annexure A6** – True copy of the advertisement appeared in the Website of the 7<sup>th</sup> respondent on 25.3.2014 inviting application for the post of Manager (Civil Works) on contract basis.
- Annexure A7** – True copy of the application dated 31.3.2014 submitted by the applicant to the 4<sup>th</sup> respondent.
- Annexure A8** – True copy of the relevant extract of the application dated 15.4.2014 duly filled and submitted to the 7<sup>th</sup> respondent (except the certificates attached).
- Annexure A9** – True copy of the order No. 10120/P/682/E1G dated 21.4.2014 of the 4<sup>th</sup> respondent, Chief Engineer, Chennai Zone.
- Annexure A10** – True copy of the application dated 26.4.2014.
- Annexure A11** – True copy of the letter No. 10818/CC/Misc./157/E1LC dated 29.4.2014 of the 4<sup>th</sup> respondent.
- Annexure A12** – True copy of the salary slip of the applicant for the month of December, 2014.
- Annexure A13** – True copy of the office order No. 139, dated 22.9.2014.

**RESPONDENTS' ANNEXURES**

- Annexure R1** – True copy of the letter No. 10120/P/692/E1G dated 10<sup>th</sup> May 2014.