

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00173/2016

Thursday, this the 2nd day of August, 2018

CORAM:

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

Vijayakumaran V.P., 53 years,
S/o. Kumaran Nair (late),
Auditor/8338428,
O/o. The Accounts Officer (R&D),
N.P.O.L, Kochi – 21.

..... **Applicant**

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

V e r s u s

1. The Controller General of Defence Accounts,
Ulan Batar Road, Palam,
Delhi, Cantonment – 110 010.
2. The Controller of Defence Accounts (R&D),
C.V. Raman Nagar,
Bangalore – 560 093.
3. The Controller of Defence Accounts,
618, Anna Sali, Teynampet,
Chennai – 600 018.
4. Union of India represented by its Secretary,
Ministry of Defence (Finance),
New Delhi – 110 010.

..... **Respondents**

(By Advocate : Mr. K.S. Dilip, ACGSC)

This application having been heard on 30.07.2018 the Tribunal on
02.08.2018 delivered the following:

ORDER**Hon'ble Mr. Ashish Kalia, Judicial Member –**

The applicant claimed the relief as under:

“(a) Set aside Annexures A-8, A-9 and A-15.

(b) Issue necessary directions to the respondents not to withdraw the 1st ACP/MACP scheme benefits granted to the applicant and the fixation of pay granted to him accordingly in accordance with law and pay him salary without any reduction in his pay.

(c) Issue necessary directions to the respondents to continue to pay the applicant his salary as being paid till now, untrammelled by Annexure A-15.

(d) Declare that the attempt on the part of the respondents to withdraw the 1st ACP/MACP scheme benefits legally granted and paid to him is bad in law and unconstitutional.

(e) Issue necessary directions to the respondents not to recover from the applicant the accrued and vested rights of 1st ACP/2nd MACP scheme financial benefits granted and paid as per law and enjoyed by him.

(f) Award costs of these proceedings; and

(g) Grant such other and further reliefs as this Hon'ble Tribunal deems fit and proper in the interest of justice.”

2. The applicant was appointed as Lower Division Clerk on 26.12.1987 with Bank Note Press, Dewas, Madhya Pradesh. On completion of 12 years service he was granted 1st financial upgradation under Assured Career Progression (in short ACP) scheme in the scale of pay of Rs. 4,000-6,000/- on 26.12.1999 and his pay was fixed at Rs. 4,000/-. The applicant applied for appointment to the post of Clerk in Defence Account Department (DAD in short) on interdepartmental transfer basis. He was offered the post of Clerk lower scale of pay of Rs. 3,050-4,590/- without pay protection. The applicant was granted 1st ACP in the scale of pay of Rs.4500-7000/- from the date he joined DAD vide Annexure A5. On completion of 20 years service applicant was granted MACP in the scale of Rs. 9300-34800/- plus Grade Pay of Rs.4,200/- w.e.f. 1.9.2008 vide Annexure A7. implementation of

Vith Central Pay Commission applicant's pay was fixed at Rs. 12,240/- with Grade Pay of Rs. 2,800/- and on completion of 20 years service applicant was granted 2nd MACP upgradation and his pay was fixed at Rs. 10,580/- in PB-2 with Grade Pay of Rs. 4,200/- in the scale of pay of Rs. 9,300-34,800/- with effect from 1.9.2008. Later on he was promoted as Auditor.

3. The grievance of the applicant is against Annexures A8, A9 and A15 are basically recovery orders made by the respondents on account of grant of 1st MACP twice. Feeling aggrieved by this he has approached this Tribunal.

4. The respondents have filed reply and submitted that applicant joined the DAD on 11.3.2005 as a Clerk in the pay scale of Rs. 3,050-4,590/- on interdepartmental transfer. The applicant was allowed a request transfer to a lower post of Clerk. But his pay was fixed by the Department at Rs. 4,430/- plus Rs.70/-(PP) protecting his pay drawn in the parent department. As the applicant was already granted 1st ACP in his parent department, 1st ACP was again granted w.e.f. 11.3.2005 (date of joining in the present department) and his pay was fixed at Rs. 4,625/-. On 1.9.2008, 2nd MACP was granted and the pay of the applicant was fixed at Rs. 10,310/- plus Grade Pay of Rs. 4,200/-. The respondents submitted that as per the judgment of Hon'ble Supreme Court in *Chandi Prasad Uniyal & Ors. v. State of Uttarakhand & Ors.* - (2012) 8 SCC 417 recovery of excess payment wrongly made to the government servant is permissible. Respondents contend that the action of the respondents in issuing Annexures A8, A9 and A15 is correct and does

not call for any interference by this Tribunal.

5. Heard the counsel appearing for the parties and perused the records.

6. The short grievance of the applicant is that he has been denied the pay protection firstly and secondly that 3rd MACP upgradation was not given to him. The applicant's transfer from his parent department to DAD was on his own volition and therefore, his pay has to be fixed in the lower grade of Clerk with Grade Pay of Rs. 1,900/-. However, erroneously his pay was fixed at Rs. 4,625/- after granting him 1st ACP by the DAD. Meaning thereby that the applicant has got his ACP in the year 1999 and again 1st MACP on joining the transferred Department and his pay has been upgraded to the Grade Pay of Rs. 2,800/-.

7. On conclusion drawn by the records it is very clear that applicant has received two 1st ACP/MACP within the span of six years firstly in 1999 and secondly in 2005. Thereafter he got 2nd MACP to the Grade Pay of Rs. 4,200/- whereas actually his first upgradation should have been in the Grade Pay of Rs. 1,900/- and second in the Grade Pay of Rs. 2,800/- instead of Grade Pay of Rs. 4,200/- which has been duly been given by the Department and recovery is effected with effect from 11.3.2005 i.e. the date he has received the 2nd first ACP.

8. In the nut shell it is observed that the applicant has got the benefit of two 1st ACP with effect from 11.3.2005 which is now been recovered by the

Department. As per the judgment of the Hon'ble Supreme Court noted above we are of the view that excess payment made by the department are liable to be refunded if there is no errors on the part of the respondents. The recovery by the respondents is of the excess payment done to the applicant on account of twice grant of ACP effected on 11.3.2005. We are convinced that no case is made out by the applicant. Therefore, the OA is liable to be rejected.

9. Accordingly, the Original Application is dismissed. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

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APPLICANT'S ANNEXURES

- Annexure A1 - True copy of the notification appeared in Employment News dated 31 July – August 2004.
- Annexure A2 - True copy of the Part II Office Order No. 116 dated 22/3/2005 of the Accounts Officer (Admin) Chennai.
- Annexure A3 - True copy of the Office Order Part-II O.O. No. 204 dated 7/5/2008 granting sanction for fixation of pay.
- Annexure A4 - True copy of the letter dated 18.6.2008 from the Office of the CGDA, R.K. Puram, New Delhi.
- Annexure A5 - True copy of the Office Order Part II office order No. 290 dated 30-6-2008 of the third respondent.
- Annexure A6 - True copy of the Office Order vide Part II O.O. No. 306 dated 3.7.2008.
- Annexure A7 - True copy of the Order vide Part II O.O No. 384 dated 12.8.2010 issued by the 3rd respondent.
- Annexure A8 - True copy of the Part II 0.0.0160 dated 02/12/2015 of the Assistant Controller of Defence Accounts (AN) Bangalore – 93.
- Annexure A9 - True copy of the Part II 0.0.0161 dated 02/12/2015 of the Assistant Controller of Defence Accounts (AN), Bangalore.
- Annexure A10 - True copy of the letter dated 21.12.2015 by the 2nd respondent.
- Annexure A11 - True copy of the clarification letter dated 25.2.2010 by the 1st respondent.
- Annexure A12 - True copy of the instructions by letter dated 4.6.2010 by the 1st respondent.
- Annexure A13 - True copy of the instructions by letter dated 27.5.2013 by the 1st respondent.
- Annexure A14 - True copy of the representation dated 18/1/2016 before the 2nd respondent submitted by the applicant.
- Annexure A15 - True copy of the PTII OO. No. 0012 dated 21.01.2016

of the Assistant Controller of Defence Accounts (AN)
Bangalore – 93.

RESPONDENTS' ANNEXURES

- Annexure R2(a) - True copy of the letter dated 25.02.2010.
- Annexure R2(b) - True copy of the letter dated 06.05.2013.
- Annexure R2(c) - True copy of the letter dated 04.06.2012.
- Annexure R2(d) - True copy of the letter dated 21.12.2015.
- Annexure R2(e) - True copy of the letter dated 01.02.2016.
- Annexure R2(f) - True copy of the Representation dated 08.03.2016.
- Annexure R2(g) - True copy of the letter dated 18.05.2016.
- Annexure R2(h) - True copy of the Order dated 16.01.2015 in O.A No.
97/2014 of the CAT, Bangalore Bench.
- Annexure R2(i) - True copy of the letter dated 27.05.2016.
- Annexure R2(j) - True copy of the O.M dated 14.02.2006.

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