

**Central Administrative Tribunal
Ernakulam Bench**

OA/180/00900/2015

Thursday, this the 29th day of November, 2018.

CORAM

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

Hon'ble Mr.Ashish Kalia, Judicial Member

K.Aravindakshan (Retd), MES No.109223
Refrigeration Mechanic (HS)
19/361 G, Vino Nivas, Athira Lane
Warrioms Junction
Palluruthy, Kochi-682 006.

Applicant

[Advocate: Smt.P.Ushakumari]

versus

1. The Union of India, represented by
the Secretary to Government
Ministry of Defence, Govt of India
New Delhi-110 001.
2. The Chief Engineer
Military Engineer Services
Headquarters, Southern Command,
Pune-412 101
3. The Chief Engineer (NW), Kochi-682 004.
4. Command Works/Engineers (NW)
Kochi-682 004.
5. Garrison Engineer (1) MES/E/M (NW)
Kattaribagh, Kochi-682 004.

Respondents

[Advocate: Mr.N.Anilkumar, Sr.PCGC]

This OA having been heard on 22nd November, 2018, the Tribunal delivered the following order on 29.11.2018:

O R D E R**By E.K.Bharat Bhushan, Administrative Member**

Through this OA, the applicant, a retired Refrigeration Mechanic (Skilled) under the respondent Military Engineering Services (Ministry of Defence), Katari Bagh, Kochi, seeks 3rd financial upgradation under the MACP Scheme with effect from 5.2.2013 along with increments. The admitted facts are that the applicant was initially appointed as Mazdoor on 19.11.1977. He was appointed as Refrigeration Mechanic/MPA in the skilled category with effect from February, 1983. This post was later reclassified as Refrigeration Mechanic (Skilled) without any difference in the pay scale.

2. The applicant became eligible for 1st ACP benefit on completion of 12 years of service, in February, 1995. Since the ACP Scheme was introduced with effect from 9.8.1999, the said benefit was granted to him from the date of introduction of the Scheme. On completion of 24 years of service (calculating from February 1983), the applicant was granted the benefit of 2nd ACP Scheme with effect from 5.2.2007 in the pay scale of Rs.5000-8000 (with revised Grade Pay of Rs.4200). This benefit was granted by the respondents as a result of a favourable order obtained by the applicant in OA No.689/2010 (Annexure A1). Claiming 3rd financial benefit under MACP Scheme on completion of 30 years' service with effect from 5.2.2013, the applicant moved a representation to the respondents (Annexure A2 dated 4.3.2013). Finding no response, the applicant sent a legal notice dated 17.3.2015 (Annexure A3) which was replied to by the respondents vide Annexure A4 communication, rejecting the claim of the applicant. Hence the present OA.

3. Learned counsel for the applicant has placed on record an order of this Bench passed in OA No.958 of 2014 to contend that the claim of the applicant is fully covered by the aforesaid order.

4. We have heard Smt.P.Ushakumari, learned counsel for the applicant and Mr.N.Anilkumar, Sr.PCGC on behalf of the respondents and examined the matter carefully. The objections raised by the respondents are that the applicant was drawing grade pay of Rs.4200 which was the maximum grade pay that could be allowed. Grade Pay of Rs.4600/-, claimed by the applicant under the 3rd MACP, is only applicable to those Highly Skilled Workers/MCM who were granted the pay of Rs.5000-8000 (pre-revised) upto 31.12.2005.

5. Reply, rejoinder, additional reply and additional rejoinder etc., were exchanged by the parties reiterating the contentions. In the additional reply statement, the respondents have relied on a common order dated 24.3.2015 in OA No.061/00032/2014 and OA 060/00602/2014 passed by the CAT Chandigarh Bench, marked as Annexure R1(f), as per which, according to the respondents, the claim put forth by the present applicant is not admissible.

6. On a careful reading of the aforesaid judgment of the CAT, Chandigarh Bench, the facts of the case are different in as much as the claim of the applicants therein was rejected on account of the fact that their placement in HSG-I in the grade of Master Craftsman was treated as promotion as per the policy regarding Restructuring of Cadre of Artisan Staff. The applicant in the present case has not earned any promotion except that the post he was holding from the very inception was reclassified as Refrigeration Mechanic (Skilled) with the same pay structure. The respondents' contention that the reclassification of the post in question is to be treated as promotion cannot stand in view of the

clarification contained in DoPT order dated 10.12.2000 cited in the order dated 30.1.2012 in OA Nos.689 and 861 of 2010 (Annexure A1). We are of the considered view that claim of the applicant is fully covered by the order passed in OA No.958/2014, the relevant portion of which is extracted below:

"11. The facts remains that the applicants were in the scale of pay of Rs.9300-34800 with corresponding grade pay of Rs.4200/- after they were granted the 2nd upgradation under the ACP Scheme. There is no dispute regarding the fact that the applicants have completed 30 years of service as on the respective dates. Hence they are entitled to the next grade pay in Rs.4600/-. The contention that if only the applicants were in the corresponding scale of which the grade pay is Rs.4200.-, they would be entitled to get the financial upgradation to the next grade pay of Rs.4600/- is unacceptable. Since the applicants have admittedly completed 30 years of service as on the respective dates, they are entitled to get benefit of 3rd financial upgradation under the MACP Scheme to the next Grade Pay of Rs.4600. The Original Application is allowed. Appropriate orders shall be passed by the respondents within two months from the date of receipt of a copy of this Order. No costs.

7. Accordingly, the OA is allowed. Appropriate orders shall be passed by the respondents within two months from the date of receipt of this order. No order as to costs.

(Ashish Kalia)
Judicial Member

(E.K.Bharat Bhushan)
Administrative Member

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Annexure filed by the applicant:

Annexe A1: Copy of the order of this Tribunal dated 30.1.2012 in OA 689/2010.

Annexure A2: Copy of the representation dated 4.3.2013 submitted by the applicant to the 4th & 5th respondents.

Annexure A3: Copy of the legal notice dated 17.3.2015 sent to the 5th respondent by the counsel for the applicant.

Annexure A4: Copy of the letter No.14004/GE(NS) Kochi/343/SB Cell dated 29.4.2015 sent by the 4th respondent to the counsel for the applicant.

Annexures filed by the respondents:

Annexure R1(a): Copy of the appointment order No.1580/2030/E1 dated 14.11.1977.

Annexure R1(b): Copy of Option Certificate for ACP on completion of 24 years' service.

Annexure R1(c): Copy of the letter No.85610/47/ACP/IND(3)/Scheme/CSCC dated 31.12.2012.

Annexure R1(d): Copy of the letter No.CC-II.B.77030/VI CPC/IND/06/CSCC dated 10.3.2014.

Annexure R1(e): Copy of the CWE Jammu letter No.1022/Rattan Lal/106/E1L dated 30.12.2015.

Annexure R1(f): Copy of the order dated 24.3.2015 in OA No.061/00032/2014 and 060/00602/2014 of the CAT, Chandigarh Bench.

Annexure R1(g): Copy of the letter No.11(5)/2009-D (Civ-1) dated 23.7.2012.