

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

OA No.3878/2013

Order Reserved on :24.04.2018
Order Pronounced on: 07.05.2018

Hon'ble Mr. V. Ajay Kumar, Member, (J)
Hon'ble Ms. Nita Chowdhury, Member (A)

No. P-4343-Civ.Clk – Subhash Chandra Tyagi,
S/o Shri Ranjit Singh Tyagi,
Lower Division Clerk (Civilian)
Presently posted - 510,
Army Base Workshop,
Meerut – Cantt UP)

- Applicant

(By Advocate: Shri VK Sharma)

Versus

1. Union of India
Through the Secretary
Government of India
Ministry of Defence,
South Block,
New Delhi
2. The Director General, EME,
Integrated Headquarters of Ministry of Defence,
Sena Bhawan, 'L' Block,
DHQ Post Office,
New Delhi
3. The Commandant, EME,
510-Army Base Workshop,
Meerut-Cantt.

- Respondents

(By Advocate: Mr. Subhash Gosai)

ORDER

By Hon'ble Ms. Nita Chowdhury, Member(A):

This Original Application (OA) has been filed by the applicant claiming the following reliefs:-

“(a) That the respondents may be directed to settle the ACP Scheme and MACP Scheme financial entitlements to the applicants as supported with necessary illustrations and Govt. orders in justification of his claim raised through this OA within a time bound period as this Hon'ble Tribunal may deem fit and proper for early settlement of his case.

(b) The respondents may also kindly be directed to pay penal interest @12% p.a. for the period of delay in this case counting from the date of enforcement of these schemes w.e.f. 09.08.1999 and 01.09.2008, respectively upto date of final payment of these respective dues.

(c) Allow any other further relief which this Hon'ble Court may deem fit and proper in the circumstances of this case in order to meet the ends of justice.

(d) Allow Exemplary costs of this petition in favour of the humble applicant.

and

(e) Allow costs of this Application in favour of the humble applicant.”

2. The brief facts of the case are that the applicant was appointed as Cook (Civilian) under 39-Gorkha Training Centre, Varnasi, in the scale of pay of Rs.200-3-206-4-234-4-250. He fulfilled prescribed qualification for the post of LDC and

accordingly, was appointed as such in the scale of pay of Rs.260-400. But, all of a sudden, he was reverted to his initial post of Cook without any show cause and without providing any opportunity of hearing. He continued in the substantive post of Cook from 15.04.1978 onwards. In the year 2005, he qualified Limited Departmental Examination for the post of LDC (Civilians) in the office of Commandant 510-Army Base Workshop, EME, Meerut-Cantt. As a result of 4th Central Pay Commission's recommendations, the post of 'Cook' was regrouped in category 'C' and upgraded in the pay scale of Rs.3050-75-4590. However, the applicant was merely given in-situ promotion in the post of Cook – which scale is lower to the upgraded scale of the post.

3. The Government of India introduced Scheme of Assured Career Progression Scheme (ACP Scheme) effective from 19.08.1999. As per this Scheme, Group 'C' and 'D' employees were made eligible for grant of two time bound financial upgradations on completion of 12 and 24 years of service in hierarchy of the posts held by them. The Ministry of Defence, while upgrading post of 'Cook' equivalent to the pay scale of LDC, also prescribed its next promotion in the pay scale of Rs.3200-85-4900. The applicant, who is continuous in service as Cook w.e.f. 20.01.1978, was eligible for 1st financial upgradation w.e.f.

the date of operation of the scheme viz. 19.08.1999. The applicant also claims that as per the clarification of DoP&T and decided court cases, he was eligible for the 2nd financial upgradation in the scale of pay of Rs.4000-100-6000.

4. It is further averred that on the recommendations of the 6th Central Pay Commission, Modified Assured Career Progression Scheme (MACP Scheme) was introduced. As per this Scheme, three financial upgradations were available in the corresponding next Pay Band and Pay Scale. The applicant completed 30 years regular service on 19.01.2008. Since MACP Scheme was operational w.e.f. 01.09.2008, he was eligible for 3rd financial upgradation in the same very Pay Band of Rs.5200-20200, with Grade Pay revised from Rs.2400/- to Rs.2800/- w.e.f. 01.09.2008. Since the office authorities did not provide him the financial upgradatons under the ACP and MACP Schemes despite long pursuation, the applicant made a representation dated 08.09.2010 to the DG, EME but in vain. Hence the present OA has been filed for the reliefs prayed for.

5. The applicant, in support of his OA, has placed reliance upon the judgment of **Union of India & Anr. V. G. Rajanna & Ors.** (2009) SCC (L&S)174. In the said case, the Group 'D' employees (non-matriculates) in the scale of pay of Rs.750-940, were granted in situ promotion in the next higher scale of

Rs.775-1025 in the same manner as has been given to the applicant herein in situ promotion w.e.f. 20.04.1994. The Hon'ble Supreme Court, while upholding the decision of the High Court, observed that "if in any particular organisation, promotion of Group 'D' employees are required to be made in a higher scale instead of scale indicated here, in accordance with the Rules of Recruitment, in- situ promotion will also be allowed to the scale to which promotions are made in that organization." Hence, he has prayed that the OA be allowed.

6. Pursuant to the notices issued by the Tribunal, the respondents entered appearance and filed their reply. In the reply, the respondents submitted that the applicant had applied for posting to COD, Delhi on compassionate grounds and accordingly, was posted to COD w.e.f. 21.04.1994 as Messenger in the pay scale of Rs.750-940 as per 4th CPC effective from 20.04.1994. He was promoted in situ under the scheme of Career Advancement in the next higher scale of Rs.775-1150 w.e.f. 21.04.1994 (Revised pay scale of Rs.2610-3540) under the provisions of Govt. of India, Ministry of Finance (Department of Expenditure) OM dated 13.09.1991. It is further submitted that the applicant was granted 2nd ACP in the scale of Rs.3050-4590 w.e.f. 21.01.2002 on completion of 24 years of service as he had already got one higher pay scale on promotion in situ under

career advancement scheme. Hence, the applicant was not eligible for 1st ACP on completion of 12 years. It is further submitted that the applicant was granted 2nd and 3rd financial upgradations under MACP in the Pay Band of Rs.5200-20200/- with Grade Pay of Rs.2000/- on completion of 20 years service and Rs.2400/- Grade Pay in the Pay Band 5200-20200/- on completion of 30 years w.e.f. 01.09.2008. The respondents, therefore, submitted that this OA is liable to be dismissed.

7. The respondents have also submitted that the OA is time barred and should be dismissed on the sole ground of limitation. In this regard, they placed reliance on the decision of the Hon'ble Delhi High Court in the case of **Prakash Singh v. Union of India & Anr.** [W.P.(C) No. 9580/2015] decided on 03.06.2016 and referred to paras 23 and 24 thereof, which read as under:-

“23. When we look at the factual matrix of the present case, the promotee officers were given seniority way back in the year 2004. The petitioner did not object and protest at that time. The promotees got their first promotion in 2007 and have been working on the promotional post, without any demur and protest. After about 8-9 years, the petitioner has raised objections in 2013 as to his placement in the seniority list of 2004 and also sought promotion from 2007, when others were promoted, whom he now claims were his juniors. He wants antedated and notional or retrospective promotion. It is obvious that the promotee officers, who were further promoted in the year 2007 have worked at the promotional or higher grade for almost 6-7 years. If this stale and dead claim is allowed to be raised. This would cause chaos and resentment. We therefore do not intend to remand the case for a fresh decision permitting the petitioner to file an application

seeking condonation of delay. It would be a futile exercise.

24. The submission that the Tribunal in its earlier order dated 17th February, 2014 had directed the respondents to dispose of the petitioner's representation in consonance with the order of the Supreme Court in N.R. Parmar's case through a reasoned and speaking, should be read as accepting that the prayer made was within the limitation period, has to be rejected. The submission is contrary to the law. We have already referred to the majority judgment of the Supreme Court in Mafatlal and judgments in Tarsem Singh, Arvind Kumar Shrivastava (supra) and more pertinently M.K. Sarkar (supra) which deals with representations. The petitioner's case cannot be on a better footing. Decision of a representation relating to a time-barred claim of seniority, promotion etc, would not constitute a fresh and new cause of action or revive a time barred and stale claim. The order dated 29th April, 2014 rejects the representation on the ground of limitation and delay."

8. We have considered the arguments put forth by the learned counsel for the parties and have also perused the pleadings and the documents annexed thereto and available judgments.

9. The short question involved in this OA is whether applicant is entitled to the relief as claimed in the OA i.e. grant of ACP and MACP from back date. The matter has been examined, in detail, by the Hon'ble Delhi High Court in the case of Prakash Singh (supra). The relevant paras have already been quoted above (paras 23 and 24). Hence, as seen from the Prakash Singh judgment, the respondents have acted as per law and we need not dwell further in this matter.

10. In the circumstances and for the reasons recorded above, we find no merit in the OA and the same is accordingly dismissed. No costs.

(Nita Chowdhury)
Member (A)

(V. Ajay Kumar)
Member (J)

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