

OA.No.170/00970/2016/CAT/Bangalore Bench
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00970/2016

DATED THIS THE 14th DAY OF SEPTEMBER, 2017

HON'BLE JUSTICE SHRI HARUN UL RASHID, MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

R.Sridharamurthy
S/o.Late. R.Subba Rao
Aged about 61 years
R/o.No.159, 6th Cross
Teachers Colony
Banashankari II Stage
Bengaluru-560070.

.....Applicant

(By Advocate Shri Vishnu Bhat)

Vs.

1. Union of India
Represented by its Secretary
Ministry of Defence
Central Secretariat
New Delhi-110 001.
2. Engineer-in-Chief
Engineer-in-Chief's Branch
Army Head Quarters. DHQ (P.O.)
New Delhi-110 001.
3. The Chief Engineer
Head Quarters
Southern Command
Engineer's Branch
Pune-411 001.
4. The Senior Accounts Officer (PAY)
O/o.Principal Controller of the Defence Accounts
No.107, Lower Agram Road
Agram post
Bangalore-560007.
5. The Chief Engineer (Air Force)
Chennai Zone
Island Grounds
Chennai-9.
6. The Chief Engineer (R&D)
PICKET

Secunderabad.

7. Garrison Engineer (North)
T/64, Meance Line
MEG & Center
Bengaluru-560 042.

....Respondents

(By Advocate Sri.K.Gajendra Vasu)

O R D E R (ORAL)

(PER HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (ADMN))

The applicant has filed the present OA seeking the following relief:

- a. *Call for records and proceedings leading to issuance of the letter dtd:3.10.2016 in No.Pay Tech/Gen/Corr issued by the 4th respondent as per Annexure-A3 and after perusal of the same.*
- b. *To direct the respondents in particular the 4th respondent to sanction/grant/disburse the death benefits of deceased S.Padma MES Staff No.1386563 who died on 9.4.2015 such as gratuity, family pension, leave encashment. Etc., taking into consideration her last pay drawn as on 9.4.2015 in the pay band 2 Rs.9300-34800+grade pay of Rs.4600/- and disburse the same including the arrears of pension, etc., taking into consideration the service rendered by the wife of the applicant Smt.S.Padma from her initial date of appointment as in lieu of combatant for the purpose of grant of 3rd MACP and grant the 3rd Financial upgradation on completion of his 30 years of service from the date of her initial appointment as LDC in lieu of combatants w.e.f. 13.12.1983 with all consequential benefits forthwith with interest for the delayed payment at 12% p.a. till the date of actual payment forthwith.*

2. The applicant is the husband of the deceased Smt.S.Padma who was working as Upper Division Clerk(UDC) with the respondent organisation and died while in service on 9.4.2015. As submitted in the OA, Late Smt.S.Padma joined the services in Head Quarters, Northern Command, as Lower Division Clerk(Civilian) in lieu of Combatant on 13.12.1983. After serving for two years, she was absorbed in MES as Civilian Lower Division Clerk on 11.12.1985. Subsequently she was promoted as Upper Division Clerk and worked as such till 9.4.2015 when she died. The applicant submits that Smt.S.Padma was

OA.No.170/00970/2016/CAT/Bangalore Bench appointed as Lower Division Clerk in lieu of combatant after following all the procedures contemplated under the rules and as such the said services are liable to be counted for the purpose of seniority, leave, increment, pay and pension, etc. On introduction of Assured Career Progression(ACP) Scheme, the respondent Department failed to extend the ACP benefit on completion of 12 and 24 years of service to Smt.S.Padma on the ground that the services rendered in lieu of combatant cannot be counted for the purpose of calculation of residency period of 12 & 24 years under the scheme. In this context, several employees similarly situated like the wife of the applicant Smt.S.Padma approached various Benches of the Tribunal. The Chennai Bench of the Tribunal in OA.No.85/2006 in Sakaria Thomas vs. Union of India & Anr. allowed the prayer holding that the period of service rendered in lieu of combatant is entitled to be counted for the purpose of grant of ACP scheme. The said order was unsuccessfully challenged before the Hon'ble High Court of Madras in WP.No.5876/2006 and thereafter before the Hon'ble Apex Court in SLP(CC) No.7223/2009. Following the said order of the Madras Bench, various Benches of the Tribunal have allowed such applications directing for counting of services rendered in lieu of combatants for grant of financial upgradations under ACP. Thereafter, the respondents after considering the service rendered by the wife of the applicant granted the 2nd financial upgradation under ACP Scheme taking into account the service rendered in lieu of combatant w.e.f. 13.12.2007 in the pay scale of Rs.5000-8000 vide order dated 29.2.2008. Thereafter, they granted the 3rd financial upgradation under MACP vide order dated 22.9.2014 in PB-2 with GP of Rs.4600(Annexure-A1).

3. The applicant submits that in spite of the order issued by the competent

authority, the pay of Smt.S.Padma was not actually re-fixed till 9.4.2015 when she died while in service. After her death, the 7th respondent forwarded the pension/gratuity claim of deceased Smt.S.Padma on 23.7.2015 to the 3rd respondent(Annexure-A2). It appears that all the documents were transmitted to the office of Principal Controller of Defence Account, Bangalore for actual disbursement of the death benefits of the deceased Smt.S.Padma and family pension to the applicant taking into consideration the last pay of the deceased Smt.S.Padma in PB 2 with GP 4600. However, the Office of the Principal Controller of Defence Account i.e. 4th respondent raised an objection regarding the entitlement to the deceased Smt.S.Padma and directed to re-fix the pay of the applicant on the ground that the wife of the applicant will not be entitled for 2nd ACP of GP Rs.4200 w.e.f. 13.12.2007 and 3rd MACP on the ground that the service rendered by the wife of the applicant as LDC in lieu of combatant cannot be counted for the purpose of ACP/MACP(Annexure-A3). Consequently, even after lapse of one and half year, the respondents failed to settle the death benefits of deceased Smt.S.Padma. In the circumstances, the applicant approached the 7th respondent with a request to persuade the competent authority to release death benefits such as gratuity, family pension etc. at the earliest. However, he was informed that the benefits cannot be disbursed in view of the objection by the 4th respondent who returned the claim papers.

4. The applicant submitted that the various orders of the Tribunal covers the question involved regarding counting of service rendered in lieu of combatant. He refers to the order dated 6.1.2016 passed by this Tribunal in OA.No.1008-1043/2015(Annexure-A4). There are several other orders of the Tribunal to that effect. Therefore he submits that he is entitled to the relief sought by him

in the present OA.

5. The respondents have filed a reply statement in which they have corroborated the fact that the deceased Smt.S.Padma was appointed as LDC in lieu of combatant service in December 1983 and was then transferred to MES as Civilian LDC w.e.f. 11.12.1985. As per clarification issued by the Army Head Quarters vide letter dated 7.3.2008(Annexure-R1), the services rendered in lieu of combatant could not be counted for the purpose of MACP. The applicant's contention of non-grant of 2nd ACP is not agreed to as his wife Smt.S.Padma has already been granted 2nd ACP in the pay scale of Rs.5000-8000 w.e.f. 13.12.2007 and following the 6th CPC, her pay was revised with GP Rs.4200/-. However, at the time of audit of service book of deceased official, it was pointed out that ACP granted taking into account of previous service is not in order. Since the regular appointment of Late Smt.S.Padma starts from 11.12.1985, 3rd MACP was due only on completion of 30 years of service i.e. in December 2015 and since she died, grant of 3rd MACP could not be considered.
6. They have also submitted that the 4th respondent has not received any pension claim papers in respect of Smt.S.Padma, UDC. However, the unit has submitted service book along with the statement of case in respect of Late Smt.S.Padma for approval of pay fixation pertaining to 6th CPC and subsequent grant of ACP. They have also mentioned that as per condition No.9 of Annexure-I of MACP Scheme(Annexure-R2), the regular service shall commence from the date of joining of a post in direct entry grade on a regular basis and service rendered on adhoc/contract basis shall not be taken into reckoning. They mentioned that in a similar case, the Hon'ble High Court of Patna vide its order dated 8.8.2016 in CWJC No.3071/2016 set aside the

order of the Tribunal and dismissed the Original Application(Annexure-R3). They have also mentioned that this Tribunal in order dated 24.6.2016 in OA.No.1226/2015 filed by Sri Mohan R Arbinawadi vs. UOI & Ors. also held that service rendered on adhoc basis before regular employment shall not be taken into reckoning for grant of MACP benefit.

7. The respondents further submit that the applicant's wife is eligible for 2nd MACP benefits w.e.f. 1.9.2008 and 3rd MACP w.e.f. 11.12.2015. However, she expired on 9.4.2015 before the due date of 3rd MACP. They submit that as per GE(N) Bangalore PTO No.38 dt.22 Sept 2014 Late S.Padma was granted 3rd MACP in the Pay Band II 9300-34800 with Grade Pay 4600 based on the HQ letter No.50101/4/MACP/3785/EIB(R-DPC) dated 21 August 2014 and CWE(Army) Bangalore letter No.11004/MACP/SUB/108/EIR dated 23 Sept 2014 which was subsequently amended vide 150101/MACP/7016/E1B (R-DPC) by PCDA Bangalore vide letter No.Pay/Tech/Gen/Corr dated 03 Oct 2016, the same was amended vide CE SC Pune letter No.150101/MACP/7016/E1B (R-DPC) dated 27 Jan 2017. In the meanwhile PCDA Bangalore was approached by GE (N) Bangalore for the subject case, resultantly PCDA Bangalore approval was accorded vide letter No.PAYTECH/PAYFIX/TD dated 25 Jan 2017 4200 GP which was sanctioned as special case since individual expired during service drawing 4200/- GP and the same is submitted as Annexure-R7.
8. The respondents submitted that they have prepared all the ground works and kept ready all the pension documents for submission to competent audit authorities after the receipt of the final approved pay fixation from PCDA Bangalore through GE(North) Bangalore.

9. Heard the Learned Counsel for the parties. The Learned Counsel for the applicant while reiterating the submission made in the OA referred to a judgment of this Tribunal which was upheld by the Hon'ble High Court of Karnataka wherein it was held that service in lieu of combatant should be counted for the purpose of ACP/MACP. During the hearing, the Learned Counsel for the applicant produced a copy of the appointment order in which several individuals were appointed as temporary LDC in lieu of Combatant and in which late Smt.S.Padma also figures. He mentioned that Sri R.Parthasarathy at Sl.No.22 and Sri V.Ramaiah at Sl.No.7 below Sri S.Padma were parties in the earlier OA before this Tribunal which was allowed and was upheld by the Hon'ble High Court. He mentioned that the said two persons have already been granted necessary reliefs. Accordingly, Smt.S.Padma is also entitled to the similar relief as already allowed by respondents to two other persons who are appointed vide the same appointment order and under the same terms and conditions.
10. The Learned Counsel for the respondents reiterated the submission made in the reply statement and quoted another order passed by this Tribunal and also an order of Hon'ble High Court of Patna wherein counting of ad-hoc service was not allowed to be considered for MACP benefits in the context of para-9 of MACP guidelines. He also referred to 7th respondent's communication wherein the Principal Controller of Defence Accounts had agreed to allow Grade Pay Rs.4200 under ACP and it was sanctioned in favour of the deceased Smt.S.Padma w.e.f. 13th Dec 2007.
11. We have carefully considered the facts of the case and submissions made by either side. It seems that the respondents had initially sanctioned the ACP benefits to the deceased Smt S.Padma, but subsequently had issued a

clarification saying that the same is not permissible. Again they have agreed to allow ACP benefits in the Grade Pay Rs.4200 w.e.f. 13.12.2007 as evident from communication dated 25.1.2017 of the Principal Controller of Defence Accounts(Annexure-R7). As mentioned by both sides, on this present issue there are two different decisions of the Tribunal. The order of the Madras Bench of the Tribunal which was upheld by the Madras High Court for reckoning adhoc service for the purpose of ACP. The MACP guidelines did not permit such reckoning of adhoc service towards regular service for grant of MACP benefits. Based on this premise, this Tribunal had dismissed the OA.No.1226/2015. Similar observation was also made by the Patna High Court. However, this Tribunal while making reference to the orders of other Tribunals has allowed the said benefits which was upheld by the Hon'ble High Court of Karnataka in WP.No.61185/2016 and connected WPs. The said order also refers to the decision of the Madras Bench of the Tribunal as well as Madras High Court and Apex Court. As pointed out by the Ld.Counsel for the applicant, two other persons namely Sri R.Parthasarathy and Sri V.Ramaiah who were appointed along with Smt.S.Padma in the same appointment order have already been given benefits under ACP and MACP by respondents counting the adhoc services rendered in lieu of combatant. Therefore, we are inclined to hold that late Smt.S.Padma would also be entitled to similar benefits as has been allowed to Sri R.Parthasarathy and Sri V.Ramaiah who were appointed along with her in the same order.

12. On detailed consideration of the facts and circumstances of the case, we direct the respondents to issue necessary orders granting necessary benefits under ACP/MACP which have been allowed to Sri R.Parthasarathy and Sri V.Ramaiah, to late Smt.S.Padma. This will be done within a period of one(1)

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month from the date of receipt of copy of this order. We further direct the respondents to grant the pensionary benefits to the legal heirs of the deceased employee Smt.S.Padma within a period of two(2) months thereafter.

13.The OA is disposed of in terms of the aforesaid direction. No order as to costs.

(P.K.PRADHAN)
MEMBER (A)

(JUSICE HARUN UL RASHID)
MEMBER (J)

/ps/

Annexures referred to by the applicant in the OA.170/00970/2016

Annexure-A1: Copy of Part-II order dtd:22.9.2014
Annexure-A2: Copy of the letter dtd:23.7.2015
Annexure-A3: Copy of the letter dtd:3.10.2016
Annexure-A4: Copy of the order dtd:6.1.2016 in OA.No.1008-1043/2015

Annexures with reply statement:

Annexure-R1: Clarification dtd:7.3.2008 with typed copy
Annexure-R2: OM dtd:19.5.2009
Annexure-R3: Copy of the order passed by High Court of Patna in CWJC
No.3071/2016
Annexure-R4: Copy of the order passed by the Tribunal in OA.No.1226/2015
Annexure-R5: Copy of the order passed by the Tribunal in RA.No.70/2016
(OA.No.1226/2015)
Annexure-R6: Frequently Asked Questions
Annexure-R7: Letter dtd:25.1.2017

Documents supplied by the applicant:

Document No.1: High Court of Karnataka order dtd.2.3.2017 in WP.No.61185/2016
and WPs.No.9235-9269/2017(S-CAT)(running 17 pages)

Documents supplied by the respondents:

Document No.1: Appointment order of the applicant
