

OA.No.170/01010/2016/CAT/Bangalore Bench
**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO. 170/01010/2016

DATED THIS THE 02nd DAY OF MARCH, 2018

HON'BLE DR.K.B. SURESH, MEMBER (J)
HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

MES No.181393
J.Kameshwara Rao
S/o.Late J.Sathya Rao
Aged 60 years
R/o.Q.No.554/3
CE(AF) Complex
Goruguntepalya
Yaswanthpur
Bengaluru-560022.

... Applicant

(By Advocate Shri N.G.Phadke)

Vs.

1. The Union of India
Represented by the Secretary
Ministry of Defence
South Block
New Delhi-110 001.
2. The Engineer-in-Chief
Army Head Quarters
Kashmir House
Rajaji Marg
New Delhi-110011.
3. The Chief Engineer(AF)
No.2, D.C.Area
M.E.S.Road
Yashwanthpur
Bangalore-560 022.
4. Ministry of Personnel
Public Grievances and Pensions
(Dept. of Personnel and Training)
Govt. of India, North Block
New Delhi-110 001.
Represented by its Secretary.

...Respondents

(By Advocate Shri M.Rajakumar for R1 to 4)

ORDER

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

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

- i. Quash the decision conveyed in the letter No.CRO/20/AE/ACP 02/PF-II(A) 25.07.2016 at Annexure:A-7 of the Asst.Director (Admn), Central Record Office (Officers), PIN:900 106, C/o.56 APO, in so far as the applicant is concerned;*
- ii. Quash the amendment letter No.B/41028/ACP/AEs/JEs/E1 (DPC) dated 17.12.2014 at Annexure:A-8 of the Director General (Pers)/E1 (DPC), MES, issued under the authority & approval of the II-respondent, in so far as the applicant is concerned;*
- iii. Direct the I & II-respondents to grant the II-ACP & III-MACPs benefit to the applicant from the due dates in the appropriate pay scales with all the consequential benefits;*
- iv. Direct the I, II & IV-respondents to finalise the pension & the other terminal benefits payable to the applicant, within a period of 3 months from the date of the disposal of the OA by ignoring the letter of instructions dated 19.07.2016 at Annexure:A-6 in the interest of justice.*

2. The applicant who is a diploma holder joined the Military Engineer Service on 01.10.1977 as Superintendent (B/R) Gr.II. He was in the pay scale of Rs.2000-3500 as on 31.12.1995. Following the 5th Pay Commission recommendation, the said pay scale was revised to Rs.6500-200-10500 w.e.f. 01.01.1996 and accordingly the applicant's pay was fixed at Rs.7100/- in the said pay scale(Annexure-A1). The posts of Superintendent (B/R) Gr.II & I were merged and re-designated as Junior Engineer(Civil) w.e.f. 09.07.1999. According to the applicant, for a diploma holder Junior Engineer in MES to get promotion to the

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post of Asst.Engineer, he was required to pass MES procedure
examination, which is the educational qualification fixed for such
a promotion. The applicant had passed the said examination on
30.06.2003 and accordingly, he was promoted as
Asst.Engineer(Civil) by an order of promotion-cum-postings
dtd.24.01.2005.

3. The applicant submits that vide order dtd.14.3.2007(Annexure-A2), a decision was taken to grant II-ACP benefits w.e.f. 09.08.1999 to the diploma holder Junior Engineers who have completed 24 years of service between 09.08.1999 to 10.07.2004 by relaxing the prescribed educational qualification in recruitment rules for ACP purpose only and not for actual promotion. Thereafter vide order dtd.07.09.2009, the 2nd respondent granted 2nd financial upgradation to the applicant under ACP Scheme in the scale of Rs.10000-325-15200(Pre-revised) and the date of grant of 2nd ACP benefits to the applicant was fixed on 03.10.2001 i.e on completion of 24 years of service(Annexure-A3). Thereafter vide order dtd.01.09.2010, the said benefit was granted to the applicant(Annexure-A4). The applicant retired on superannuation w.e.f. 30.06.2016. Thereafter, the 3rd respondent had forwarded papers relating to the pension/gratuity claims of the applicant to CRO(Officers) C/o.56 APO on 11.08.2015(Annexure-A5). However, the CRO(Officers) has returned the pension papers of the applicant on 19.07.2016 stating that the 2nd ACP benefits given to the applicant has been cancelled by the 2nd respondent and as such

the last pay drawn by the applicant is not in order. They also enclosed a copy of the amendment order dtd.17.12.2014 asking the units/formation concerned to effect recovery of the amount due to such cancellation of benefits(AnnexureA8).

4. The applicant submits that he was not given opportunity of being heard by the 2nd respondent before cancelling the 2nd ACP upgradation w.e.f. 03.10.2001. Moreover, since he did not get any promotion on completion of 24 years of service, his pay scale ought to have been upgradated to the next pay scale of Rs.10000-325-15200 and thereafter he would have been granted 3rd MACP on 01.09.2008 on completion of 30 years of regular service. Since, the same has not been granted, the applicant has filed the present OA seeking the relief as mentioned earlier.

5. The respondents in their reply statement have submitted that passing of MES Procedure Exam is a prerequisite for grant of promotion to the next post in the hierarchy i.e., Assistant Engineer in terms of clarification No.16 issued vide DOPT OM dtd.10.02.2000(Annexure-R1) and clarification No.53 of DOPT OM dtd.18.07.2001(Annexure-R2). Therefore, to become eligible for grant of 1st ACP in the scale of Assistant Engineer, the applicant has to pass MES Procedure Examination. Since the applicant has passed the MES Procedure Exam on 30.06.2003, he is eligible for grant of 1st ACP w.e.f. 30.06.2003 only and not from any other previous date. The applicant shall be eligible for

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2nd ACP only after 12 years from the date he became eligible for 1st ACP. They further referred to DOPT OM dtd.9.8.1999(Annexure-R3) saying that if the first upgradation gets postponed on account of the employee not found fit or due to departmental proceedings, etc. this would have consequential effect on the second upgradation which would also get deferred accordingly.

6. According to the respondents, the OM dtd.14.03.2007(Annexure-A2) is only for one time relaxation in educational qualification. Since passing of MES Procedure Exam is an essential qualification for promotion to next rank, the 2nd ACP granted to the applicant w.e.f. 03.10.2001 was erroneous and accordingly it was corrected by the competent authority vide letter dtd.17.12.2014. The applicant cannot claim parity with all other individuals who have passed the exam prior to introduction of ACP scheme in 1999. The mistake of granting ACP erroneously came to notice in 2014 and hence it was cancelled by the respondents. This fact was escaped notice while forwarding the pension papers. This was noticed by CRO(O), New Delhi and hence returned the papers for taking corrective measures.

7. The respondents further submitted that the applicant got 1st ACP w.e.f. 30.06.2003 and promotion as Assistant Engineer w.e.f. 24.01.2005. He is due for 3rd MACP w,e,f, 30.06.2013 i.e. completion of 10 years from the date of grant of earlier financial

upgradation. However, the case was held up due to stay on the operation of letter dtd.25.07.2016 by this Tribunal by way of interim order. Regarding the contention of the applicant that he was not given opportunity for being heard, the respondents submit that cancellation of 2nd ACP erroneously granted to the applicant was as per Govt. policy. Hence the Government is correct by cancelling the letter dtd.07.09.2009 by subsequent letter dtd.17.12.2014. There is no specific requirement of hearing the applicant, when department needs to correct its own mistakes as per Govt. order.

8. The applicant has filed a rejoinder in which he submitted that the respondents have accepted the ACP scheme in place of existing time bound pay promotional scheme in respect of Junior Engineers by order dtd.23.01.2002(Annexure-A9). The 1st respondent with the concurrence of DOPT superseded the letter dtd.23.01.2002 by communication dtd.22.03.2007(Annexure-A10). The decision taken by the respondents with the concurrence of the DOPT has not been withdrawn and hence the applicant is entitled to get 2nd ACP benefit in the pay scale of Rs.10000-15200 w.e.f. 03.10.2001 when he completed 24 years of regular service without any promotion. Further passing of MES Procedure Examination is not an essential qualification for getting higher pay scale under ACP Scheme as it is granted on personal basis and does not amount to functional/regular promotion. Hence, grant of 2nd financial upgradation vide order dtd.07.09.2009 w.e.f. 03.10.2001 is in order and hence

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subsequent order dtd.17.12.2014 cancelling the grant of 2nd ACP
benefits to the applicant is illegal and unjustified.

9. The applicant further mentioned that the clarification No.16 under OM dtd.10.02.2000 and 18.07.2001 at Annexures-R1 & R2 respectively is not applicable to the case on hand in view of specific and particular decision taken by the 1st respondent at Annexures-A2, A9 & A10. Therefore, the applicant contended that he is entitled to the relief sought by him.

10. The respondents have filed additional reply statement followed by additional rejoinder filed by the applicant virtually reiterating the submissions made by them earlier in the reply statement as well as rejoinder.

11. We have heard the Learned Counsel for both the parties. The Learned Counsel for the applicant while highlighting the submission made in the OA and rejoinder referred that this Tribunal in an earlier order dtd.25.11.2002 in OAs.No.540, 595-634/2002 had taken the view that the 2nd upgradation under the ACP scheme is in no way related to the recruitment rules for promotion to the higher cadre. The same view was also taken by the Jodhpur Bench of this Tribunal in its order dtd.20.08.2010 in OA.No.149/2008. Therefore, he submits that the applicant is entitled to the ACP benefits on completion of 24 years of service and MACP benefits on completion of 30 years of regular service.

12. The Learned Counsel for the respondents, on the other hand, while highlighting the submission made in the reply statement stated that under ACP, the applicant is entitled to the higher pay scale meant for Assistant Engineer and hence he is entitled to meet the requisite criteria meant for promotion to the said post. Therefore, passing of MES Procedure Examination is an essential ingredient for getting ACP benefit. When a query was made as to whether the OM dtd.14.03.2007 which was issued in consultation with the DOPT has since been reversed or withdrawn, the Ld.Counsel stated that there is no order to that effect and the OM dtd.14.03.2007 stands. However, he emphasized the fact that the applicant is entitled to get ACP benefit only from the date he passed the MES Procedure Examination and not before that. Hence, the respondents had to cancel the earlier order granting ACP benefit from 2001 which is found to be erroneous. Therefore, the action of the respondents is strictly in accordance with the rules.

13. We have carefully considered the facts of the case and the submissions made by either side. The Learned Counsel for the respondents subsequently had provided the recruitment rules as well as the communication dtd.21.02.2006 which has been referred to in OM dtd.14.03.2007 and some more details. The only issue that has to be considered in the present OA is whether the passing of MES Procedure Examination is an essential ingredient for getting financial upgradation under

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Assured Career Progression(ACP) scheme specially in the
context of the OM dtd.14.03.2007 issued by the respondents.

14.It appears from the recruitment rules that the post of Assistant
Engineer(Civil) and the criteria for promotion has been
mentioned as follows:

Promotion:

Junior Engineer (Civil) (Erstwhile Superintendent Building and Roads Grade-I), in the revised pay scale of Rs.5500-9000 with three years regular service in the grade in the case of Civil Engineering Degree Holders from a recognized University or equivalent or seven years of regular service in the grade in the case of Civil Engineering Diploma Holders from a recognized Institute or University or equivalent;

and

Having passed the Military Engineer Services Procedure Examination.

Failing which

Junior Engineer (Civil) (Including Erstwhile Superintendent Building and Roads Grade-II) in the revised pay scale of Rs.5000-8000 with six years regular service in the grade in the case of Civil Engineering Degree Holders from a recognized University or equivalent or 10 years of regular service in the grade in the case of Civil Engineering Diploma Holders from the recognized Institute or University or equivalent;

and

Having passed the Military Engineer Services Procedure Examination.

Note: Where juniors who have completed their qualifying or eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of requisite qualifying or eligibility service by more than half of such qualifying or eligibility service or two years, whichever is less and have successfully completed their probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying or eligibility service.

15. The ACP scheme had been introduced by the Government of India following the 5th Pay Commission recommendation which was adopted by the respondent department in respect of Supdts. B&R/Redesignated as JEs vide order dtd.23.01.2002 in place of existing time bound pay promotion scheme. The condition of grant of benefit under ACP scheme specified that financial upgradation shall be granted subject to fulfillment of prescribed conditions. This according to the respondents stipulates passing of departmental examination and meeting the prescribed bench mark. The Memo dtd.14.03.2007 issued by the respondents reads as follows:

GRANT OF SECOND FINANCIAL UPGRADATION UNDER ACP SCHEME TO DIPLOMA HOLDER AE/JE (B/R & E/M)

1. Further to min of def letter no.85610/47/ACP/Supdt/CSCC/524/D (Works) dated 21 Feb.2006.
2. The case for the grant of 2nd ACP to the diploma holder Junior Engineer in MES who have completed 24 years of services between 09 Aug 1999 to 10 Jul 2004 was under consideration of MOD/DOP&T, DOP&T has cleared the case keeping in view of the specific anomalous situation, educational qualification in RRs have been relaxed by them only for ACP purpose, no relaxation in educational qualification in any case should be considered for actual promotion etc.
3. The competent authority has therefor decided to grant 2nd ACP w.e.f. 09 Aug 1999 to all eligible diploma/degree holders who have completed 24 years of eligibility

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service.

4. In view of above it is requested to forward fresh eligibility list of JEs/AEs for grant of 2nd ACP as already asked vide this HQ letter No:B/41025/ACP/AEs/JEs/2006-07/E1(DPC-1) dated:20 Dec 2006.

16.The earlier Memo dtd.21.02.2006 referred to by the said letter reads as follows:

Consequent to promulgation of revised, IDSE rules vide SRO 95 of 10th July 2004, the diploma holder AEs who have been promoted after 09 July 1991 will be eligible for grant of second ACP in the pay scale of rs.10000-325-15200 w.e.f. the date of publication of the notification viz 10th July 2004 subject to fulfilling the necessary eligibility criteria including 24 years regular service.

2. The Govt. of India letter No.85610/47/ACP/SUPDTS/236/D(Works) dated 23 Jan 2002 stands amended accordingly. In all other respects the provisions of Govt. of India, Ministry of Defence letter No.85610/47/ACP/SUPDTS/236/D(Works) dated 23 Jan 2002 will remain the same.

3. This issues with the concurrence of Ministry of Defence(Finance) U.O.No.04/F/W-I/06 dated 16.02.06 and DOP&T U.O.No.7520/US(Estt-D)/05 dated 30.09.05.

Sd/-

(Rosy Sharma)

Deputy Secretary to the Govt.

of India

17.The respondents have taken the contention that the communication dtd.14.03.2007 only mentioned about relaxation of educational qualification i.e. from degree to diploma. However, it seems that as per recruitment rules both degree holders and diploma holders are entitled for promotion to the

post of Asst.Engineer and also to the grade of Executive Engineer after completing certain number of years of service. Hence, the relaxation given by the respondents in consultation with the DOPT cannot amount to indicate a relaxation from degree to diploma since the diploma holders are also held eligible for being considered for promotion to both Executive Engineer and Asst.Engineer. Only the number of years in case of degree and diploma holders varies. The only other condition was Military Engineer Service(MES) Procedure Examination. Moreover para-3 of the said communication of March,2007 indicates that the competent authority had decided to grant 2nd ACP to all eligible diploma/degree holders who have completed 24 years of eligibility service. This should only mean that the relaxation would only relates to passing of Military Engineer Service Procedure Examination and that too for officials who have completed 24 years of service between August, 1999 to July 2004. Moreover it should be noted that this memo specified that this relaxation is meant only for grant of financial upgradation under ACP scheme and not for regular promotion. We also note that this OM has not been recalled or substituted by any further order. Therefore, we are inclined to accept the contention of the applicant that passing of Military Engineer Service Procedure Examination does not become an essential condition for granting of 2nd financial upgradation under ACP scheme for diploma holder Junior Engineers. We also taken note of the earlier view taken by the Jodhpur Bench of this Tribunal in order dtd.20.08.2010 in OA.No.149/2008 wherein it

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was held that passing of MES Procedure Examination is not
essential to become entitled for 2nd financial upgradation under
ACP.

18. The issue of grant of 3rd MACP benefit has also been raised by the applicant. According to the applicant, he is entitled to get 3rd MACP w.e.f 01.09.2008 on completion of 30 years of regular service which has not been granted to him. The respondents, on the other hand, taken the contention that the applicant would be eligible for grant of 3rd MACP only after completion of 10 years from the date of grant of last upgradation under ACP scheme. The Modified Assured Career Progression scheme which was introduced in place of earlier ACP scheme following the 6th Pay Commission recommendation has envisaged three financial upgradations counting from the direct entry grade on completion of 10, 20 & 30 years of service respectively. Para-28(C) of the MACP scheme mentioned as follows:

28(C): If a Government servant has been granted either two regular promotions or 2nd financial upgradation under the ACP Scheme of August, 1999 after completion of 24 years of regular service, then only 3rd financial upgradation would be admissible to him under the MACPS on completion of 30 years of service, provided that he has not earned third promotion in the hierarchy.

19. Therefore, there is no ambiguity to the fact that a person is entitled to 3rd financial upgradation under MACP on completion of 30 years of service if he is not given 3rd promotion in the hierarchy. The stipulation of 10 years from the date of last upgradation come into play only when a person get 2nd financial upgradation on promotion before completion of 20 years. In fact

in the case of DR Assistant/ DR Grade 'C' Stenographers who have got Non-Functional Grade, the DOPT had clarified in the OM dtd.12.04.2010 that they are entitled to get 3rd financial upgradation on completion of 30 years of continuous service or on completion of 10 years of stagnation in a single grade pay, whichever is earlier. Therefore, there is absolutely no ambiguity to the fact that a person shall be entitled to 3rd MACP benefit on completion of 30 years of regular service and the contention of the respondents that a person will be allowed 3rd financial upgradation only after completion of 10 years from the date of last financial upgradation even though he had already completed 30 years of service is erroneous and unjustified.

20. Therefore, on detailed consideration of facts and circumstances of the case and in the light of the discussion in the preceding paras, we hold that the applicant is entitled to get 2nd ACP benefit on completion of 24 years of regular service i.e from 03.10.2001 which was actually given to him earlier vide order dtd.07.09.2009. Therefore, subsequent action of the respondents to cancel that benefit is wrong and unjustified and the same is quashed. The respondents are directed to restore the 2nd financial upgradation granted to the applicant earlier vide order dtd.07.09.2009. We also hold that the applicant is entitled to 3rd financial upgradation under MACP on completion of 30 years of regular service subject to fulfillment of stipulation under MACP guidelines.

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21. The OA is therefore allowed. The respondents are directed to restore the benefit of 2nd ACP issued earlier and grant 3rd MACP including fixation of his pension. They shall also sanction his pension and other terminal benefits on the basis of revision of his pay in terms of the above. This shall be done within a period of three(3) months from the date of receipt of a copy of this order. No order as to costs.

(P.K. PRADHAN)
MEMBER(A)

(DR. K.B. SURESH)
MEMBER (J)

/ps/

Annexure-A1: Statement of fixation of pay of the applicant dated 19.02.1998
Annexure-A2: Decision dated 14.03.2007 as to grant of II-ACP benefits to the
Diploma Holder AE/JE(B/R)& E/M)
Annexure-A3: Amendment to effective date of grant of II-ACP benefits dated
07.09.2009
Annexure-A4:Part-II order dated 01.09.2010
Annexure-A5: Pension papers forwarding letter dated 11.08.2015
Annexure-A6: Letter returning pension papers dated 19.07.2016
Annexure-A7: Letter dated 25.07.2016 conveying decision to cancel the II-ACP
benefits
Annexure-A8: Amendment order dated 17.12.2014 as to II-ACP benefits

Annexures with reply statement:

Annexure-R1: Copy of DOPT OM dtd.10.02.2000
Annexure-R2: Copy of DOPT clarification dtd.18.07.2001
Annexure-R1: Copy of DOPT OM dtd.09.08.1999

Annexures with rejoinder:

Annexure-A9: Letter of the 1st respondent dtd.23.01.2002
Annexure-A10: Letter of the 1st respondent dtd.22.03.2007

Annexures with additional reply statement:

-NIL-

Annexures with additional rejoinder:

-NIL-
