

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
ORIGINAL APPLICATION NO.060/00202/2017

**Chandigarh, this the 16th day of August, 2018
(Reserved on 06.08.2018)**

...
**CORAM:HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. AJANTA DAYALAN, MEMBER (A)**

- ...
1. Ashok Paul s/o Sh. Piare Lal, TG-II, Age about 58 years.
 2. Jai Kumar s/o Sh. Nar Singh, TG-II, Age about 53 years.
 3. Lochan Dutt s/o Sh. Dhan Raj, TG-IV, age about 49 years.
 4. Sukhdev s/o Sh. Joundu Ram, TG-IV, age about 51 years.
 5. R.K. Chopra s/o Sh. S.C. Chopra, UDC age about 62 years.
 6. Swatam Dass s/o Sh. Kirpa Ram, UDC, age about 62 years.
 7. R.K. Bedi s/o Sh. J.N. Bedi, A. Lib Age about 63 years.
 8. Ramesh Singh s/o Sh. Balwant Singh, Stenographer, age about 61 years.
 9. Nirmal Singh s/o Sh. Laxman Dass, Steno, age about 62 years.
 10. Dhood Nath s/o Sh. Chhangu Ram, Mali, age about 51 years.
 11. Aman Verma s/o Sh. Tarlok Nath, TG-1, age about 41 years.
 12. Balwinder Singh s/o Sh. Tarsem Singh, TG-II, age about 55 years.
 13. Raj Kumar s/o Sh. Des Raj TG-IV age about 54 years.
 14. Amrik Kumar s/o Sh. Amar Chand, Storekeeper, age about 59 years.
 15. Chaman Lal s/o Bahadur Chand, LDC, age about 62 years,
 16. Raj Kumar s/o Sh. Roshan Lal, MTS, age about 55 years.
 17. Jaspal Singh s/o Sh. Avtar Singh, Draftsman, age about 43 years.
 18. R.S. Sandhu s/o Sh. Mohinder Singh, Draftsman, age about 61 years.
 19. Harish Chander s/o Sh. Kanta Parshad, TG-IV, age about 48 years.
 20. Mahabir Prasad s/o sh. Manohar Pal, TG-IV, age about 54 years.
 21. Ashwani Kumar s/o Sh. Tarsem Pal, TG-I, age about 41 years.
 22. Sangat Ram s/o sh. Sadhu Ram, LDC, age about 52 years.
 23. Bhola Nath s/o Sh. Ram Lubhaya, MTS, age about 57 years.

All are working and retired from Group 'C' & 'D' post from Central Institute of Hand Tools (CIHT) G.T. Road, bye Pass, Jalandhar.

....Applicants

(Present: Mr. Rohiteshwar Singh, Advocate)

Versus

1. Union of India through its Additional Secretary & Development Commissioner, Ministry of Micro, Small & Medium Enterprises-cum-Chairman, Central Institute of Hand Tools, 7th floor, Nirman Bhawan, New Delhi.
2. The Principal Director, Central Institute of Hand tools (CIHT), G.T. Road, bye Pass, Jalandhar.

.....

Respondents

(Present: None for Resp. No. 1

Ms. Upasana Dhawan, counsel for Resp. No. 2)

ORDER

SANJEEV KAUSHIK, MEMBER (J)

1. Applicants are aggrieved against the orders dated 01.07.2014 (Annexure A-6) and dated 02.06.2016 (Annexure A-9) whereby their request for grant of 2nd financial upgradation under MACP Scheme w.e.f. 01.09.2009 has been rejected by the respondents.
2. The facts, which led to the filing of this case, are not in dispute.
3. The sole issue, raised by the applicants, before this Court, by way of the present O.A., is that they are entitled for grant of 2nd financial upgradation under MACP Scheme w.e.f. its operational date i.e. 01.09.2008, or from the date when it was approved by the respondent institution. Concededly, the applicants were granted 1st financial upgradation under ACP Scheme, on acceptance of recommendations of 5th Central Pay Commission (in short CPC). After introduction of 6th CPC, the earlier ACP Scheme was superseded by a new Scheme called MACP Scheme whereby three financial upgradation are allowed in service career of those who do not get promotion or are facing stagnation in service. The said scheme was introduced vide O.M. dated 09.05.2009 and was made applicable w.e.f. 01.09.2008. The respondents while giving 2nd financial upgradation under ACP Scheme allowed the benefit w.e.f. 01.01.2014. Aggrieved by the aforesaid action of the respondents

in not giving them the benefit of 2nd financial benefits under MACP Scheme w.e.f. 01.09.2008, the applicants are before this Court.

4. The respondents by filing written statement submitted that in terms of Clause 14 of MACP Scheme, It is directly applicable to the Central Govt. Civilian Employees only w.e.f. 01.09.2008, and not to the employees of Central autonomous/statutory bodies under the administrative control of any ministry or department. They are required to pass a resolution for adopting the Scheme and take a conscious decision regarding the date of its effect. It is submitted that the matter was taken up by the respondent institution for grant of benefit of MACP in its 56th/30th meeting held on 23.09.2013, and informed that that they are not taking any budgetary support for their recurring expenses and in future, from the Govt. of India, and extend the MACP benefit to the CIHT, Jalandhar also. In view of the aforesaid, a resolution was passed that the benefit of MACP would be extended to its employees w.e.f. 01.01.2014, instead from the date it was granted to the Central Govt. Employees, vide letters dated 17.12.2013 and 01.07.2014 (Annexure R-4 and R-5).

5. We have heard learned counsel for the parties and carefully examined the respective pleadings, available on record, with their able assistance.

6. Clause 14 of the MACP Scheme, which is relevant for adjudication of the issue in hand, is reproduced hereunder:-

“The MACP is directly applicable only to Central government civilian employees. It will not get automatically extended to employees of Central Autonomous/Statutory Bodies under the administrative control of a Ministry/Department. Keeping in view the financial implication involved, a conscious decision in this regard shall have to be taken by the respective Governing Body/Board of Directors and the administrative Ministry concerned and where it is proposed to adopt the MACPs, prior concurrence of Ministry of Finance shall be obtained.”

7. A perusal of the above makes it clear that the scheme of MACP was directly applicable only to the civilian employees of Central Govt. and its benefits will not get automatically extended to employees of Central Autonomous/Statutory Bodies under the administrative control of a Ministry/Department. And, keeping in view the financial implications involved, a conscious decision is required to be taken by the respective Governing Body/Board of Directors with regard to its applicability. Since it is for the concerned department to take a conscious decision to adopt the Scheme, therefore, the respondents, in their meeting held on 23.09.2013, decided to grant the benefit of financial upgradation under MACP Scheme w.e.f. 01.01.2014, and accordingly the benefit was extended to the applicants. The contents of the relevant letter dated 01.07.2014 (Annexure R-5) are reproduced hereunder:-

“Sub: Extension of MACP Scheme to the employees of CIHT, Jalandhar.

Sir,

Please refer to our letter No. CIHT/JAL/ADMN/2226/2346 dated 17.12.2013 on the above mentioned subject.

The proposal for extending the MACP Scheme to the employees of CIHT Jalandhar has been examined.

The Competent Authority after keeping in the view the fact that CIHT, Jalandhar has achieved sustainability during the year 2012-13 has approved extension of MACP scheme to the employees of CIHT, Jalandhar w.e.f. 01.01.2014 with the condition that entire expenditure on this account would be borne by CIHT out of its own resources.

As regards payment of arrears, it has been decided that no arrears of MACP will be payable and the benefits will accrue only prospectively.”

8. Apparently, the respondents acted in accordance with the rules on the subject and took a decision regarding adoption of MACP Scheme and its effective date, taking into consideration the financial implications. Learned counsel for the applicants is not able to cite any law invalidating the aforementioned rule formation, or cut-off date adopted by the respondents, which is in accordance with law. The Hon'ble Apex Court has held in the case of

Government of Andhra Pradesh and Ors, Vs. N. Subbarayudu

and Ors 2008 (14) SCC 702 as under :

"5. In a catena of decisions of this Court it has been held that the cut-off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. This Court is also of the view that fixing cut-off dates is within the domain of the executive authority and the court should not normally interfere with the fixation of cut-off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary. (See *State of Punjab Vs. Amar Nath Goyal*, 2005(6) SCC 754)

6. No doubt in *D.S. Nakara Vs. Union of India* 1983(1) SCC 305 this Court had struck down the cut-off date in connection with the demand of pension. However, in subsequent decisions this Court has considerably watered down the rigid view taken in *Nakara* case as observed in para 29 of the decision of this Court in *State of Punjab Vs. Amar Nath Goyal*.

7. There may be various considerations in the mind of the executive authorities due to which a particular cut-off date has been fixed. These considerations can be financial, administrative or other considerations. The court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut-off date. The Government must be left with some leeway and free play at the joints in this connection.

8. In fact several decisions of this Court have gone to the extent of saying that the choice of a cut-off date cannot be dubbed as arbitrary even if no particular reason is given for the same in the counter-affidavit filed by the Government (unless it is shown to be totally capricious or whimsical), vide ***State of Bihar vs. Ramjee Prasad*** 1990(3) SCC 368, ***Union of India Vs. Sudhir Kumar Jaiswal*** 1994(4) SCC 212 (vide SCC 5), *Ramrao vs. All India Backward Class Bank Employees Welfare Assn.* 2004(2) SCC 76 (vide para 31), ***University Grants Commission Vs. Sadhana Chaudary*** 1996(10) SCC 536, etc. It follows, therefore, that even if no reason has been given in the counter-affidavit of the Government or the executive authority as to why a particular cut-off date has been chosen, the court must still not declare that date to be arbitrary and violative of Article 14 unless the said cut-off date leads to some blatantly capricious or outrageous result.

9. As has been held by this Court in ***Aravali Gold Club Vs. Chander Hass*** 2008 (1) SCC 683 and in *Govt. of A.P. Vs. P. Laxmi Devi* 2008(4) SCC 720 the court must maintain judicial restraint in matters relating to the legislative or executive domain."

9. Examining the facts of the case, in the light of the relevant rule formation and the law declared by the Hon'ble Apex Court, we do not find any ground to interfere with the cut-off date chosen by the respondents. Therefore, the O.A., being devoid of any merit, is hereby dismissed. No costs.

(AJANTA DAYALAN)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 16.08.2018

'mw'