

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.Nos. 917, 932,942 & 943 of 2014

Cuttack this the 24th of August, 2018

CORAM:

THE HON'BLE SHRI A.K.PATNAIK, MEMBER(J)

THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

IN O.A.No.917 of 2014

William Kullu, aged about 51 years, S/o. late Marcus Kullu – at present working as Technical Officer-B (TO-B) in Proof & Experimental Establishment, Ministry of Defence, Chandipur-756 025, Dist-Balasore

...Applicant

By the Advocate(s)-M/s.S.K.Ojha

S.K.Nayak

-VERSUS-

Union of India represented through:

1. The Secretary, Ministry of Defence, South Block, New Delhi-110 001.
2. Department of Defence Research & Development, Ministry of Defence represented through its Secretary-cum-Director General, DRDO & Scientific Adviser to RakshyaMantri, DRDO Bhawan, RajajiMarg, New Delhi-110 105.
3. Director, Directorate Human Resource & Development, DRDO Bhawan, RajajiMarg, New Delhi-110 105.
4. Director, Directorate of Personnel, Room No.266, DRDO Bhawan, RajajiMarg, New Delhi-110 105.
5. Director, Proof & Experimental Establishment, Ministry of Defence, Chandipur-756 025, Dist-Balasore
6. Secretary, Ministry of Personnel, Public Grievances & pension (Department of Personnel & Training), 3rd Floor, LoknayakBhawan, Khan Market, New Delhi-110 003.

...Respondents

By the Advocate(s)-Mr.L.Jena

IN O.A.No.932 of 2014

BimalenduSekharSenapati, aged about 56 years, S/o. Bhudhar Chandra Senapati – at present working as Technical Officer-B (TO-B) in Proof & Experimental Establishment, Ministry of Defence, Chandipur-756 025, Dist-Balasore

...Applicant

By the Advocate(s)-M/s.S.K.Ojha

S.K.Nayak

-VERSUS-

Union of India represented through:

1. The Secretary, Ministry of Defence, South Block, New Delhi-110 001.
2. Department of Defence Research & Development, Ministry of Defence represented through its Secretary-cum-Director General, DRDO &

Scientific Adviser to RakshyaMantri, DRDO Bhawan, RajajiMarg, New Delhi-110 105.

3. Director, Directorate Human Resource & Development, DRDO Bhawan, RajajiMarg, New Delhi-110 105.
4. Director, Directorate of Personnel, Room No.266, DRDO Bhawan, RajajiMarg, New Delhi-110 105.
5. Director, Proof & Experimental Establishment, Ministry of Defence, Chandipur-756 025, Dist-Balasore
6. Secretary, Ministry of Personnel, Public Grievances & pension (Department of Personnel & Training), 3rd Floor, LoknayakBhawan, Khan Market, New Delhi-110 003.

...Respondents

By the Advocate(s)-Mr.L.Jena

IN O.A.No.942 of 2014

Manoj Kumar Das, aged about 54 years, S/o. late Biswanath Das - at present working as Technical Officer-B (TO-B) in Proof & Experimental Establishment, Ministry of Defence, Chandipur-756 025, Dist-Balasore

...Applicant

By the Advocate(s)-M/s.S.K.Ojha
S.K.Nayak

-VERSUS-

Union of India represented through:

1. The Secretary, Ministry of Defence, South Block, New Delhi-110 001.
2. Department of Defence Research & Development, Ministry of Defence represented through its Secretary-cum-Director General, DRDO & Scientific Adviser to RakshyaMantri, DRDO Bhawan, RajajiMarg, New Delhi-110 105.
3. Director, Directorate Human Resource & Development, DRDO Bhawan, RajajiMarg, New Delhi-110 105.
4. Director, Directorate of Personnel, Room No.266, DRDO Bhawan, RajajiMarg, New Delhi-110 105.
5. Director, Proof & Experimental Establishment, Ministry of Defence, Chandipur-756 025, Dist-Balasore
6. Secretary, Ministry of Personnel, Public Grievances & pension (Department of Personnel & Training), 3rd Floor, LoknayakBhawan, Khan Market, New Delhi-110 003.

...Respondents

By the Advocate(s)-Mr.L.Jena

IN O.A.No.943 of 2014

Keshab Chandra Mohanty, aged about 54 years, S/o. late DukhishyamMohanty – at present working as Technical Officer-B (TO-B) in Proof & Experimental Establishment, Ministry of Defence, Chandipur-756 025, Dist-Balasore

...Applicant

By the Advocate(s)-M/s.S.K.Ojha
S.K.Nayak

-VERSUS-

Union of India represented through:

1. The Secretary, Ministry of Defence, South Block, New Delhi-110 001.
2. Department of Defence Research & Development, Ministry of Defence represented through its Secretary-cum-Director General, DRDO & Scientific Adviser to RakshyaMantri, DRDO Bhawan, RajajiMarg, New Delhi-110 105.
3. Director, Directorate Human Resource & Development, DRDO Bhawan, RajajiMarg, New Delhi-110 105.
4. Director, Directorate of Personnel, Room No.266, DRDO Bhawan, RajajiMarg, New Delhi-110 105.
5. Director, Proof & Experimental Establishment, Ministry of Defence, Chandipur-756 025, Dist-Balasore
6. Secretary, Ministry of Personnel, Public Grievances & pension (Department of Personnel & Training), 3rd Floor, LoknayakBhawan, Khan Market, New Delhi-110 003.

...Respondents

By the Advocate(s)-Mr.L.Jena

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

These four OAs deal with similar facts and points of law and therefore, they are being disposed of through this common order.

2. The applicants in all the above mentioned OAs are working as Technical Officer 'B' in the Proof & Experimental Establishment at Chandipur, Odisha under the Ministry of Defence. They are aggrieved by the rejection of their claim for grant of 2nd financial upgradation under the Modified Assured Career Progression (MACP) Scheme. They have therefore, prayed for a direction to the respondents to extend the benefit of 2nd MACP by way of financial upgradation from the Grade Pay of Rs.4600 to Rs.5400/- as per various dates of their eligibility.

3. The applicants had initially joined as Junior Scientific Assistant (JSA), Gr.II and subsequently promoted as JSA, Gr.I. Thereafter, they were promoted as Senior Technical Assistant(STA). Further, they were promoted as Technical Officer-A and thereafter as Technical Officer-B. In view of merger of various posts to a single post on the recommendations of the 6th CPC, they were sanctioned the 1st financial upgradation from Rs.4200 to Rs.4600/. As per the

communication dated 05.06.2009 issued by the Respondents although the Grade Pay of Rs.4600 was upgraded to Rs.4800/- in respect of TO-A, the same was subsequently withdrawn. On completion of regular service the applicants became eligible for the 2nd MACP from Grade Pay of Rs.4600 to Rs.5400/-. The applicants' representation for the same were rejected vide A/5 on the following grounds.

"ACP Scheme promulgated in 1999 has not been made applicable to DRTC due to merit based promotion under limited flexible complementing scheme. After VIth CPC, the ACP scheme has been modified names as MACP Scheme. Hence it is not applicable".

Aggrieved by this, the applicants have approached this Tribunal praying for the reliefs as at Para-2 above.

4. The applicants have based their prayer mainly on the grounds that on completion of 20 years of regular services they have become entitled to 2nd MACP from Grade Pay of Rs.4600 to Rs.5400/- from the date(s) they became eligible. Therefore, the rejection of their representations vide Annexure-A/5 is illegal and arbitrary and contrary to the guidelines issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) vide Office Memorandum dated 19.05.2009 (A/3) and subsequent clarifications issued by the DOP&T for the grant of 2nd MACP. Denial of the same is in violation of the principles of natural justice.

6. The Respondents in their counter-reply have challenged the claim of the applicants. It is their contention that the applicants are working as TO-B in DRDO which is governed by DRDO Technical Cadre Rules 2000 (DRTC Rules). As per Rule-6 of the DRTC Rules, 2000, promotion from one grade to another grade in the Defence Research & Development Technical Cadre is made under the Flexible Complementing Scheme through assessment. As per Rule-7 of the

DRTC Rules, 2000, on promotion from one grade to the next higher grade, the post held by an individual in the lower grade stands upgraded automatically. The ACP Scheme was introduced on 09.08.1999 as per which officials in Group-B, C & D were eligible for 1st financial upgradation after completing 12 years of regular service without any promotion and for 2nd financial upgradation after 24 years of regular service with not more than one promotion. In respect of Group-A Central Services (Technical/Non-Technical), no financial upgradation under the Scheme was proposed on the ground that promotion in their cases must be earned. As per Para-2(iii) of Directorate of Manpower Planning & Development, R&D Headquarters, New Delhi letter No.DRDO/76213/Policy/MPD dated 01.09.1999, the ACP Scheme was not applicable to the posts covered by the Flexible Complementing Scheme or adhoc/contract/casual employees and those who have already got two regular promotions (including in situ promotions) in their career. MACP Scheme was introduced with effect from 01.09.2008 replacing the ACP Scheme providing financial upgradations on completion of 10/20/30 years of service. On 23.7.2014 the Directorate of HRD, DRDO Headquarters, New Delhi had clarified that similar to the practice followed for ACP, the MACP Scheme was not applicable to DRTC due to merit based promotion under Limited Flexible Complementing Scheme. The respondents have therefore contended that the claim of the applicants for grant of the benefit of 2nd MACP from Grade Pay of Rs.4600 to Rs.5400 is unsubstantiated and has been rightly rejected vide order under A/5. The applicants have already earned two promotions since their initial appointments. They have also earned financial upgradation from Grade Pay of Rs.4200 to Rs.4600/- by virtue of the Central Assessment under merit based Limited Flexible Complementing Scheme.

Based on the Directorate of HRD, DRDO Headquarters, New Delhi letter dated 22.12.2009 and the subsequent letter dated 23.7.2014 wherein it has been clarified that neither the ACP nor the MACP Scheme is applicable to DRTC due to merit based promotion under the Limited Flexible Complementing Scheme, the applicants are not entitled to the reliefs claimed by them as at Para-2 above.

6. We have heard the learned counsels from both the sides and perused the documents submitted by them. The issue to be decided in the present O.A. is whether the applicants are eligible for financial upgradation under the MACP Scheme as claimed by them. During the course of arguments, learned counsel for the applicants drew our attention to the order dated 25.05.2018 passed by a Division Bench of this Tribunal in O.A.No.1098 of 2014 in which one of us was also a Member. The said order was written by the Administrative Member relying on the judgment passed by the CAT, Bengaluru Bench dated 8.1.2016 in O.A.No.1020/2013 which was upheld by the Hon'ble High Court of Karnataka at Bengaluru vide common judgment dated 13.2.2017 in W.P. Nos.61691/16 and 61692/16 and by the Hon'ble Supreme Court vide judgment dated 6.7.2017. The relevant extract from the order of this Tribunal in O.A.No.1098 of 2014 is as follows:

"5. The learned counsel for the applicant during the course of arguments submitted that the issue involved in the present O.A. is already covered by the decision of CAT, Bengaluru Bench vide order dated 8.1.2016 in O.A.No.1020/2013.

6. The matter was argued on 9.5.2018 when the learned counsels from both the sides were heard. Learned counsel for the applicant submitted that a similar issue has already been heard and settled by the CAT, Bengaluru Bench vide order dated 8.1.2016 in O.A.No.1020/2013 which has been upheld by the Hon'ble High Court of Karnataka at Bengaluru vide common judgment dated 13.2.2017 in W.P. Nos.61691/16 and 61692/16. The judgment of the Hon'ble High Court of

Karnataka at Bengaluru has also been upheld by the Hon'ble Supreme Court vide judgment dated 6.7.2017.

7. *In O.A.No.1020/13 before the CAT, Bengaluru Bench the applicant was a Technical Officer, Gr.A working under the Aeronautical Development & Establishment under the DRDO. The relevant paragraphs in the said order are as follows:*

"16. When the Flexible Complementing Scheme was introduced in 1998, there was no such provision/mention regarding ACP benefit, since the ACP Scheme was introduced/became applicable later on 09.08.1999. The DRDO had also issued a circular indicating the non-applicability of the ACP to the posts covered by the flexible complementing scheme. However, the modified complementing scheme based on the 6th Central Pay Commission says that the modified ACP would also be applicable to the scientists covered under FCS to provide an alternative channel for development. Had there been no ceiling in the number of eligible employees to be promoted to the next higher grade under the FCS then the question of any alternative financial progression under the MACP would not have arisen. In spite of the fact that under Flexible Complementing Scheme, the promotion from one grade to another grade in a cadre is not post based but by automatic upgradation of the existing post, there is a ceiling limit which bars 70% of the employees from getting promotion each assessment year even if they might meet required benchmark. Therefore rightly the Modified Flexible Complementing Scheme allows for applicability of the MACP to the persons covered under FCS. So that a person gets financial upgradation at least thrice in his/her service period instead of remaining stagnant in any grade throughout.

17. In the backdrop of the above, we are of the view that the stand of the respondents that MACP shall not be applicable to the persons who come under the Flexible Complementing Scheme is totally incorrect especially in terms of the Modified Flexible Complementing Scheme following 6th CPC recommendations. The applicants should be eligible for financial upgradation under the MACP provided they meet the required benchmark stipulated for the promotion. It has also been specified in the guidelines that MACP was expected to provide an alternate channel for development for Scientists and is expected to maintain the rigors of assessment required for assessment under FCS. Therefore the applicant is to meet the stipulated benchmark for getting benefits under MACP.

18. Therefore, after considering the entire facts and circumstances of the case, we hold that the applicant is entitled to be considered under MACP scheme and the respondents are therefore directed to constitute an

Assessment Board for considering the case of the applicant for financial upgradation under MACP with three (3) months from the date of receipt of copy of the order. The respondents shall lay down the bench mark for grant of such financial benefits taking into account the normal standards adopted for granting promotion. In case the applicant meets the required stipulation for grant of MACP benefit, then she shall get the 2nd MACP w.e.f. 01.09.2008 and 3rd MACP on completion of 30 years of service".

8. *The Hon'ble High Court of Karnataka at Bengaluru vide common judgment dated 13.2.2017 W.P.Nos.61691 and 61692/2016 & also upheld the decision of CAT, Bengaluru Bench in O.A.No.1020/2013. At Paragraphs-5 and 6 of the Hon'ble High Court observed as follows:*
 5. *The aforesaid shows that though initially ACP scheme was not applicable to the FCS, but subsequently by the office memorandum dated 10.9.2010 read with office memorandum dated 1.5.2012, it has been made applicable.*
 6. *Under the circumstances, it is not possible to accept the contentions of the learned counsel for the petitioners that the MACP scheme is not at all applicable".*
9. *The issue of the applicability of the ACP and MACP having been conclusively established by the above orders of the CAT, Bengaluru Bench as upheld by the Hon'ble High Court of Karnataka at Bengaluru and subsequently the SLP filed by the Union of India having been dismissed by the Hon'ble Supreme Court, we follow the identical ratio and quash the impugned order dated 25.8.2014(A/5) which has been passed solely on the ground that the ACP of 1999 has not been made applicable to DRTC due to merit based promotion under Limited Flexible Complementing Scheme and after 6th CPC, the ACP Scheme has been modified as MACPS which is also not applicable to DRTC. The Respondents are directed to reexamine the case of the applicant in the light of the eligibility under the MACP Scheme by constituting an Assessment Board and consider the case of the applicant for financial upgradation under the MACP Scheme within a period of three months from the date of receipt of this order.*
10. *The O.A is disposed off with the above direction. No costs".*

7. A perusal of the above mentioned judgment and the facts and points of law involved in these OAs filed by the present applicant appears to be exactly similar. Therefore, following the rationale of the order/judgment of this Tribunal in O.A.No.1098/2014, we are of the considered view that the reliefs

granted in the O.A. No.1098/14 will also be applicable in the present cases. We therefore direct the respondents to re-examine the case of the applicants through an Assessment Board to consider the prayer of the applicants for financial upgradation under the MACP Scheme and pass an appropriate order within a period of three months from the date of receipt of this order.

8. With the above direction, all the four OAs are disposed of with no order as to costs.

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

(A.K.PATNAIK)
MEMBER(J)

BKS