

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

O.A. No.459 of 2012

Date of CAV:02.11.2017.

Date of Order :22.11.2017.

Between :

J.Suresh Babu, s/o late Bhimachary,
59 yrs, Occ:Assistant Manager-cum-Storekeeper,
O/o DMRL, Kanchanbagh,
Hyderabad-500 058. ... Applicant

AND

1. Union of India, rep., by its Secretary,
M/o Defence, Sena Bhavan, New Delhi.
2. The Director General, Research & Development,
M/o Defence, DRDO HQ, DRDO Bhavan,
Rajaji Marg, New Delhi.
3. The Director,
Defence Metallurgical Research Laboratory (DMRL),
Kanchanbagh, Hyderabad-500 058. ... Respondents

Counsel for the Applicant ... Mrs.S.Anuradha
... Mr.G.T.Gopal Rao

Counsel for the Respondents ... Mrs.K.Rajitha, Sr.CGSC

CORAM:

**THE HON'BLE MR.JUSTICE R.KANTHA RAO, MEMBER (JUDL.)
THE HON'BLE MRS.MINNIE MATHEW, MEMBER (ADMN.)**

ORDER

{ As per Hon'ble Mrs.Minnie Mathew, Member (Admn.) }

The undisputed facts of the case are that the applicant was appointed as Canteen Supervisor-III with effect from 06.09.1984 in the office of the 3rd respondent and the said post was subsequently re-designated as Canteen Manager-III. The applicant was promoted to the post of Canteen Manager-II on 16.01.1995 and the said post was also re-designated as Assistant Manager-cum-Store Keeper. On completion of 24 years of service, the applicant was granted the 2nd financial upgradation with effect from 06.09.2008 under the Assured Career Progression Scheme (ACP), which was in force from August 1999. While so, the 3rd respondent issued the Annexure.A-7 order dated 05.01.2010 cancelling the 2nd ACP in the scale of Rs.5000-8000/- . The said scale was later upgraded to Rs.6500-10500/- with Grade Pay of Rs.4200/- in the 6th CPC. As a result of the cancellation of his 2nd ACP, his pay was fixed in the lower scale of Rs.4500-7000/- (pre-revised) corresponding to Grade Pay of Rs.2800/- in the 6th CPC. The applicant had earlier filed OA.No.990/2010 against the cancellation and the proposed recovery. The aforesaid OA was allowed on 12.07.2011 with a direction to dispose of his representation after hearing him by passing a reasoned and speaking order.

2. The main contentions raised by the applicant are that there was no representation from him to upgrade his pay under the ACP Scheme of 1999. As he was not granted any promotion between 1995 to 2008 and as he had completed 24 years of service, he was granted the benefit of 2nd financial upgradation as per the existing hierachial pay scale on the basis of a statutory rule. It is further contended that it is an established principle of law that an accrued right which emerges out of a statutory rule cannot be taken away by an office order. Thus, the action of the respondents in cancelling the 2nd ACP granted without amending the statutory rules is arbitrary and illegal. The applicant further submits that his 2nd ACP was granted by a

duly constituted Screening Committee much before the issue of the Modified Assured Career Progression Scheme (MACPS), on 19.05.2009. In the said Scheme, it has been categorically stated that no past cases would be reopened. The respondents, without considering the above clarification and without considering the fact that much before the promulgation of MACP on 19.05.2009, the Zonal DCP had considered his case and recommended him for grant of 2nd ACP with effect from 06.09.2008 that is the date on which he completed 24 years of regular service, have unilaterally proceeded to recover the alleged excess payment from his pay and allowances.

3. It is also the case of the applicant that he was placed under 2nd ACP Scheme with effect from 06.09.2008 for the simple reason that Rs.5000-8000/- (pre-revised scale) was the next hierachial pay scale of Rs.4000-6000/- as per the recruitment rules in vogue. The action of the respondents in reducing his 2nd ACP Grade Pay from Rs.4200/- to Rs.2800/- has resulted in a net reduction of Rs.1400/- in the form of Grade Pay + other incremental benefits like DA, HRA, etc. Further, as the applicant is due for retirement in January 2013 the effect of this reduction would have a drastic impact on his pension and pensionary benefits. The applicant, therefore, prays for setting aside the Annexure.A-1 order dated 19.08.2011, cancelling the 2nd financial upgradation granted to him in the pre-revised scale of Rs.5000-150-8000/- with effect from 06.09.2008. He also seeks a consequential direction to the respondents to restore his Grade Pay to Rs.4200/- in Pay Band-II.

4. The respondents, on the other hand, have justified the cancellation of the 2nd financial upgradation given to the applicant on the ground that as per the procedure laid down for grant of ACP, the Screening Committee would meet twice a year in

January and July to screen the cases in advance. The Screening Committee convened in the month of January would cover the cases pertaining to the period from April to September of the same year and the Committee convened in July would consider the cases for the period from October to March of the next year. The applicant was accordingly considered in advance during March 2008 under the ACP Scheme of 1999. They concede that by this time the MACP Scheme which has been introduced with effect from 01.09.2008 had not come into force. They have, however, pointed out that the Government while accepting the MACP Scheme had ordered that the said Scheme would be operational with effect from 01.09.2008. The MACP envisages placement in the immediate next higher Grade Pay in the hierarchy of the recommended revised Pay Bands and Grade Pay. It was also clarified in the MACP Scheme that the financial upgradations as per the provisions of the earlier ACP Scheme would be granted only till 31.08.2008. Consequent on the introduction of MACP Scheme, the Zonal DPC-II Secretariat at Defence Electronics Research Laboratory, Hyderabad, re-examined the cases of financial upgradations granted under the earlier ACP Scheme of 1999 and found that the applicant was not entitled to the 2nd financial upgradation with effect from 06.09.2008 under the ACP Scheme as he did not complete 24 years of service as on 31.08.2008, which is the effective date for considering financial upgradation under the earlier scheme. As he did not complete the requisite years of service as on 31.08.2008, his case would fall for consideration under the MACP Scheme, which came into force with effect from 01.09.2008. Thus, the applicant had fallen short of six days of regular service for being covered under the ACP Scheme. It was in these circumstances that his case was reviewed and the 2nd financial upgradation cancelled. The aforesaid cancellation has resulted in re-fixation of pay and recovery of overpayment made to

the applicant. It is also further submitted that the Zonal Screening Committee has granted the applicant the 2nd financial upgradation to the Grade Pay of Rs.2800 with effect from 01.09.2008, which is the date of the commencement of the MACP Scheme as he was drawing a Grade Pay of Rs.2400/- only as on 31.08.2008. As per the provisions of the MACP, he is eligible only for grant of financial upgradation to the Grade Pay of Rs.2800/-. It has also been pointed out that since the new pay structure under the 6th CPC came into effect from 01.01.2006 and the MACP with effect from 01.09.2008, the benefit of financial upgradation under the ACP Scheme would be allowed in the revised pay structure from 01.01.2006 to 31.08.2008 in the promotional hierarchy. The applicant, however, did not fulfill the conditions of the ACP Scheme during the said period to get the benefit of the 2nd financial upgradation under the ACP Scheme. The respondents also point out that the Government has clarified in Para 11 of the DoP&T letter dated 19.05.2009 that no past cases would be reopened. It is stated that the aforesaid clarification would mean that wherever the financial upgradations were already granted to those employees who have completed 12 years and 24 years of regular service in the grade as on 31.08.2008 under the provisions of ACP Scheme of 1999, such cases would not be re-opened even after implementation of MACP Scheme. However, the applicant has given an interpretation that since he was already granted financial upgradation with effect from 06.09.2008 much before the receipt of the MACP Scheme, his case could not be re-opened. They submit that this interpretation is incorrect and that any overpayment made to the Government servant has to be recovered.

5. During the course of hearing, Mr.G.T.Gopal Rao, the learned counsel for the Applicant, drew our attention to an identical case decided by the Chandigarh Bench of

this Tribunal in O.A.No.1003/PB/2011. He argued that the said OA was allowed on the ground that the conditions of service cannot be altered retrospectively to the prejudice of a public servant. He also relied on the judgment of the Ernakulam Bench of this Tribunal in OA.No.252/2013, which dealt with the same issue, which is being considered in this OA. He further pointed out that this same principle had been enunciated by the Hon'ble Supreme Court in *Ex.Capt.K.C.Arora v. State of Haryana & Others and Ex.Capt.A.S.Parmar & Others v. State of Haryana & Others* in W.P.Nos.6436-27/1980 and Civil Appeals Nos.3095-56/1980, dated 26.04.1984.

6. We have considered the submissions of both sides and also perused the record.
7. The short point for consideration in this OA is as to whether, the action of the respondents in cancelling the 2nd financial upgradation granted under ACP with effect from 06.09.2008, on the ground that the MACP Scheme promulgated vide OM dated 19.05.2009 has retrospective application from 01.09.2008, is justified.
8. On going through the submissions on either side and the material on record, we hold that the issue is no more res integra. From the judgment of the Coordinate Bench of this Tribunal in O.A.No.1003/PB/2011, we find that an identical matter had come up in which the respondents had re-opened the grant of 2nd financial upgradation given to the applicants therein under the old ACP Scheme and issued orders to re-fix their pay resulting in reduction of their Grade Pay from Rs.4200/- to Rs.2800/. In the instant case also, the applicant was drawing Grade Pay of Rs.4200/- after the introduction of the 6th CPC, on the basis of the 2nd financial upgradation under ACP. By cancelling the 2nd ACP, the applicant's Grade Pay was reduced from Rs.4200/- to Rs.2800/. Thus, the facts of the instant case are almost similar. The Tribunal after considering

the matter at length has held as follows:

"10. On merits, we find that it is now a well settled principle of law that conditions of service cannot be altered retrospectively to the prejudice of a public servant. The judgments cited by the learned counsel for the applicants clearly lay down that the applicants cannot be made to suffer on account of any decision applied retrospectively. The DOPT had taken into account this aspect of the matter and in para 11 of their OM no.35034/3/2008.Estt. (D),, dated 19.5.2009, it has been clearly stated as follows:- It is clarified that no past cases will be re-opened. Further, while implementing the MACP Scheme the differences in pay scales on account of grant of financial upgradation under the ACPL Scheme (of August 1999) and under the MACP Scheme within the same cadre shall not be construed as an anomaly. This para has not been discussed at all in the speaking order dated 25.8.2011 issued by the respondents.

11. The applicants cases are within the ambit of the provision in the above-mentioned letter dated 19.05.2009, para 11 since these cases would constitute past cases because these were decided before the coming into force of the MACP Scheme. They had been granted the second ACP on different dates in 2008-2009, which are prior to the date of the issue of the MACP scheme i.e., 19.05.2009. Since these applicants had obtained the said benefits under the old ACP Scheme before 19.5.2009, therefore, they would be covered under the definition of past cases and as provided in para 11 of the Scheme, these cases are not to be reopened. Therefore, we find that the respondents have misinterpreted the provision of this para of the Scheme and have wrongly withdrawn the earlier benefit from the applicants. Therefore, the impugned order dted 25.8.2011 is hereby quashed and set aside and consequently, the respondents are directed to fix the pay of the applicants after ensuring that they do not suffer

any prejudice vis-a-vis the pay scales already granted to them. They are also directed to ensure that all the applicants, who, if they are similarly placed and had all got/were eligible for the 2nd ACP before 19.5.2009, are given similar benefits as per law and rules and their eligibility. Consequently, no recovery is to be made from the applicants. This exercise may be completed within a period of 4 months from the date of receipt of a copy of this order. The applicants have also prayed that para 9 of the OM dated 19.5.2009 may be quashed. For the reasons mentioned in the preceding paras, we find that this is not required since the OM already provides that past cases are not be re-opened.

12. Consequently, this OA stands disposed of within directions as above and with no order as to costs.”

9. The same issue has been considered by the Ernakulam Bench of this Tribunal in O.A.No.252/2013 in which it was held that “employees who had completed 24 years of service prior to the issue of the DOP&T OM dated 19.05.2009, are entitled for upgradation under the ACP Scheme”. In the instant case also, the applicant had admittedly completed 24 years of service on 06.09.2008, which is prior to the issuance of the MACPS on 19.05.2009. Thus, he stands covered by this judgment also.

10. Likewise, the Hon'ble Supreme Court in *Ex.Capt.K.C.Arora v. State of Haryana & Others* and *Ex.Capt.A.S.Parmar & Others v. State of Haryana & Others* has also categorically held that the rules cannot be amended with retrospective effect to deprive petitioners of their vested rights.

11. In view of the ratio already decided by the Coordinate Benches of this Tribunal and the settled position of law that the rights of a Government servant cannot be altered by making amendment of rules with retrospective effect, the

applicant herein is entitled to succeed. Accordingly, the impugned Annexure.A-I orders are hereby quashed and set aside. The respondents are directed to restore the Grade Pay of the applicant to Rs.4200/- in Pay Band-II in the 6th CPC. This exercise shall be carried out within 8 weeks from the date of receipt of a copy of this order.

12. The OA is allowed as above. No order as to costs.

Dated: this the 22nd day of November, 2017

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