

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

Original Application No. 974 of 2013

Reserved on: 14.11.2018

Order pronounced on: 15.11.2018

Between:

Bhagaban Panda, S/o. late Binayak Panda,
Aged about 54 years, Occ: Store Keeper, C.No.2537,
Material Organization, Visakhapatnam,
O/o. Assistant Naval Store Officer-II,
Assistant Controller (Admn), Eastern Naval Command,
Naval Base, Visakhapatnam.

...Applicant

And

1. Union of India, Rep. by the Chief of Naval Staff,
(for PDLS), Integrated Head Quarters,
Ministry of Defence (Navy), Sena Bhavan,
C Wing, New Delhi – 1.
2. The Principal Director Logistics Support,
Integrated Head Quarters,
Ministry of Defence (Navy), Sena Bhavan,
C Wing, New Delhi.
3. The Flag Officer Commanding in Chief,
Head Quarters, Eastern Naval Command,
Naval Base, Visakhapatnam.
4. The Material Superintendent,
(for Assistant Controller/ Admin),
Material Organization, Visakhapatnam.
5. The Assistant Naval Store Officer-II,
Assistant Controller (Admn),
Naval Base, Visakhapatnam.

...Respondents

Counsel for the Applicant ... Dr.A. Raghu Kumar

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

CORAM:

Hon'ble Mr. B.V. Sudhakar ... ***Member (Admn.)***
Hon'ble Mr. Swarup Kumar Mishra ... ***Member (Judl.)***

ORDER
{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

The OA has been filed for non-granting ACP benefits and third MACP counting his service from the date of initial appointment.

2. The applicant was appointed as Assistant Store Keeper on 03.02.1984. As per Assured Career Progression (ACP) Scheme, the employees are eligible for two financial upgradations after 12 and 24 years of service respectively provided they do not get any promotion during the said period. The applicant was granted 1st ACP on 09.08.1999 and the 2nd ACP on 01.09.2008 reckoning his service from 1987, the year in which his services were regularized. Subsequently, the Modified Assured Career Progression (MACP) Scheme was implemented by Government of India vide OM dt. 19.05.2009. According to the said OM employees are granted financial upgradations in intervals of 10, 20 and 30 years in case they stagnate in a particular grade during the said period of time. The 2nd respondent rejected the claim of the applicant for grant of financial upgradations from the date of his initial appointment in the department vide 5th respondent letter dt. 23.01.2013. Hence, the present OA.

3. The main contention of the applicant is that similarly situated employees when they approached this Tribunal in OA 1175/2004 and Batch, OA No. 210/2011, they were directed to be granted eligible second ACP. Accordingly, the respondents have granted relief sought from the date of initial appointment. The applicant has represented on 17.10.2012 to provide similar relief to him as well. The applicant has also brought to the notice of the respondents that similar relief was ordered by the Hon'ble Ernakulam, Mumbai Benches of this Tribunal in OA Nos. 755/2000 and 23/2005 respectively. However, the respondents did not consider the same.

4. The respondents vide reply statement intimate that the benefits under ACP/MACP are to be granted from the date of completion of the eligibility period prescribed under the scheme or from the date of issue of Department of Personnel and Training OM dt. 09.08.1999, whichever is later and subject to fulfilling other conditions like qualifying in Departmental Qualifying Examination. The respondents also stated that the scheme does not affect the normal promotional avenues. Accordingly, the applicant was granted first financial upgradation after completion of 12 years in the pay scale of Rs.4000-6000 (pre-revised) w.e.f. 09.08.1999 and the second financial upgradation under MACP Scheme after completion of 20 years of regular service in PB-I Rs.5200-20200 with Grade Pay of Rs.2800 w.e.f. 01.09.2008 vide letter dt. 22.07.2010. The respondents also state that the OAs referred to by the applicant have given relief only to those applicants in the said OAa and they are not applicable to others. Hence, they could not extend the relief sought.

5. Heard learned counsel and perused the documents on record.

6. The applicant was appointed on 03.02.1984 as Assistant Store Keeper in the respondent organization. The ACP/ MACP Schemes only speak about financial upgradation in case there is no promotion during certain intervals of time as expounded above. The respondents have provided the financial upgradation from the date of regularization of service of the applicant i.e. 01.01.1987. The applicant's contention is that it should be considered from the date of his initial appointment. If we read the Schemes and their objectives, it is evident that the Schemes have been framed to provide financial relief to the employees in case they stagnate at any particular level/ grade. The applicant has been serving the respondent organization from 03.02.1984. In other words, his career started from 1984 and therefore, the period of stagnation necessarily has

to be considered from the initial date of rendering service to the respondent organization. This being the objective of the Scheme, the respondents brining in a date of regularization as the date to be reckoned for granting financial upgradations appears to be unreasonable, particularly in the context of para 4 of the ACP Scheme which reads as under:

“The first financial upgradation under the ACP Scheme shall be allowed after 12 years of regular service and the second financial upgradation after 12 years of regular service from the date of the first financial upgradation subject to fulfilment of prescribed conditions. In other words, 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.”

Further, para 3.2 of the Scheme enunciates that *“Regular service for the purpose of ACP Scheme shall be interpreted to mean the eligibility service counted for regular promotion in terms of relevant Recruitment/ Service Rules.”*

As can be seen from the above paras of the Scheme, it is the eligibility service which is to be counted. Hence, the ground taken by the respondents does not stand to reason. Besides, the Hon’ble High Court of Punjab and Haryana dismissed CWP No. 21485/2014 vide order dt. 30.01.2017 relying upon its earlier order in CWP No.22139/2015 (Union of India & Ors Vs. CAT Chandigarh & Ors) wherein it has been held as under:

“ (8) The Bombay High Court relied upon the decision of the Hon’ble Supreme Court in State of Maharashtra & Ors. vs. Uttam Vishnu Pawar (2008) 2 SCC 646, taking note of its previous decisions in the case of Dwijen Chandra Sarkar & Anr. vs. Union of India & Ors., (1999) 2 SCC 119, Union of India vs. V.N. Bhat (2003) 8 SCC 714, APSEB vs. R.Parthasarathi (1998) 9 SCC 425, Scientific Advisor to Raksha Mantri vs. VM Joseph (1998) 5 SCC 305 and Renu Mullick vs. Union of India (1994) 1 SCC 373 to hold that the very purpose of ACP/MACP is to relieve frustration on account of stagnation and the scheme does not involve the actual grant of promotional post to the employees but merely monetary benefits in the form of next higher grade subject to fulfilment of qualifications

and eligibility criteria. Thus, the benefit of service rendered by the respondents before their regular absorption, if counted, neither it affects the seniority of directly recruited other members of the cadre nor it affects them in terms of the promotional aspirations. The respondents rather would continue to retain the same status except monetary benefits admissible in the higher grade."

Thus, as can be seen and discussed in the above paras, the financial upgradation is an anti-dote against stagnation. In doing so, it is the number of years which the applicant has put in from the date of initial appointment which needs to be reckoned and not from any other date. By not doing so, the very objective of the Schemes cited would be defeated. Therefore, the Hon'ble Benches of this Tribunal viz., Ernakulam and Mumbai have upheld that the benefit of ACP/ MACP has to be given from the date of initial appointment. This view has been further confirmed by the Hon'ble High Court judgment cited above. This Tribunal has also upheld the same principle in OA No.1175 of 2004 & batch. Thus, the case is well covered by the judicial pronouncements of the Hon'ble Judicial forums mentioned above.

7. In view of the above facts, the OA fully succeeds and the impugned proceedings dated 19.12.2012 of the 2nd respondent communicated through the Note of the 5th respondent dt. 23.01.2013 are set aside. The respondents are therefore directed

- i) to consider granting financial upgradation under ACP/MACP Scheme from the date of the initial appointment i.e. 03.02.1984 with consequential financial benefits thereof.
- ii) that this order is meant only for granting financial upgradation and it will not provide any ground for the applicant to seek seniority, promotion, etc.

iii) Time calendared to implement this order is three months from the date of receipt of this order.

8. In the result, the OA is allowed. No order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (JUDL.)

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 15th day of November, 2018

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