

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

O.A. No.505 of 2013

Date of CAV:13.12.2017.

Date of Order : 23.01.2018.

Between :

K.Appa Rao, s/o late K.Appalaswamy,
Retired Chargeman, CIN No.82917
Naval Dockyard, Visakhapatnam-14.

... Applicant

AND

1. Union of India, rep., by its Secretary,
Govt. of India, M/o Defence, North Block,
New Delhi.
2. The Chief of the Naval Staff Integrated HQ
in Ministry of Defence (Navy), New Delhi.
3. The Admiral Superintendent, Naval Dockyard,
Visakhapatnam.
4. The Flag Officer Commanding-in-Chief,
Headquarters, Eastern Naval Command,
Visakhapatnam.
5. The Principle Controller of Defence Accounts
(Pensions), Allahabad.
6. The Financial Advisor to Admiral Superintendent,
Naval Dockyard, Visakhapatnam. ... Respondents

Counsel for the Applicant ... Mr.G.Pavana Murthy

Counsel for the Respondents ... Mr.M.Brahma Reddy, Sr.PC for CG

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 applicant was appointed as Welder in the Naval Dockyard, Visakhapatnam on 2.6.1976. Subsequently, he was promoted to the Grade of HSK – I on 2.1.1985 and thereafter promoted to the Grade of Master Craftsman (MCM) w.e.f. 2.4.1994. While working in the Grade of MCM, he was further promoted to the Grade of Chargeman-II during 1996 and as Chargeman Gr.I during May, 2009. He finally retired on 31.7.2012.

2. The applicant submits that on account of his promotion to the Grade of HSK in 1985, he was not given the benefit of the 1st Financial Upgradation under the Assured Career Progression Scheme (ACP). However, he was also not granted the 2nd MACP in 1995 to which he is entitled on completion of 10 years of service from the date of his promotion as HSK during 1985. It is also contended that on completion of 10 years from 1996, he is entitled to the 3rd MACP w.e.f. 2006. However, he was not granted the financial upgradation under the 3rd MACP due to him during 2006.

3. The applicant submits that the 3rd Respondent granted financial upgradation under the ACP Scheme with retrospective effect to technical supervisory staff on completion of 24 years of regular service vide Annexure.A-2 dated 31.12.2004. However, he was not granted the said benefit. It is further submitted that the applicant submitted representation to the 3rd respondent on 7.1.2005 & 27.8.2008. In response to his representation

on 27.8.2008, the 3rd Respondent informed him that he was not recommended for the 2nd ACP by the DPC Screening Committee on 2.3.2005 as his Reports were below benchmark. The applicant has denied the contention of the Respondents that he was graded as below the benchmark as neither adverse remarks have been communicated to him nor was there any disciplinary action pending against him. Thus, in terms of the judgement of the Hon'ble Supreme Court in Dev Dutt vs UOI {2008 (9) SCC (20)} and Abhijit Ghosh Dastidar vs UOI {SPL (C) 26556 of 2004}, non-communication of remarks in the ACRs has to be treated as arbitrary and violative of Article 14 and cannot be a ground for denying promotion and other benefits. It is also pointed out that the Respondents have not conducted the departmental competitive examination for the three years 2001, 2002 & 2003 and that he could not appear for the examination during this period.

4. The applicant further submits that as per as per Annex.A-5 MACP scheme dated 19.5.2009 he is entitled for third financial upgradation as per the MACP and the provisions of the Annex.VI CCS (RP) 2008 and for the grant of Grade Pay of Rs.4200/- in the Pay Band -2 and two financial upgradations to the next higher Grade Pay of Rs.4600 & Rs.4800 in PB-2. It is the case of the applicant that he fulfills the condition of completion of 12 years and is thus entitled for the financial upgradation. Further, the MACP Scheme only envisages that there should be no pending disciplinary proceedings. He also states that on account of the merger of Grades of Chargeman-I & Chargeman-II as per the orders of Ministry of Defence dated 24.8.2009, his promotion to the grade of Chargeman-I during 2009 is void. The applicant's grievance is

that his retirement benefits have been calculated without including the financial upgradation under 2nd & 3rd MACP due to him in 1995 & 2006 and that only the benefit of pay fixation on promotion to the Grade of Chargeman-I has been taken into consideration for the purpose of his retirement benefits. He has, therefore, filed this O.A. seeking direction to grant 2nd MACP to him with all consequential benefits from 1995 and 3rd MACP with all consequential benefits from 2006 and pay the arrears and also re-fix the retirement benefits earlier granted.

5. From the reply statement, it is seen that there is no serious dispute on the basic facts of the case relating to the dates of promotion to the various grades of HSK-I, Chargeman-I & Chargeman-II. The Respondents, however, state that the applicants promotion to HSK.I was ignored for the purpose of ACP/MACP due to merger of HSK.I and HSK.II w.e.f. 1st January 1996. They further point out that the ACP Scheme introduced in 1999 envisages the first financial upgradation in the next higher pay scale if an employee completes 12 years of regular service in the same post and the 2nd financial upgradation if he continues in the same post without any promotion for 24 years. The ACP Scheme has been replaced with the MACP Scheme w.e.f. 19.5.2009 which provides for three financial upgradations on completion of 10, 20 & 30 years of service. Under both the schemes, the applicant will be granted the appropriate financial upgradation from the date of introduction of the Scheme and not from the date on which he completed the required number of years of service. Para 8 of the Annex.R-II O.M. dated 9.8.1999 indicates that the Scheme becomes operational from the date of issue of the O.M. and there is no provision for retrospective effect of grant of financial upgradation. Likewise,

the MACP Scheme came into force only on 1st September 2008 and cannot operate retrospectively. The Respondents further submit that the applicant completed the requisite 30 years of service required for 3rd MACP on 2.6.2006. However, as the MACP Scheme was introduced w.e.f 1.9.2008, the question of granting financial upgradation with retrospective date even before the Scheme came into force, does not arise.

6. The Respondents further pointed out that the applicant was already granted 2nd ACP w.e.f. 21.7.2005 under the ACP Scheme and was granted the 3rd MACP w.e.f. 1.9.2008 on completion of 30 years of service and satisfaction of other criteria. With regard to the contention of the applicant that some technical persons were granted 2nd ACP on completion of 24 years while denying the benefit to him the Respondents submit out that all those who were granted the 2nd ACP as per the CE order cited by the applicant, have not only completed 24 years of regular service but have also qualified in the requisite Departmental Qualifying Examination (DQE). However, the applicant has not qualified in the DQE and assessment reports were also below benchmark as observed by the 1st Departmental Screening Committee convened in 2005. Thus, mere completion of 24 years of regular service does not entitle the applicant to the grant of 2nd ACP. He also has to fulfil the other conditions for getting the benefit of the financial upgradation.

7. Heard the learned counsel on both sides and perused the record.

8. The relief sought for in this O.A. is for grant of 2nd MACP with all consequential benefits w.e.f. 1995 and the 3rd MACP with all consequential benefits w.e.f. 2006.

9. From the material placed before us, it is evident that the applicant who joined as Welder Gr.I on 2.6.1976 was promoted to the HSK-I on 2.1.1988 and as Chargeman-II in March, 1996. The ACP Scheme was introduced on 9.8.1999. At the time of the introduction of the ACP Scheme, the applicant had completed 23 years of service and would have been eligible for the 1st ACP, had he not already got one promotion. However, by virtue of his promotion from HSK-I to Chargeman-II, the 1st ACP is not applicable. On completion of 24 years of service as on 2.6.2000, he becomes eligible for the 2nd Financial Upgradation only in terms of Para 5.1 of the ACP Scheme. However, he was not granted the 2nd ACP along with other Technical Supervisors as he had admittedly not qualified in the Departmental Qualifying Examination. The ACP Scheme is sufficiently clear that fulfilment of the normal promotional norms (benchmark pass in the departmental examination, seniority-cum-fitness in the case of Group-D employees, etc.) shall be ensured for grant of benefits under the ACP Scheme. Therefore, for the applicant, passing the Departmental Qualifying Examination is a pre-requisite for grant of the 2nd ACP. As the applicant has failed to pass the Departmental Qualifying Examination, he has not been recommended for grant of the 2nd ACP in 2000. On qualifying in the Departmental Qualifying Examination in 2004, his case was again considered by the Departmental Screening Committee. However, he was not granted the 2nd ACP as his grading was below the benchmark. The applicant's contention is that no adverse remarks have been communicated to him. As such, the uncommunicated adverse remarks cannot be taken into consideration for holding that he does not satisfy the benchmark. It is a well settled position that if any assessment or report of

the applicant has been considered for grading him below bench mark, the same should have been communicated to him and that the non-communication of the adverse remarks/report is a violation of the principles of natural justice. The reply statement of the respondents is silent as to whether the adverse remarks, if any, have been communicated to the applicant. Hence, an inference would have to be drawn that the below benchmark assessment has never been communicated to him. As such, the same cannot be relied upon by the respondents for denying the applicant the financial upgradation under 2nd ACP. In this view of the matter, the applicant would be entitled to the 2nd ACP immediately after he qualified in the Departmental Qualifying Examination in 2004.

10. As regards the 3rd MACP, admittedly, the applicant has been granted the 3rd MACP w.e.f. 1.9.2008. The applicant's contention is that he should be extended the benefit from 2006 as he completed 30 years of service in 2006. Para 9 of the OM governing MACP makes it clear that the Scheme would be operational w.e.f. 1.9.2008. When the order is categorical on this aspect, the grant of any retrospective benefit to the applicant from 2006 does not arise. We, therefore, find no merit in his claim for 3rd MACP w.e.f. 2006.

11. In the result, the O.A. is partly allowed with a direction to the Respondents to sanction the 2nd ACP immediately after the applicant qualified in the Departmental Qualifying Examination and without reference to any below benchmark assessment that might have been there in the ACRs as they have not produced any evidence of such remarks having been communicated

to the applicant. The Respondents are directed to work out the arrears and sanction the same within a period of eight weeks from the date of receipt of a copy of this order. The applicant will also be entitled to re-fixation of his retirement benefits on account of the revision of the date of the financial upgradation under the 2nd ACP.

12. There shall be no order as to costs.

(MINNIE MATHEW)
MEMBER (ADMN.)

(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)

Dated: this the 23rd day of January, 2018

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