

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00360/2017

Jabalpur, this Thursday, the 22nd day of November, 2018

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

P.L. Mishra, S/o Late Raghunath Mishra, Assistant Commissioner, Central Excise and Customs, DOB 20.10.1959, R/o 12, Nilanchal Vihar, Khamardih, Kachna Road, P.O. Shankar Nagar, Raipur – 492001 (C.G.) **-Applicant**

(By Advocate – Shri Sandeep Vyas, proxy counsel of Shri Vijay Tripathi)

V e r s u s

1. Union of India, through its Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi – 110001.
2. The Chairman, Central Board of Excise and Customs, North Block, New Delhi – 110001.
3. The Secretary, Ministry of Personnel, Public Grievance & Pension, North Block, New Delhi – 110001.
4. The Principal Chief Controller of Accounts, Central Board of Excise & Customs, AGCR Building, 1st Floor, New Delhi – 110002.
5. The Principal Chief Commissioner, Central Excise & Customs, Bhopal Zone, 48, Administrative Area, Hoshangabad Road, Bhopal 462011 (M.P.).
6. Addl. Commissioner (P&V), Central Excise, Raipur (C.G.) 492001.
7. The Pay & Accounts Officer, Central Excise, Headquarter, Raipur (C.G.) **-Respondents**

(By Advocate – Shri Himanshu Shrivastava)

ORDER (O R A L)**By Ramesh Singh Thakur, JM.**

The applicant is aggrieved by the order dated 20.06.2016 (Annexure A-1), whereby it has been clarified that the nonfunctional scale in Grade Pay of Rs.5400/- in PB-2 shall be treated as a financial upgradation under the MACP Scheme. He is also challenging the orders dated 04.07.2016 (Annexure A-2) and 11.07.2016 (Annexure A-3), whereby it has been instructed to regularize the case of grant of MACP in Grade Pay of Rs.5400/- PB-2 to those Superintendents/Officers who have been granted the benefit of non-functional grade. The applicant is also seeking quashment of orders dated 16/18.08.2016 (Annexure A-4) and 24.10.2016 (Annexure A-5) regarding revision of pay and pension of the applicant consequent to which recovery has been ordered.

2. The applicant, has therefore, sought for the following reliefs:

“(8.1) Summon the entire relevant record from the possession of respondents for its kind perusal;

(8.2) Upon holding that the 3rd promotion/up-gradation granted to the applicant in the pay scale of Rs.15,600-39,100/- + G.P. of Rs.6,600/- is just and proper ; quash and set aside the order dated 20.06.2016 (Annexure-A/1), order dated 04.07.2016 (Annexure-A/2) and order dated 11.07.2016

(Annexure-A/3) order dated 16/18.08.2016 (Annexure A/4) and order dated 24.10.2016 (Annexure A/5) with all consequential benefit;

(8.3) Any other order/orders, direction/directions may also be passed;

(8.4) Award cost of the litigation to the applicant.”

3. Learned proxy counsel for the applicant submitted that recently in Original Application Nos.200/01141/2016 & 200/00952/2017, this Tribunal has allowed both the OAs vide order dated 20.09.2018. Similarly, OA No.200/00806/2018 was also disposed of vide order dated 13.11.2018 in the light of the orders passed in Original Application Nos.200/01141/2016 & 200/00952/2017. Since the facts of the present case are identical to the above referred cases, this O.A may also be disposed of in the similar terms, it has been prayed.

4. We have gone through the record and also perused our order dated 20.09.2018 passed in OA Nos.200/01141/2016 & 200/00952/2017, whereby both the OAs were decided by way of a common order. The issue whether the Non-functional scale in Grade Pay of Rs.5400 in PB-2 granted to the applicant can be accounted as a promotion or ACP for the purpose of MACP is concerned, has already been decided by us in the aforesaid OAs.

This Tribunal while placing reliance on the orders passed by the Hon'ble High Court of Madras dated 08.12.2014 in Writ Petition No.19024 of 2014 (**R. Chandrasekaran vs. Union of India & Ors.**), as also the decision of coordinate Mumbai Bench of this Tribunal in Original Application No.633/2015, dated 21.06.2017 (**Prakash Vasant Ratnaparkhi & Ors. vs. The Union of India & Ors.**), has disposed of both the OAs vide order dated 20.09.2018. The relevant paragraphs of the order read as under:

“13. We may note that the issue involved in this Original Application has already been considered and decided by the Hon'ble High Court of Madras in the case of **R. Chandrasekaran** (supra), wherein it has been held as under:

“(16). The Customs and Central Excise Department has granted benefits of MACP to the employees like petitioner herein without taking into account the financial upgradation given on ‘non-functional scale’. The departments have earlier maintained that only functional promotions would be counted for the purpose of extending the benefits of ACPS. The employees were all given benefits by taking a position that there was no provision for counting ‘non-functional scale’ for the purpose of ACPS. Subsequently, on the basis of further clarification the benefits were all withdrawn. This resulted in filing several original applications before the Central Administrative Tribunal. The Central Administrative Tribunal, Chandigarh Bench rejected the contentions taken by the respondent in O.A. No.1038 of 2010. The said decision was upheld by the High Court of Punjab and Haryana. Even thereafter several orders were passed by the respondents. We have considered similar writ petitions. In case the concerned departments took earnest efforts to codify all the circulars issued earlier and to issue a fresh circular explaining the nature and

scope of MACPS and as to whether non-functional scale would be counted for the purpose of ACPS, it would be possible to avoid cases like this and future cases that are bound to come. We are therefore of the view that instead of deciding the matter one way or the other it would be in the interest of all the parties to direct the Department of Personnel, Public Grievances and Pensions to look into the issue and to take a decision in the light of MACP Scheme.

17. Since the Central Administrative Tribunal has taken a decision notwithstanding the claim made by the petitioner and in view of our decision to direct the Department of Personnel, Public Grievances and Pensions to consider the issue once again, we set aside the order passed by the Central Administrative Tribunal dated 24 February 2014 in O.A.No.675 of 2013 and remit the matter to the Department of Personnel, Public Grievances and Pensions for fresh consideration. The Department of Personnel, Public Grievances and Pensions is directed to consider the issue in extenso in the light of the provisions of MACP Scheme and the benefits given to the employees like the petitioner to count the non-functional scale for the purpose of ACPS. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this writ petition."

14. It is pertinent to mention that recently, the coordinate Bench at Mumbai in the case of **Prakash Vasant Ratnaparkhi** (supra), has dealt with this issue. While allowing the Original Application, it was observed as under:-

"(18). We note that there is no reference that the order of the Tribunals in the above OAs at paras 15, 16 and 17 of this order have been challenged by either party. The orders were passed in 2015 and 2016 and there is no reference, specifically, to the status of compliance of the orders in the OAs. The only development is that a general reference (post judgment of the Hon'ble High Court of Madras) is pending with DOPT since 2015.

(19). The Tribunal is led to believe that the respondents have not been quick to act or obtain decision on the directions of the Tribunal in the said OAs and the matter appears to be pending even as late

as June, 2017 when the present OA is being heard regarding 11 more similarly situated applicants. A waiting line/queue of pending orders has been created with a line of same orders for disposal in similar matters. The queue has practically not moved forward and remained static since 2015. Hence, we are not inclined to permit respondents to take any further umbrage by merely directing them to pass a reasoned and speaking order, as in the earlier OAs, so long as it is not denied by respondents, anywhere in the OA that present applicants are dissimilarly situated to that of Shri R.Chandrasekaran. The only view taken is that the reference is pending in DOPT in the light of order in R.Chandrasekaran's case (supra).

(20). *Further, a view has already been taken after due Inter-Ministerial consultation following the Judgment of the Hon'ble High Court of Madras. Inter-Ministerial consultations means that the decision is not a decision in personam, but a decision in rem. Hence, having complied with the order of the Hon'ble High Court of Madras, the Judgment of the Hon'ble High Court being a judgment in Rem leaving no scope for further dilly dallying on respondents to pass a similar order in favour of present applicants not distinguished in the OA by respondents as being dissimilar. The Judgment of the Hon'ble High Court of Madras (and Hon'ble High Court of Punjab and Haryana, as referred in the order of the Hon'ble High Court of Madras) has attained finality. Any similar direction in the light of earlier OAs is not warranted, in such a situation, in the interest of justice and resolving and not keeping disputes pending, where they qualify to be disposed of finally.*

(21). *It may be that applicants in this OA consist of retired or serving officers. But the cause of action remained the same in case of all the applicants. In any case, the joint petition was allowed by this Tribunal and this order was never challenged at the appropriate time by the respondents.*

(22). *In view of the above the impugned order is set aside, as the prayer clause 8 (a) of this OA is liable to be allowed. The respondents are directed to comply with the orders within a period of two months from the date of receipt of certified copy of this order in all the*

similarly situated persons among the eleven applicants. Since the matter is pending with DPT based on a bonafide belief that DOPT would issue clarification/decision, no interest is payable.”

15. It is the case of the applicants that they are similarly situated to that of R. Chandrasekaran and are also entitled for the similar benefit, as has been extended to him. The applicants, in Para 4.9 of the O.A have stated that after the order passed by the Hon’ble Madras High Court in the case of R. Chandrasekaran, the respondents issued an order dated 26.05.2015, whereby, it was directed to implement the order passed by the Hon’ble Madras High Court. Though the respondents have stated that vide the impugned order dated 20.06.2016 (Annexure A-1), they have withdrawn their earlier order dated 26.05.2015 in the case of R. Chandrasekaran and a decision has been taken to defend the cases, emerging out of the case of R. Chandrasekaran, however, there is no denial regarding the applicants being similarly situated to that of R. Chandrasekaran. Since, the judgment passed by the Hon’ble High Court of Madras in the case of **R. Chandrasekaran** (supra) is judgment in rem, as has been held by the coordinate Bench at Mumbai in the case of **Prakash Vasant Ratnaparkhi** (supra) and there is no such denial that the applicants are not dissimilar to that of R. Chandrasekaran, therefore, we hold that the applicants are also entitled for the similar benefit, as has been extended to R. Chandrasekaran.

16. In any case, the purpose and spirit of the Career Progression Scheme is only for the benefit of the employees, who face stagnation in their career. That purpose and spirit cannot be defeated, if the benefit under the new Scheme is causing detrimental to the interest of the employees. The intention between the Scheme would not be as such. In any event, as a principle of purposive interpretation, it has to be seen that what is more advantageous to the employees is what should be preferred, since the Scheme being a beneficial one, cannot be allowed to result in loss to the employees on its implementation.

17. In the result, all these OAs are allowed. The impugned orders dated 20.06.2016 (Annexure A-1), 04.07.2016 (Annexure A-2) and 11.07.2016 (Annexure A-3) are quashed and set aside with all consequential benefits. No costs.

5. Since the facts of the present case are identical to that of OA Nos.200/01141/2016 and 200/00952/2017, we are of the considered view that the applicant is also entitled to the same benefit as has been extended to the applicants in OA Nos.200/01141/2016 & 200/00952/2017. Accordingly, we allow this Original Application in terms of our order passed in the above referred OAs. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

am/-