

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING : INDORE

Original Application No.201/00813/2016

Jabalpur, this Thursday, the 16th day of August, 2018

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

Parmanand Kaushal, s/o Late Shri Sukhjee,
Aged 59 years, Civil Motor Driver,
Infantry School, r/o H.No.2446, Gokul Ganj,
Mhow – 453441 (M.P.) Distt Indore

-Applicant

(By Advocate – Shri P.J. Mehta)

V e r s u s

1. Union of India through Secretary,
Ministry of Defence, South Block,
New Delhi – 110001.
2. The Director General of Military training (MT-7),
General Staff Branch, Integrated H.Q. of MOD (Army),
‘A’ Wing – Sena Bhavan, New Delhi – 110011.
3. The Commandant, Infantry School,
Mhow – 453441 (M.P.) Distt Indore

- Respondents

(By Advocate – Shri Kshitij Vyas)

(Date of reserving order : 07.08.2018)

O R D E R

By Navin Tandon, AM

This Original Application has been filed by the applicant aggrieved by the fact that he has not been given the benefit of 3rd

financial upgradation under the Modified Assured Career Progression (MACP) scheme.

2. The applicant has made the following submissions:

2.1 The applicant was appointed as Fatigueman w.e.f.07.02.1978 in the pay scale of Rs.196-232 (3rd CPC).

2.2 Since the post of Fatigueman was not having any further promotional avenue, therefore, on 10.02.1982, the applicant was given fresh appointment to the post of Civilian Motor Driver (CMD) Grade II in the pay scale 260-6-326-EB-8-350 (3rd CPC) after taking Trade Test and considering his merits in respect of Drivers. A copy of appointment letter dated 16.02.1982 has been filed as Annexure A-2.

2.3 The applicant was promoted to the erstwhile post of CMD Grade-I in the pay scale of Rs.1200-1800 (4th CPC) on 14.09.1994. Further, the applicant was promoted to the post of CMD Grade-I in the pay scale of Rs.4500-7000 (5th CPC) on 14.09.2000 after passing the Trade Test (Annexure A-7).

2.4 He was further promoted to the post of CMD (Special Grade) w.e.f. 18.07.2011 in PB-2 9300-34800 + Grade Pay 4200/- (Annexure A-9).

2.5 The applicant places reliance on letter dated 05.12.1996 (Annexure A-5), wherein the promotional scale for Civilian Motor Drivers in Defence Establishments has been made similar to Staff Car Drivers in various Ministries/Department, as per DoP&T OM dated 30.11.1993 (Annexure A-3)

3. The applicant has sought for the following reliefs:

“8.1 It be held that the applicant is entitled for the pay scale of 5000-8000 meant for Civil Motor Driver (Special Grade) w.e.f. 10.02.2000 by setting aside Annexure A/1.

8.2 Alternatively it be held that the applicant is entitled for IIIrd MACP w.e.f.07.02.2008.

8.3 It be held that applicant is entitle for all consequential benefits and direction may kindly be given to pay him arrears of salary and other terminal benefits including pension with interest.

8.4 Any other relief as deemed proper by this Hon’ble Tribunal and the costs of this O.A.”

4. The respondents, in their reply, have brought out the dates on which the applicant was appointed/promoted as per service record available, which are as under:

(a)	07.02.1978	Fatigueman	Rs.196-232 (3 rd CPC pay scale) Rs.5200-20200+GP 1800 (6 th CPC pay scale)
(b)	10.02.1982	CMD Gr.-II	Rs.260-350 (3 rd CPC pay scale) Rs.5200-20220+GP 1900 (6 th CPC pay scale)
(c)	14.09.1994	CMD Gr.-I	Rs.4000-100-6000 (5 th CPC pay scale) Rs.5200-20200+GP 2400 (6 th CPC pay scale)
(d)	14.09.2000	CMD Gr.-I	Rs.4500-7000 (5 th CPC pay scale) Rs.5200-20200+GP 2800 (6 th CPC pay scale)

4.1 Under the MACP scheme, three financial upgradation in the entire career of an employee is counted against regular promotions availed from the grade in which an employee was appointed as a direct recruit. In the instant case, the applicant has already been given three financial upgradations before completion of thirty years of service and, therefore, he is not eligible for benefit of 3rd MACP.

4.2 The applicant had filed two cases, i.e. OA No.1026/2011 and CCP No.55/2012 earlier, which were disposed of by this Tribunal directing the respondent department to decide his appeal. The appeal was decided on 11.01.2013 (Annexure A-1), whereby his request for further financial upgradation has been rejected.

4.3 Special Grade of Rs.5000-8000 was also sanctioned for Civilian Motor Drivers vide letter dated 09.04.2001 (Annexure R-3) and these orders were to take effect from 8.11.1996.

5. We have heard the learned counsel for the parties and gone through the pleadings and documents available on record.

6. The main issue to be adjudicated is whether the movement of the applicant from Fatigueman to CMD was a promotion, which is to be taken as first financial upgradation or it is to be taken as an element of direct recruitment.

7. While the applicant has stated in the O.A that there were no further promotional avenue to the post of Fatigeman, the respondents, in their reply, have stated that the promotion avenue to the Fatigueman category was Overseer and Supervisor.

8. It is an admitted fact that the post of Civilian Motor Driver is not in the regular channel of promotion of Fatigueman. The respondents have stated that for the Fatigueman category, the channel of promotion avenues were Overseer and Supervisor. We also find that the respondents have failed to show that for an appointment to the category of Civilian Motor Driver, the post of Fatigueman has been defined as a feeder post for promotion by way of seniority or any other known method like seniority-cum-merit selection. Thus, the entry of the applicant as a departmental candidate to the cadre of Civilian Motor Driver was not by way of promotion in his avenue of promotion but by way of selection in another cadre. Therefore, the respondents are wrong in counting the applicant's selection as a Civilian Motor Driver as promotion for the purpose of denying him the benefit of financial upgradation under the MACP scheme. This is in line with the orders passed by the coordinate Bench at Jodhpur Bench of the Tribunal in OA No.382/2011 (**Bhanwarl Lal Regar vs. Union of India & Ors.**, decided on 22.05.2012), subsequently affirmed by the Hon'ble

Jodhpur High Court of in Writ Petition No. 11336/2012 and also the orders passed by the Principal Bench in OA No.3756/2011 (**Shakeel Ahmad Burney vs. Unions of India & Ors.**, decided on 21.12.2012), which has also been affirmed by the Hon'ble High Court of Delhi in W.P.(C) No.4131/2014, wherein the movement from the Postman to Postal Assistant has not been considered as a promotion for the purpose of financial upgradation.

9. Accordingly, the O.A is allowed. Annexure A-1 is set aside. The respondents are directed to decide the case of the applicant for grant of MACP-III, without considering his induction into Civilian Motor Driver Gr.-II from Fatigueman as a promotion. All financial benefits be paid to him within a period of 60 days from the date of receipt of a certified copy of this order. No interest would be payable. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

am/-