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CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH  
KOLKATA

Master Craftsman

MACP

OA No. 350/1508/2014  
MA No. 350/003061/2015  
OA No. 350/01386/2014

Date of Order: 29.09.2016 JWJ

29.9.2016

Present:

The Hon'ble Mr. Justice Vishnu Chandra Gupta, Judicial Member  
The Hon'ble Ms. Jaya Das Gupta, Administrative Member.

OA No.350/01508/2014

Pannalal Ghosh Dastidar, son of Late P.B.Ghosh Dastidar, aged about 53 years working as Master Craftsman (Machinist) Section CNC-II, Ticket No. 16, Per No. 100683 in the Rifle Factory, Ishapore, Post Office Ichapore-Nawabganj, District 24-Parganas (North), Pin-743144 and residing at Sondlapara Road, West Maniktala, Ichapur Post Office Ichapore-Nawabganj, District-24 Parganas (North), Pin-743144.

-Versus-

1. UNION OF INDIA service through the Secretary, Ministry of Defence (Department of Defence Production), Government of India, South Block, New Delhi-110001.
2. THE CHAIRMAN, Ordnance Factory Board, Ministry of Defence, Government of India, 10A, Shaheed Khudiram Bose Road, Kolkata-700001.
3. THE GENERAL MANAGER, Rifle Factory Ishapore, Post Office -Ishapore-Nawabganj, District-24 Parganas (North), Pin-743144.
4. THE PRINCIPAL CONTROLLER OF ACCOUNTS (Factories), 10A, Shaheed Khudiram Bose Road, Kolkata-700001.

.....Respondents

JWJ

OA No. 350/01386/2014

1. **MOHAN LAL DAS**, son of Late Manindra Nath Das, aged about 58 years, working as Master Craftsman bearing Personal No. 151709 under General Manager, Rifle Factory, Ishapore, Nawabganj, District - 24 Parganas (North) and residing at Village and Post Office - Nadral (Joychanditala) via Kakinara, Police Station - Jagatdal, District - 24 Parganas (North), Pin-743126.
2. **SUBRATA KUMAR BANERJEE**, son of Late A.K.Banerjee, aged about 55 years working as Master Craftsman bearing Personal No. 151731 under General Manager, Rifle Factory Ishapore, Nawabganj, District- 24 Parganas (North) and residing at 19 No. Railway Gate Math Bagan, Post Office - Bengal Enamel, District 24 Parganas (North), Pin-743144.
3. **HARIPADA MAJUMDAR** son of Late P.C.Majumdar, aged about 53 years working as Master Craftsman bearing 152368 under General Manager, Rifle Factory, Ishapore, Nawabganj, District 24 Parganas (North) and residing at Niranjan Nagar, Block-A, Post Office, Chandanpukur, Barrackpore, District 24 Parganas, Kolkata-700122.
4. **PARESH NATH SHAW**, son of Late Jagannath Shaw aged about 59 years working as Master Craftsman, bearing Personal No. 151634 under General Manager, Rifle Factory Ishapore, Nawabganj, District- 24 Parganas (North) and residing at 19 No. Railway Gate Math Bagan, District 24 Parganas (North), Pin-743144.
5. **JAGABANDHU PAL**, sons of Late Biswanath Pal aged about 60 years worked as Master Craftsman, bearing Personal No. 151633 under General Manager, Rifle Factory Ishapore, Nawabganj, District- 24 Parganas (North) and residing at C/o. Smt. Rupali Biswas, Monirampur, Post Office Barrackpore, District 24 Parganas (North), Pin-700120.
6. **GHANSHYAM BAJPAI**, son of late Ramnaresh Bajpai, aged about 58 years, working as Master Craftsman, bearing Personal No. 170004 under General Manager, Rifle Factory

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Ishapore, Nawabganj, District- 24 Parganas (North) and residing at C/81, East Land, Type-III, Post Office Bengal Enamel, District- 24 Parganas (North), Pin-743122.

..... Applicants

-Versus-

1. **UNION OF INDIA** service through the Secretary, Ministry of Defence (Department of Defence Production), Government of India, South Block, New Delhi-110001.
2. **THE CHAIRMAN AND DIRECTOR GENERAL**, Ordnance Factory Board, Ministry of Defence, Government of India, 10A, Shaheed Khudiram Bose Road, Kolkata-700001.
3. **THE GENERAL MANAGER**, Rifle Factory Ishapore, Post Office -Ishapore-Nawabganj, District-24 Parganas (North), Pin-743144.
4. **THE PRINCIPAL CONTROLLER OF ACCOUNTS** (Factories), 10A, Shaheed Khudiram Bose Road, Kolkata-700001.

..... Respondents

For the Applicants : Mr. P.C.Das, Counsel

For the Respondents : Mr.B.P.Manna, Counsel

ORDER

MS.JAYA DAS GUPTA, AM:

Original Application No. 1508 of 2014 and OA No. 1386 of 2014 are taken together as both the parties (i.e. the applicants and respondents) have submitted that they are analogous matters.

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2. While in OA No. 1508 of 2014 there is only one applicant, namely Pannalal Ghosh Dastidar, there are six applicants in OA No. 1386 of 2014.

3. The Applicants have approached this Tribunal under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

**OA No. 1508 of 2014**

(a) To quash and/or set aside the impugned office order dated 16<sup>th</sup> June, 2014 being No. 1896/I-C/MACP/LO.B/2014 along with letter of Ministry of Defence being I.D. No. 11 (5)/2009-D (Civ-I) dated 06.02.2014 being Annexure A-18 of this original application which is absolutely illegal and arbitrary in view of the similar decisions passed by this Hon'ble Tribunal as well as Coordinate Bench of the Central Administrative Tribunal, Chandigarh Bench dated 27<sup>th</sup> November, 2009 in OA No. 104/PB/2013 and OA No. 519/PB/2013 and also the order passed by this Hon'ble Tribunal in OA No. 1231 of 2013 dated 24.09.2013 and OA No. 738 of 2013 dated 22.07.2013 and the latest order passed by this Hon'ble Tribunal in OA 350/01386/2014 dated 10<sup>th</sup> October, 2014;

(c) To quash and/or set aside the impugned order dated 23.10.2014 issued by the respondent authority whereby and where under the benefit of MACP in respect of Grade Pay of Rs. 4600/- of the applicant which was granted in favour of the applicant has been deleted being Annexure A-20 of this original application which is absolutely illegal and arbitrary in view of the similar decisions passed by this Hon'ble Tribunal as well as Coordinate Bench of the Central Administrative Tribunal, Chandigarh Bench dated 27<sup>th</sup> November, 2009 in OA No. 104/PB/2008 as well as order passed by the said Coordinate Bench in OA No. 217/PB/2013 and OA No. 519/PB/2013 and also the order passed by this Hon'ble Tribunal in OA No. 1231 of 2013 dated 24.09.2013 and OA No. 738 of 2013 dated 22.07.2013 and the latest order passed by this Hon'ble Tribunal in OA 350/01386/2014 dated 10<sup>th</sup> October, 2014;

(c) A declaration to the effect that the applicant is entitled to the grade pay of Rs. 4800/- as 3<sup>rd</sup> MACP and they be further directed to continue the applicant's pay and allowances, while continuing the grade pay of Rs.4600/- with all consequential benefits without effecting any recoveries from them;

(d) To pass an appropriate order directing upon the respondent authority to refund the amount if they have already deducted from the salaries of the applicants with penal interest and to quash and/or set aside the decision of recovery."

**OA No. 1386 of 2014**

(a) Leave be granted to move one single application jointly under Rule 4 (5) (a) of the Central Administrative Tribunal (Procedures) Rules, 1987 as the applicants have got a common grievances and all of them are similarly circumstanced persons;

(b) To quash and/or set aside the impugned speaking order dated 20<sup>th</sup> September, 2014 issued by the General Manager, Rifle Factory, Ishapore against the applicants which is absolutely illegal and arbitrary and in gross violation of the proviso of Article 309 of the Constitution of India by reduction of their Grade Pay from Rs. 4600/- to Rs. 4200/- by overriding the proviso of Article 309 of the Constitution of India along with Show cause Notice dated 27<sup>th</sup> June, 2014 being Annexure-A/19 and A/16 of this original application;

(c) The impugned order dated 15.03.2014 be quashed and/or set aside and declared as illegal and arbitrary being violative of the object and spirit behind the MACP Scheme and also being violative of the Constitution of India;

(d) A declaration to the effect that the applicants are entitled to the grade pay of Rs. 4600/- as 3<sup>rd</sup> MACP and they be further directed to continue the applicants 'pay and allowances, while continuing the grade pay of Rs. 4600/- with all consequential benefits without effecting any recoveries from them;

(e) To pass an appropriate order directing upon the respondent authority to refund the amount if they have already deducted from the salaries of the applicants with penal interest and to quash and/or set aside the decision of recovery."

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3. It is the case of both sides that the applicants occupied the posts of Machinist B, Machinist Skilled, Highly Skilled and Master craftsman as per the following chart:

Date	Post/Grade	Mode of Appointment/up gradation	3 <sup>rd</sup> Pay Commission w.e.f. 01.01.1976	4 <sup>th</sup> Pay Commission w.e.f. 01.01.1996	5 <sup>th</sup> Pay Commission w.e.f. 01.01.1996	6 <sup>th</sup> Pay Commission w.e.f. 01.01.2006	Remarks
I	II	III	IV	V	VI	VII	VIII
5.3.82	Machinist-B	Initial appointment	Rs.210-290	-	-	-	
15.10.84	Machinist B	ECC Recommendation	Rs.260-400	Rs.950-1500/-	Rs.3050-4590/-		
9.8.99	Machinist (Skilled)	ACP-I	....	....	Rs.4000-6000/-		ACP I was granted to the pay scale of Rs. 4000-6000 being the pay scale of next promotional hierarchy i.e. Highly Skilled Grade.
18.3.01	Highly Skilled	Promotion (Functional)	....	....	Rs.4000-6000/-		
20.5.03	Master Craftsman	Placement	....	....	Rs.4500-7000/-	Rs.2800/- (GP)	After implementation of 3 <sup>rd</sup> grade structure he was placed in the Master Craftsman grade w.e.f. 20.5.03. Movement from H S to MCM is treated as placement not promotion till 31.12.05.
1.1.06	Master Craftsman	Cadre restructuring	....	....	Rs.4500-7000/-	Rs.9300-34800/- (GP Rs.4200/-)	
5.3.06	Master Craftsman	ACP II	....	....	Rs.5000-8000/-	Rs.9300-34800/- (GP Rs.4200/-)	
5.3.12	Master Craftsman	MACP III	....	....	....	Rs.4200(GP) with 3% increment	

4. There is no dispute that upto the stage of grant of second ACP to them on 05.03.2006 i.e. after introduction of the 6<sup>th</sup> CPC they were granted the scale of Rs. 5000-8000/-. The only controversy arises because as per the submission of the applicants they were granted third MACP benefits on 05.03.2012 in the GP of Rs. 4600/- but this was later withdrawn and they

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were given the GP of Rs. 4200/- with an extra 3% increment as MACP benefit. As a result of this exercise, recovery has been made only from one applicant (Shri Pares Nath Shaw who retired from service w.e.f. 30.04.2014 and recovery was made from him before his retirement). The learned counsel for the applicants have drawn our attention to the letter of the Ministry of Defence D (Civ-I) (part of Annexure-A/18, at page 104) and want to take the advantage of this communication from the Ministry of Defence. Such communication is set out below:

"Ministry of Defence  
D (Civ-I)

Subject: Restructuring of cadre of artisan staff in Defence Establishment in modification of recommendations of 6<sup>th</sup> CPC- clarification regarding.

Reference Ministry of Defence ID note of even number dated the .....on the above mentioned subject. The entire matter has been reconsidered in consultation with the DOP&T and Department of Expenditure. Their advice in the matter is as under:

- (i) As per provision of MACP Scheme introduced w.e.f. 01.09.2008, financial up gradation is admissible in the hierarchy of Grade Pay and placement of High Skilled workers (GP Rs. 2400/-) as Master Craftsman (GP Rs. 4200/-) is very much considered as ladder in hierarchy of Grade Pays. Ignoring the placement of Highly Skilled as Master Craftsman (Non Functional) will be deviating the provisions of MACPS. Hence placement of Highly Skilled workers as Master Craftsman (MCM) prior to 01.01.2006 would be offset against one up gradation for the purpose of grant of MACP benefits;

JW

- (ii) MCM being the feeder post of Charge man and since both these posts have identical pay band and Grade Pay financial up gradation under MACPS cannot be to a Grade Pay which is more than what is admissible in regular promotion;
- (iii) Financial up gradations earned to non functional post of MCM is to be taken into account as 2<sup>nd</sup> financial up gradation in so far as MACPS is concerned;
- (iv) On ground (ii) above i.e. whether MCM is the feeder post to charge man is *prima facie* a question of fact to be established by the administrative Ministry i.e. Ministry of Defence. The contention of the staff side in this matter that MCM is not a feeder post to Charge man is therefore may be resolved by Ministry of Defence itself;

2. As for the 1 (iv) above, the matter has been considered in consultation with Defence Finance and it is further clarified that since the post of MCM was not in the hierarchy of artisan staff cadre upto 2005 Highly Skilled Worker/MCM who were already drawing scale of charge man (Rs. 5000-8000) viz; the promotion post upto 2005 under ACPS may be considered for further financial up gradations if due in the next Grade Pay (Rs. 4600/-) in the hierarchy of grade pay.

This issues with the concurrence of Defence Finance vide their I.E. No.017/AG/PB dated the 5<sup>th</sup> February, 2014.

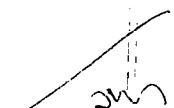
Sd/- (M.S.Sharma)  
Under Secretary"

5. As per paragraph 2 of the aforesaid communication, supra, the matter has been clarified that since the post of Master Craftsman is not in the hierarchy of artisans upto 31.12.2005 the highly skilled worker/Master Craftsman who are already drawing

the pay scale of charge man Rs. 5000-8000/- i.e. promotional post of Master Craftsman as on 31.12.2005 under ACP may be considered for further financial up gradation if due in the next GP of Rs. 4600/- in the hierarchy of the GP. It is clear from the records set out below, that as on 31.12.2005, the applicants were all posted as master craftsman enjoying the pay scale of Rs. 4500-7000/-, before the introduction of 6<sup>th</sup> CPC i.e. as on 31.12.2005. They were not posted to the promotional post of charge man nor were they enjoying the pay scale of Rs. 5000-8000/- attached to the post of charge man before 01.01.2006. All of them were placed as on December, 2005 in the pay scale of Rs. 4500-7000/- details of which in so far as applicants in OA no. 1386 of 2014 are given herein below for ready reference:

"1. OA No.350/01386/2014 – Mohanlal as & 5 Ors –Vs- UoI & Ors.

Sl. No	Name of applicant	Designation	Pay scale as on 31.12.2005	Remarks
1.	Mohan Lal Das	Master craftsman	Rs.4500-125-7000/-	The applicant was drawing Basic Pay of Rs. 5125/- in the pay scale of Rs.4500-7000/- on 31.12.2005, the minimum i.e. Rs. 4500/- of which highlighted in the pay slip.
02	Subrata Kumar Banerjee	-do-	-do-	The applicant was drawing Basic Pay of Rs. 5000/- in the pay scale of Rs.4500-7000/- on 31.12.2005, the minimum i.e. Rs. 4500/- of which is highlighted in the pay slip.
03	Haripada Majumdar	-do-	-do-	The applicant was drawing Basic pay of Rs. 5125/- in the pay scale of Rs. 4500-7000 on 31.12.2005 the minimum i.e. Rs. 4500/- of which is highlighted in the pay slip.
04	Paresh Nath Shaw	-do-	-do-	The applicant was drawing Basic Pay of Rs. 5125/- in the pay scale of Rs. 4500-



				7000 on 31.12.2005 the minimum i.e. Rs. 4500/- of which is highlighted in the pay slip.
05	Jagabandhu Pal	-do-	-do-	The applicant was drawing Basic Pay of Rs.5000/- in the pay scale of Rs. 4500-7000 on 31.12.2005 of which is highlighted in the pay slip.
06	Ghanshyam Bajpai	-do-	-do-	The applicant was drawing Basic Pay of Rs. 4750/- in the pay scale of Rs. 4500-7000 on 31.12.2005 the minimum i.e. Rs. 4500 of which is highlighted in the pay slip.

6. In fact from the chart given above, they were given the scale of Rs. 5000-8000/- only on 05.03.2006 i.e. the date after the 6<sup>th</sup> CPC came into effect. The Applicants did not enjoy the scale of Rs. 5000-8000/- in the 5<sup>th</sup> CPC which culminated on 31.12.2005 also as the post of charge man enjoying the scale of Rs. 5000-8000/- is a promotional post to that of master crafts man they cannot get the GP higher than the promotional post of charge man. The GP of charge man is Rs. 4200 in the 6<sup>th</sup> CPC. Therefore, is no need to interfere in the action taken by the respondents of awarding them GP of Rs. 4200/- with 3 extra increment as MACP instead of Rs. 4600/-.

7. Also in the case of the Applicant Shri Pannalal Ghosh Dastidar in OA No. 1508 of 2014, as per the document (Pay slip) submitted by the respondents as per direction of the court it is apparent in December, 2005 he was in pay scale of Rs. 4500-7000/-.

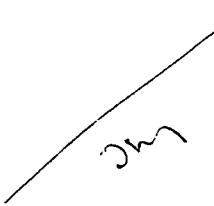
8. Show cause notice for the recovery to be made of the over payment was issued to Shri Pannalal Ghosh Dastidasr on 04.03.3014 and the order allowing GP Rs. 4600/- was cancelled vide order dated 15.03.2014. Therefore, we see that more than five years have not passed between the wrong fixation of Grade Pay and the order cancelling such wrong fixation of GP.

Similarly in the case of Applicants in OA No. 1386 of 2014, the following facts are given below:

Name	Show cause notice	Personal hearing	SPEAKING ORDER
Mohan Lal Das	27.6.14	23.8.14	20.9.14
Subrata Kumar Banerjee	-do-	-do-	-do-
Haripada Majumdar	-do-	-do-	-do-
Paresh Nath Shaw	-do-	-do-	-do-
Jagabandhu Pal	-do-	-do-	-do-
Ghanshyam Bajpai	-do-	-do-	-do-

Also in these cases more than five years have not elapsed from the wrong award of Grade Pay and its rectification. The above order shows that hearing was given before recovery order/speaking order issued.

9. The Applicants have also drawn our attention to the order of Chandigarh Bench of the Tribunal in OA No. 104/PB/2008 delivered on 27<sup>th</sup> November, 2009. We have gone through the same. We find that the issue before the Chandigarh Bench of the Tribunal is different and distinct. The applicant in that case was not



given any promotional benefit in 24 years of his service. So he became entitled to 2<sup>nd</sup> ACP from 09.08.1999 on which date the ACP scheme of the Govt. Of India was introduced. In the present cases 2<sup>nd</sup> ACP was granted on 5.3.2006 in the scale of Rs. 5000-8000 i.e. as on 31.12.2005 the applicants were in scale of Rs. 4500-7000. As per communication of Ministry of Defence, supra, they are not entitled to GP Rs. 4600/-.

10. On the question of recovery, the learned counsel for the Applicants placed reliance on the decision of the Hon'ble Apex Court rendered in the case of **State of Punjab and Others** etc. **Vs. Rafiq Masih (White Washer)** etc, Civil Appeal No. 11527 of 2014 (arising out of SLP (C) No. 11684 of 2012 dated 18<sup>th</sup> December, 2014. The relevant portion of the decision is quoted hereunder:

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery where payments have mistakenly been made by the employer, in excess of their entitlement. Be it as it may, based on the decisions referred to herein above, we may8 as a ready reference, summarize the following few situations wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' Service);
- (ii) Recovery from retired employees, or employees who are due to retire within one year of the order of recovery;

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- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued;
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post and has been paid accordingly even though he should have rightfully been required to work against an inferior post;
- (v) In any other case, where the Court arrives at the conclusion that recovery if made from the employee would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recovery."

However, on the issue of recovery, the Hon'ble Apex Court rendered a decision on 29<sup>th</sup> July, 2016 in Civil Appeal No.3500 of 2006, in the case of High Court of Punjab and Harayana & Ors vs Jagdev Singh. The Hon'ble Apex Court after taking note of the case of Rafiq's case supra was pleased to hold as under:

"12. For the reasons, the judgment of the High Court which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable instalments. We direct that the recovery be made in equated monthly instalments spread over a period of two years.

13. The judgment of the High Court is accordingly set aside. The Civil Appeal shall stand allowed in the above terms. There shall be no order as to costs."

11. In view of the discussions made above we find no merit in these cases. Hence both the OAs stand dismissed.

MC

Accordingly MA disposed of. Any subsisting interim order stands vacated.

However, while parting with this case, in the light of the decision of the Hon'ble Apex Court in the case of Jagdev Singh (supra), we direct the Respondents that recovery if any, instead of in lump sum, shall be in equal monthly instalments. There shall be no order as to costs.

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(Ms.Jaya Das Gupta)  
Administrative Member

Justice V.C.Gupta  
Judicial Member

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