

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O.A.NO. 060/0602/2018 Date of order:- 06.02.2019.

Coram: **Hon'ble Mr. Sanjeev Kaushik, Member (J)**
Hon'ble Mrs.P.Gopinath, Member (A).

Ramesh Kumar son of Sh. Kanshi Ram, office of Executive Engineer, Madhopur Central Division, Central Public Works Department, Madhopur Cantt. District Pathankot(Punjab) and resident of village Ranipur Chhota, Post Office Ranipur, District Pathanakot(Punjab).

.....Applicant.

(By Advocate :- Mr. Som Dutt Sharma)

Versus

1. The Union of India through the Secretary, Government of India, Department of Central Public Works, Nirman Bhawan, New Delhi.
2. The Director General(Works) Central Public Works Department, Nirman Bhawan, New Delhi.
3. The Additional Director General, North Zone-I, CPWD, Kendriya Sadan, Sector 9-A, Chandigarh.
4. The Superintending Engineer, Shimla Central Circle, Central Public Works Department, Kennedy Cottage, Shimla-04 (Himachal Pradesh).
5. The Executive Engineer, Madhopur Central Division, Central Public Works Department, Madhopur Cantt. District Pathankot(Punjab).

...Respondents

(By Advocate : Mr. Vinod K.Arya).

O R D E R (Oral).

Sanjeev Kaushik, Member (J):

Applicant has filed the present OA praying for the following relief(s):-

"a) It is respectfully prayed that this Hon'ble Tribunal may kindly quash Annexures A-9, A-10 & A-11;

b) It is respectfully prayed that this Hon'ble Tribunal may kindly declare that the applicant has correctly been given the benefits of 3rd financial up-gradation granted to the applicant vide order dated 16.5.2014 at Annexure A-7 and A-8 under the MACP Scheme and his pay was correctly fixed;

c) It be further declared that no recovery can be made from the applicant in view of the law laid down by the Hon'ble Apex Court in the case of Rafiq Masih and the subsequent directions issued by respondent no.1 at Annexure A-12".

2. Facts as projected by the applicant are that he joined the respondent department as Plumber on 16.5.1986 as work charge category at Madhopur Central Division, CPWD, Madhopur. After qualifying the trade test prescribed for promotion, the applicant was promoted as Work Assistant vide order dated 28.8.2003 and he is continuing as such till date. Applicant has stated that as per Assured Career Promotion Scheme (ACP) issued on 09.08.1999 for grant of two financial up-gradations to those employees, who did not get a chance of promotion, to remove hardship faced by them, on completion of 12 and 24 years of regular service. The said Scheme was modified and new Modified Assured Career Progression Scheme (MACP) was issued vide OM dated 19.05.2009 operational w.e.f. 01.09.2008, which was to be granted on completion of 10/20/30 years of regular service. It is submitted that in terms of order dated 25.9.2008 passed by Delhi High Court, the office of respondent No.2 granted Selection Grade in revised pay scale of Rs.330-480 vide office Memo dated 09.06.2011 whereby the category of the applicant became entitled for selection grade on completion of 8 years of regular service. Accordingly, applicant was granted selection grade

with effect from 16.5.1994 on completion of 8 years of service. After grant of selection grade, the benefit of ACP Scheme given to the applicant was withdrawn in view of mandate contained in para 13 of ACP Scheme. Applicant has further stated that after grant of selection grade, he was given the benefit of 2nd financial up-gradation with effect from 1.9.2008 on completion of 10 years regular service and his pay was rightly fixed vide order dated 31.3.2012.

3. Applicant has stated that respondent no.2 again issued instructions dated 1.7.2016 (Annexure A-6) by reiterating the earlier instructions dated 12.7.2012, wherein the respondents have clarified that in case of CPWD workers getting selection grade on completion of 8 years, they are entitled for next 2nd & 3rd financial up-gradations after 18 & 28 years of service. Respondent no.4 vide order dated 10.10.2014 granted approval for grant of 3rd financial up-gradation with effect from 16.5.2014 under the MACP Scheme to the applicant along with other employees. After grant of 3rd financial up-gradation, the pay of the applicant was fixed at Rs.14180/- plus Rs.4200/- w.e.f. 1.7.2014 with next date of increment on 1.7.2015 vide order dated 11.11.2014. The applicant continued to get salary in the above pay scale w.e.f. 1.7.2014. Suddenly, vide order dated 29.5.2017, respondent no.1 issued clarification to respondent no.5 that 3rd MACP should be given after completion of 30 years service i.e. on 16.5.2016. Pursuant thereto, another letter was issued by respondent no.4 on 4.4.2018, wherein it was clarified that that effective date of grant of 3rd financial up-gradation in respect of the applicant is with effect from 16.5.2016 instead of earlier date i.e. 16.5.,2014. Accordingly, vide letter dated 18.4.2018, the pay of the

applicant has been re-fixed and recovery of excess payment was made. Hence this O.A.

4. Pursuant to notice the respondents have contested the claim of the applicant by filing written statement, wherein they have submitted that the impugned orders have been passed in accordance with law and MACP policy which stipulates that financial up-gradation will be granted on completion of 10/20/30 years of service. Since applicant was granted 3rd financial up-gradation on completion of 28 years of service, therefore, while rectifying their mistake and consequent thereupon, order of recovery has been made.

5. We have heard learned counsel for the parties at considerable length.

6. This matter is no longer res-integra and has already been decided in the case of **Kewal Singh** versus **Union of India & Ors** in O.A.No.060/ 00334/2016 vide order dated 28.9.2017. The order dated 28.9.2017 passed by the Tribunal in the case of Kewal Singh (supra) has also been affirmed by the jurisdictional High Court vide judgment dated 23.8.2018. In the said case, this Tribunal had ordered as follows:-

" 8. Perusal of the above makes it very clear that if person gets regular promotion on completion of 8 years of service then he becomes entitled to grant of 2nd ACP on completion of 18 years of service and then 3rd financial upgradation on completion of 28 years of service. By applying this illustration, the respondents have rightly allowed 2nd and 3rd financial upgradation in favour of the applicant in terms of their office order dated 09.06.2011 issued by Govt. of India, Director General Public Works Department, which has been issued in furtherance to DoPT OM dated 09.02.2009 and the said benefit has been

conferred upon the applicant by fixing his pay. Not only this, clarification dated 12.07.2012 issued by them wherein they have stated that the selection grade is to be treated as upgradation for the purpose of grant of ACP/MACP on completion, therefore, after grant of selection grade on completion of 8 years to skilled category, the 2nd MACP is to be granted on completion of 10 years in a grade i.e. after 18 years (8+10) and 3rd MACP after 28 years of service (8+10+10). Therefore, the impugned order withdrawing the benefit is totally bad in law and cannot be allowed to sustain.

9. We, therefore, allow both the O.As. and quash the impugned orders. Consequently, the respondents are directed to refix pay of the applicants and grant them the benefit of 3rd MACP on completion of 28 years of service as has already granted to them on 03.04.2014 instead of 03.04.2016.”

The present case is squarely covered by the ratio of order passed in the case of Kewal Singh (supra) and is also disposed of in the same terms. No costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(P.GOPINATH)
MEMBER (A).

Dated:- 06.02.2019.

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