

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.916 of 2014

Cuttack this the 5th day of December, 2018

CORAM:

THE HON'BLE MR. GOKLUL CHANDRA PATI, MEMBER(A)
THE HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER (J)

Lawrence Aind, aged about 49 years, S/o. Joseph Aind, at present working as Technical Officer – B (TO-B) in Proof & Experimental Establishment, Ministry of Defence, Chandipur-756 025, Dist-Balasore

...Applicant

By the Advocate(s)-M/s.S.K.Ojha
S.K.Nayak

-VERSUS-

Union of India represented through:

1. The Secretary, Ministry of Defence, South Block, New Delhi-110 011
2. Department of Defence Research & Development, Ministry of Defence represented through its Secretary-cum-Director General, DRDO & Scientific Adviser to Rakshya Mantri, DRDO Bhawan, Rajaji Marg, new Delhi-110 105
3. Director, Directorate Human Resource & Development, DRDO Bhawan, Rajaji Marg, New Delhi-110 105
4. Director, Directorate of Personnel, Room No.266, DRDO Bhawan, Rajaji Marg, New Delhi-110 105
5. Director, Proof & Experimental Establishment, Ministry of Defence, Chandipur-756 025
6. Secretary, Ministry of Personnel, Public Grievances & Pension(Department of Personnel & Training), 3rd Floor, Laknaya Bhawan, Khan Market, New Delhi-110 003

...Respondents

By the Advocate(s)-Mr.L.Jena

ORDER(Oral)

SWARUP KUMAR MISHRA, MEMBER(J):

The applicant was working as Technical Officer –B in Proof & Experimental Establishment, Ministry of Defence, Chandipur at the time of filing the O.A. In this O.A. he has prayed for the following reliefs:

- i) Let the action of the Respondents in rejecting the claim of the applicant for grant of 2nd MACP w.e.f. 15.09.2008 to 31.08.2011 vide the impugned order dated 15.09.2014 under Annexure-A/5 be declared as illegal and as such liable to be set aside.
- ii) Let the Respondents be directed to extend the benefit of 2nd MACP in shape of financial upgradation of Grade Pay from Rs.4600 to Rs.5400/- w.e.f. 15.09.2008 to 31.08.2011 within a stipulated time.
- iii) Let the Respondents be directed to sanction and disburse the arrear entitlements on such sanction of 2nd MACP for the period from 15.09.2008 to 31.08.2011 within a stipulated time.
- iv) Let any other appropriate order/orders, direction/directions may kindly be passed which would be deemed fit and proper in the facts and circumstances of the case.

2. Respondents have filed their counter contesting the claim of the applicant, inter alia mentioning that the Directorate of HRD, DRDO HQ, New Delhi vide their letter No.DHRD/76213/MACPS/C/M/01 dated 22.12.2009 and letter dated 23.07.2014 (R/4 series) has specifically clarified about the applicability of MACPS to DRTC Cadre which states that ACP Scheme promulgated in 1999 has not been made applicable to DRTC due to merit based promotion under Limited Flexible Complementing Scheme. Therefore, the MACPS is also not applicable to DRTC.

3. During the course of hearing, learned counsel for the applicant drew our attention to the order dated 25.05.2018 passed by this Tribunal in O.A.No.1098/2014 and submitted that the grievance of the applicant in the present O.A. is set at rest by that decision.

4. We have gone through the decision of this Tribunal as relied upon by the learned counsel for the applicant and we find that the facts of that case are quite akin to the facts of the present O.A. In O.A.No.1098/2014 the issue of

applicability of MACP was considered and after noting the observation of Hon'ble Karnata HighCourt, it was held as under:

"8. The Hon'ble High Court of Karnataka at Bengaluru vide common judgment dated 13.2.2017 W.P.Nos.61691 and 61692/2016 & also upheld the decision of CAT, Bengaluru Bench in O.A.No.1020/2013. At Paragraphs-5 and 6 of the Hon'ble HighCourt observed as follows:

"5. The aforesaid shows that though initially ACP scheme was not applicable to the FCS, but subsequently by the office memorandum dated 10.9.2010 read with office memorandum dated 1.5.2012, it has been made applicable.

6. Under the circumstances, it is not possible to accept the contentions of the learned counsel for the petitioners that the MACP scheme is not at all applicable".

9. The issue of the applicability of the ACP and MACP having been conclusively established by the above orders of the CAT, Bengaluru Bench as upheld by the Hon'ble High Court of Karnataka at Bengaluru and subsequently the SLP filed by the Union of India having been dismissed by the Hon'ble Supreme Court, we follow the identical ratio and quash the impugned order dated 25.8.2014(A/5) which has been passed solely on the ground that the ACP of 1999 has not been made applicable to DRTC due to merit based promotion under Limited Flexible Complementing Scheme and after 6th CPC, the ACP Scheme has been modified as MACPS which is also not applicable to DRTC. The Respondents are directed to reexamine the case of the applicant in the light of the eligibility under the MACP Scheme by constituting an Assessment Board and consider the case of the applicant for financial upgradation under the MACP Scheme within a period of three months from the date of receipt of this order.

5. In view of the above, to maintain consistency, certainty and uniformity in the administration of justice, we are not inclined to make a departure from the view already taken in an identical case. Therefore, following the *ratio decidendi* in O.A.No.1098/14 (supra), we make the following order.

i) The impugned order dated 15.09.2014 is quashed and set aside.

- ii) The Respondents are directed to reexamine the case of the applicant in the light of the eligibility under the MACP Scheme by constituting an Assessment Board and consider the case of the applicant for financial upgradation under the MACP Scheme within a period of three months from the date of receipt of this order.

6. The O.A is disposed of with the above direction with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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