

.1.

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**Original Application No.180/00734/2017**

**Tuesday, this the 26<sup>th</sup> day of March, 2019**

**CORAM:**

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER  
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

Shri K.Mathai, S/o M.Koshy,  
Lineman (retired), Electricity Department,  
Port Blair, Andaman & Nicobar Islands - 744 101.  
Residing at Cherakorottu House,  
Kadakkad South, Pandalam,  
Pathanamthitta District,  
Kerala – 689 501.

**....Applicant**

**(By Advocate Mr.Shafik.M.A.)**

**v e r s u s**

1. The Secretary (Power),  
Anadaman and Nicobar Administration,  
Port Blair, Andaman Nicobar Islands – 744 101.
2. The Superintending Engineer,  
Electricity Department, Port Blair,  
Andaman Nicobar Islands - 744 101.
3. The Executive Engineer,  
Electricity Department,  
South Andaman Division,  
Haddo PO, Port Blair,  
Andaman Nicobar Islands - 744 102.
4. The Pay & Accounts Officer,  
Office of the Chief Pay & Accounts Office,  
Andaman and Nicobar Administration,  
Port Blair, Andaman Nicobar Islands - 744 101.

**....Respondents**

**(By Advocate Mr.N.Anilkumar, SCGSC)**

.2.

This application having been heard on 15<sup>th</sup> March 2019, the Tribunal on 26<sup>th</sup> March 2019 delivered the following :

**ORDER**

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER**

O.A.No.180/734/2017 is filed by K.Mathai, retired Lineman, Electricity Department Andaman and Nicobar Islands, currently residing at Pandalam, Kerala. He is aggrieved by the action of the respondents in withdrawing the 3<sup>rd</sup> Modified Assured Career Progression (MACP) upgradation granted to him on completion of 30 years of service on the ground that it has been erroneously granted. The impugned order dated 16.1.2017 issued by the 3<sup>rd</sup> respondent is at Annexure A-1. The applicant is further aggrieved by the Office Order dated 17.10.2013 issued on behalf of the 2<sup>nd</sup> respondent cancelling the 3<sup>rd</sup> MACP benefit already granted (Annexure A-2). Further the applicant also assails the order dated 21.6.2013 issued by the 4<sup>th</sup> respondent revising his pension which had been based on the last pay drawn without any notice to him (Annexure A-3). The reliefs sought are as follows :

1. To call for the records relating to A-1 to A-13 and to quash A-1, A-2 and A-3 being illegal, arbitrary and discriminatory.
2. To direct the respondents to restore the benefits granted as per A-8 and A-9 and to re-fix the pay and pension accordingly and to grant the arrears of such fixation with 18% penal interest.
3. To direct the respondents to revise the pension and to disburse the pension with the last pay drawn with 3<sup>rd</sup> MACP benefits granted as per A-8 and A-9.
4. To issue appropriate direction or order which this Hon'ble Tribunal deems fit, just and proper in the circumstance of the case.
5. To award costs of the applicant.

.3.

2. The applicant had joined the Electricity Department in 1974 as a Casual Mazdoor. He was absorbed in regular service as per Annexure A-4 on 20<sup>th</sup> July 1981. As per Annexure A-5 dated 22.12.1986 the 2<sup>nd</sup> respondent had allowed the appointment of applicant as a quasi permanent Mazdoor along with 80 other regular Mazdoors. He was promoted to the post of Lineman as per order dated 12.4.1993 issued by the 2<sup>nd</sup> respondent (Annexure A-6).

3. The applicant was granted Assured Career Progression (ACP) Scheme benefit on completion of 12 years of service (from 12.10.1993) as per Office Order dated 9.2.2009. This was further modified as per order dated 23.3.2012 (Annexure A-7). Later taking into account the fact that the fixation done as per Annexure A-7 did not give the applicant credit for the 30 plus years of regular service put in by him he had submitted a request for grant of 3<sup>rd</sup> MACP and resultant revision in pay. Accordingly as per Annexure A-8 dated 29.1.2013 he was granted 3<sup>rd</sup> MACP in the scale of pay of Rs.9300-34800 with Grade Pay (GP) of Rs.4200/-. The pay was fixed to the said scale by Office Order dated 7.3.2013 (Annexure A-9).

4. The applicant retired voluntarily from service on 1.4.2012 and was aggrieved by the fact that the effect of Annexure A-9 was not seen reflected in his pension. He repeatedly represented to the respondents drawing their attention to this anomaly. He got no positive response. Ultimately the 2<sup>nd</sup> respondent has now issued Annexure A-1 letter intimating the applicant that

.4.

the fixation granted as per Annexure A-8 and Annexure A-9 have been withdrawn. This was on the ground that the 3<sup>rd</sup> MACP granted to the applicant was erroneous as he had been “appointed” as Lineman only on 12.4.1993 and could count his service only from that date. The applicant contends that this cancellation has been unilateral without any notice. Being a pensioner the applicant had returned to his native place and has been beset by ill health. Hence he could not forcefully present his case when the impugned order was issued.

5. The applicant maintains that he is not a fresh appointee of 1993 and had satisfactory service of 12 years from 1981 onwards when he became a Lineman. For their own reasons the respondents have chosen to ignore his claim. The documents produced as Annexure A-4 to Annexure A-6 clearly show that the applicant was on regular service with effect from 20.7.1981 till the date of voluntary retirement with effect from 1.4.2012. This amounts to service extending beyond 30 years and having had enjoyed only one financial upgradation under ACP Scheme and one promotion, he was entitled to the 3<sup>rd</sup> MACP upgradation. The finding made in Annexure A-2 that his service could only be counted from 12.4.1993 on appointment as Lineman is at variance with the entries in his service book. Orders at Annexure A-8 and Annexure A-9 had been issued by the 2<sup>nd</sup> respondent duly considering all these factors and any revocation of the same is arbitrary and illegal.

.5.

6. The applicant maintains that even Mazdoor juniors to him have been granted 3<sup>rd</sup> MACP Scheme benefit on completion of 30 years and are currently enjoying the benefit. He mentions the case of one C.K.Babu who is two years junior to him. Moreover, the decision, highly detrimental to him, has been taken without hearing him and giving an opportunity to state all the factors in his favour.

7. The respondents have filed a reply statement wherein they stress that the impugned orders at Annexure A-1 and Annexure A-2 have been issued on detecting anomaly in granting 3<sup>rd</sup> MACP Scheme benefit to the applicant. It is admitted that the applicant was appointed as “regular Mazdoor” on adhoc basis on 20.7.1981 and reported for duty on the same date in the pay scale of Rs.196-3-220-EB-3-232. He was regularized by order dated 4.9.1996 with effect from 20.7.1981. He was appointed as Lineman on adhoc basis as per order dated 12.4.1993 in the scale of pay of Rs.950-20-1150-EB-25-1400 and regularized as per order dated 24.12.1996 with effect from 12.4.1993 (Annexure R-1). The applicant was granted second financial upgradation under ACP Scheme on completion of 24 years of regular service with effect from 20.7.2005. He was granted 3<sup>rd</sup> financial upgradation under MACP Scheme on completion of 30 years of regular service with effect from 20.7.2011 in the scale of pay of PB2 Rs.9300-34800 + GP Rs.4200/-. However, the Pay and Accounts Officer, Port Blair rejected the 3<sup>rd</sup> MACP benefit awarded to the applicant stating that OM issued on 19.5.2009 does not

allow such a benefit. Although the correction has been made cancelling the 3<sup>rd</sup> MACP benefit, no steps have been initiated by the Department to recover the amounts disbursed erroneously to the applicant. The respondents are fully within their rights to correct a genuine error that had occurred in the applicant's case.

8. Heard Shri.Shafik.M.A, learned counsel for the applicant and Shri.N.Anilkumar, learned SCGSC for the respondents. The facts before us are not under dispute. The reply statement makes the following unequivocal averments :

“ The applicant was appointed as Regular Mazdoor on adhoc basis vide Order No.68 dated 20.7.1981 and reported for duty on 20.7.1981 in the scale of pay of Rs.196-3-220-EB-3-232 which was regularized by Order No.626 dated 4.9.1996 with effect from 20.7.1981. The applicant was again appointed as Lineman on adhoc basis vide SE Order No.695 dated 12.4.1993 and reported for duty on 12.4.1993 in the scale of pay of Rs.950-20-1150-EB-25-1400 which was regularized vide order No.5358 dated 24.12.1996 with effect from 12.4.1993. Photocopy of office order No.5358 dated 24.12.1996 in which at Sl.No.36 the name of the applicant appears is enclosed herewith and marked Annexure R-1.

The applicant was granted 1<sup>st</sup> financial upgradation under ACP Scheme with effect from 12.4.2005 vide order No.671 dated 10.6.2010 in the scale of pay of Rs.4000-100-6000. A true copy of order 161 dated 9.2.2009 and order No.579 dated 23.3.2012 are enclosed herewith and marked as Annexure R-2 collectively. The applicant was granted 2<sup>nd</sup> financial upgradation under ACP Scheme on completion of 24 years of regular service with effect from 20.7.2005 vide order No.161 dated 9.2.2009 in the scale of pay of Rs.4000-100-6000. The DPC, thereafter reviewed his case for considering the scale of pay of Rs.4500-125-7000 with effect from 20.7.2005 vide Order No.579 dated 23.3.2012.

The applicant was granted 3<sup>rd</sup> financial upgradation under MACP Scheme on completion of 30 years of regular service with effect from 20.7.2011 vide order No.144 dated 29.1.2013 in the scale of pay in PB-II of 9300-34800 + GP 4200. The PAO Port Blair vide PO letter No.2-17149/PAO/PB/PEN/1604 dated 21.6.2013 rejected the 3<sup>rd</sup> MACP awarded to the applicant citing that it is not GOI's OMNo.35034/3/2008-Estt.(D) dated 19.5.2009 and directed this office to review his case. Thus the 3<sup>rd</sup> MACP awarded to the applicant attached to EE(SAD) issued vide O/O No.144 dated 29.1.2013 with effect from 20.7.2013 was cancelled vide this Office Corrigendum No.1575 dated 17.10.2013.”

9. Starting with his initial posting as regular Mazdoor on adhoc basis from 20.7.1981 he had put in over 30 years of regular service till he retired voluntarily on 1.4.2012. This position has been clearly admitted by the respondents in their statement. Thus, the position as maintained in Annexure A-8 and Annexure A-9 reflects the correct situation with regard to the applicant's service. Having admitted this, the respondents' reply that the Pay and Accounts Office under the respondents had come to the conclusion that his service is to be counted from the date of his appointment as Lineman from 12.4.1993 alone thus extinguishing his entire previous service. We fail to understand the logic behind this abrupt jettisoning of the applicant's previous service. In fact the document at Annexure R-2 mentions that the applicant had got the benefit of 2<sup>nd</sup> ACP on 20.7.2005 clearly admitting that the upgradation due after 24 years of regular service had been earned by the applicant.

10. A further contention had been made that the respondents' organization being the Andaman and Nicobar Islands, this Tribunal has no jurisdiction over the case. However, it is to be noted that the applicant, a pensioner, is now settled in Kerala and within the jurisdiction of this Tribunal. After examining all aspects we come to the conclusion that the O.A has merit and accordingly it succeeds. All benefits as prayed for are to be allowed to the applicant and his pension is to be re-calculated on the basis of the last pay drawn in accordance with the 3<sup>rd</sup> MACP benefits granted as per Annexure A-8 and

.8.

Annexure A-9. However, we are not issuing any orders regarding the payment of interest on the arrears due. Orders in this regard are to be issued within a period of two months from the date of receipt of a copy of this order.

No costs.

(Dated this the 26<sup>th</sup> day of March 2019)

**ASHISH KALIA**  
**JUDICIAL MEMBER**

**E.K.BHARAT BHUSHAN**  
**ADMINISTRATIVE MEMBER**

**asp**



**List of Annexures in O.A.No.180/00734/2017**

1. **Annexure A1:** True copy of the letter F.no.II-152/PF/EE/SA/07/107 dated 16.01.2017 issued by the 3<sup>rd</sup> Respondent.
2. **Annexure A2:** True copy of the Office order 1575 dated 17.10.2013 issued by the Asst. Director (Admn) of the 2<sup>nd</sup> Respondent.
3. **Annexure A3:** True copy of the F.No.2-17149/PAO/PB/PEN/1604 dated 21.06.2013 of the 4<sup>th</sup> Respondent.
4. **Annexure A4:** True copy of the office order No.68 dated 20.07.1981 issued by the 2<sup>nd</sup> respondent.
5. **Annexure A5:** True copy of the order No.954 dated 22.12.1986 of the 2<sup>nd</sup> Respondent.
6. **Annexure A6:** True copy of the office order No.695 dated 12.04.1993 issued by the 2<sup>nd</sup> respondent.
7. **Annexure A7:** True copy of the Order No.579 dated 23.03.2012 issued by the Asst. Director (Admn) of the 2<sup>nd</sup> Respondent.
8. **Annexure A8:** True copy of Order No.144 dated 29.01.2013 issued by the Asst. Director (Admn) of the 2<sup>nd</sup> respondent.
9. **Annexure A9:** True copy of the Office order No.484 dated 7.3.2013 issued by the 4<sup>th</sup> Respondent.
10. **Annexure A10:** True copy of the Representation dated 22.09.2016 submitted before the 3<sup>rd</sup> Respondent.
11. **Annexure A11:** True copy of the Representation dated 24.01.2017 before the 3<sup>rd</sup> respondent.
12. **Annexure A12:** True copy of the Representation dated 27.03.2017 before the 2<sup>nd</sup> Respondent.
13. **Annexure A13:** True copy of the Representation dated 2.5.2017 submitted before the 1<sup>st</sup> respondent.
14. **Annexure A14:** True copy of the office order No.1736 dated 24.08.2012 issued by the 3<sup>rd</sup> Respondent.

.10.

15. **Annexure R1:** True copy of the Office order No.5358 dated 24.12.1996.
  16. **Annexure R2:** True copy of the office Order No.161 dated 09.02.2009 & order No.579 of 23.03.2012.
  17. **Annexure R3:** True copy of the Recruitment Rules for the post of Lineman.
  18. **Annexure R4:** True copy of the letter/memo dated 16.01.2017.
-