

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

ORGINAL APPLICATION NO.200/00674/2015

Jabalpur, this Wednesday, the 27th day of February, 2019

**HON'BLE MR.NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR.RAMESH SINGH THAKUR, JUDICIAL MEMBER**

Bhagwat Singh Thakur S/o late Shri Dileep Singh Thakur,
Aged about 65 years, Chargeman (retired) CQA(W), Jabalpur
R/o 864/1 Indira Gandhi Ward, Post Office Garha,
Jabalpur, M.P.-482003

- APPLICANT

(By Advocate – Ms.Malti Dadariya)

Versus

1. Union of India Ministry of Defence through
Director General Quality Assurance, Department of Defence
Production (DGQA)/ADM-10, South Block, Nirman Bhawan,
DHQ Post New Delhi-110011

2. The Controller, Controllerate of Quality Assurance (Weapons)
Jabalpur, near GCF, Jabalpur, M.P.-482011

3. Principal Controller of Defence Accounts (Pensions),
Draupadighat, Allahabad U.P.-211014

- RESPONDENTS

(By Advocate – Shri D.S.Baghel)

(Date of reserving the order:13.02.2019)

ORDER

By Navin Tandon, AM.-

The applicant is aggrieved by denial of benefits of 2nd ACP on completion of 24 years of service, and 3rd financial upgradation under the MACP on completion of 30 years of service.

2. The applicant has submitted as under:-

2.1 He was initially appointed as Sign Writer with effect from 15.04.1972 in MES Jabalpur.

2.2 Thereafter, he was directly recruited to the post of Painter Grade-I with effect from 30.10.1980 in the Controllerate of Quality Assurance. He was redesignated under the same scale as Fitter with effect from 08.06.1984.

2.3 He became Fitter General Mechanic (HS-II) on 31.08.1995. HS-II was merged with HS-I with effect from 01.01.1996.

2.4 He became Master Craftsman on 30.10.2003 and this was treated as placement scale and not treated as promotion.

2.5 He was promoted to the post of Chargeman Grade-II with effect from 20.04.2005 in the pay scale of Rs.5000-8000.

2.6 He retired on attaining the age of superannuation on 30.06.2010. At the time of retirement on 30.06.2010 he was in Grade Pay of Rs.4200/-.

3. The applicant has prayed for the following reliefs:

“(8.1) Hon’ble Tribunal may kindly be pleased to direct the respondents to award benefit of upgradation on completion of 24 years of service under ACP Scheme on completion of 24 years of service with effect from 9.8.1999 giving its arrears of salary along with interest at the rate 10% per annum thereon with effect from 9.8.1999 till its actual payment, counting the service with effect from 15.04.1972.

(8.2) Similarly the respondents may kindly be directed to award financial upgradation giving Pay Band II with Grade Pay Rs.4600/- with effect from 1.09.2008 under MACP Scheme on completion of 30 years of service giving arrears of salary with effect from 1.9.2008 till its actual payment along with interest at

the rate of 10% per annum therein, counting his service with effect from 15.4.1972.

(8.3) *Consequently the respondents may kindly be directed to revise the retiral claim of the petitioner and his pension may be directed to be revised accordingly on the basis of the benefit given under relief 1 and 2 and after revising the pension and arrears of pension be directed to be given with effect from July 2010 till its actual payment along with interest at the rate 10 per cent per annum thereon.*

(8.4) *Any other order/direction which this Hon'ble Tribunal deems fit may kindly be passed”.*

4. The respondents have submitted as under:

4.1 The applicant was appointed as Sign Writer in MES, GE (West) Jabalpur in the pay scale of Rs.85-128 which was upgraded in the pay scale of Rs.210-290 as per ECC recommendation.

4.2 The applicant after rendering his resignation from MES joined this Contollerate on 31st October,1980 on higher appointment in the post of Painter Grade-I in the pay scale of Rs.225-308 which was upgraded in the pay scale of Rs.260-400 i.e. as per ECC recommendation.

4.3 The claim of the applicant for grant of 2nd ACP is not in order. He reported in the higher scale. His services for ACP under the ACP Scheme will be counted with effect from 30.10.1980. Accordingly, he was granted 2nd ACP w.e.f. 30.10.2004 (Annexure R-2).

4.4 As far as grant of 3rd financial upgradation under MACP scheme is concerned, he will be entitled for 3rd MACP w.e.f. 30.10.2010 and hence he is not entitled to financial upgradation under the MACP scheme.

4.5 The applicant's previous service has been counted for qualifying service for pension only vide PCDA letter dated 23.01.2007 (Annexure R-5).

4.6 The applicant's representation was duly considered and rejected by the higher authority and the same has been communicated to him vide letter dated 13.06.2012 (Annexure R-6).

4.7 The Original Application is hopelessly time barred as the applicant superannuated from service w.e.f. 30.06.2010 and approached this Tribunal in the year 2015. Therefore, the same deserves to be dismissed on this ground alone.

5. Heard the learned counsel of both sides and carefully perused the pleadings of the respective parties and the documents annexed therewith.

6. The learned counsel for the applicant has argued that since the past services rendered by the applicant as Sign Writer in GE(W) Jabalpur in the scale of Rs.210-290 with effect from 15.04.1972 to 29.10.1980 has been counted as qualifying service for all purposes vide PCDA(P) Allahabad letter No. G1 Civil/Counting/423/12-06/V dt.23/1/2007, the denial of benefit of counting of service for the purpose of ACP and MACP is not justified.

6.1 The learned counsel for the applicant relying on Annexure A-6 has further submitted that pay scales of various grades including Sign Writer

and Painter were upgraded to Rs.260-400 w.e.f. 15.10.1984 and became identical. Therefore, in terms of the clarification under Points Nos. 4,5 & 6 of the DoPT OM dated 10.02.2000 past services rendered on the grade of Sign Writer are liable to be counted while computing 12/24 years of service for the purposes of grant of benefits under the ACP/MACP scheme.

7. The clarification given by the DoPT under Points Nos. 4, 5 & 6 in their OM dated 10.02.2000 read thus:

S.No.	Point of doubt	Clarification
4.	Whether a Government servant, who is direct recruit in one grade and subsequently joins another post again as direct recruit, is eligible for first financial upgradation under ACPS after completion of 12 years of service counted from the first appointment or from the subsequent second appointment as direct recruit?	The benefits under ACPS are limited to higher pay scale and do not confer designation, duties and responsibilities of the higher post. Hence, the basic criterion to allow the higher pay scale under ACPS should be whether a person is working in the same pay scale for the prescribed period of 12/24 years. Consequently, so long as a person is in the same pay scale during the period in question, it is immaterial whether he has been holding different posts in the same pay scale. As such, if a Government servant has been appointed to another post in the same pay scale either as a direct recruit or on absorption (transfer) basis or first on deputation basis and later on absorbed (on transfer basis), it should not make any difference for the purpose of ACPS so long as he is in the same pay scale. In other words, past promotion as well as past regular service in the same pay scale, even if it was on different posts for which appointment was made by different methods like direct recruitment, absorption (transfer)/ deputation, or at different places should be taken into account for computing the prescribed period of service for the

post held by him in the present cadre? Also, what will be the situation if he was holding a post in the parent cadre carrying a lower pay-scale?

6. An employee appointed initially on deputation to a post gets absorbed subsequently, whether absorption may be termed as promotion or direct recruitment. What will be the case if an employee on deputation holds a post in the same pay-scale as that of the post held by him in the present cadre? Also, what will be the situation if he was holding a post in the parent cadre carrying a lower pay-scale?

purpose of ACPS. Also, in case of absorption (transfer)/deputation in the aforesaid situations, promotions earned in the previous/present organisations, together with the past regular service shall also count for the purpose of ACPS. However, if the appointment is made to higher pay-scale either as on direct recruitment or on absorption (transfer) basis or first on deputation basis and later on absorbed (on transfer basis), such appointment shall be treated as direct recruitment and past service/promotion shall not count for benefits under ACPS.

Needless to say, in cases of transfer on administrative ground, involving only change of station within the same department, the service rendered in the same grade at two stations may count for ACPS, as such transfers are within the same organisation, ordered generally for administrative/personal considerations and the service rendered in the earlier station counts as eligibility service for promotion.

8. Further, Para 9 of Annexure-I to the MACP Scheme issued vide OM No.35034/3/2008-Estt.(D), dated 19th May, 2009 by the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) read thus:

“(9). ‘Regular service’ for the purposes of the MACPS shall commence from the date of joining of a post in direct entry grade on a regular basis either on direct recruitment basis or on absorption/re-employment basis. Service rendered on adhoc/contract basis before regular appointment on pre-appointment training shall not be taken into reckoning. However, past continuous regular service in another Government Department in a post carrying same grade pay prior to regular appointment in a new Departments without a break, shall also be counted towards qualifying regular service for the purposes of MACPS only (and not for the regular promotions). However,

benefits under the MACPS in such cases shall not be considered till the satisfactory completion of the probation period in the new post.
(emphasis supplied)

9. On perusal of letter dated 12.06.2007 (Annexure R-2) we find that the Office of the DGQA has simply stated as under:

“(2). Shri BS Thakur CM-II was directly recruited as Painter Gde-I on 30 Oct.80 and is entitled for 2nd ACP in the scale of Rs.5000-8000 on completion of 24 years of regular service”.

10. We may observe here that the Office of the DGQA seems to have not examined the case of the applicant by taking into account the above clarification issued by the DoPT vide their OM dated 10.02.2000. Once the applicant had specifically mentioned in his representation that both the posts of Sign Writer (earlier held by him in his previous department) and Painter (in which he was appointed subsequently) were upgraded to Rs.260-400 w.e.f. 15.10.1984 and became identical, the authorities should have examined the matter in the light of the provisions of the ACP/MACP, which seems to have not been done in the present case.

11. Since the provisions of the ACP/MACP Scheme clearly provides that past continuous regular service in another Government Department in a post carrying same grade pay prior to regular appointment in a new Departments without a break, shall be counted towards qualifying regular service for the purposes of ACP/MACPS only (and not for the regular promotions), the respondent-authorities are required to re-examine the

matter of grant of financial upgradation to the applicant on completion of 24 & 30 years of service under the ACP/MACP Scheme.

12. After having considered all pros and cons of the matter and provisions of the ACP/MACP Scheme as narrated above, we dispose of this Original Application with a direction to the respondents to first examine whether applicant's pay scales as Sign Writer (in MES) and Painter (in CQA) are same, and if so to consider grant of benefit of upgradation under ACP Scheme on completion of 24 years of service counting his service with effect from 15.04.1972. Similarly the respondents are further directed to consider grant of 3rd financial upgradation under MACP Scheme on completion of 30 years of service by counting his service with effect from 15.4.1972. This should be done within a period of four months from the date of communication of this order. We make it clear that since the applicant has filed this Original Application very belatedly after five years of his retirement, no monetary benefit in lieu of the above would be admissible to him. Only monetary benefit in reference to pensionary benefits from the date of filing of this Original Application shall be extended to him, in case orders are passed in favour of the applicant. No costs.

(Ramesh Singh Thakur)
Judicial Member
rkv

(Navin Tandon)
Administrative Member