

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/01802/2018

DATED THIS THE 18th DAY OF JULY, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

MES-116480
E.Unnikrishnan
S/o late Natesa Menon
Aged 70 years
EE (QS&C) [Retd.]
CMA 803, Golden Blossom
Kadugodi P.O.
Bengaluru-560067.

....Applicant

(By Advocate Sri N.G.Phadke)

Vs.

1. The Union of India
By its Secretary
Ministry of Defence
South Block
New Delhi-110 001.
2. Engineer-in-Chief
Army Headquarters
Kashmir House
New Delhi – 110 001.
3. Chief Engineer (Air Force)
No.2, D.C.Area, MES Road
Yeshwanthpur
Bangalore -560 022.

....Respondents

(By Advocate Sri V.N.Holla, Sr.CGSC)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The case of the applicant is that he joined the Military Engineering Service(MES),
Min. of Defence on 5.2.1973 as Gr.II Superintendent (B/R), a Civilian Employee and

has retired from service w.e.f. 31.5.2008 on attaining the age of superannuation as an Executive Engineer(QS&C) and was drawing pay in PB-3 with GP Rs.6600/- as on 31.5.2008. He submits that he was given 2nd ACP benefits in the pay scale of Rs.10000-325-15200 w.e.f. 9.8.1999 which pay scale has been revised to PB-3 with GP Rs.6600/- w.e.f. 1.1.2006 in view of recommendation of VI CPC. The Union of India had introduced MACP Scheme in place of ACP Scheme vide OM dtd.19.5.2009(Annexure-A1) and made it applicable w.e.f. 1.9.2008. The Union of India has issued various clarifications on MACP vide OM dtd.9.9.2010(Annexure-A2).

2. The applicant submits that the Hon'ble Apex Court in Civil Appeal Diary No.3744/2016 vide order dtd.8.12.2017(Annexure-A3) held that the benefit under the MACPS has to be extended w.e.f. 1.1.2006 on the reasoning that the benefit under the MACPS is a part of pay structure. Then the applicant along with some of his colleagues have given representations on 22.2.2018(Annexure-A4) to the 2nd respondent seeking grant of 3rd MACP benefit w.e.f. 1.1.2006, for which the respondents have given reply stating that 'since the applicant got superannuated prior to operation of the MACP Scheme, the benefit of 3rd MACP is not due'. The applicant further submits that the Hon'ble High Court of Judicature at Bombay rendered a judgment in WP.No.1763/2013 in the case of *M.P.Joseph vs. UOI & ors.* on 15.10.2018 holding that benefits under the MACPS dtd.19.5.2009 is available w.e.f. 1.1.2006 by following the Apex Court judgment dtd.8.12.2017(Annexure-A5). Since these judgments are binding on the respondents, the applicant has filed the present OA seeking a direction to the respondents to grant 3rd MACP benefits w.e.f. 1.1.2006 with all the consequential benefits as he completed more than 30 years of regular service as on 1.1.2006.

3. The respondents, on the other hand, have submitted in their reply statement that the Apex Court judgment dtd.8.12.2017 pertains to Defence Personnel i.e. Persons Below Officer Rank(PBOR) whereas the applicant is a civilian employee of Central Govt. i.e. MoD and hence the judgment is not applicable to him. The applicant is not an applicant in WP.No.1773/2013 of Hon'ble Bombay High Court and therefore, the judgment delivered in the said WP is also not applicable directly to him till suitable OM is issued by the Competent Authority i.e. DOPT to change the policy in this regard. Further it is not feasible to prepone the benefits of MACP Scheme to 1.1.2006 from 31.8.2008 as more than nine years of time has passed and the issue has been settled as per extant instructions. The change of effective date will lead to surge of litigation particularly from employees who availed the benefits of ACP Scheme during 1.1.2006 to 31.8.2008 which is much more beneficial to them and recovery from them is not practicable/possible.

4. The respondents submit that the applicant was granted all benefits which were due on the date of his superannuation as per the existing Govt. orders. Seeking 3rd MACP benefits referring to Hon'ble High Court of Bombay order on the similar lines is not justified, until and unless the said policy is amended by DoPT through a specific order. Therefore, the prayer of the applicant is not justified and therefore, the OA is liable to be dismissed with costs.

5. The applicant has filed rejoinder reiterating the submission already made in the OA and submits that in both the judgments of the Hon'ble Apex Court reported in (2018) 11 SCC 99 and High Court of Bombay in WP.No.1763/2013, it has been held that the benefit under the MACP is to be regarded as part of the pay structure of pay bands and grade pay and as such MACP benefits have to be extended w.e.f.

1.1.2006. Both the judgments are based on the identical resolutions of the Central Government dtd.29.8.2008 in respect of Civil Employees in Groups-A,B,C & D and Personnel of All India Services. The contention of the respondents that the change of effective date will lead to surge of litigations, particularly from employees who availed the benefits under ACP Scheme during 1.1.2006 to 31.8.2008, which is much more beneficial to them and recovery from them is not practicable/possible, is not sustainable as the Hon'ble Apex Court has observed, while rejecting the submissions of the Union of India that if the MACP is made applicable w.e.f. 1.1.2006 then many employees would have lost out and they would have had to refund the excess amount, if any, paid to them and that there may be many employees who may suffer, that there may be some gainers and some losers and the intention of the Government was clear that the MACP scheme which is part of the pay structure would apply from 1.1.2006 which is a decision of the Cabinet and the same could not be modified by issuing executive instructions. Therefore, the above judgments are binding on the respondents and it cannot be delayed on the excuse of issuance of any OM by DoPT at some uncertain future.

6. We have heard the Learned Counsel for both the parties and perused the materials and written arguments note filed by both the parties in detail. The issue in this case is in a very small compass. The point whether MACP is part of the pay and pay structure or part of allowances has been very clearly answered by the Hon'ble Apex Court vide its judgment dtd.8.12.2017(Annexure-A3) in *Civil Appeals Diary No.3744/2016* reported in (2018) 11 SCC 99 and the judgment of Hon'ble High Court of Judicature at Bombay in WP.No.1763/2013 rendered on 15.10.2018 vide Annexure-A5. The settled position in this regard is that the MACP is regarded as part of the pay structure and Pay Band and Grade Pay and as such the MACP

benefits have to be extended w.e.f. 01.01.2006 wherever the employees are eligible. The applicant has also quoted the resolution of the Govt. of India dtd.29.8.2008 with respect to the civilian employees which is as follows:

“2. The Commission's recommendations and Government decision thereon with regard to revised scales of pay and dearness allowance for civilian employees of the Central Government and personnel of the All India Services as detailed in the Part-A of Annex-I will be made effective from 1st day of January, 2006.

3. The revised allowances, other than dearness allowance, will be effective from 1st day of September, 2008.”

7. The only contention of the respondents would be that the applicant was not a party before the Hon'ble Bombay High Court and therefore the judgment is not applicable directly to him till a suitable order is issued by the competent authority i.e. DoPT to change the policy in this regard. They have also cited that more than 9 years' time has been elapsed since the implementation of the MACP and therefore any change of effective date will lead to a surge of litigations particularly from the employees who availed the benefits of ACP scheme during the period from 01.01.2006 to 31.08.2008. The applicant in his written arguments has cited the order of the Hon'ble Apex Court in the case of *Inder Pal Yadav vs. Union of India* reported in (1985) 2 SCC 648 wherein para-5 states as follows:

.....“Therefore, those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else at the hands of this Hon'ble Court.”...

He has also cited the judgment of the Hon'ble High Court of Karnataka in *Nagappa vs. State of Karnataka* reported in *ILR 1986 KAR 3093* wherein at para-2 it is stated as follows:

“In our opinion, it is not necessary for every person to approach this Court for a relief similar to the one already granted by this Court in the aforesaid

decisions. If a decision has been rendered by this Court, it would be proper for the authorities to follow and extend the benefit of that decision in like cases coming before them. That should be the guiding principle to be borne in mind in the administration. It is not proper to drive every person to seek relief in this Court. It is indeed the duty of the authorities to extend the benefits of the concluded decision of this Court to all other similar cases.”

8. The respondents' Counsel has referred to the judgment of this Tribunal in OA.No.1337 & 1364 to 1375/1994 dtd.31.03.1995 which discussed the issue relating to parity of pay between the Military Engineering Services vis-a-vis the JEs in CPWD. The orders in this case are not relevant to the present case and therefore we have to agree with the contention of the applicants that they are squarely covered by the judgments of the Hon'ble Apex Court and Hon'ble Bombay High Court(supra).

9. The OA is therefore allowed. The respondents are directed to issue necessary orders within a period of three(3) months from the date of issue of this order. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred by the applicant in OA.No.170/01802/2018

Annexure-A1: MACPS OM dtd.19.5.2009

Annexure-A2: Clarificatory OM dtd.9.9.2010

Annexure-A3: Hon'ble Apex Court judgment dtd.8.12.2017 in CA Diary No.3744/2016

Annexure-A4: II-Respondent's letter dtd.22.2.2018

Annexure-A5: Hon'ble Bombay High Court judgment dtd.15.10.2018

Annexures with reply statement:

-NIL-

Annexures with rejoinder:

-NIL-
