

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHANDIGARH BENCH**

...  
**Order reserved on: 30.09.2019  
Order Pronounced on: 09.10.2019**

**ORIGINAL APPLICATION NO. 060/551/2017**

...  
**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)  
HON'BLE MS. ARCHANA NIGAM, MEMBER (A)**

- ...  
1. Bhupinder Singh, Token No. 602, aged 56 years, s/o Sh. Babu Singh, working as Chargeman (Painter), 11 F.O.D, C/o 56 APO.  
2. Surjit Singh, Token No. 558, aged 58 years, s/o Sh. Pritam Singh, Special Packer, 11 F.O.D., c/o 56 APO.

....APPLICANTS  
(By Advocate: Shri R.K. Sharma)

**VERSUS**

1. The Union of India through the Secretary to Government of India, Ministry of Defence, New Delhi.
2. Director General of Ordnance Services, Master General of Ordnance Branch, Integrated Headquarters of MOD (Army), DHQ PO, New Delhi.
3. Chief Record Officer, AOC Records (Ordnance Branch) Pin 900453 C/o 56 APO.
4. Commandant, 11 Field Ordnance Depot, Pin 909911, c/o 56 APO.
5. Local Audit Officer, 11 Field Ordnance Depot, Pin 909911 C/o 56 APO.

....RESPONDENTS  
(By Advocate: Shri K.K. Thakur)

**ORDER****ARCHANA NIGAM, MEMBER (A)**

This is second round of litigation. Applicants earlier filed O.A. NO. 60/1195/2015, which was disposed of by this Tribunal vide order dated 24.8.2016, by setting aside impugned orders therein with a direction to respondents to pass fresh reasoned and speaking order, in accordance with law, after affording an opportunity of hearing to the applicants. In pursuance to said direction, the respondents have now passed the impugned orders dated 8.11.2016 (Annexure A-1), including Ministry of Defence ID No. 11(5)/2009-D (Civ-I) dated 6.2.2014 and LAO 11 FOD letter dated 29.7.2015, whereby Grade Pay of the applicants granted to them in 3rd MACP has been reduced from Rs. 4600/- to Rs. 4200/- in Pay Band-2 i.e. Rs. 9300-34800 with retrospective effect. A prayer has also been made to quash recovery as indicated in pay slip qua applicant no. 1 (Annexure A-2) from his salary for the month of April 2017 and May, 2017. A direction to the respondents has also sought to restore the pay fixation done vide order dated 6.7.2012 qua applicant no. 1 and order dated 6.11.2012 qua applicant no. 2 whereby the applicants were granted 3<sup>rd</sup> MACP in the grade pay of Rs. 4600/- on completion of 30 years of service w.e.f. 16.3.2012 and 15.5.2012 with all consequential benefits including payment of the amount paid less to the applicants from the month of October/November, 2015 onwards and to refund the amount already recovered from their salaries.

2. The brief facts, leading to filing of the instant Original Application (O.A.), are that applicant no.1 initially joined respondent department as Painter on 16.3.1982, who was treated as skilled in the pay scale of Rs. 260-1500/- w.e.f. 1.1.1986. Subsequently, he was granted highly skilled Grade-II w.e.f. 16.3.1985 in the pre-revised pay scale of Rs 330-480, which was revised to Rs. 1200-1440. He was granted HS-I w.e.f. 14.12.1996 in the scale of Rs. 1320-1500. Thereafter the pay scales were revised on the recommendations of 5<sup>th</sup> C.P.C. in the year 1997-98 with retrospective effect i.e. 1.1.1996 and in that pay revision both HS Grade-II and Grade-I were merged and placed in the pay scale of Rs. 4000-6000 w.e.f. 1.1.1996.

3. Applicant no. 2 joined respondent no. 2 joined respondent department as a Packer on 15.5.1982 in the pay scale of Rs. 210-350. The said pay scale was converted into Rs. 260-400 which was not a promotion, but reclassification of the category from semi-skilled to skilled. He was promoted as Special Packer on 27.8.2005.

4. The Central Govt. issued a scheme known as ACP, which provide for grant of two higher pay scales by way of financial up-gradations to its employees on completion of 12 and 24 years regular service provided they did not get any promotion during this period.

5. The applicant no. 1 granted 2<sup>nd</sup> ACP w.e.f. 16.3.2006 in the pay scale of Rs. 5000-8000 whereas applicant no. 2 was granted 1<sup>st</sup> ACP w.e.f. 9.8.1999 in the pay scale of Rs. 4000-6000 and he was promoted as Special Packer on 27.8.2005 in the pay scale of Rs.

4000-6000. He was granted 2<sup>nd</sup> ACP in the pay scale of Rs. 5000-8000 w.e.f. 15.5.2006 and 3<sup>rd</sup> MACP in pay band-2 Rs. 9300-34800 with grade pay Rs. 4600/- w.e.f. 15.5.2012. The pay scale was further revised with retrospective effect w.e.f. 1.1.2006 and both the applicants were placed in the revised pay scale of Rs. 9300-34800 with grade pay of Rs. 4200/-. The erstwhile ACP was replaced by another scheme known as MACP made effective from 1.9.2008, which providing 3 financial up-gradations to the employees on completion of 10, 20, 30 years of regular service. As per MACP Scheme, both the applicants became entitled to grant of 3<sup>rd</sup> financial upgradation on completion of 30 years of service and as such applicant no. 1 was granted 3<sup>rd</sup> MACP w.e.f. 16.3.2012 in the Pay Band-2 Rs. 9300-34800 with grade pay of Rs. 4600/- and applicant no. 2 w.e.f. 15.5.2012, which benefit has been reduced to Rs. 4200/- by the respondents by passing impugned order. Aggrieved by the said reduction in their grade pay, the applicants are again before this Tribunal with a prayer to restore them the grade pay of Rs. 4600/-

6. In support of claim of applicants leaned counsel for applicants argues that the impugned order Annexure A-1 and A-2 reducing the grade pay from Rs. 4600 to Rs. 4200 is illegal, arbitrary, discriminatory and violative of principles of natural justice. He further argues that the claim of the applicants is covered by a decision rendered by a Ernakulam Bench of this Tribunal in case of **K. Soman Pillai and Ors. vs. Secretary,**

**Ministry of Defence & Ors.**- O.A. No. 252 of 2013 decided on 24.3.2015.

7. The respondents filed their reply contesting the claim of applicants. It is stated that the grade pay of Rs. 4600/- is admissible only to HS/MCM who were already drawing pay scale of Chargeman i.e. Rs. 5000-8000/- as on 31.12.2005 under financial upgradation. Thus MACP cannot be granted in grade pay, which is more than what is admissible in regular promotion to industrial/artisan staff. Therefore, the O.A. deserves to be dismissed.

8. Learned counsel appearing on behalf of respondents while supporting the impugned orders argued that financial upgradation under the ACP/MACP cannot be more than what can be allowed to an employee on his normal promotion.

9. We have heard the learned counsel for the parties, gone through the pleadings available on record and given our thoughtful consideration to the matter.

10. The sole point that arises for our consideration is whether the applicants are entitled to get the 3<sup>rd</sup> financial upgradation under the MACP Scheme to the Grade Pay of Rs. 4600/- in the pay of Rs. 9300-34800/-.

11. During the course of hearing a submission was made by the learned counsel for applicants that the matter has already come up to this Court in the O.A. No. 60/1195/2015 by these applicants and vide order dated 24.8.2016 this Tribunal had ordered that

“ In the light of above proposition of law, it can safely be concluded here that any order which has civil

consequences, cannot be passed without affording an opportunity of hearing unless rule formation say otherwise. Even if rules don't provide for grant of opportunity then as per judicial pronouncements, authorities are under obligation to grant opportunity of hearing before passing such orders.

8. Considering the facts of the present case, we are in agreement with the submissions made at the hands of learned counsel for the applicants that impugned orders have been passed without affording an opportunity of hearing to the applicants. Counsel for the respondents could not produce any law contrary to reproduced above that principles of natural justice are not required to be followed. Hence, we are left with no other option but to quash the impugned orders and matter is remitted back to the respondents to consider case of the applicants afresh after affording an opportunity of hearing to them and thereafter pass a reasoned and speaking order in accordance with law."

Subsequent to that it has been stated by the learned counsel for applicants that show cause notice was issued by the respondents vide order dated 14.9.2016 (Annexure A-11) where in compliance of order of this Tribunal quoted above the applicants have been asked to explain the reasons as to why Grade Pay should not be reveresed from Rs. 4600 to Rs. 4200. It is pertinent to mention that issue of this order appears to have been solely for the purpose of compliance of the direction of this Tribunal. The applicants have replied to this vide their letter dated 27.9.2016 (Annexure A-12). It has been stated in the reply that there are number of judgments including judgment of Ernakulam Bench of this Tribunal in the case of K. Soman Pillai and Ors vs. Secretary, Ministry of Defence, New Delhi & Ors., O.A. No. 252 of 2013 decided on 24.3.2015 in the matter.

12. It has also been submitted by the applicants that in view of judgment of Apex Court in the case of **State of Punjab and Others vs Rafiq Masih (White Washer)**, reported in 2015 (1) SCT 195, no recovery can be made from (i) an employee belonging to Class III & IV service (Group-C & D) and therefore the impugned orders requires to be

quashed and applicants be allowed to draw grade pay of Rs. 4600 as per their pay fixation already done, which required to be restored.

13. From the speaking order issued in compliance to direction of this Tribunal, the respondent department have stated that since MACP cannot be a grade pay which is more than what is admissible in regular promotion to industrial/artisan staff. The applicant no.2 in the O.A. have been erroneously granted the 2<sup>nd</sup> financial upgradation in the pay scale of Rs. 5000-8000 w.e.f. 15.5.2006.

14. Admittedly the applicants in the O.A. are stated to have been wrongly granted grade pay and for that reason the respondent department has directed to withdraw and re-fixation of their pay with Grade pay of Rs. 4200 only. The Apex Court in its landmark judgment in the case of Rafiq Masih (supra) have stated very clearly that no recovery can be effected from Group C & D employees more so where there has been no misrepresentation or fraud on the part of employee committed by the applicants as has been admitted by the respondents. The excess payment has been made on account of error committed by the respondent department and as such we are of the opinion that the recovery now being made is not correct.

15. In a earlier judgment of this Tribunal in O.A. No. 1003/pb/2011-  
**Amar Singh & Ors. vs Union of India & Ors** decided on 23.2.2012 it has been directed as below:-

“11. The applicants cases are within the ambit of the provision in the above-mentioned letter dated 19.5.2009, para 11, since these cases would constitute past cases because these were decided before the coming into force of the MACP Scheme. They had been granted the second ACP on different dates in 2008-2009, which are prior to the date of the issue of the MACP Scheme i.e. 19.5.2009. Since these applicants had obtained the said benefits under the old ACP Scheme before 19.5.2009, therefore, they would be covered under the definition of past cases and as provided in para 11 of the Scheme, these cases are not to be reopened. Therefore, we find that the respondents have misinterpreted

the provision of this para of the Scheme and have wrongly withdrawn the earlier benefit from the applicants. Therefore, the impugned order dated 25.8.2011 is hereby quashed and set aside and consequently, the respondents are directed to fix the pay of the applicants after ensuring that they do not suffer any prejudice vis-a-vis the pay-scales already granted to them. They are also directed to ensure that all the applicants, who, if they are similarly placed and had all got/were eligible for the 2nd ACP before 19.5.2009, are given similar benefits as per law and rules and their eligibility. Consequently, no recovery is to be made from the applicants. This exercise may be completed within a period of 4 months from the date of receipt of a copy of this order. The applicants have also prayed that para 9 of the OM dated 19.5.2009 may be quashed. For the reasons mentioned in the preceding paras, we find that this is not required since the OM already provides that past cases are not to be re-opened.”

16. We are in agreement with the judgment rendered by the Ernakulam Bench of this Tribunal in case of **Sri M.V. Elias vs the Chief Engineer, Head Quarter, Southern Command, Pune & Ors.**, O.A. No. 180/00958/2014 decided on 20.3.2017 on which reliance has been placed by the learned counsel for applicants that the applicants are entitled to get the benefit of 3<sup>rd</sup> MACP in grade pay of Rs. 4600/- as admissible from their respective dates. The impugned orders reducing the grade pay of the applicants from Rs. 4600 to Rs. 4200 are quashed. It is made clear that while giving the benefits of financial upgradations to the applicants with the aforesaid mentioned view, the respondents will make calculation of the benefits payable to them and would refund such amount which was recovered from them. Appropriate orders may be directed to be passed by the respondents within a period of 2 months from the date of receipt of certified copy of this order. The O.A. stands disposed of in the above term. No costs.

**(ARCHANA NIGAM)**  
**MEMBER (A)**

**(SANJEEV KAUSHIK)**  
**MEMBER (J)**

**Dated: 09.10.2019**

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