

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No 915 of 2014
OA No. 933 of 2014
OA No. 944 of 2014
OA No. 945 of 2014

Date of order : 14.5.2019

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

OA 915 OF 2014 Kunja Bihar Dasbabu, aged about 49 years, S/o Sitaram Dasbabu, at present working as Technical Officer-B (TO-B) in Proof & Experiential Establishment, Ministry of Defence, Chandipur-756025, Dist. – Balasore.

OA 933 OF 2014 Narayan Chandra Dash, aged about 56 years, S/o Late Niranjan Dash, at present working as Technical Officer-B (TO-B) in Proof & Experiential Establishment, Ministry of Defence, Chandipur-756025, Dist. – Balasore.

OA 944 of 2014 Laxmi Kanta Chanda, aged about 52 years, S/o Satish Chandra Chanda, at present working as Technical Officer-B (TO-B) in Proof & Experiential Establishment, Ministry of Defence, Chandipur-756025, Dist. – Balasore.

OA 945 of 2014 Susanta Kumar Singh, aged about 57 years, S/o Late Sudam Charan Singh, at present working as Technical Officer-B (TO-B) in Proof & Experiential Establishment, Ministry of Defence, Chandipur-756025, Dist. – Balasore.

VERSUS

OA 915 of 2014

1. Union of India, represented through the Secretary, Ministry of Defence, South Block, New Delhi – 110011.
2. Department of Defence Research & Development, Ministry of Defence, represented through its Secretary-cum-Director General, DRDO & Scientific Adviser to Rakshya mantra, DRDO Bhawan, Rajaji Marg, New Delhi – 110105.
3. Director, Directorate Human Resource & Development, DRDO Bhawan, Rajaji Marg, New Delhi – 110105.
4. Director, Directorate of Personnel, Room No. 266, DRDO Bhawan, Rajaji Marg, New Delhi – 110105.
5. Director, Interim Taste Range, Ministry of Defence, Chandipur-756025, Dist. – Balasore.
6. Secretary, Ministry of Personnel & Public Grievances & Pension (Department of Personnel & Training), 3rd Floor, Loknaya Bhawan, Khan Market, New Delhi – 110003.

OA 933, 944,945 of 2014

1. Union of India, represented through the Secretary, Ministry of Defence, South Block, New Delhi – 110011.
2. Department of Defence Research & Development, Ministry of Defence, represented through its Secretary-cum-Director General, DRDO & Scientific Adviser to Rakshya mantra, DRDO Bhawan, Rajaji Marg, New Delhi – 110105.

3. Director, Directorate Human Resource & Development, DRDO Bhawan, Rajaji Marg, New Delhi – 110105.
4. Director, Directorate of Personnel, Room No. 266, DRDO Bhawan, Rajaji Marg, New Delhi – 110105.
5. Director, Proof & Experiential, Ministry of Defence, Chandipur-756025, Dist. – Balasore.
6. Secretary, Ministry of Personnel & Public Grievances & Pension (Department of Personnel & Training), 3rd Floor, Loknayak Bhawan, Khan Market, New Delhi – 110003.

.....Respondents.

For the applicant : Mr.B.P.Satpathy, counsel

For the respondents: Mr.B.P.Nayak, counsel (OA 915/2014 & 933/2014)
Mr.J.K.Nayak, counsel (OA 944/2014)
Mr.L.Jena, counsel (OA 945/2014)

O R D E R (ORAL)

Per Mr.Gokul Chandra Pati, Member (A)

The nature of the dispute and reliefs sought in these OAs are similar and same question of law is relevant in all these OAs, which were taken up for consideration together with the consent of the learned counsels for both the parties. The representations of the applicants claiming the benefit of Modified Assured Career Progression (in short MACP) Scheme for financial upgradation have been rejected by the respondents on the ground that since the Assured Career Progression (in short ACP) Scheme was not applicable to the officials of the Defence Research & Technical Cadre (in short DRTC) of DRDO, the Modified Assured Career Progression Scheme (in short MACP) will also not be applicable and hence the applicant will not be entitled for the MACP benefit as claimed in the representations. All four OAs in this batch were heard together and are being disposed of this common order, taking the OA No. 915/2014 as the leading OA for the purpose of this order.

OA No. 933 of 2014

2. The applicant through this OA filed under section 19 of the Administrative Tribunals Act, 1985 has sought 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. 1.9.2008 to 31.8.2010 vide the impugned order dated 15.9.2014 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. 1.9.2008 to 31.8.2010 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 of 1.9.2008 to 31.8.2010 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."

3. The facts in this case are that the applicant was appointed under the DRDO as Chargeman-II. He was promoted as STA-C, then as TO-A and was also allowed financial upgradation to the Grade Pay from Rs. 4600/- to Rs. 4800/- w.e.f. 5.6.2009 after merger of pay scales relating to promotional scales w.e.f. 1.1.2006. Then the applicant was promoted to the grade of TO-B w.e.f. 1.9.2010. On 10.5.2013, the financial upgradation benefit to the GP of Rs. 4800/- granted to the applicant on 5.6.2009, was withdrawn. Hence, the claim of the applicant is for the 2nd MACP benefit w.e.f. 1.9.2008 from the GP Rs. 4600/- to the GP of Rs. 5400/-. The applicant claims eligibility for the benefit of higher GP, if 2nd MACP is allowed to him as prayed for, from 1.9.2008 till 31.8.2010 as he was promoted as TO-B w.e.f. 1.9.2010. The representation dated 18.8.2014 (Annexure-A/4) of the applicant in this regard has been rejected by the respondents vide order dated 15.9.2014 (Annexure-A/5), which has been impugned in this OA.

OA 944 of 2014

4. The applicant has prayed for the following reliefs in this OA:-

- "(i) Let the action of the respondents in rejecting the claim of the applicant for grant of 2nd MACP w.e.f. 1.9.2008 to 31.8.2012 vide the impugned order dated 17.10.2014 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. 1.9.2008 to 31.8.2012 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 of 1.9.2008 to 31.8.2012 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."

5. The facts in this case are that the applicant was appointed under the DRDO as JSA-II. He was promoted as JSA-I, then as STA-C and was also promoted as TO-A w.e.f. 1.9.2006. He was allowed financial upgradation from Grade Pay Rs. 4600/- to Rs. 4800/- w.e.f. 5.6.2009 after merger of pay scales relating to promotional scales w.e.f. 1.1.2006. Then the applicant was promoted to the grade of TO-B w.e.f. 1.9.2012. On 10.5.2013, the financial

upgradation benefit to the GP of Rs. 4800/- granted to the applicant on 5.6.2009, was withdrawn. Hence, the claim of the applicant is for the 2nd MACP benefit w.e.f. 1.9.2008 from the GP Rs. 4600/- to the GP of Rs. 5400. The applicant claims eligibility for the benefit of higher GP, if 2nd MACP is allowed to him as prayed for, from 1.9.2008 till 31.8.2012 as he was promoted as TO-B w.e.f. 1.9.2012. The representation dated 10.10.2014 (Annexure-A/4) of the applicant in this regard has been rejected by the respondents vide order dated 17.10.2014 (Annexure-A/5), which has been impugned in this OA.

OA No. 945 of 2014

6. The applicant has prayed for the following reliefs in this OA:-

- “(i) Let the action of the respondents in rejecting the claim of the applicant for grant of 2nd MACP w.e.f. 1.9.2008 to 31.8.2011 vide the impugned order dated 15.9.2014 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. 1.9.2008 to 31.8.2011 and benefit of 3rd MACP in shape of financial upgradation of Grade Pay from Rs.5400/- to 6600/- w.e.f. 1.9.2013 within a stipulated time.
- (iii) Let the respondents be directed to sanction and disburse the arrear entitlements on such sanction of 2nd and 3rd MACP for the period of 1.9.2008 to 31.8.2011 and 1.9.2013 to till date 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.”

7. The facts in this case are that the applicant was appointed under the DRDO as Technical Supervisor. He was promoted as Chargeman-II, then as TA-B and was also promoted as STA w.e.f. 1.9.1996. He was promoted as TO-A on 1.9.2003 and was allowed financial upgradation from Grade Pay Rs. 4600/- to Rs. 4800/- w.e.f. 5.6.2009 after merger of pay scales relating to promotional scales w.e.f. 1.1.2006. On 10.5.2013, the financial upgradation benefit to the GP of Rs. 4800/- granted to the applicant on 5.6.2009, was withdrawn. Hence, the claim of the applicant is for the 2nd MACP benefit w.e.f. 1.9.2008 from the GP Rs. 4600/- to the GP of Rs. 5400 and 3rd MACP benefit w.e.f. 1.9.2013 from the GP of Rs. 5400 to the GP of Rs. 6600/-. The representation dated 20.08.2014 (Annexure-A/4) of the applicant in this regard has been rejected by the respondents vide order dated 15.09.2014 (Annexure-A/5), which has been impugned in this OA.

OA No. 915 of 2014

8. The applicant has prayed for the following reliefs in this OA:-

- “(i) Let the action of the respondents in rejecting the claim of the applicant for grant of 2nd MACP w.e.f. 7.8.2009 to 31.8.2012 vide the impugned order dated 25.6.2014 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. 7.8.2009 to 31.8.2012 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 of 7.8.2009 to 31.8.2012 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.”

9. The facts in this case (i.e. OA No. 915/2014) are that the applicant was appointed under the DRDO as JSA-II w.e.f. 7.8.1989. He was promoted as JSA-A, then as STA-C and was also promoted as TO-A w.e.f. 1.9.2007. He was allowed financial upgradation from Grade Pay Rs. 4600/- to Rs. 4800/- w.e.f. 5.6.2009 after merger of pay scales relating to promotional scales w.e.f. 1.1.2006. Then the applicant was promoted to the grade of TO-B w.e.f. 1.9.2012. On 10.5.2013, the financial upgradation benefit to the GP of Rs. 4800/- granted to the applicant on 5.6.2009, was withdrawn. Hence, the claim of the applicant is for the 2nd MACP benefit w.e.f. 1.9.2008 from the GP Rs. 4600/- to the GP of Rs. 5400. The applicant claims eligibility for the benefit of higher GP, if 2nd MACP is allowed to him as prayed for, from 1.9.2008 till 31.8.2012 as he was promoted as TO-B w.e.f. 1.9.2012. The representation dated 13.05.2014 (Annexure-A/4) of the applicant in this regard has been rejected by the respondents vide order dated 25.06.2014 (Annexure-A/5), which has been impugned in this OA.

10. The grounds on which the respondents have rejected the claim of the applicants in these OAs as stated in the impugned order dated 25.6.2014 which is reiterated in the Counter filed by the respondents in this OA are as under:-

“It is intimated that, in terms of para 13 of Annexure-1 to Govt. of India, Department of personnel & Training letter No. 35034/3/2008-Estt.(D) dated 19th May 2009, MACP Scheme shall not run concurrently with any other kind of promotion scheme existing for a particular category of employees in a Ministry/Department or its offices. Since you belong to Defence Research & Technical Cadre (DRTC) and are covered under merit based scheme of Limited Flexible Complementing for promotion, etc. MACP Scheme is not applicable in your case.”

From above, the respondents have not accepted the claim of the applicant because the MACP Scheme is not applicable to the applicant who belongs to the DRTC, for which the ACP Scheme was not applicable.

11. In view of the above, the only issue to be decided in all these OAs is whether the ground taken by the respondents to reject the claim for the MACP benefit is sustainable under law. As pointed out by the applicants' counsel at the time of hearing, this point has already been decided in the case of Sib Nath Paul vs. The Secretary, Ministry of Defence & others in the OA No. 1098 of 2014 vide order dated 25.05.2018.

12. We have perused the order dated 25.05.2018 of this Bench of the Tribunal passed in OA No. 1098 of 2014. The reliefs claimed and facts of that OA are discussed in para 2 of the order, which is as under:-

"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. 23.12.2006 vide the impugned order dated 25.08.2014 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. 23.12.2006 to 31.08.2012 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 23.12.2006 to 31.08.2012 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. The brief facts of the case are as follows:

The applicant was appointed as Junior Scientific Assistant, Gr.II on 23.12.1986. He was promoted to JSA-I with effect from 2.3.1991 and as Sr. Technical Assistant with effect from 1.9.2004. He was subsequently promoted to Technical Officer-A with effect from 1.9.2009 and to Technical Officer-B with effect from 1.9.2012. He had availed the benefit of financial upgradation from Grade Pay of Rs.4200 to Rs.4600 under the MACP Scheme. On 5.6.2009, Grade Pay of the Technical Officer-A was raised from Rs.4600 to Rs.4800 with effect from 1.1.2006 consequent upon the implementation of the 6th CPC recommendations. However, on 10.5.2013, an order was passed by the DRDO withdrawing GP of Rs.4800 from the Technical Officer-A in DRDO and the Grade Pay was fixed at Rs.4600 with effect from 1.1.2006. The applicant claims that he became entitled to get financial upgradation by way of 2nd MACP from Grade Pay of Rs.4600 to Rs.5400 after completion of 20 years of regular service with effect from 23.12.2006. This is in view of the fact that Grade Pay of Rs.4800 was withdrawn vide the Department's order dated 10.5.2013. On 15.5.2015 the applicant submitted an application to Respondent No.5 for grant of 2nd MACP which was rejected. The applicant moved another application on 9.6.2014 to Respondent No.4 which was rejected vide order dated

25.8.2014(A/5). Aggrieved by this the applicant has filed the present O.A. praying for the reliefs as stated at Para-1 above."

13. The Tribunal, while passing the order dated 25.05.2018, has followed the order passed by Bangalore Bench in OA No. 1020/2013, which has been upheld by Hon'ble Karnataka High Court. Accordingly, this Bench of the Tribunal disposed of the OA No. 1098/2014 vide order dated 25.05.2018 with the following directions

"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. "

14. From the above discussions, it is clear that the facts of the OA No. 1098/2014 including the nature of dispute and reliefs prayed for in that OA are similar to the facts of the OA No. 915/2014 and other three OAs in this batch. Hence, we are of the view that the order dated 25.05.2018 of this Tribunal passed in the OA No. 1098 of 2014 will apply squarely cover the applicants in these OAs. Accordingly, the issue framed in para 11 of this order is answered with the finding that the MACP Scheme will be applicable to the applicants of this batch of OAs who are the officials of the DRTC under the DRDO and the ground taken by the respondents to refuse the MACP benefit to the applicants are not sustainable under law.

15. In view of the discussions above, the impugned order dated 25.06.2014 (Annexure-A/5) of the OA No. 915/2014 rejecting the representation of the applicant for MACP benefit and the impugned orders in other OAs in this batch are quashed and the respondents are directed to re-examine the claim of the applicants in these OAs in the light of the guidelines of the MACP Scheme and consider the case of the applicants for financial upgradation under the MACP Scheme within a period of three months from the date of receipt of this order. All four OAs are disposed of accordingly with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath