

**Central Administrative Tribunal
Ernakulam Bench**

OA No.180/00417/2018

Tuesday, this the 20th day of August, 2019.

CORAM

Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member
Hon'ble Mr.Ashish Kalia, Judicial Member

1. N.M.Jabbar,
UD Clerk, Headquarters,
Southern Naval Command, Kochi-682 004.
Residing at Krishna Kripa, House No.8/241-C,
Shenoy Lane, Eroor West P.O.-682 306.
2. P.C.Valsala,
Ex. UD Clerk (Retired),
Southern Naval Command, Kochi-682 004.
Residing at Veluthedath Nikathil House,
Kedamangalam (S), North Paravoor-683 513.
3. P.A.Alice,
UD Clerk, Material Organization,
Southern Naval Command, Kochi-682 004.
Residing at Choorakulath House,
Janatha, Ferry Road,
Kumbalangi, Kochi-682 007.
4. Shylamma Cherian,
UD Clerk, Material Organization,
Southern Naval Command, Kochi-682 004.
Residing at House No.67, Parappalli House,
Velloor P.O.,Kottayam District-686 501.
5. T.Girija,
UD Clerk, Material Organization,
Southern Naval Command, Kochi-682 004.
Residing at Thenayath House, Manjummel P.O.,
Udyogamandal-683 501.

6. P. Prema,
UD Clerk, Material Organization,
Southern Naval Command, Kochi-682 004.
Residing at Premalakshmi, BTS Road,
Edappally, Kochi-682 024.

Applicants

(Advocate: Ms.Chithra S.Babu/Mr.Sarun Rajan)

versus

1. Union of India represented by
the Secretary, Ministry of Defence,
South Block, New Delhi-110 001.
2. The Director,
Civilian Personnel Services,
Integrated HQs of Ministry of Defence (Navy),
Room No.109, D-II Wing, Sena Bhavan,
New Delhi-110 001.
3. Commodore,
Chief Staff Officer (Personnel and Administration),
Headquarters, Southern Naval Command,
Cochin-682 004.
4. Flag Officer Commanding-in-Chief,
Southern Naval Command,
Cochin-682 004.

Respondents

(Advocate: Mr. Thomas Mathew Nellimoottil, Sr.PCGC)

The OA having been taken up on 7th August, 2019, this Tribunal delivered the following order on.....:

ORDER**By E.K.Bharat Bhushan, Administrative Member**

This OA is filed by Sri N.M.Jabbar and 5 others. They are aggrieved by the denial of benefits under the 2nd Financial Upgradation under Assured Career Progression Scheme 1999. The reliefs sought in the OA are as follows:

(ii) Set aside Annexure A4 to A4(e) and declare that the said orders are not maintainable in law.

(iii) Direct the respondents to consider Annexures A3 to A3(e) representations submitted by the applicants and to grant the relief sought by the applicants within a time frame that may be ordered by this Tribunal.

2. The 1st applicant had joined the Indian Navy, Southern Naval Command as an LDC on 19.3.1985 and was granted the first financial upgradation under the Assured Career Progression (ACP) Scheme on 9.8.1999 in the scale of pay of Rs.4000-6000 and second financial upgradation under the Modified Assured Career Progression (MACP) Scheme on 1.9.2008 in Pay Band-1 of Rs.5200-20,200/- with Grade Pay of Rs.2800/- and the 3rd financial upgradation under MACP Scheme on 19.3.2015 in the Pay Band-2 of Rs.9300-34,800/- with Grade Pay of Rs.4200/-. He is still in service.

3. The 2nd applicant had joined the service of Indian Navy, Southern Naval Command as LDC on 22.4.1985. She was granted 1st financial upgradation under ACP Scheme on 9.8.1999 in the pay scale of Rs.4000-6000 and 2nd financial upgradation under MACP Scheme on 1.9.2008 in the Pay Band-I of Rs.5200-20,200/- with Grade Pay of Rs.2800/- and the 3rd financial upgradation under MACP Scheme on 22.4.2015 in the Pay Band-2 of Rs.9300-34,800/- with Grade Pay of Rs.4200/-. She retired from service on 30.11.2017.

4. The 3rd applicant had joined the service of Indian Navy, Southern Naval Command as LDC on 18.4.1985. She was granted first financial upgradation under ACP Scheme on 9.8.1999 in the pay scale of Rs.4000-6000/- and 2nd financial upgradation under MACP Scheme on 1.9.2008 in the pay Band-1 of Rs.5200-20,200/0 with Grade Pay of Rs.2800/- and the 3rd financial upgradation

under MACP Scheme on 18.4.2015 in Pay Band-2 of Rs.9300-34,800/- with Grade Pay of Rs.4200/-. She is in service.

5. The 4th applicant had joined the service of Indian Navy, Southern Naval Command as LDC on 10.10.1984. She was granted 1st financial upgradation under ACP Scheme on 9.8.1999 in the pay scale of Rs.4000-6000/- and 2nd financial upgradation under MACP Scheme on 1.9.2008 in Pay Band-1 of Rs.5200-20,200/- with grade Pay of Rs.2800/- and the 3rd financial upgradation under MACP on 10.10.2014 in Pay Band-2 of Rs.9300-34,800/- with Grade Pay of Rs.4200. She is still in service.

6. The 5th applicant had joined the service of Indian Navy, Southern Naval Command as LDC on 11.12.1984. She was granted 1st financial upgradation under ACP Scheme on 9.8.1999 in the pay scale of Rs.4000-6000/- and 2nd financial upgradation under MACP on 1.9.2008 in Pay Band-1 of Rs.5200-20,200 with Grade Pay of Rs.2800/- and the 3rd financial upgradation under MACP on 11.12.2014 in Pay Band-2 of Rs.9300-34,800/- with Grade Pay of Rs.4200/-. She is still in service.

7. The 6th applicant had joined the service of Indian Navy, Southern Naval Command as LDC on 27.12.1984. She was granted 1st financial upgradation under ACP Scheme on 9.8.1999 in the pay scale of Rs.4000-6000/- and 2nd financial upgradation under MACP Scheme on 1.9.2008 in Pay Band-1 of Rs.5200-20,200/- with Grade Pay of Rs.2800/- and the 3rd financial upgradation under MACP on 27.12.2014 in Pay Band Rs.9300-34,800/- with Grade Pay of Rs.4200/-. She is still in service.

8. The applicants 1 to 6 have a common grievance that they have been denied the benefit of second financial upgradation under the ACP Scheme, 1999 in the appropriate Grade Pay on completion of their 24th year of service between October, 2008 and April, 2009. It is stated that they were denied the benefit under the ACP Scheme for the sole reason that the new scheme by name “Modified Assured Career Progression Scheme” (MACP), introduced on 19.5.2009, was implemented with retrospective effect. All the applicants had completed their 24th year of service between October, 2008 and April, 2009 prior to 19.5.2009 i.e., the date of introduction of the new scheme. The following table would help to understand the issue clearly:

S.No.	Name of applicant	Date of joining	1 st ACP	2 nd ACP	2 nd MACP	3 rd MACP
1	N.M.Jabbar	19/3/85	09/08/99	Due	01/09/08	19/3/15
2	P.C.Valsala	22/4/85	09/08/99	Due	01/09/08	22/4/15
3	P.A.Alice	18/4/85	09/08/99	Due	01/09/08	18/4/15
4	Shylamma Cherian	10/10/84	09/08/99	Due	01/09/08	10/10/14
5	T.Girija	11/12/84	09/08/99	Due	01/09/08	11/12/14
6	P.Prema	27/12/84	09/08/99	Due	01/09/08	27/12/14

9. The principal difference between ACP and MACP Schemes is that under the ACP Scheme, financial upgradation is granted in the next higher pay scale as per hierarchy in line of promotion whereas under the MACP, it would be granted only in the next higher grade pay as prescribed. The applicants press for second ACP from the date they were eligible i.e., from the 24th year of service. Instead, they have been granted second MACP from 1.9.2008. This had the effect of denying the applicants an accrued right which was available to them under the ACP Scheme, which, they see, as having been taken away with the implementation of the MACP Scheme. The factor that worked to their

disadvantage is the fact that the MACP Scheme which was introduced later, on 19.5.2009, was given retrospective effect. The interpretation taken flies in the face of the decision of the Apex Court in K.C.Arora and another vs. State of Haryana and others, (1984 (2) SLR 97), which ruled that “ *amendments in the rules with retrospective effect affecting prejudicially the person who had acquired rights are ultra vires to constitution cases*”. A similar view was taken by the Madras Bench of this Tribunal in OA No.818 of 2011, which ruled as below:

“The respondents are directed to place the case of the applicants in both the OAs before the screening committee for consideration for grant of 2nd financial upgradation under Assured Career Progression Scheme on completion of 24 years of service, provided that they have completed this period as claimed by them between January and April 2009 i.e., prior to the issue of DoPT's Original Memorandum dated 19.5.2009 by which modified Assured Career Progression Scheme came to be introduced and if based on such consideration by the committee, it is ordered to grant the above benefits, the benefits of financial upgradation under Modified Assured Career Progression Scheme, if extended, would have to be withdrawn. The above exercise shall be completed within a period of 4 months from the date of receipt/production of a copy of this order. In the circumstance, there shall be no order as to costs.”

10. Again, this Bench itself had taken a similar view in OA No.253 of 2013 – *K.Soman Pillai and others vs. Secretary, Ministry of Defence, New Delhi and others* as per order dated 24.3.2015. The Honble High Court of Judicature at Madras by judgment dated 14.2.2017 had dismissed writ petitions challenging various orders of the Central Administrative Tribunal, Madras Bench on the same issue. The relevant pages of the judgment of the Hon’ble High Court of Judicature at Madras are at Annexure A2.

11. In the reply statement filed, the respondents have taken a different interpretation, stating that as per the scheme of MACP, the financial upgradation granted under the erstwhile ACP scheme could be granted only till 31.8.2008 and are to be discontinued with effect from 1st September, 2008. The applicants in this case were due for the 2nd ACP during the period from October, 2008 to April, 2009 and thus were outside the purview of the erstwhile ACP Scheme. And, they were granted second MACP in the Grade Pay of Rs.2800 as per the new dispensation. Further, in respect of the judicial pronouncements allowing similar demands, the reply statement submits that the competent authority has intimated that such orders are specific to the applicants in those cases, unless approved by the government or explicitly instructed to extend the benefits to other similarly situated persons. The categorical stand of the respondents is contained in Annexure R1 where it has been stated *“since the benefit of ACPS has been discontinued with effect from 1.9.2008, the cases settled between 1.9.2008 and 19.5.2009 in terms of previous ACP Scheme shall be reviewed”*.

12. In a rejoinder submitted by the applicant, it is forcefully stated that the applicants were admittedly eligible for the 2nd financial upgradation under the ACP on a date when MACP had not been promulgated. Having completed 24 years of service, it was the duty of the respondents to ensure that the financial upgradation was allowed in time and they cannot be allowed to profit out of their own negligence. Also, the various judgments cited in the OA are reiterated to reinforce the point that by giving rules retrospective effect thereby prejudicially affecting persons who had acquired rights relating to seniority,

increments and pension, legal propriety is given a go by.

13. Heard Ms.Rekha Vasudevan, learned counsel for the applicants and Mr. Thomas Mathew nellimoottil, Sr.PCGC for the respondents.

14. The applicants had completed 24 years of service and were due for 2nd ACP on a date when the MACP had not been introduced. After the MACP was introduced on 19.5.2009, it was given retrospective effect, whereby the applicants ended up getting the benefit under MACP and not under ACP. The same issue has been considered and decided in the various judicial orders which have been referred to in the OA. There is no doubt that the applicants are also eligible for the same benefit. OA is allowed. Benefits arising from the orders granting 2nd ACP financial upgradation on a date when it was eligible to the individual applicants are to be issued within two months of receipt of copy of this order. This shall be done withdrawing the benefit under MACP already granted.

(Ashish Kalia)
Judicial Member

(E.K.Bharat Bhushan)
Administrative Member

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Annexures filed by the applicants:

- Annexure A1: Copy of the Office Memorandum dated 19.5.2009.
- Annexure A2: Copy of relevant pages of judgment of the Hon'ble High Court of Judicature at Madras dated 14.2.2017.
- Annexure A3 to A3(e): Copy of the representations given by the 1st, 2nd, 3rd, 4th, 5th and 6th applicants before the Flag Officer, Commanding-in-Chief, Headquarters, Southern Naval Command.
- Annexure A4 to A4(e): Copy of the reply letters received by the applicants 1,2,3,4,5 and 6 from the Civilian Admin Officer for Commanding officer.
- Annexure A5: Copy of the order in OA No.252 of 2013 dated 24.3.2015.
- Annexure A6: Copy of the decision in Civil Appeal No.3095-96 of 1980 dated 26.4.1984.

Annexures filed by the respondents:

- Annexure R1: Copy of Ministry of Defence ID No.11(3)/2009-D(Civ-I) dated 31st July, 2012 along with FAQ.