

**CENTRAL ADMINISTRATIVE TRIBUNAL,**  
**ERNAKULAM BENCH**

**Original Application No. 180/00951/2018**

**Friday, this the 26<sup>th</sup> day of July, 2019**

**CORAM:**

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

N.S. Jayakumar, Lower Division Clerk,  
 NCC Directorate (Kerala & Lakshadweep),  
 Cotton Hill Bungalow, Thiruvananthapuram-10. .... **Applicant**

**(By Advocate : Mr. S. Radhakrishnan)**

**V e r s u s**

1. The Director General, Directorate General NCC (Pers 'C'),  
 West Block-IV, RK Puram, New Delhi – 110 016.
2. Additional Director General, NCC Directorate (Kerala &  
 Lakshadweep), Cotton Hill Bungalow, Thiruvananthapuram-10.
3. The Controller General of Defence Accounts,  
 618 Teynampet, Annasalai, Chennai-18. .... **Respondents**

**(By Advocate : Mr. N. Anilkumar, SCGSC)**

This application having been heard on 18.07.2019 the Tribunal on  
 26.07.2019 delivered the following:

**ORDER**

**Hon'ble Mr. Ashish Kalia, Judicial Member –**

The relief claimed by the applicant are as under:

- “a) Call for the records connected with the case;
- b) Declare that the Military service rendered by the applicant prior to his appointment as a civilian clerk is also to be reckoned as qualifying service for the purpose of grant of benefits under the ACP/MACP schemes;
- c) Quash Annexure A9 communication issued by the Director, NCC;
- d) Direct the respondents to reckon the Military Service of the applicant

from 26.2.1982 to 5.3.1987 along with the civilian service from 1.12.1994 for the grant of benefits under the ACP/MACP schemes;

e) Direct the respondents to grant the ACP benefits on completion of 12 years of service by reckoning the Military Service and to grant the benefits under the MACP scheme on completion of 20 years of regular service by reckoning the Military service;

f) Grant such other reliefs as this Honourable Tribunal may deem fit, just and proper in the facts and circumstances of the case.”

2. The brief facts of the case are that the applicant was appointed in the Indian Army as Clerk (General Department) (Class-II employee) in the Electronics and Mechanical Engineers (EME) Corps, Military Services on 26.2.1982. After a short service of 5 years, he was discharged from the military service on 5.3.1987 on medical grounds. Subsequently, the applicant being an ex-serviceman got appointment as a Lower Division Clerk in the Armed Forces Headquarters Clerical Service in the scale of pay of Rs. 950-1500/- w.e.f. 1.12.1994 and he was taken on the strength of the MS Branch of Army Headquarters from the same date onwards. The applicant is presently working at NCC Directorate (Kerala & Lakshadweep), Trivandrum from 26.3.2015. Disciplinary proceedings were initiated against the applicant treating certain period as unauthorized absence and minor penalties were imposed on him for different periods. The applicant submitted that he was under the clout of minor penalties from 3.3.2004 to 30.6.2010. Subsequently, the period of absence were regularized by the competent authority by granting ex-ordinary leave on medical grounds. The applicant was not granted the ACP benefits on completion of 12 years of service due to the pendency of minor penalties.

3. Learned counsel for the applicant relied on the order passed by the Principal Bench of the Tribunal on 4.3.2010 in OA No. 1445/2010 – ***Ramprakash Mandal v. All India Radio***, wherein the Tribunal allowed the claim of the applicant by granting him the benefit of defence service to be counted for the purpose of grant of ACP benefits. Subsequently, the Chandigarh Bench of the Tribunal in OA No. 660/216/2016 – ***Pardeep Singh v. Union of India*** also considered the similar issue and disposed of the OA on 23.11.2016. The applicant was granted 1<sup>st</sup> MACP w.e.f. 1.7.2010. However, applicant represented for reckoning his military service from 26.2.1982 to 5.3.1987 as qualifying service for grant of ACP/MACP benefits. The respondents rejected the request of the applicant vide Annexure A9. Aggrieved the applicant has filed the present OA.

4. Notices were issued to the respondents. They entered appearance through Shri N. Anilkumar, SCGSC who filed a reply statement in the matter contending that as per the existing Government Rules, ex-servicemen who after availing age relaxation is re-employed as civilian employee shall be entitled for financial upgradation on completion of 12/24 years of service after direct recruitment in to the civil employment. Accordingly, the applicant's 12 years of service will be counted from 1.12.1994 and he will be entitled for 1<sup>st</sup> ACP w.e.f. 1.12.2006. The applicant was granted financial benefits w.e.f. 1.7.2010 only after completion of penalty period consequent to a disciplinary action. The respondents further submitted that the applicant cannot be extended the benefits given to other persons who have filed cases before this Tribunal as there were no clear instructions by the Courts to

extend the same benefits to other similarly placed employees also. Respondents pray for dismissing the OA.

5. Heard S. Radhakrishnan, learned counsel appearing for the applicant and Shri N. Anilkumar, SCGSC learned counsel appearing for the respondents. Perused the record.

6. The short point to be considered in the present OA is whether the applicant is entitled to reckon his military service from 26.2.1982 to 5.3.1987 as qualifying service for grant of ACP/MACP benefits ?

7. We have gone through the order passed by the Principal Bench in OA No. 1074/2014 dated 28<sup>th</sup> April, 2016 in ***HC (Exe) Ashok Kumar v. GNCT of Delhi & Ors***, wherein this Tribunal held as under:

“8. We have heard the learned counsel for parties and also carefully perused the judgment dated 4.3.2011 passed in OA No. 1445/2010. The judgment has attained finality and has not been assailed till date. The observations of this Tribunal in para 9 quoted hereinabove in unequivocal terms allow the benefit of the past Defence service to an ex-serviceman recruited to civil service for purpose of ACP/MACP benefit. The applicant cannot be treated differently. This Tribunal while considering the claim of ex-Defence personnel for grant of ACP benefit heavily relied upon clarification 13 rendered by DOP&T, which inter alia provides for grant of financial upgradation under the ACP scheme on completion of 12/24 years of service after direct recruitment in the civil employment. We find no reason to disagree with the observations made in the aforesaid judgment, as noticed by us.

9. This Application is accordingly allowed. The orders impugned are hereby quashed. The respondents are directed to consider the claim of the applicant for grant of second financial upgradation on completion of 24 years of service, and third financial upgradation under MACP scheme on completion of 30 years of service by counting his past service rendered in Army w.e.f. 30.9.1976 to 30.3.1983. Let the process of consideration be completed within a period of three months and consequential benefits released within one month thereafter. No costs.”

8. The Principal Bench of the Tribunal while passing orders in OA No. 1074/2014 dated 28<sup>th</sup> April, 2016, considered the order passed by the Tribunal in OA No. 1445 of 2010 on 4.3.2011 wherein it was observed as under:

“9. Thus, the applicant's services shall be counted from 18.3.1982 onwards for the purpose of ACP as well. However, when the past services are counted, corresponding promotions granted to the applicant during his military service cannot be lost sight of. The same shall also be taken into consideration while working out the eligibility/entitlement of the applicant for grant of ACP benefits. In that event, the applicant having got one promotion as Corporal, he may be entitled to grant of second ACP under the ACP scheme or second and third ACP under the MACP scheme. 24 years calculated from the initial date of employment would be w.e.f. 18.3.2006 only. However, this may not be beneficial to the applicant, as the respondents are prepared to grant the first ACP fixing his pay scale of Rs. 7500-12000/- from 28.11.2003 itself. Perhaps the applicant would be benefited of the military service if he is eligible for MCP in which event his second ACP would be from 2002 and third ACPO would fall due in 2013. The scheme of ACP being a beneficial measure, the one which is the most advantageous should be made available to the applicant.”

9. The Chandigarh Bench of the Tribunal in OA No. 060/216/2016 dated 23.11.2016 in ***Pardeep Singh v. Union of India & Ors.*** relying on the order passed by the Principal Bench of the Tribunal in ***Ashok Kumar's*** case (supra) held as under:

“8. We have heard the learned counsel for the parties and also carefully perused the judgment dated 4.3.2011 passed in OA No. 1445/2010. The judgment has attained finality and has not been assailed till date. The observations of this Tribunal in para 9 quoted hereinabove in unequivocal terms allow the benefit of the past Defence service to an ex-serviceman recruited to civil service for the purpose of ACP/MACP benefit. The applicant cannot be treated differently. This Tribunal while considering the claim of ex-Defence personnel for grant of ACP benefit heavily relied upon clarification 13 rendered by DOP&T which inter alia provides for granting of financial upgradation under the ACP scheme on completion of 12/24 years of service after direct recruitment in the civil employment. We find no reason to disagree with the observations made in the aforesaid judgment as noticed by us.

9. This Application is accordingly allowed. The orders impugned are hereby quashed. The respondents are directed to consider the claim of the applicant for grant of second financial upgradation on completion of 24 years of service and third financial upgradation under MACP scheme on

completion of 30 years of service by counting his past service rendered in Army w.e.f. 30.9.1976 to 30.3.1983. Let the process of consideration be completed within a period of three months and consequential benefits released within one month thereafter. No costs.

10. Accordingly, we are left with no other option, but to quash the impugned order. The matter is remitted back to the respondents for reconsideration in the light of the decision passed in the case of Ashok Kumar (*supra*) and grant the applicant the benefit by counting his past service rendered in Indian Army w.e.f. 12.9.1977 to 14.5.1985 as eligible one for ACP/MACP. Let the process of consideration be completed within a period of three months from the date of receipt of a certified copy of this order and consequential benefits be released within one month thereafter.”

10. Hence, the issue raised in the present case is already considered by the above orders passed by the Tribunal. The above orders have attained finality and have not been assailed till date. The observations of the Tribunal quoted hereinabove in unequivocal terms allow the benefit of the past defence service to an ex-serviceman recruited to civil service for the purposes of grant of ACP/MACP benefit. Therefore, the applicant cannot be treated differently. We find no reason to disagree with the observations made in the aforesaid orders, as noticed by us. Moreover, the respondents contended in the reply statement that the benefits of orders passed by the Tribunal cannot be extended to the applicant as there are no clear instructions by the Courts to extend the same benefits to other similarly placed employees. They further contended that even after such orders by various courts, the DoP&T has not yet issued any amendments/modifications in the policy issued on 10.2.2000. We are not in agreement with the stand taken by the respondents as the Hon'ble apex court in various judgments held that similarly situated persons should not be dragged in to the court for identical reliefs which have already been considered and decided in favour of the employee. [See (1997) 2 SCC 1 –

*Aswini Kumar & Ors. v. State of Bihar*, (1975) 4 SCC 714 – *Amrit Lal Berry v. CCE*, (1985) 2 SCC 648 – *Inder Pal Yadav v. Union of India*, (2006) 10 SCC 346 – *Uttaranchal Forest Rangers' Assn. (Direct Recruit) v. State of U.P.*, (2006) 2 SCC 747 – *State of Karnataka v. C. Lalitha* and (2015) 1 SCC 347 – *State of Uttar Pradesh v. Arvind Kumar Srivastava*]

11. Thus, we have no hesitation to allow this Original Application. Accordingly, the OA is allowed. Annexure A9 communication is set aside. The respondents are directed to consider the claim of the applicant for grant of ACP benefits on completion of 12 years of service and second financial upgradation under MACP scheme on completion of 20 years of service by counting his past service rendered in Army w.e.f. 26.2.1982 to 5.3.1987. Let the process of consideration be completed within a period of three months from the date of receipt of a copy of this order. No order as to costs.

**(ASHISH KALIA)**  
**JUDICIAL MEMBER**

**(E.K. BHARAT BHUSHAN)**  
**ADMINISTRATIVE MEMBER**

“SA”

**Original Application No. 180/00951/2018**

**APPLICANT'S ANNEXURES**

- Annexure A1** - True copy of the relevant extract of the discharge certificate issued to the applicant with Army No. 14544276P by the Record Officer.
- Annexure A2** - True copy of the ex-servicemen identity card issued to the applicant by the Sainik Welfare Office, Thiruvananthapuram with Army no. 14544276P.
- Annexure A3** - True copy of the service certificate issue by the NCC Directorate on 12.11.2018 where applicant is presently employed.
- Annexure A4** - True copy of the the OM No. 35034/1/97-Estt(D) dated 9.8.1999 introducing the ACP scheme.
- Annexure A5** - True copy of the order No. 12467/MACP/HQ NCC/Pers.(C) dated 7.2.2018 issued by the 1<sup>st</sup> respondent.
- Annexure A6** - True copy of the order dated 28.4.2016 passed by the Principal Bench in OA No. 1074/2014 (HC (Exe) Ashok Kumar No. 1410/PCR v. GNCT of Delhi).
- Annexure A7** - True copy of the order dated 23.11.2016 passed by the Chandigarh Bench of this Hon'ble Tribunal in Pradeep Singh v. Union of India (OA No. 0660/00216/2016).
- Annexure A8** - True copy of the representation dated 12.7.2018.
- Annexure A9** - True copy of the communication No. 12467/LDC/DG NCC/Pers.(C) dated 4.9.2018 issued by the 1<sup>st</sup> respondent.
- Annexure A10** - True copy of the letter No. 0650/02/MACP/Pers(C) dated 14.12.2016.

**RESPONDENTS' ANNEXURES**

- Annexure R1** - True copy of the letter No. 35034/1/97-Esst(D) (Vol.IV) dated 10.2.2000.

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