

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 040/00264/2016

Date of Order: This, the 07th day of March 2019

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

THE HON'BLE MR. NEKKHOMANG NEIHSIAL, ADMINISTRATIVE MEMBER

Sri Pankaj Kumar Das
Vehicle Mechanic
T/No. 116
O/o the Officer Commanding Station Workshop (EME)
Dist – Kamrup (M), Narengi Cantt.
Guwahati – 781171.

...Applicant

By Advocates: Mr. M. Chanda, Mrs. U. Dutta, Ms. S. Begum and
Mr. A.K. Das

-VERSUS-

1. The Union of India
Represented by the Secretary
Ministry of Defence, New Delhi – 110011.
2. The Controller of Defence Accounts
Udayan Vihar, Narangi
Guwahati – 781171, Assam.
3. The Officer Commanding
Station Workshop, ME
Guwahati, Pin – 900328, C/o 99 APO.
4. The Local Audit Officer (Army)
Naangi, Guwahati – 781027, Assam.

... Respondents

By Advocate: Mrs. G. Sutradhar, Addl. CGSC

O R D E R (ORAL)

NEKKHOMANG NEIHSIAL, MEMBER (A):

This O.A. has been preferred by the applicant under Section 19 of the Administrative Tribunals Act 1985 seeking the following reliefs:-

- “8.1 That the Hon’ble Tribunal be pleased to declare that the applicant is legally entitled to benefit of 1st ACP in the grade pay of Rs. 1900/- (in the pre revised scale of Rs. 3050-4590/-) either w.e.f. 01.02.2002 i.e. on completion of 12 years of service or alternatively at least w.e.f. 01.01.2006 as well as benefit of 2nd MACP in the Grade Pay of Rs. 4200/-, (later on amended to 2400/-) in the relevant PB of Rs. 9300-34800/- at least w.e.f. 01.02.2010 i.e. on completion of 20 years of service or alternatively in any other higher grade pay as deem fit and proper by learned tribunal with all consequential benefit including arrear monetary benefit by way of review/modification of the relevant orders of ACP and MACP issued earlier.
- 8.2 That the Hon’ble Tribunal be pleased to declare that benefit of 2nd MACP has been wrongly granted in the grade pay of Rs. 2000/- in the PB I of Rs. 5200-20200/- w.e.f. 01.07.2010 which is not sustainable in the eye of law in terms of prayer No. 8.1, when the applicant is legally entitled to benefit of 2nd MACP in the grade pay of Rs. 4200/-, (later on amended to Rs. 2400/-), in the relevant PB of Rs. 9300-34800/- at least w.e.f. 01.01.2006 or in any other higher grade pay as deem fit and proper by the learned tribunal.
- 8.3 That the Hon’ble Tribunal be pleased to declare that in terms of provision of para 5 of

the laid down in Annexure 1 of the MACP scheme dated 19.05.2009 the applicant is legally entitled to the benefit of 1st ACP in the grade pay of Rs. 1900 either w.e.f. 01.02.2002 or alternatively at least w.e.f. 01.01.2006 in view of merger of the scale of pay of the feeder post of Mazdoor and Mazdoor Mate in terms of CCS (revised) Pay Rule 2008 in terms of prayer No. 8.1.

8.4 Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper."

2. Grounds for relief are that – the respondents deliberately did not review the benefit of ACP/MACP in the light of CCS (revised) Pay Rule 2008 and also in terms of provision of para 5 of the laid down in Annexure 1 of the MACP Scheme dated 19.05.2009. When all other Central Govt. Departments have already reviewed the benefit of ACP and MACP granted earlier and in terms of Para 5 of the aforesaid condition, placed all the similarly situated employees in the appropriate higher grade pay/scale of pay. But surprisingly in spite of merger of scale of pay of the feeder post of Mazdoor and the promotional post of Painter Mate on account of CCS (revised) Pay Rule 2008, no review has been carried out with regard to the benefit of ACP/MACP already extended to the applicant. As a result, the applicant has been allotted lower grade pay than the grade

pay legally entitled to the applicant with consequential arrear monetary benefit.

3. The respondents Union of India, neither extended the benefit of restructuring due and admissible to the applicant in terms of Govt. of India O.M dated 09.08.1999 as well as in terms of OM dated 19.05.2009, as a result service prospect of the applicant has been adversely affected, when the similar benefit has already been extended to the incumbent working in other trades of the respondents Department and thereby applicant has been meted out with hostile discrimination and such action of the respondents also in violation of Art. 14 of the Constitution of India, and as a result applicant is incurring huge financial loss due to non-consideration of financial up gradation to the appropriate higher grade pay in terms of Govt. of India OM dated 09.08.1999 as well as in terms of OM dated 19.05.2009 each and every month, which gives rise continuous cause of action.

4. Due to lack of knowledge and experience of the officers working in the administrative branch, Accounts wing including the branch of CDA, the benefit due and admissible to

the applicant on account of ACP scheme dated 09.08.1999 as well as MACP scheme dated 19.05.2009 has not been extended to the applicant in the appropriate grade pay which resulted lower allotment of grade pay/scale of pay. As a result the applicant is continuing in much lower grade pay in each and every month than the grade pay due and admissible to him in terms of the schemes of the ACP/MACP.

5. The 1st ACP of the applicant is due and admissible w.e.f. 01.02.2002 or alternatively w.e.f. 01.01.2006 in the grade pay of Rs. 1900 in the pre revised scale of Rs. 3050-4590/- on completion of 12 years of service, similarly 2nd MACP is due to the applicant in the grade pay of Rs. 4200/- (amended Rs. 2400/-) in the relevant pay band II w.e.f. 01.02.2010 instead of Grade Pay of Rs. 2000/- by way of review in the light of CCS (revised) Pay Rule 2008 and also in the light of Govt. of India OM dated 09.08.1999 and 19.05.2009. Allotment of grade pay of Rs. 2000/- on account of 2nd MACP is wrongly given when applicant is legally entitled to grade Pay of Rs. 4200/- (amended Rs.2400/-) instead of 2000/- on account of 2nd MACP w.e.f. 01.02.2010 on completion of 20 years of service therefore, applicant is entitled to benefit of Grade pay of Rs. 4200/- (amended Rs. 2400/-) or

any other higher grade pay as deemed fit and proper on account of 2nd MACP by way of review/modification of the benefit of ACP/MACP already granted. The applicant submitted representation dated 14.12.2015 praying for review of the benefit of ACP/MACP in the light of para 5 of the condition laid down in Annexure I of the MACP scheme and also in the light of the CCS (revised) Pay Rule 2008, with a further prayer to supply photocopy of service book but to no result.

6. Facts of the case as submitted by respondent No. 3 are that Token No. 116, VM (MV) Shri Pankaj Kumar Das, applicant in the present case was employed in the Workshop under the respondents as a Labourer w.e.f. 01.02.1990 in the pay scale of Rs. 750-12-870-EB-14-940/- per month and his pay has been fixed under CCS Revised Pay Rules 1997 (i.e. Vth CPC) at the rate of Rs. 2605/- in the pay scale of Rs. 2550-55-2660-60-3200/- with date of next increment w.e.f. 01.02.1996.

After he was granted 1st ACP on completion of 12 years of continuous regular service with effect from 01.02.2002 in terms of Govt. of India, Ministry of Personnel, OM No. 35034/1/97-Estt (D) dated 09.08.1999 in the scale of pay Rs. 2650-65-3300-70-4000/-

& his pay was fixed by Local Audit Office (Army), Narangi vide letter No. LAO/20/Pay fixation/II dated 24.06.2004 at Rs. 3170/- per month.

7. The applicant was promoted from Labourer to Labour Mate with effect from 24.02.2005 without any financial benefit of pay fixation in the same scale of pay as the applicant got 1st ACP w.e.f. 01.02.2002. On completion of revised pay under CCS (Revised pay) Rule 2008, pay of the Applicant has been fixed at pay band Rs. 6400/- with Grade Pay Rs. 1800/- in the pay scale of Rs. 5200-20200/- (PB-1) with effect from 01.01.2006. Having been merged the pre-revised scale of pay Rs. 2550-3200, 2610-3540, 2650-4000 and 2750-4400/- into a single scale of pay Rs. 5200-20200/- with Grade Pay Rs. 1800/-, the applicant was granted 1st MACP with effect from 01.09.2008 ignoring earlier pay fixation and pay of the applicant has been revised under CCS (RP) Rules, 2008 in terms of Govt. of India OM No. 10/02/2011-E.III/A dated 19.03.2012 and pay of the applicant was fixed at PB Rs. 7450/- with Grade Pay Rs. 1900/- in the scale of pay Rs. 5200-20200/- (PB-1) with date of next increment 01.07.2009.

8. The respondent authorities are contesting the demands of the applicant in their written statement submission dated 14.12.2017. Among others, they have pointed out that the benefits of 2nd MACP Scheme in the Grade Pay of Rs. 4200/- in the relevant PB of Rs. 9300-34800/- does not meet in next hierarchy of Vehicle Mechanic. The trade of vehicle mechanic does not come under MTS. Hence, no comparison can be considered between Vehicle Mechanic & MTS. The condition mentioned in the Office of the Comptroller and Auditor General of India, New Delhi letter dated 13.02.2014 is for fixation of pay in respect of "Non-Industrial Personnel", now termed as MTS. The post of Vehicle Mechanic is an 'Industrial Post'. As such, the above condition is not applicable in present case.

9. We have gone through the submissions made by both the parties. From the submission of the applicant, it is revealed that the demanded Grade Pay of Rs. 4200/- has been amended by the learned counsel for the applicant to Rs. 2400/-. As such, the demand for 2nd MACP in the Grade Pay of Rs. 4200/- is not more relevant and is not being examined. This demanded Grade Pay has been changed to Rs. 2400/-.

10. The other demand of the applicant is that he should have been granted the benefit of 1st ACP in the Grade Pay of Rs. 1900/- w.e.f. 01.02.2002 on completion of 12 years of service or alternatively at least w.e.f. 01.01.2006 and the benefit of 2nd MACP in the Grade Pay of Rs. 2400/- (as amended) in the relevant PB of Rs. 9300-34800/- w.e.f. 01.02.2010 i.e. on completion of 20 years.

11. Keeping in view of the above demand, we have considered the issue and felt that it would be appropriate and in the fitness of the things that the respondent authorities be directed to re-examine the demand of the applicant in the light of judgment of Hon'ble High Court of Delhi in **W.P. (C) No. 3549/2018 (Sunil Kumar Tyagi Vs. Union of India and Anr.) dated 01.05.2019** wherein the decision of the Hon'ble Apex Court in **Union of India V. Balbir Singh Turn (2018) 11 SCC 99** has also been cited.

12. The respondents are, therefore directed to re-examine the grievances of the applicant and consider his case for financial upgradation as demanded by him.

13. The above action may be completed by the respondent authorities within a period of four months from the date of receipt of a copy of this order.

14. With the above directions, O.A. stands disposed of accordingly. There shall be no order as to costs.

(NEKKHOMANG NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)

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