

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.21/1266/2018

Reserved on: 16.07.2019

Pronounced on:23.07.2019

Between:

Mula Ramakka, W/o. Sri Odelu Mallaiah,
Family Pensioner, Secunderabad Division,
H. No. 1-83/8, A/1, Near Ambedkar Statue,
Madikonda – 506 003, TS.

...Applicant

AND

1. UOI, Represented by its General Manager,
South Central Railway, Rail Nilayam,
Secunderabad – 500 025, TS.
2. Senior Divisional Personnel Officer,
S.C. Railway, Sanchalan Bhavan,
Secunderabad Division,
Secunderabad – 500 071, TS.

... Respondents

Counsel for the Applicant ... Mr. S. Srinivasa Rao

Counsel for the Respondents ... Mrs.A.P. Lakshmi, SC for Rly

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. The OA is filed for disposal of representation made in regard to revision of pay and thereafter pension of the applicant based on 6th CPC recommendations.

3. The husband of the applicant worked as Sr. Trackman in the respondents organisation and retired voluntarily on 31.12.2008. Consequent to the implementation of the 6th CPC recommendations, applicant claims that MACP benefit of revising the grade pay as Rs.2400 instead of Rs.1800 has not been extended to her husband while he was in service, which resulted in less pay, pension and finally family pension on the demise of her husband. Applicant made a representation on 4.7.2018 along with others. A similarly situated employee Sri B.Narahari, who represented along with her, was given the benefit of grade pay of Rs.2400. As her grievance has not been resolved, the OA has been filed.

4. The contentions of the applicant are that as per MACP scheme circulated vide RBE 101/2009, her late husband's Grade Pay should have been revised from Rs.1800 to Rs.2400 through the relevant stages. Service certificate dated 23.3.2009 is enclosed as Annexure A-2 evidencing that the grade pay granted was only Rs 1800. As per letter dated 5.2.2015 of the APIO & APO/SC, all Group D employees are eligible for the benefit sought. Similarly situated employee has been granted the benefit. Not granting the benefit to her late husband is arbitrary and illegal.

5. Respondents, *per contra*, state that the applicant's husband was granted 1st and 2nd MACP with grade pay of Rs.1900 and Rs.2000 respectively w.e.f. 1.9.2008 vide memo dated 15.3.2019 since he has put in 24 years, 9 months and 27 days service. Accordingly, the last pay of the late employee was fixed at Rs.10,990/-. The late employee is not eligible for the 3rd MACP with Grade Pay of Rs.2400 since he has not completed 30 years of service. In case of Sri B. Narahari he has been

granted 3rd MACP with grade pay of Rs 2400 as per RBE 101/2009 since he has completed 33 years of service.

Applicant has filed a rejoinder appreciating the action of the respondents in granting 1st and 2nd MACP but claimed that the 3rd MACP need also to be granted as per clause 1, 5 and 22 of MACP Scheme. Besides, during submissions, learned counsel has submitted that the MACP scheme is to be given effect from 1.1.2006 and not from 1.9.2008 as per Hon'ble Apex court directions in UOI v Balbir Singh Turn in CA Diary No 3744 of 2016 dated 8.12.2017.

6. Heard both the counsel and perused the pleadings on record. Primarily, ld. counsel for the applicant has objected that the reply statement was filed by an officer who is not a party to the OA. In response, Ld. Counsel for the respondents has submitted that a senior officer of the rank of DPO has filed the reply on behalf of the respondents and pleaded to take the reply statement on record. Accordingly it was taken on record since she has vouched that the reply is on the behalf of the respondents who were made party to the OA.

7) I) Applicants husband has put in around 24 years of service and hence, he was granted 1st and 2nd MACP w.e.f. 1.9.2008. To be granted 3rd MACP, an employee has to put in 30 years whereas the late employee had around 24 years and hence ineligible for 3rd MACP. Applicant in the rejoinder claimed that as per clauses 1, 5 and 22 of the MACP scheme the 3rd MACP has to be granted. Clauses cited are extracted hereunder:

1. *There shall be three financial upgradations under the MACPS, counted from the direct entry grade on completion of 10, 20 and 30*

years service respectively. Financial upgradation under the Scheme will be admissible whenever a person has spent 10 years continuously in the same grade-pay

5. *Promotions earned/upgradation granted under the ACP Scheme in the past to those grades which now carry the same grade pay due to merger of pay scales/upgradations of posts recommended by the Sixth Pay Commission shall be ignored for the purpose of granting upgradations under Modified ACPS.*
22. *If Group "A" Government employee, who was not covered under the ACP Scheme has now become entitled to say third financial upgradation directly, having completed 30 year's regular service, his pay shall be fixed successively in next three immediate higher grade pays in the hierarchy of revised pay-bands and grade pays allowing the benefit of 3% pay fixation at every stage. Pay of persons becoming eligible for second financial upgradation may also be fixed accordingly.*

II) Applicant has also relied on the clarification given in regard to MACP in RBE No.143/2010 at Sl.9 and Sl. 11 vide memo S.No PC-VI/228 dated 29.9.2010, in support of her contentions.

III) Although the respondents have granted 1st and 2nd MACP as per clause 1 of the scheme referred to above, however, there is no response in regard to clauses 9 & 11 of the clarificatory letter dated 29.9.2010. This needs to be examined. Clause 22 does not apply to the ex-employee as he has not put in 30 years of service. Coming to the case of B.Narahari, it was properly explained by the respondents that since he has put in 33 years of service 3rd MACP was granted, whereas the service of the applicant is around 24 years. Besides, the submission of the applicant that all Group D employees have been granted all the benefits under the scheme is untenable as the provisions of the scheme have to be followed in granting the financial upgradations. The other averment made by the applicant is that MACP is to be implemented from 1.1.2006 as per the Hon'ble Apex Court Order in Babir Singh Turn cited supra. This Order is

not relevant to the present case, since the applicant in the cited case was a defence employee. 6th CPC has recommended separate schemes for Civilian and Defence personnel. ACP scheme was in operation from 1.1.2006 till 31.8.2008. Changing the date of implementation of MACP would be beneficial to some and disadvantageous to others. Hon'ble High Court of Madras in Writ Petition No.33946, 34602 & 27798 of 2014 has held that the benefit of ACP cannot be negated by implementing MACP with retrospective effect. The CBEC, Ministry of Finance letter dated 9.1.2019 clarifies the aspect lucidly. Therefore, the plea of the applicant that MACP is to be made applicable from 1.1.2006 cannot be entertained.

IV) Thus based on the above, respondents may examine the issue from the aspect of clarifications specifically given at clauses 9 and 11 of the respondents letter 29.9.2010 as well as those raised in her representation dated 4.7.2018 and an appropriate response be given to the applicant based on extant rules within a period of 12 weeks from the date of receipt of this letter.

V) With the above directions the OA is disposed of with no order as to costs.

**(B.V. SUDHAKAR)
MEMBER (ADMN.)**

Dated, the 23rd day of July, 2019
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