

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

Original Application No. 021/00917/2016

Date of C.A.V. : 17.07.2018

Date of Order : 27.12.2018

Between :

Chalasani Rajyasree, W/o Sri K.Ravi Kumar,
Aged about 59 years, Occ : Assistant Engineer (Civil),
Military Engineer Services, O/o the Chief Engineer (Fy),
Hyderabad. ... Applicant

And

1. The Union of India,
rep. by the Secretary to Government
Ministry of Defence, South Block, New Delhi.
2. The Military Engineer Services
Rep. by the Engineer-in-Chief,
Engineers-in-Chief's Branch,
Integrated HQ Ministry of Defence (Army),
Kashmir House, Rajaji Marg, New Delhi – 110001.
3. The Chief Engineer, Military Engineer Services,
Southern Command, Pune – 411 001.
4. The Chief Engineer (Fy), Hyderabad,
Military Engineer Services, Opp. Parade Ground,
S.P.Road, Secunderabad.
5. The Central Record Officer (O),
O/o The Central Records Officer (Officers) Delhi,
C/o 56 APO, Pin 900 106.
6. The Principal Controller of Defence Accounts,
Allahabad. ... Respondents

Counsel for the Applicant ... Mr.Siva, Advocate

Counsel for the Respondents ... Mr.T.Hanumantha Reddy, Sr.PC for CG

CORAM:

Hon'ble Mr.Justice R.Kantha Rao ... Member (Judl.)

ORDER

{ As per Hon'ble Mr.Justice R.Kantha Rao, Member (Judl.) }

The applicant was appointed as Superintendent Grade-II and she reported for duty on 30.07.1981. The applicant has been given the financial upgradation w.e.f. 30.07.1986 and 30.07.1996 i.e. after putting in 5 and 15 years of service respectively. Thus she was drawing pay scale of Assistant Engineer w.e.f. 30.07.1996. While the matter stood thus and with the recommendations of the V Central Pay Commission accepted by the Government of India, Assured Career Progression Scheme (ACPS) was formulated vide Office Memorandum dated 09.08.1999. As per the Scheme, two financial upgradations are liable to be granted on completion of 12 and 24 years without being promoted. After the VI Central Pay Commission recommendations were accepted the ACPS came to be modified called the Modified Assured Career Progression Scheme (MACPS) as per which, two financial upgradations were assured. They were granted after completion of 10, 20 and 30 years of service. The applicant having completed 30 years of service as on 30.07.2011 was granted the 3rd financial upgradation. The Diary Order Part II to this effect was issued on 02.06.2014 and arrears were computed and paid to her after a pre-audit. While the applicant was nearing her superannuation, the 5th respondent has issued letter dated 09.08.2016 addressed

to the 4th respondent and a copy endorsed to the applicant. The contents of the letter revealed that the Pension Payment Order issued by the 6th respondent will be kept in abeyance and advised the 4th respondent to take action as regards the cancellation of 2nd ACP and 3rd MACP and recovery due thereon from the officer to submit a fresh calculation sheet, etc., for onward submission and issuance of a corrected Pension Payment Order. The direct impact of the order would be that the applicant would not be given pension and other terminal benefits on her retirement. Aggrieved by the aforementioned action the applicant filed the present OA to quash and set aside the said letter dated 09.08.2016 issued by the 5th respondent and consequently direct the respondents to issue the Pension Payment Order made ready by the 6th respondent and act upon the same by releasing the terminal benefits and also pension.

2. The respondents resisted the OA by filing a counter affidavit contending as follows :

The 1st financial upgradation under ACPS has not been granted to the applicant on 09.08.1999 as she did not fulfill the promotion criteria for Assistant Engineer by passing the Military Engineer Services (MES) procedure examination on that date. She had passed the subject examination subsequently on 21.04.2004. Thus she became eligible for 1st financial upgradation under ACPS on 21.04.2004 and 2nd financial upgradation under MACPS on 21.04.2014. But the department erroneously given 2nd financial upgradation under ACPS and 3rd financial upgradation under MACPS to the applicant on 30.07.2005 and 30.07.2011 respectively by overlooking the delay in her fulfilling the promotion

criteria of passing the MES procedure examination. Upon noticing the above position, the 5th respondent vide their letter dated 09.08.2016 has held the Pension Pay Order (PPO) of the applicant in abeyance for issuing corrected PPO based on revised calculation. The pay and allowances being drawn by the applicant are on higher side and recovery is to be affected towards the overpayment made to her basing on the financial upgradation given to her wrongly. It is incorrect to state that the applicant will not be given pension and other terminal benefits on her retirement as the pension and terminal benefits will be paid based on the revised calculations after giving 2nd financial upgradation under MACPS on 21.04.2014. The order passed by the 5th respondent dated 09.08.2016 is in accordance with the rules and regulations enumerated with ACPS which came into force w.e.f. 09.08.1999. The cancellation of the financial upgradations of the applicant is not an isolated case and it has been done to all similarly placed employees of the department after reviewing and reconciling the mistake / error committed earlier. Thus according to the respondents the impugned action was taken on the ground of the applicant's non-eligibility in meeting the promotion criteria due to delay in passing the MES procedure examination. The respondents therefore justified their action and sought to dismiss the OA.

3. In the rejoinder the applicant contended as follows :

It has been admitted by the respondents that the error has been committed by them and therefore the applicant is not responsible for the error. It has been held by the courts that where a benefit has been conferred on the employee due

to the error of the department, the employee cannot be visited with any civil consequences. At any rate, the least that was expected from the respondents was to put the applicant on notice before any decision is taken holding that the benefit given was liable to be withdrawn. No such notice was issued to the applicant and therefore the decision which was taken is in violation of principles of natural justice.

4. I have heard Sri Siva, learned counsel for the applicant and Sri T.Hanumantha Reddy, Sr. Panel Counsel for Central Government.

5. It is submitted on behalf of the applicant that the impugned action taken against the applicant by the respondents is without any notice to her and therefore the principles of natural justice has been violated. Since the applicant was not at fault in getting the ACPS at an earlier date even if the contention of the respondents that they were granted to the applicant by which time she did not fulfill the eligibility criteria is considered as correct, the amounts shall not be recovered from her as the same was not done on any sort of misrepresentation made by the applicant. On the other hand it is contended by the respondents that as the applicant became eligible for MACPS on 21.04.2004 and 21.04.2014 respectively i.e. after passing the Military Engineer Services (MES) procedure examination the amounts towards ACPS which were earlier granted to her can be recovered by the department before settling her pension dues.

6. The issue involved in the instant case is covered by the order passed

by the Central Administrative Tribunal, Bangalore Bench in OA.1010/2016.

Dealing with the identical issue, the Hon'ble Bangalore Bench held as follows :

"Therefore, we are inclined to accept the contention of the applicant that passing of Military Engineer Service Procedure Examination does not become an essential condition for granting of 2nd financial upgradation under ACP scheme for diploma holder Junior Engineers. We also taken note of the earlier view taken by the Jodhpur Bench of this Tribunal in order dated 20.08.2010 in OA.No.149/2008 wherein it was held that passing of MES Procedure Examination is not essential to become entitled for 2nd financial upgradation under ACP."

The Hon'ble Bangalore Bench of the Tribunal further held that __

"There is no ambiguity to the fact that a person is entitled to 3rd financial upgradation under MACP on completion of 30 years of service if he is not given 3rd promotion in the hierarchy. The stipulation of 10 years from the date of last upgradation come into play only when a person get 2nd financial upgradation on promotion before completion of 20 years.....Therefore , there is absolutely no ambiguity to the fact that a person shall be entitled to 3rd MACP benefit on completion of 30 years of regular service and the contention of the respondents that a person will be allowed 3rd financial upgradation only after completion of 10 years from the date of last financial upgradation even though he had already completed 30 years of service is erroneous and unjustified."

The Learned Tribunal found that subsequent action of the respondents to cancel the benefit is wrong and unjustified and quashed the same. The Tribunal directed to restore the 2nd financial upgradation granted to the applicant therein earlier holding that the applicant is entitled to 3rd financial upgradation under MACP on completion of 30 years of regular service subject to fulfillment of stipulation under

MACP guidelines.

7. In view of the afore-referred order of the Bangalore Bench of the C.A.T., which was passed on exactly identical facts, the present OA deserves to be allowed.

8. Consequently the OA is allowed. The letter No.CRO/34/97/CHR/09/2016 dated 09.08.2016 and letter No.CRO/34/97/CHR/09/2016 dated 30.09.2016 of the 5th respondent and letter No.PF/147476/3/E1.Adm(R), dated 06.10.2016 of the 4th respondent are quashed and set aside. The respondents are directed to issue the Pension Payment Order which was made ready by the 6th respondent and act upon the same by releasing the terminal benefits and also the pension within a period of eight weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

*(JUSTICE R.KANTHA RAO)
MEMBER (JUDL.)*

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