

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

OA No.484 of 2011

Dated of order: 30.09.2016

PRESENT:

THE HON'BLE MR. JUSTICE VISHNU CHANDRA GUPTA, JUDICIAL MEMBER
THE HON'BLE MS. JAYA DAS GUPTA, ADMINISTRATIVE MEMBER

.....

1. Smt. Shahedas Jabeen wife of Late Raja Panjatan aged about 58 years by occupation housewife;
2. Munawer Hussain son of Late Raja Panjatan aged about 38 years;
3. Mazhar Hussain son of Late Raja Panjatan, aged about 33 years;
4. Shahrenawaze Hussain son of Late Raja Panjatan, aged about 30 years.

All of them residing at G-222, Battikal, 2nd Lane, First Floor, PO. Garden Reach, Kolkata-700024, West Bengal as the applicants in the aforesaid OA in place and stead of the existing applicant following his death on 06.05.2014.

.....Applicants

For the Applicant: Mr.J.R.Das[®] Counsel

-Versus-

1. Union of India service through the Secretary, Ministry of Defence, Department of DGQA, South Block, New Delhi-11.
2. The Deputy Secretary, Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, North Block, New Delhi-1.
3. The Director General DGQA/Admn. Room No. 234, South Block, New Delhi-110011.

4. The Director, Quality Assurance/Adm. 10, Block, New Delhi-110011.
5. The Dy. Director, Office of the Director General Quality Assurance/Adm 10, H Block, New Delhi-110011.
6. Shri Sushill Dutta son of ot known aged about 58 years serving as JTO, SQAE (L), New Delhi-110011.

.....Respondents

For the Respondents: Ms.R. Basu, Counsel.

ORDER

MS.JAYA DAS GUPTA, AM:

Initially, this Original Application was filed by the applicant Raja Panjatan, under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"(i) To caused necessary addition/correction to the Note Sheet at Annexure-A/6 to provide for 3rd MACP for grade pay benefit @ Rs. 5400/- considering his past service since due;

i(a) For an order quashing and/or setting aside the letter dated 12.7.2011 issued by the Joint Director, DGQA (Annexed herewith as A-9) rejecting the prayer of applicant for 3rd MACPS benefits;

(ii) An order directing the respondents to grant the benefit of MACPS of the applicant to the extent of grade pay @ Rs. 4800/- for 2nd MACP as also @ Rs. 5400/- for 3rd MACPS to the applicant forthwith along with all consequential benefits thereon including interest as per rule;

(iii) An order directing the respondent to grant his due 3rd MACP benefit @ Rs. 5400/- as per similarly situated person and pay all consequential benefits due to the applicant following such deprivation;

(iv) An order directing the respondents to re calculate the pension and pensionary benefits of the applicant on such enhanced MACP since already retired;

/s/

(v) To direct the respondents to place all the papers on record in connection to the adjudging of the matter;

(vi) And to pass such further or other order/orders and/or direction or directions as to this Hon'ble Tribunal may seem fit and proper."

2. However, during the pendency of this Original Application the original applicant Raja Panjatan expired and, therefore, his legal heirs have been substituted as the matter relates to financial implication.

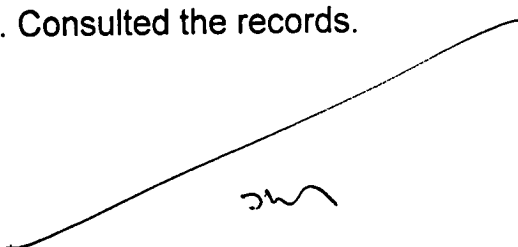
3. It is the case of the Applicants that the deceased joined as Electrician on 12.09.1973 under the Director General of Quality Assurance (in short DGQA). Thereafter, he was further appointed as Instrument Mechanic on 22.03.1977. As per the pleadings, subsequently, he was transferred to Supervisory Cadre as Sub III on 1.4.1981 i.e. from Industrial to non Industrial category in the same identical scale which he was enjoying previously. This post of Supervisor III was merged with charge man Gr. II with effect from 01.01.1986 i.e. in the 4th CPC period. The deceased was promoted to the grade of Charge Man Gr. I w.e.f. 28.11.1997. The post of Charge man Gr. II and Grade I were merged w.e.f. 01.01.2006 in the 6th CPC period. The deceased was further promoted to the grade of Assistant Foreman on 29.10.2003 which grade was subsequently merged to the grade of JTO w.e.f. 01.01.2006. He retired as JTO on 30.09.2010. His contention is that his regular service for getting the benefit of MACP sought to have been counted from 22.03.1977 when he joined as Instrument Mechanic. As he has got only two promotions by his own

submission after thirty years of service he was entitled to the GP of Rs. 5400/- as third MACP and not GP Rs. 4800/- which was paid to him till his retirement.

4. Per contra, it is the main contention of the Respondent authorities that the deceased joined regular service only on 01.04.1981 in Supervisor Gr. III and as he was previously appointed against a temporary post he was not in regular service. The Grade Pay of Rs. 4800/- was awarded to him correctly as he retired before he became eligible for the next GP of Rs. 5400/-.

It has been stated by the Respondents that the date of appointment of the applicant as Instrument Mechanic was 22.3.1977. After qualifying in the departmental trade test, he was transferred from industrial category of post of instrument mechanic to non industrial post of Technical supervisor Grade III w.e.f. ;1.4.1981 in the same pay scale of Rs. 380-560/-. After Vth CPC, the word transfer was substituted as absorption in terms of DOP&T OM No. AB 14017/2/97-Estt. (RR) dated 25.5.1998. After IVth CPC the post of TS III was designated as Charge man grade II w.e.f. 1.1.1986. The applicant was promoted to charge man grade I w.e.f. 28.11.1997 in the pay scale of Rs. 5500-9000 and Assistant Foreman w.e.f. 29.10.2003 in the pay scale Rs. 6500-10500/- . He was given 2nd MACP in GP Rs. 4800/- from 01.09.2008 and he retired before completion of 30 years of service i.e. on 30.09.2010. Accordingly, the Respondents have prayed for dismissal of this OA.

5. Heard parties. Consulted the records.



6. The learned counsel for the applicant drew our attention to the impugned order dated 12.07.2011 (A/9) which is set out below:

Government of India,
Ministry of Defence
Deptt of Defence Production,
DGQA/Adm-10,
New Delhi-110 011.

A/86320/MACPS/GEN/11/DGQA/Adm.10
Shri Raza Panjatan, JTO (Retd.)
G-222 Battikal 2nd Lane,
Garden each PO
Kolkata-700 024.

12.July,2011

CLARIFICATION FOR GRANT OF MACP

1. Reference your letter No. Nil dated 20.04.2011 addressed to Director, DGQA (Grievance Cell) Room No. 32 A, H Block, New Delhi.

2. Your case for grant of 3rd financial up gradation in the Grade Pay of Rs. 5400/- w.e.f. 01.09.08 as contended in your earlier letter has been considered in light of para 9 of Annexure-I to DOP&T OM No. 35034/3/2008-Estt.(D) dated 19 Mar 2009 read in conjunction with clarification Point of Doubt No.5, vide DOP&T OM No. 35034/3/2008-Estt.(D) dated 09 Sep 2010 whereby your continuous service for the purpose of grant of financial up gradation under MACPS is to be reckoned w.e.f. 01.04.81 i.e. the date you were transferred (absorbed) as Sup Tech.III (with notional Grade Pay of Rs. 4200/-). You are, therefore, not entitled to any further financial up gradation prior to 01.04.2011 which falls after your retirement from the service w.e.f. 30.09.10.

3. This is for your information please.

Sd/-(Sheodan Singh)
Joint Director,
DGQA/Adm-10
For DGQA"

7. As per the contention of the Applicants, the deceased was appointed as Instrument Mechanic temporarily in an existing vacancy w.e.f. 22.03.1977 in the scale of Rs. 380-560/- (A/10). The relevant portion of the order of appointment as Instrument Mechanic is set out below:

"DAILY ORDERS PART II
INSPECTORATE OF ELECTRONICS
CALCUTTA
Last daily order part II

Daily orders Part II



No.4/IND dt. 15th Mar, 1977 No.5/IND Dt.5.4.77

APPOINTMENT IND. STAFF
Shri RAJA PANJATAN
Electrician
(T.No.1 LC/41)

Appointed as temporary
Instrument Mech. w.e.f. 22.3.77 in
the scale of Rs. 380-12-EB-15-560.

He will be on probation for six
months which may be extended to 1
year if considered necessary.

Pending fixation of his pay
consultation with the audit
authorities he will draw his pay and
allowances at the minimum of his
new post.

Certified that the above named individual
assumed the appointment of Instrument Mechanical
with effect from 22.3.77 (FN)."

The letter of appointment of the Applicant at Annexure-A/1
dated 21.3.1977 is set out below:

"No.12502/A/XVIII/77

21 MAR,1977/PHGN 30,1998(SAKA

To

Shri Raja Panjatan, Elect,
Inspectorate of Electronics,
Commissionerate Road,
Hastings Dak Ghar,
Calcutta-700 022.

Appointment

You are offered an appointment of 'Instrument
Mechanic' in the scale of Rs. 380-12-500-EB-15-560
with allowances as admissible under the rules;

2. The appointment will be subject to the
following conditions:-

(a) **The post is temporary.**

(b) You will be on probation for a period of 6
months from the date of your appointment as
'Instrument Mechanic' and if your performance is not
found satisfactory your services are liable to be
terminated without assigning any reasons or the
period of probation extended at any time either before
the expiry of the probationary period or thereafter.
Ordinarily, the period of probation shall not be

extended beyond 1 year i.e. double the period of probation.

(c) You will be liable to All India and Field Service liability.

3. Your willingness for acceptance or otherwise of the appointment offered should be intimated to the undersigned through proper channel as early as possible but not later than 24 Mar 77.

Sd/-(Anand Swarup)

DCSO

Senior Inspector"

8. The above letter of appointment clearly shows that his appointment was made against a post which was temporary. Unless the post is made permanent no regular appointment can be made against that post. Hence, the contention of the applicants that the regular service of the deceased starts from 22.03.1977 is misnomer. There is nothing on record to show when the post of Instrument Mechanic became permanent.

9. In the meanwhile, as per the order (at page 61) of the OA on the recommendation of the Departmental Promotion Committee-III, the deceased was transferred from Industrial post to Supervisor Tecch. w.e.f. 1.4.1981(FN) which is of non Industrial establishment in the scale of pay of Rs. 380-560/-. As per DOPT's order dated 25.5.1995 the word 'transfer' was substituted as 'absorption' and absorption can only be effected against a regular post. The relevant portion of the said order at page 61 of the OA is set out below:

"DAILY ORDER PART II
INSPECTRATE OF ELECTRONICS
CALCUTTA.

LAST DO PART ii PUBLISHED

No.18/NI DATED 6 APR 81

DAILY ORDERS PART II

me

No.19/NI Dt.8APR 81

Strength Increase : transfer from industrial categories to Supervisors (tech).

SHRI RAJA PANJATAN

I/Mech (TLC/41 - On the recommendation of DPC II marginally named individuals are transferred from the Industrial posts to Supervisors (Tech) w.e.f. 01.4.81 (FN) in the scale of pay of Rs. 380-12-500-EB-15-560 and TOS of non industrial establishment of this Inspectorate w.e.f. the same date.

They will be on probation for two years which may be extended for further period of two years if considered necessary.

Thy will draw pay and allowances in the existing rates, the pay scales I/Mech TCM and Sup (Tech) being identical.

Certified that the above named individuals assumed the charge of Supervisors (Tech) w.e.f. 01. APR 81."

10. Going through the records and the facts narrated above, it is evident that the deceased was posted regularly from 01.04.1981 after passing the required trade test as Tech. Supervisor III. The post of Tech. Supervisor III was merged with the post of Charge man II w.e.f. 1.1.1986. He was promoted from the post of Charge man II to Charge man Gr. I on 28.11.1997 in the scale of Rs. 5500-9000/-. He was further promoted to Assistant Foreman on 29.10.2003 in the scale of pay of Rs. 65000-10500/-. The second promotional movement from Rs.5500-9000/- to Rs. 6500-10500/- is to be ignored while granting MACP benefit as per para 5 of the MACP Scheme. Para 5 of the MACP Scheme is set out below for ready reference:

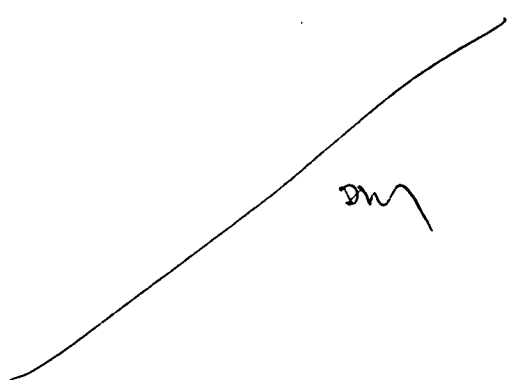
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"5. Promotions earned/up gradations granted under the ACP scheme in the past to those grades which now carry the same grade pay due to merger of pay scales/up gradations of posts recommended by the Sixth Pay Commission shall be ignored for the purpose of granting up gradations under Modified ACPS."

The deceased was enjoying the GP of Assistant Foreman which was re-designated as JTO in the GP of Rs. 4600/- with effect from 01.01.2006.

As one promotion during the 5th CPC was to be ignored as per MACP scheme he became entitled to 2nd MACP after 20 years of service i.e. on 01.09.2008 and his GP was enhanced to Rs. 4800/-. This GP OF Rs. 4800/- has been awarded to him from 01.09.2008. His claim for third MACP to the next higher GP of Rs. 5400/- cannot be accepted as he becomes entitled to third MACP only after completion of 30 years of regular service i.e. w.e.f. 01.04.2011 by counting his regular service w.e.f. 01.04.1981 but he retired before that date i.e. on 30.09.2010.

11. The learned counsel for the Applicants have also placed reliance on a decision of the Chandigarh Bench of the Tribunal dated 23rd of February, 2012 in OA No.1003/PB/2011 (Amar Singh and others vs Union of India and others) The issue arrived at by the CAT in the said case is that retrospective effect cannot given to amendment if such retrospective effect affects the government employee adversely. Therefore, issues before the Chandigarh Bench are completely different and distinct to the present case and thus, has no bearing to the case in hands.



12. Therefore, there is no infirmity in the impugned order dated 12.07.2011. In view of our findings above, this OA lacks merit and is dismissed. No costs.

(Ms. Jaya Das Gupta)
Administrative Member

(Justice V.C. Gupta)
Judicial Member

KNM