

U13

**CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI**

**ORIGINAL APPLICATION No. 399 OF 2015**

**Dated:** *6<sup>th</sup> August, 2019*

Coram: R. Vijaykumar, Member (A).  
R. N. Singh, Member (J).

Rajaram Namdeo Shahale,  
age about 58 years,  
Son of Namdeo Tukaram Shahale,  
Residing at House No.1032,  
Ganesh Colony, Vijaynagar,  
Kalewadi, Pimpri, Pune-411 017.  
Employed as Mechanist in 512,  
Army Base Workshop, Khadki,  
Pune-411 003. ...Applicant.  
(By Advocate Shri P. J. Prasadrao)

**Versus**

1. Union of India,  
Through the Secretary,  
Ministry of Defence,  
South Block,  
New Delhi-110 011.
2. The Directorate General of EME(Civ2)  
MGO's Branch,  
Integrated Headquarters of MoD (Army)  
Pin 900106 C/o 56 APO.
3. Commandant,  
512 Army Base Workshop,  
Khadki, Pune-411 003.
4. Local Audit Officer,  
512 Army Base Workshop,  
Khadki, Pune-411003. ... Respondents  
(By Advocate Shri R. R. Shetty)

Reserved on:- 25.02.2019.  
Pronounced on:- 06.08.2019

**ORDER****PER:- R. VIJAYKUMAR, MEMBER (A)**

This application has been filed on 29.06.2015 by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

**"8(a)** To allow this application.

**(b)** This Hon'ble Tribunal be pleased to quash and set aside the impugned orders 22<sup>nd</sup> January 2015, 11<sup>th</sup> May 2015, 22<sup>nd</sup> May 2015 and 03<sup>rd</sup> June 2015 and direct the respondents to restore the 3<sup>rd</sup> MACP and grant of Grade Pay of Rs.4800/- with effect from 2<sup>nd</sup> May 2011 on completion of 30 years of service which was granted correctly.

**(c)** This Hon'ble Tribunal be pleased to direct the Respondent No.3 and 4 not to recover any arrears on account of down grading of the Grade Pay to Rs. 4600/- pending finally hearing and deciding of present OA.

**(d)** Ad-interim orders in terms of Prayer (c) above may be granted in the interest of justice.

**(e)** Any other or further order(s) may be granted in the interest of justice.

**(f)** Cost of the application may be awarded in favour of the applicant."

**2.** The applicant commenced regular services with the respondents on 02.05.1981 as a Skilled Machinist in the III CPC pay scale Rs.260-350 later made equivalent to Rs.3050-4590 in IV CPC and PB-1, GP Rs.1900 in VI CPC. After the Expert Classification Committee Report, his pay as Skilled Machinist was revised on 16.10.1981 to Rs.330-480 (III CPC) equivalent to the pay scale Rs.1200-

30-2040 made on par with Highly Skilled Machinist and set at Rs.4000-6000 pay scale by the V CPC. He was promoted to the post of Machinist HS on 01.01.1986 on the pay scale Rs.1200-1800 into which the lower post had also been fitted and then was fitted into the scale Rs.4000-6000 of Machinist HS Gr.II on 01.01.1996 (IV CPC) in posts created of Mach Gr.II and Mach Gr.I (Rs.320-2040) by SRO 185/1994 superseding Recruitment Rules of 1989. This scale of Rs.1320-2040 was also fitted in Rs.4000-6000 pay scale (S-7) by the IV CPC. At that point in time, the promotional lines had the designation of Machinist Highly Skilled Grade-II and Machinist Highly Skilled Grade-I to which promotions were possible and then as elevation as a Master Craftsman. He was granted first financial upgradation under the ACP Scheme with the scale of pay corresponding to the Master Craftsman (MCM) from 06.07.2000 of Rs.5000-8000. The respondents issued order No.11(1)/2002/D(Civ.1) dated 20.05.2003 restructuring the Cadre of Artisan Staff and merged the Highly Skilled Grade-I and Highly Skilled Grade-II categories into a single scale just below the scale of Master Craftsman which was again declared to be not part of the hierarchy and that placement in this post would not be considered as promotion. Subsequently, on 01.10.2003, the applicant was elevated as Master Craftsman (MCM), although not in the promotional hierarchy, and without any change in pay scale because he was already in the MCM pay scale after getting the first ACP. This MCM pay scale correspondent to Pay Band-I with Grade Pay of

Rs.4200/- under the 6<sup>th</sup> Pay Commission and is on par with the pay scale of Chargeman, the next post above Machinist HS in the promotional hierarchy. Both these posts are group 'B' category posts. Based on the 6<sup>th</sup> Pay Commission recommendation, the respondents issued orders in their Circular No.11(5)/2009-D(Civ.I) dated 14.06.2010 splitting the Highly Skilled Grade-II and Highly Skilled Grade-I post and now declared that the post of Master Craftsman would be a part of the hierarchy and movement from Highly Skilled Grade-I to MCM would be treated as a promotion. These orders were given effect from 01.01.2006. The pay fixed for Highly Skilled Grade-II and Highly Skilled Grade-I, under these orders were Pay Band-I with Grade Pay Rs.2400/- and Pay Band-I with Grade Pay Rs. 2800/- respectively. The applicant was granted second MACP w.e.f. 01.09.2008 in orders dated 15.03.2010 based on the completion of 20 years of service and at this stage, the respondents assigned him Grade Pay of Rs. 4600/- which was above the Grade Pay of Rs.4200 in the promotional post of Chargeman and which was itself equal to that of the Master Craftsman. Thereafter, the respondents granted the applicant the 3<sup>rd</sup> MACP on completion of 30 years of service on 02.05.2011 in order dated 12.10.2011 in the Grade Pay of Rs.4800 further above the next promotional level of Chargeman.

3. On detection of the error, the respondents issued a clarification on 23.07.2012 (Annexure R-3) which reads as under:

“  
**Ministry of Defence**  
**D(Civ.I)**  
.....

**Subject:** Restructuring of Cadre of Artisan staff in Defence Establishments in modification of recommendation of 6<sup>th</sup> CPC – Clarification regarding.

.....

On restructuring of the artisan staff in Ministry of Defence as per letter No.11(5)/2009-D (Civ.I) dated 14.06.2010, clarifications on the following points have been sought from DoP&T:-

- (a) Whether financial upgradation to the eligible Master Craftsman will be in the same Grade Pay of Rs.4200/- or to the Grade Pay of Rs.4600/- as per the hierarchy of the Grade Pays;
- (b) Placement of Highly Skilled Grade as Master Craftsman prior to 01.01.2006 shall not be counted as promotion for the purpose of MACPs.

2. DOP&T have clarified the points as under:-

- (a) Para 8 of Annexure I of DOP&T OM No.35034/3/2008- Estt.(D) dated 19.05.2009 of MACPs provides that promotion earned in the post carrying same grade pay in the promotional hierarchy as per recruitment rules shall be counted for the purpose of MACPs. Financial upgradation under MACPs in respect of Master Craftsman will be in the same grade pay of Rs.4200/- as that of the promotional post of Chargeman.

- (b) ACP/MACP Schemes have been introduced by the Government in order to mitigate stagnation faced by employees due to lack of promotional avenues. Financial upgradation under ACP/MACP Scheme cannot be more than what can be allowed to an employee on his normal promotion. It may be clarified that placement of Highly Skilled Grade as Master Craftsman prior to 01.01.2006 is to be treated as one promotion for the purpose of MACP benefits.

(Based on DOP&T I.D. No.7680/12/CR. Dated 13.07.2012).

(M.S. Sharma)  
Under Secretary to the Govt. of India”

4. Deductions were therefore directed by Local Audit Officer (LAO) in the impugned (Annexure A-1) letter No.50631/Estd(Ind)/6004 dated 22.01.2015 and ordered in letter dated 11.05.2015 (Annexure A-1). The respondents have supplied a Due and Drawn statement to the applicant, enclosed with rejoinder, giving details of recovery due from September, 2008 to April 2015 totaling Rs.1,35,455/-. In his OA, the applicant has annexed a letter of the Ministry of Defence I.D.No.11(5)/2009-D(C.v-I) dated the 6<sup>th</sup> February, 2014 in support, which reads as under:

"MCM being the feeder post to Chargeman and since both these posts have identical pay band and Grade Pay, financial upgradation under MACPS cannot be to a Grade Pay which is more than what is admissible in regular promotion".

5. The applicant has argued that no show cause notice was issued to him prior to the reductions of Grade Pay Rs. 4800 to 4600/- and he was not given proper opportunity. He states that the pay scale granted and disbursed in 2011 cannot be reduced after a period of 04 years and

depends on the judgment of the Hon'ble Apex Court in the case of Shyambabu Verma Vs. Union of India & Ors. 1994 SCC (L&S) 683 and also the decision of the Hon'ble Apex Court in Rafiq Masih which has been communicated in the DoP&T OM F.No. 18/03/2015-Estt.(Pay-I) dated 02.03.2016 which should be followed by the respondents.

6. The respondents have asserted the correctness of their computation and have relied on the Government orders issued to them (Annexure R-3) enclosing the clarification of the DoP&T dated 13.07.2012. They have also relied on the orders of the Jabalpur Bench of this Tribunal in a similar matter where the applicant was also not responsible for any misrepresentation and the error had occurred on the part of the respondents. In that case, the Tribunal had relied on the decision of the Hon'ble Apex Court in the case of **Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others, (2012) 8 SCC 117**. The respondents have explained the errors that have occurred in

respect of the applicant. When he was granted 2<sup>nd</sup> MACP on 01.09.2008, he had already been elevated as Master Craftsman (MCM) and was drawing Grade Pay of Rs.4200/- under the 6<sup>th</sup> Pay Commission. The promotional category was that of Chargeman since MCM is only an elevation and not a promotion in the hierarchy at the relevant point of time in 2008. However, the Grade Pay for the Chargeman was also Rs.4200/- and since prior to the revision in structure carried out in 2010, the post of Chargeman was the next in promotional hierarchy, the MACP upgradation could not extend Grade Pay higher than the Grade of a Chargeman which was Rs. 4200/- as in the case of Master Craftsman, itself only an elevation and not a promotion. However, the applicant was, by error, actually granted 2<sup>nd</sup> MACP from 01.09.2008 in the Grade Pay of Rs. 4600/- which was that of a Foreman and higher than that of a Chargeman.

7. In response Annexure-A-11 filed by applicant, the respondents have reiterated the contention in their instructions dt.23.7.2012

reproduced at para 3 above to hold that the applicant is not eligible for Grade Pay of Rs.4,600/- for second financial upgradation and Rs.4,800/- as 3<sup>rd</sup> financial upgradation. They contend that Annexure-A11 which is an instruction of even number dt. 6.2.2014 and issued subsequently to the previous instructions of 23.7.2012 has again clarified at para 1(ii) that MCM being the feeder post to Chargeman and since both these posts have identical pay band and Grade Pay, financial upgradation under MACPS cannot be to a Grade Pay which is more than what is admissible in regular promotion.

8. We have gone through the O.A. along with Annexures A-1 to A-13 and Rejoinder along with Annexure-A-14 filed by the applicant. We have also gone through the Reply along with Annexure R-1 to R-5 filed by the Respondents and have also carefully examined the various documents annexed in the case.

9. Although the letter of respondents dt. 23.7.2012 (para 3 above) and 1(ii) of letter dt. 6.2.2014 would support the stand of the

respondents, reference is to be made to para 2 of the instructions dt. 6.2.2014 whereby Machinist HS and MCM who were already drawing the pay scale of Chargeman Rs.5000-8000, the promotion post up to 31.12.2005, after which MCM was brought into the promotional hierarchy and who had obtained this pay scale of Chargeman under ACPS by financial upgradation would be considered for further financial upgradation if due in the next Grade Pay of Rs.4,600/- in the hierarchy of Grade Pays. This clarification has been issued in consultation with DOPT and the Department of Expenditure and is a re-consideration of the previous letter dt. 23.7.2012 which, for reasons cited, has not been properly displayed in the Annexure-R-3 enclosed by respondents and does not speak very well of their intentions in this matter. In these circumstances, it is quite apparent that the applicant was entitled, when due, for the Grade Pay of Rs.4,600/- in the hierarchy of Grade Pays when he obtained the second upgradation under the MACP and was entitled to Rs.4,800/- in the

3<sup>rd</sup> upgradation under MACP since he remained without promotion during this period. Therefore, the question of any recovery does not arise.

10. In the aforesaid circumstances, this OA is allowed. Since the applicant appears to have superannuated subsequent to filing this OA, in the event that the recovery planned has been withdrawn from the pensionary benefits of the applicant, the respondents are directed to repay the said amounts along with interest at the GPF rate from the date of deduction up to the date of payment. Further considering the manner in which the respondents have read their own circulars and caused needless litigation, they shall also bear the legal costs of the applicant quantified at Rs.5,000/-.

(R.N. SINGH)  
MEMBER (J)

(R.VIJAYKUMAR)  
MEMBER (A)

B.

27/8/19

