

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 043/00012/2017

Date of Order: This, the 15th day of March 2019

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

THE HON'BLE MR. NEKKHOMANG NEHSIAL, ADMINISTRATIVE MEMBER

Shri Yam Bahadur Thapa
Son of Lt. Pahal Singh Thapa
Working as Electrician (SK)
Office of the Garrison Engineer
Shillong – 793002.

...Applicant

By Advocates: Mr. M. Chanda, Mrs. U. Dutta & Mr. A.K. Das

-VERSUS-

1. The Union of India
Represented by the Secretary
To the Govt. of India
Ministry of Defence (D), New Delhi – 110011.
2. The Directorate General of Ordinance Services
Master General of Ordinance Branch
Integrated HQ of Ministry of Defence (Army)
New Delhi – 110011.
3. The Union of India
Represented by the Secretary
To the Govt. of India
Ministry of Defence (D), New Delhi – 110011.
4. The Commander Works Engineer
Spread Eagle Falls
Shillong Division, Shillong – 793011.

5. The Garision Engineer Shillong
Shillong Division, C/o 99 APO
Shillong – 793002.

... Respondents

By Advocates: Mr. R. Hazarika, Addl. CGSC

O R D E R (ORAL)

NEKKHOMANG NEIHSIAL, MEMBER (A):

By this O.A., applicant makes a prayer for a direction upon the respondents to grant 1st ACP w.e.f. 01.01.2006 in the Grade Pay of Rs. 1900/- in the pre revised scale of Rs. 950-1500/- on completion of 12 years of service and 2nd MACP in the Grade Pay of Rs. 2400/- in the relevant Pay Band II w.e.f. 01.09.2008 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.

2. The main grounds for relief of the applicant 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. Department 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 in spite of merger of scale of pay of the feeder post of Mazdoor and the promotional post of Mazdoor 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. It is further contended that the respondents i.e. Union of India neither extended the benefit of restructuring due and admissible to the applicant in terms of Govt. of India MoD letter dated 20.05.2003 as well as in terms of MoD letter dated 14.06.2010. As a result, service prospect/promotion prospect of the applicant has been adversely affected when the similar benefit of cadre restructuring has already been extended to the incumbent working in other trades of the respondents' department and thereby the applicant has been meted out with hostile discrimination and such action of the respondents also in violation of Article 14 of the Constitution of India. As a result, the applicant is incurring huge financial loss due to non-

consideration of promotion/financial up-gradation to the appropriate higher grade pay in terms of MoD letter dated 20.05.2003 as well as MoD letter dated 14.06.2010 each and every month, which gives rise continuous cause of action.

4. Applicant also stated that due to lack of knowledge and experience of the officers working in the administrative branch, 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 in lower allotment of grade pay/scale of pay. Thus 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. According to the applicant, his 1st ACP is due and admissible w.e.f. 01.01.2006 in the Grade Pay of Rs. 1900/- in the pre revised scale of Rs. 950-1500/- on completion of 12 years of service and 2nd MACP in the grade pay of Rs. 2400/- is due in the relevant pay band II w.e.f. 01.09.2008 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. Being aggrieved, he submitted

representation dated 01.08.2016 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.

4. In response to the statements made by the applicant in the O.A., the respondents filed their written statement on 03.04.2018. At paras 1 & 5, they have contested as under:-

“1. As per E-in-C;s Branch ibid letter dated 6th June 2011, promotion earned/up-gradation granted by/to erstwhile Group 'D' employees in any of the pre-revised pay scale of 2500-3200, Rs. 2610-3540/-, Rs. 2610-4000/- Rs. 2650-4000 upto 31 August 2008 was ignored for the purpose of MACP as these pay scales were merged into one single functional pay scale of Rs. 5200-20,200/- (PB-1) with GP Rs. 1800/- w.e.f. 1st January 2006 as part of implementation of the Central pay Commission (CPC). 1st, 2nd financial up-gradation under MACP Scheme in respect of personnel belonging to these pay scale would be granted w.e.f 1st September 2008 on completion of 10 & 20 years of service in GP Rs. 1900/- and 2000/- respectively. The personnel belonging to these pay scales attain eligibility for grant of 3rd MACP benefit in GP Rs. 2400/- as and when they complete 30 years of service reckoning from the date of initial appointment. In the instant case, the applicant was granted 1st ACP w.e.f. 9th August 1999 and promotion earned by him in May 2002 were in the same pay scale of Rs. 2650-4000/- as such the monetary financial benefit on account of promotion was not accrued to the applicant.

After implementation of 6th CPC, the 1st ACP w.e.f 09.08.99 and promotion w.e.f May 2002 of the applicant in the same and identical pay scale was ignored and he was brought under one functional pay scale of Rs. 5200-20,200/- with GP Rs. 1800/- w.e.f 1st January 2006. Thereafter the individual was entitled to receive 1st MACP in the GP Rs. 1900/- and 2nd MACP in the GP Rs. 2000/- with effect from the same date i.e. 1st September 2008 as he had completed 10 and 20 years for the purpose of MACP prior to 31 August 2008 when terms the old ACP scheme came to cease and its place new Scheme known MACP came into being w.e.f 1st September 2008. Therefore, contention of the applicant that he allowed to receive the 1st ACP in the grade pay of Rs. 1900/- w.e.f 1st January 2006 is not agreed to being contrary to policy on ground.

5. That all erstwhile Group 'D' employees who after earning regular promotions or receiving two up-gradations on completion of 12/24 years of service under old ACP scheme prevalent in any one of the pre-revised pay scale of Rs. 2550-3200, 2610/3540, Rs. 2610-4000/- and 2650-4000/- besides pay scale of Rs. 2750-4400/- with Grade Pay of Rs. 1800/-, the regular promotions earned or financial up-gradations granted after 12/24 years service up to 31 Aug 2008 will be ignored and incumbents belong to these pre-revised pay scales after merger would be brought under functional pay scale of Rs. 5200-20,200/- with GP Rs. 1800/- w.e.f. 01 Jan 2006 and the pay in respect of such employees would be re-fixed taking into account the completed years of services of 10, 20 or 30 years. In this connection it is pertinent to mention here that financial up-gradation under old ACP scheme prevalent up to 31 Aug 2008 was applicable to pay scale of next promotional post in the hierarchy but in the case of MACP which came into being 01 Sept 2008 as substitute of ACP scheme, the financial up-gradation was applicable to next grade pay

in the hierarchy of grade pay & pay scale. As such the applicant was eligible to receive the grade pay of Rs. 2000/- and not Rs. 2400/- w.e.f. 01 Sep 2008 being the next grade pay of Rs. 1900/- in the hierarchy of pay band plus grade pay on completion of 20 years prior to 31 Aug 2008."

5. The applicant also submitted rejoinder to the written statement on 07.06.2018 and contested the submissions made by the respondents in their written statement as follows:

"That the respondents in their written statement have all along admitted the fact that all erstwhile Group 'D' employees who after earning regular promotions or receiving two upgradations on completion of 12/24 years of service under old ACP Scheme prevalent in any one of the pre-revised pay scale of Rs. 2550-3200, Rs. 2610-3540, Rs. 2610-4000/- and Rs. 2650-4000/- besides pay scale of Rs. 2750-4400/- with Grade Pay of Rs. 1800/-, the regular promotions earned or financial upgradations granted after 12/24 years service up to 31 Aug 2008 will be ignored and incumbents belonging to these pre-revised pay scales after merger would be brought under one functional pay scale of Rs. 5200-20,000/- with G.P. Rs. 1800/- w.e.f. 01 Jan 2006 and the pay in respect of such employees would be re-fixed taking into account the completed years of services of 10, 20 or 30 years. But the respondents have not been able to review the pay scales after CCS (Revised) Pay Rules, 2008, in the present case of the applicant. As such, as a result the applicant has been allotted lower grade pay than the grade pay, he is legally entitled to get with consequential arrear benefit.

Moreover, the applicant has already completed 20 years of regular service on 15.10.2007, as such, the applicant is legally entitled to the benefit of 2nd MACP atleast w.e.f. 01.09.2008 in the grade pay of Rs. 2400/- in the relevant pay

band which is attached to the promotional post of HS-II."

6. We have considered the contentions of both the parties. In this connection, respondents may refer the illustrations given at para 5 & 28 of Annexure-I of Modified Assured Career Progression Scheme (MACPS) for the Central Government Civilian Employees issued by the Govt. of India under Office Memorandum No. 35034/3/2008-Estt (D) dated 19.05.2009. The respondents may also refer the 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.

7. The respondents are, therefore directed to re-examine the grievances of the applicant and consider his case for financial upgradation as demanded by him. It is further added that in the MACP, financial upgradations are to be done with respect to the Grade Pay in the hierarchy of promotion if applicable as per judicial rulings.

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

9. 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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