

**Central Administrative Tribunal
Madras Bench**

OA/310/01651/2013

Dated 16th day of October Two Thousand Nineteen

P R E S E N T

**Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)**

1. B.Sreedhar
2. Smt.Uma Maheshwari Sundaram
3. M.Puviarasu
4. Smt.P.Jayalakshmi

.. Applicant

By Advocate **M/s.M.Gnanasekar**

Vs.

1. Union of India, rep. by
Air Officer in-Charge Personnel,
Air Headquarters,
New Delhi 110 011.
2. Air Officer Commanding-in-Chief,
Headquarters Maintenance Command,
Nagpur 440 007.
3. Air Officer Commanding,
23 Equipment Depot,
Air Force Station,
Avadi IAF, Chennai 600 055.
4. Secretary,
M/o Defence,
South Block,
New Delhi 110 001.

.. Respondents

By Adovacte **Mr.R.Syed Mustafa**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

The above OA is filed seeking the following relief:-

“i. Set aside in order No.Air HQ's Letter No.Air HQ/23046/MACPs/PC(DPC) dated 14 May 2012 passed by the 1st respondent and consequently direct the respondents to grant 2nd ACP to them on completion of 24 years of service as per the ACP scheme of 1999 and

ii. Pass such further orders as are necessary to meet the ends of justice.

iii. Award costs and thus render justice.”

2. The facts of the case as stated by the applicants are that the applicants are working as UDCs in the 23 Equipment Depot (3rd respondent). The applicants' case is that they were granted financial upgradation on completion of 12 and 24 years of service as per Assured Career Progression (ACP) Scheme introduced in the year 1999. The applicants joined the service in 1984/85. They were granted 1st ACP on 09.8.99. The applicants had completed 24 years service in April 2009 and they were entitled to the 2nd financial upgradation under the ACP Scheme. By the time many of their immediate seniors had got financial upgradation (IInd). While the applicants were also expecting the 2nd financial upgradation under ACP Scheme, the Government of India introduced the Modified Assured Career Progression (MACP) Scheme by an OM dated 19.5.09 and implemented the scheme with retrospective effect from 01.9.2008. The applicants were already eligible for the 2nd financial

upgradation in April 2009 itself i.e. even before the introduction of MACP Scheme on 19.5.09.

3. The counsel for the applicants would submit that on the day they completed 24 years of service, they got an accrued right which was available to them and it cannot be curtailed by the introduction of MACP Scheme which was introduced later in the month of May 2009 giving retrospective effect. The counsel for the applicant would submit that this matter was considered by this Bench in OA 818/2011 Smt. Girija Baushan & 56 Others v. Union of India rep by DGP(CSCC) Military Engineering Service & 2 Others and the Tribunal had allowed the OA on 06.11.2011. Another similar matter was decided by this Tribunal in S.Ranjith Samuel & 27 Others v. Union of India represented by the Engineer-in-Chief, Military Engineering Service & 7 Others (OA 437/2013 dt. 26.2.14) wherein the Tribunal had directed the respondents to place the case of the applicants before the Screening Committee for consideration for granting 2nd financial upgradation (ACP). The said order was challenged by the respondents before the Hon'ble High Court of Madras in WP Nos.33946, 34602 and 27798 of 2014 and the Hon'ble High Court has confirmed the order of the Tribunal and the counsel seeks the Tribunal to consider the case of the applicants in the light of the above orders and give necessary directions.

4. The counsel for the respondents filed a detailed reply statement denying the allegations and argued the matter accordingly. But he also admitted the proposition of law laid down in the

earlier orders by this Tribunal and the confirmation of the same by the Hon'ble High Court.

5. We had anxiously gone through the pleadings and submissions made by the learned counsels across the bar. The facts of this case is also similar to the facts in OA 818/11 and OA 437/13 decided by this Tribunal. The applicants had completed 24 years of service before the order of implementation of MACP was issued. An accrued right cannot be taken away retrospectively. The Hon'ble Madras High Court has confirmed the said principle in WP No.33946/2014, WP No.27798/14 (against order in OA 818/11 & OA 437/13). So, there is no merit in the contention raised by the respondents in this case. We, accordingly, allow this OA in the following similar lines with no order as to costs.

“Impugned Order No.Air HQ's Letter No.Air HQ/23046/MACPs/PC(DPC) dated 14 May 2012 passed by the 1st respondent is hereby set aside. The respondents are directed to place the case of the applicants before the Screening Committee for consideration for grant of 2nd financial upgradation under ACP Scheme on completion of 24 years of service, provided they had completed this period as claimed by them between January and April, 2009 ie., prior to the issue of DOPT's OM dated 19.5.2009 by which MACP Scheme came to be introduced and if based on such consideration by the Committee, it is ordered to grant the above benefits, the benefits of financial upgradation under MACP

Scheme, if extended would have to be withdrawn. The above exercise shall be completed within a period of four months from the date of receipt/production of a copy of this order.”

(T.Jacob)
Member(A)

16.10.2019

(P.Madhavan)
Member(J)

/G/

Annexures referred to by the applicants in OA No.310/01651/2013:

Annexure A1: 4th applicant order of appointment dt. 22.10.84.

Annexure A2: 1st applicant order of appointment dt. 01.4.85.

Annexure A3: 2nd applicant order of appointment dt. 01.4.85.

Annexure A4: 3rd applicant order of posting/transfer dt. 07.4.95.

Annexure A5: 1st applicant order of promotion dt. 26.8.2000.

Annexure A6: 2nd applicant order of promotion dt. 04.6.03.

Annexure A7: 3rd applicant order of promotion dt. 04.6.03.

Annexure A8: 4th applicant order of promotion dt. 24.10.05.

Annexure A9: 1st applicant representation dt. 17.7.2011.

Annexure A10: 4th applicant representation dt. 18.7.2011.

Annexure A11: 2nd applicant representation dt. 01.3.12.

Annexure A12: 3rd applicant representation dt. 14.3.12.

Annexure A13: 1st respondent communication letter (impugned order dt. 14.5.12.

Annexure A14: 3rd respondent communication letter dt. 18.6.12.

Annexure A15: Order in OA 818/2011 dt. 06.11.13.

Annexures with reply statement:

Annexure R1: Normal promotion norms (condition No.6 OM No.35034/1/97-Estt(T) dt. 09.8.99.

Annexure R2: Defence Service (Revised pay) Rules 08 dt. 09.9.08.

Annexure R3: Copy of MACP dt. 19.5.09.

Annexure R4: Copy of MOD, ID No.11(3)/2009-D(civ) dt. 31.7.12.