

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

Original Application No.21/675/2016

Date of Order: 08.11.2019

Between:

P. Prabhakar, MES No. 190208, S/o. P. Marriah,
Aged about 61 years, Occ: Retd. Additional Assistant Director,
O/o. Chief Engineer (Factory), Secunderabad,
R/o. 56 SRT, Vidyanagar, Hyderabad – 500 044.

... Applicant

And

1. The Union of India,
Represented by its Secretary,
Ministry of Defence,
South Block, New Delhi.
2. Engineer in Chief,
Military Engineering Services,
Integrated Headquarters of Ministry of Defence (Army),
Kashmir House, New Delhi – 110 001.
3. Chief Engineer (Headquarters),
Southern Command, Pune – 411 001.
4. Chief Engineer (Factory),
Opp. Parade Ground, Sardar Patel Road,
Secunderabad – 500 003.

... Respondents

Counsel for the Applicant ... Mr. M.C. Jacob

Counsel for the Respondents ... Mr. A. Surender Reddy,
Addl. CGSC

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORAL ORDER
{As per B.V. Sudhakar, Member (Admn.)}

2. OA is filed challenging the proceedings dated 17.12.2014 cancelling the II ACP and the proceedings dt. 15.03.2016 issued by the respondents disposing the representation of the applicant.

3. Brief facts of the case are that the applicant was appointed as Superintendent (Electrical/ Mechanical) in the pay scale of Rs.425-640 in the respondent organization on 21.11.1981. The post of Superintendent was redesignated as Junior Engineer in the pay scale of Rs.5000-8000 as per IV CPC. As per hierarchy, promotional avenue open to the applicant is Assistant Engineer and thereafter, Executive Engineer, which would be granted to him on passing the MES procedure Superintendent B/R and E/M Grade I Examination. Applicant appeared in the examination on 14/15.04.1997 and since the result was not announced, applicant once again appeared in the examination that was held in 2001. Thereafter, result of the second examination was declared on 13.07.2001 and that of the first examination on 18.01.2002. In both the examinations, applicant was declared to have passed.

The claim of the applicant is that since he has passed the examination conducted in 1997, he is entitled for the I ACP from 09.08.1999 as per V CPC recommendations. Applicant was granted II ACP from 21.11.2005 on completion of 24 years of service in the pay scale of Rs.10,000-15,200 vide proceedings dt. 07.09.2009. Applicant was promoted to the grade of Assistant Engineer on 3.1.2008 on regular basis. With the introduction of VI CPC, applicant's pay was fixed in PB-

3 with Grade Pay of Rs.6600/-. Around this time, respondents issued proceedings dt.10.07.2013 revising the effective dates of I & II ACP of various officers including the applicant. The discrepancy in regard to grant of II ACP, though pointed out, it has not been resolved. In the meanwhile, Government introduced MACP Scheme. Based on the said scheme, respondents issued orders granting III MACP to various officers including the applicant in the pay scale of PB-3 Rs.15600-39100 with Grade Pay of Rs.7600/-. However, those orders were not implemented in respect of the applicant.

While so, the 2nd respondent on 07.09.2014 withdrew the II ACP granted to the applicant and others without giving any reasons. Aggrieved by the said action, applicant represented on 19.02.2015 to the 2nd respondent through proper channel. But, there being no reply, applicant made another representation on 9.09.2015 to the Deputy Secretary, Ministry of Personnel and Public Grievance Cell, New Delhi. In response to this representation, applicant was informed that the grievance is sub judice as a similar issue is being adjudicated by the Hon'ble Chandigarh Bench of this Tribunal in OA 99/2015. Applicant claims that the said OA has been disposed of by the Chandigarh Bench in favour of the applicant therein. Applicant is aggrieved over the decision of the respondents in not granting I ACP w.e.f. 09.08.199 and withdrawing II ACP and not implementing the orders in respect of grant of III MACP with Grade Pay of Rs.7600/-. Hence, the OA.

4. Contentions of the applicant are that since he appeared for the departmental examination on 14/15.04.1997, he should have been

granted I ACP from 09.08.1999 instead of 14.07.2001 as clarified vide DOPT letter dt. 06.12.2001, the II MACP on 21.11.2005 and thereafter, III MACP on 21.11.2011. The respondents without giving any reasons have withdrawn the II ACP and not implementing the III MACP violating the provisions of ACP/ MACP guidelines is irregular and illegal. Respondents claiming that the matter is subjudice is incorrect since the OA has been disposed by the Hon'ble Chandigarh Bench of the Tribunal.

5. Respondents have contested the contentions of the applicant in their reply statement by stating that the applicant joined the Military Engineer Services (MES) on 21.11.1981 and he was granted I ACP on 14.07.2001 after passing departmental exam on 13.07.2001. For the II ACP, he has to complete 12 years from the date of 1st ACP i.e. 14.07.2013. However, in July, 2013, the ACP scheme was not in force. Applicant became eligible for 2nd MACP on 14.07.2011 after completion of ten years. Therefore, the 2nd ACP erroneously granted on 21.11.2005 instead of 14.07.2011 was withdrawn. The III MACP has not been implemented as he is not eligible for the same due to revision in effective date of II MACP.

Applicant has filed MA 690/2019 seeking a direction to implement the orders in B/41028/ACP/PPR/E1(DPC) and B/41028/ACP/PPR/E1(DPC)(i) dated 23.10.2018 of the 2nd respondent contained in 190108/ACP/1405/EIB(O) dt. 5.12.2018 of the 3rd respondent and III

MACP from 21.11.2011 by refixing the pay and other retirement benefits including pension and pay the arrears etc.

6. Heard both sides counsel and perused the pleadings on record.

7(i) The issue of grant of ACP and MACP is under dispute because the respondents have declared the result of the departmental examination conducted in the year 1997 on 18.01.2002 and the result of the second examination held in 2001 was declared on 13.07.2001. Respondents considered the result of the second examination declared on 13.07.2001 and thereafter, decided the issue of ACP/MACP. The claim of the applicant is that since he passed the examination in 1997, he is eligible for considering him for ACP in 1999. Similar issue fell for consideration, as claimed by both sides, in OA 99/2015 before the Hon'ble Chandigarh Bench of the Tribunal, wherein it was decided on 23.12.2015 as under:

“With regard to clarification dated 06.12.2001 issued by the nodal Ministry (DoP&T) to the effect that if a person qualifies the trade test in the first attempt after 09.08.1999 be granted the 1st ACP from 09.08.1999 and not from the date of passing of the trade test and those employees who qualify the test in the subsequent attempt will be allowed financial up-gradation only from the date of passing the test. In the present case applicant appeared in the departmental examination Paper-I in 1996 and Paper-II in 1997, result of which was declared on 18.01.2002, whereas he was declared successful. Had the result been declared immediately applicant would have got the financial benefits attached to the post of Junior Engineer, which was not given to him despite being promoted on 23.07.2009. Therefore, for the fault of the respondents applicant cannot be penalized by deferring the date of grant of financial up-gradation. Accordingly, the Original Application is allowed and the impugned order dated 04.12.2004 is quashed and set aside. Matter is remitted back to the respondents to re-consider the case of the applicant in the light of the observations made above and grant him consequential benefits from the due date. The OA stands disposed of accordingly.”

Therefore, the stand of the respondents in the impugned order dt. 15.03.2016 that the matter is *su-judice* does not hold good. It requires no reiteration that benefit extended to the similarly placed employees need to be extended to other similarly placed without forcing them to approach the Tribunal for seeking similar relief as per the settled law.

(ii) True to speak, as the issue has already been decided by the Hon'ble Chandigarh Bench of this Tribunal, it is proper and appropriate to direct the respondents to consider the case of the applicant on similar basis as was decided by the Chandigarh Bench of this Tribunal in a case similar to that of the applicant, by issuing a speaking and reasoned order, within a period of 8 weeks from the date of receipt of this order.

(iii) OA and MA stand disposed of accordingly, with no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 8th day of November, 2019

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