



**Central Administrative Tribunal
Principal Bench**

OA No. 4277/2014

Order reserved on : 05.11.2019
Order pronounced on: 26.11.2019

Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)
Hon'ble Mr. Pradeep Kumar, Member (A)

Kanti Prasad Tyagi, Age 54 years, UDC,
Department of Electronics &
Information Technology, (Deity),
Ministry of Communication and Information Technology,
S/o Sh. Laxmi Chand Tyagi,
R/o T-171, Shivaji Nagar,
Narela, Delhi-110040.

... Applicants

(By Advocate: Sh. M.K.Bhardwaj)

VERSUS

The Secretary,
Department of Electronics &
Information Technology, (Deity),
Govt. of India,
Electronics Niketan,
6, CGO Complex,
New Delhi-110003.

... Respondents

(By Advocate: Sh. Subhash Gosain)

ORDER

By Hon'ble Mr. Pradeep Kumar, Member (A)

1. Applicant joined respondent department as LDC on 29.09.1984 in the pay scale of Rs.260-400. He was promoted as UDC on 15.06.1994 in the pre-revised pay scale of Rs.1200-2040 which was revised to Rs.4000-6000. It is



pleaded that applicant got only one promotion in a span of 24 years. Therefore, in accordance with DOP&T OM dated 09.08.1999, his case for grant of financial upgradation was processed and ultimately he was granted 2nd ACP w.e.f. 29.09.2008 vide order dated 21.11.2008 in the pay scale of Rs.6500-10500 (pre-revised) subject to any modification in the policy of ACP itself which was under consideration at that time.

2. VI CPC came into being w.e.f. 01.01.2006 vide notification dated 29.08.2008. In due course, he was promoted as Assistant on *in-situ* basis w.e.f. 10.06.2009 in PB-2 Rs.9300-34800 plus GP Rs.4200 vide order dated 12.06.2009. Ministry of Finance vide letter dated 05.07.2010 granted revised pay scale of Rs.7450-11500 w.e.f. 29.09.2008 to those who were in the pay scale of Rs.6500-10500 (pre-revised) and which corresponds to PB-2 plus GP Rs.4600.

3. MACP was introduced vide order dated 19.05.2009 w.e.f. 01.09.2008. Para 11 thereof specified that past cases will not be reopened. Department of Electronics and Information Technology (DEITY) adopted MACP w.e.f. 01.01.2011. Vide order issued on 28.03.2013, second ACP given vide order dated 21.11.2008 has been withdrawn. However, the *in-situ* upgradation given on 12.06.2009 was continued.



4. Feeling aggrieved, applicant preferred a representation dated 31.05.2013. It was rejected vide order dated 06.08.2013. He made another representation dated 06.09.2013 which was also rejected on 08.10.2013. Recovery was also started at the rate Rs.5000/- p.m. w.e.f. September 2013. Applicant made another representation dated 07.11.2013 which was not replied. Thereafter, legal notice was issued on 23.05.2014 for review of order dated 28.03.2013 but of no avail. Hence, the instant OA has been preferred.

5. Applicant relies upon the following cases:

(i) Judgment of Hon'ble Supreme Court in **Bhagwan Shukla vs. Union of India**, Appeal (Civil) No.5447/1994 decided on 05.08.1994.

(ii) Decision of Ernakulam Bench of this Tribunal dated 24.03.2015 in **K.Soman Pillai vs. Secretary, Ministry of Defence** (OA No.252/2013) which in turn relies upon decision of Madras Bench of this Tribunal in OA No.818/2011. Following was observed:

“The MACP Scheme was introduced by O.M., dated 19.5.2009 bringing into force with 24 years of service after 1-9-2008. The employees who had completed 24 years of service after 1-9-2008 will lose monetary benefit, even though the scheme was announced later on 19-5-2009. Hence it was held that “we are of the view that in such cases, the retrospective application of O.M., dated 19-5-2009 take away the vested rights of the Applicants under ACP Scheme will certainly be contrary to law laid down by Apex Court that amendments in the rules with

retrospective effect affecting prejudicially the person who had acquired rights are ultra vires to Constitution cases are Ex-Capt. K.C.Aroa and another v. State of Haryana and others [1984 (2) SLR 97].



(iii) Decision of Hon'ble High Court of Delhi in **Delhi Urban Shelter Improvement Board vs. Shashi Malik & ors.**, LPA No.405/2016 decided on 01.09.2016 wherein it is held as under:

"17. In the present case, we are not dealing with an explanatory or clarificatory legislation, but a new and different Scheme, which was introduced and notified on 19th May, 2009 and given retrospective effect with effect from 1st September, 2008. It is not the case of the appellant that they stand conferred the power under any statute or enactment, to make and introduce delegated legislation in the nature of the MACP Scheme or the OM dated 19th May, 2009, retrospectively. They lack the power to negate and obliterate the existing and vested rights under the ACP Scheme, which were granted on or before 18th May, 2009 or even during the period 1st September, 2008 to 18th May, 2009. This being the legal position the second interpretation would clearly be preferable and acceptable.

18. We are of the opinion that the expression "past cases" in clause 11 would refer to cases wherein financial upgradation under the ACP Scheme was granted on or before 18th May, 2009 and not to cases where financial upgradation was granted till 31st August, 2008. In fact, there was no need and requirement to incorporate clause / paragraph 11 and use the expression "past cases" in view of what was stated and referred to in clause / paragraph 9 of the said memorandum. The object and purpose of using the expression "past cases" in paragraph / clause 11 is not to deny benefit which had already accrued and granted to the employees as per the ACP Scheme. In other words, the intent behind paragraph / clause 9 of the OM dated 19th May, 2009 is to ensure that the employees who were entitled to benefit under the MACP Scheme on completion of 10/ 20/ 30 years of service would be entitled to the said benefit with retrospective effect from 1st September, 2008. To this extent, therefore, financial upgradation would not be granted to them under the ACP Scheme. However, where financial upgradations under the ACP Scheme, which was in actual operation until 18th May, 2009 had already been granted, and were more beneficial, the same would not be withdrawn. An employee would not be

entitled to dual benefit under the two schemes during the period between 1 st September, 2008 and 18th May, 2009

19. In the present case we are concerned with whether or not financial upgradation as payable under the ACP Scheme between 1st September, 2008 and 19th May, 2009 granted under the ACP Scheme, can be withdrawn and taken away. This question had arisen as the grant of financial upgradation under the ACP Scheme was more beneficial to the employee. Dual benefit is not claimed. In such cases, we would hold that the benefit of financial upgradation under the ACP Scheme cannot be taken away. In this context, the paragraph / clause 11 stipulates that "past cases" would not be re-opened. Paragraph 9, on the other hand, deals with another set of cases where an employee finds it more beneficial to take advantage or benefit under the MACP Scheme, which is made applicable with retrospective effect from 1st September, 2008 by O.M. dated 19th May, 2009. It is in this context that the financial upgradation under the earlier ACP Scheme would be granted till 31st August, 2008. The idea behind paragraph / clause 9 is not to deny or withdraw higher or greater benefit which an employee may be entitled to under the MACP Scheme."

6. Respondents have filed their counter affidavit wherein the following averment was made:

"1. Since he got only one promotion in a span of 24 years, in accordance with the instructions contained in DOPT's OM dated 09.08.1999, the case for grant of financial upgradation under the ACP Scheme was processed in January, 2008. The recommendations of the Departmental Promotion Committee were accepted by the Competent Authority. However, issuance of orders was kept pending till his completion of 24 years of regular service i.e. on 29.09.2008. By the time, he has completed the required length of service; the Government had notified the revised pay structure w.e.f. 01.01.2006. It had been mentioned in the Resolution dated 29.08.2008 of Ministry of Finance that the Government has accepted the recommendations of the 6th Pay Commission regarding modifications in the ACP Scheme. Accordingly, clarifications were sought from DOPT whether applicant can be granted financial upgradation w.e.f. 29.09.2008. Applicant was granted 2nd financial upgradation (on the advice of DoPT) under the earlier ACP Scheme w.e.f. 29.09.2008 after completion of 24 years of regular service. DoPT in its advice had also stated that the Modified ACP Scheme is under active consideration and nothing could be committed at this pre-mature stage. It was advised to grant financial upgradation under ACP Scheme notified



vide DoPT's OM dated 09.08.1999 to applicant in the pre-revised pay scale as per the existing hierarchy."

It has further been averred:

"2. Subsequently, DOPT notified MACP Scheme vide its OM dated 19.05.2009 for its implementation from a retrospective date i.e. 01.09.2008. Accordingly, in pursuance to said OM of DoPT, DeitY discontinued the ongoing ACP Scheme w.e.f. 01.09.2008 and the financial upgradation granted to the employees after 31.08.2008 was withdrawn retrospectively.

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3. However, MACP Scheme was made effective in DeitT w.e.f. 01.01.2011 due to the reason that in the years 2009 & 2010, In-situ upgradation scheme was in vogue for Gazetted employees of Deptt. The benefit of this scheme was also extended to non-gazetted employees w.e.f. 10.06.2009. The In-situ upgradation scheme was implemented keeping in view the interest of majority of officials. Applicant was also granted benefit under In-situ upgradation alongwith all other officials who were eligible for upgradation in the scale of pay of Rs.9300-34800 plus GP Rs.4600/-. The MACP scheme was implemented in DeitY w.e.f. 01.01.2011 on the basis of the recommendations of the High Level Committee (Annexure R/4) which were accepted by the Competent Authority.

4. During the period 01.09.2008 to 09.06.2009, there was no upgradation scheme viz. ACP, MACP or In-situ for non-gazetted employees of DeitY. However, In-situ upgradation scheme was in vogue for Gazetted employees during this period and after 09.06.2009, it was extended to non-gazetted employees. This situation occurred due to the reason that (a) DOPT introduced MACP scheme in May, 2009 and made it effective retrospectively w.e.f. 01.09.2008. After 01.09.2008, benefit under old ACP scheme was extended to DeitY's employees (including applicant) and subsequently, when DOPT's OM for implementation of MACP scheme came in May, 2009 and was made effective w.e.f. 01.09.2008, the benefit under old ACP scheme granted to such employees was withdrawn on case to case basis at different occasions."

7. Respondents also relied upon the case of Hon'ble Supreme Court in **P.U.Joshi & ors. vs. Accountant General, Ahmedabad & ors.**, [(2003) 2 SCC 632 wherein the following observations were made:





“10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts.....”

It was pleaded that the Government could change the terms and conditions.

8. Matter has been heard at length. Sh. M.K.Bhardwaj, learned counsel represented the applicant and Sh. Subhash Gosain, learned counsel represented the respondents.

9. Facts are not in doubt. Applicant joined the respondent department as LDC on 29.09.1984. He was granted promotion on 15.06.1994 to the post of UDC. Thereafter he was granted 2nd ACP on 29.09.2008 in PB-2 Rs.9300-34800 plus GP Rs.4200 on completion of 24 years of regular service.



He was also given *in-situ* upgradation on 10.06.2009 in the pay scale of PB-2 plus GP of Rs.4600.

DEITY had constituted a High Level Committee consisting of Director (Finance), Director (Personnel), JS (Personnel) and Additional Secretary, to consider the implementation of ACP, *in-situ* upgradation and MACP. Meeting was held on 21.03.2011. The recommendation made read as under:

“6. After detailed examination of the subject-matter/issues concerning for DIT employees, the committee recommends the following:

(i) The “In-situ” Upgradation Scheme in respect of staff in respect of non-gazetted grades (Group “B” and “C”) will cease to exist in Department of Information Technology after 31st December, 2010.

(ii) Modified Assured Career Progression Scheme (MACPS) may be adopted in DIT in respect of non-gazetted (Group “B” and “C”) graded w.e.f. 01.01.2011.

(iii) While granting upgradation under MACP Scheme to an employee, the In-situ upgradation availed of by him/her will be taken into account while computing the total service for granting three upgradations under MACPS on completion of specified years of service. Hence, if an employee has got financial benefit under In-situ upgradation which will naturally be taken as deemed to have been availed benefit under MACPS. Thus no **dual benefit** will be extended to the employee by adoption of MACPS w.e.f. 01.01.2011 and the In-situ Upgradation availed of will be factored into while granting benefit under MACPS.

(iv) Consequent upon switching over to MACP Scheme, the in-situ upgradation already granted will be nullify under MACPS in case a person has got the grade pay higher than the one which he is drawing in his/her regular posts on account of in-situ upgradation. This will then **offset one MACP** in the career of an employee in order to make it in conformity with the provisions of MACPS. *For example, if an LDC has been appointed on regular basis in the grade pay of Rs.1900/- and on getting in-situ upgradation to the post of UDC, he will get grade pay of Rs.2400/-. In such a case, he will have to forego one MACPS and will get only two MACPS in his career. Whereas, a LDC initially appointed in*



*grade pay of Rs.1900/- will get Grade Pay of Rs.2000/- under MACPS (i.e. immediate higher Grade Pay in the hierarchy) but in In-situ upgradation he will get the grade pay of next promotional post namely UDC having grade pay of Rs.2400/-. However, this **principle** will not be factored in respect of employees who have not been benefitted by grant of in-situ upgradation as their grade pay has remained the same ever after grant of in-situ upgradation. For example, if any employee is in Grade pay of Rs.2400/- and gets again Grade pay of Rs.2400/- on In-situ upgradation, his upgradation will not be taken into account and he will be given MACPS as per his normal entitlement. However, after introduction of MACPS w.e.f. 01.01.2011 past cases of grant of In-situ vis-a-vis MACPS will not be disturbed.*

(v) The period rendered after getting in-situ upgradation will not count for MACPS and this period will be inclusive of his length of regular service w.r.t. entry grade as direct recruit for computation of 10, 20 and 30 years of service as per DoPT guidelines. Idea is to have parity and remain at par with Deptt. of Personnel & Training guidelines of MACPS, with regard to the financial upgradations.”

10. It is pleaded by the respondents that DOP&T's instructions are not directly applicable on DEITY. They were required to be adopted. ACP was in force for granting upgradation after 12 and 24 years of regular service if an employee was not promoted. *In-situ* upgradation for non-gazetted employees, i.e. the applicant was also in force w.e.f. 10.06.2009 and was continued upto 31.12.2010. MACP was adopted w.e.f. 01.11.2011 for granting financial upgradation after 10, 20 and 30 years of service, if one was not promoted.

With adoption of MACP, ACP was retrospectively stopped w.e.f. 01.09.2008 i.e. curtailed on 31.08.2008. When MACP Scheme was adopted w.e.f. 01.11.2011, it could not mean that ACP benefits which were already granted earlier, are to be withdrawn and especially so, as ACP was already in force



since 09.08.1999. Despite this, *in-situ* upgradation was also extended to non-gazetted staff w.e.f. 10.06.2009. With adoption of MACP, other schemes came to a halt. However, adoption of MACP w.e.f. 01.11.2011, cannot lead to withdrawal of benefits already given in past. The High Level Committee also decided to count earlier upgradation for the purpose of MACP.

11. Keeping in view the above deliberation, the factual matrix that emerges indicates that the applicant's first promotion was after 10 years of service on 15.09.1994. Thus first ACP got off-set as promotion took place before 12 years. The second ACP was due on 29.09.2008 i.e. on completion of 24 years service and it was granted. Thereafter, he was given *in-situ* upgradation on 10.06.2009 before MACP was introduced in DEITY. MACP envisaged three upgradations by the end of 10, 20 and 30 years of service. The upgradations granted to applicant are thus before introduction of MACP Scheme and MACP does not envisage withdrawal of benefits which are already accrued/granted.

The withdrawal of second ACP on the plea, that adoption of MACP on 01.11.2011, has the effect of withdrawal of ACP benefits already granted in past after 01.09.2008, is not acceptable. The reason is that MACP was adopted by DEITY w.e.f. 01.11.2011 only.



The Hon'ble Supreme Court judgment relied upon by respondents in the case of **P.U.Joshi** (para 7 supra) is in a different context and is of no help to respondents. It in fact helps the cause of applicant as Hon'ble Supreme Court has also observed the following in same para:

“10. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and **except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time**, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.”

(emphasis supplied)

12. The MACP policy directives were issued on 19.05.2009, and it was to take effect from 01.09.2008. Prior to 19.05.2009, ACP was in force and some employees were granted ACP benefits between 01.09.2008 to 19.05.2009. Whether such ACP benefits can be withdrawn on introduction of MACP was gone into by Ernakulam and Madras Bench of Tribunal in OA No.252/2013 (**K.Soman Pillai vs. Ministry of Defence**) and in OA No.818/2011 respectively. It was held that benefits already granted cannot be withdrawn. Similar, position was observed by Hon'ble High Court in LPA No.405/2016 (Para 5 (ii) & (iii) supra).



The right to be granted 2nd ACP was already earned by the applicant before MACP Scheme was adopted by DEITY. Accordingly, this 2nd ACP cannot be withdrawn.

13. In view of the foregoing, OA stands allowed. The applicant shall retain 2nd ACP w.e.f. 29.09.2008 with consequential benefits. The in-situ upgradation granted w.e.f. 10.06.2009 will also be retained as it was granted as per policy in force at that time and before MACP was adopted w.e.f. 01.11.2011. Accordingly, recoveries made already, shall be refunded to the applicant within a period of three months from the date of receipt of a certified copy of this order. No costs.

(Pradeep Kumar)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

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