

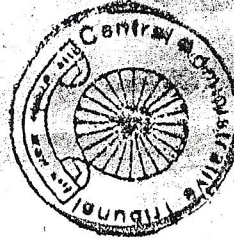
CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO.904/2012

NEW DELHI THIS THE 26TH DAY OF NOVEMBER, 2012

HON'BLE MR. G. GEORGE PARACKEN, MEMBER (J)
HON'BLE MRS. MANJULIKA GAUTAM, MEMBER (A)

1. Sanjay Kumar, UDC (8061244)
S/o Late Shri SL Gupta,
428 Housing Board Colony,
Sector 7 Extn, Gurgaon.
2. Mam Raj, UDC (8061220)
S/o Sh. Bali Ram
V-Berkheri Majra
PO Gadhauli, Narairgarh
Ambala, Haryana.
3. Rasbir Singh, UDC (8061216)
S/o Late Shri Meharbankhan
Shahpur, Nurhad
Ambala, Haryana.
4. Jadhav Ashok, UDC (8061236)
S/o Sh. Jadhav Kansi Nath Rao
Nr. Milnd Vidhiyala, Parlipajinath
Dist Beed, 431515
Kathakottai, Unbuthara
L. P. Shri RA Abraham
5. Thomas KO, UDC (8061234)
S/o Shri Olanannan
Kakkadlyil House
Anakkara PO, Kumily, Idukki
Kerala.
6. Gulshan Kumar, UDC (8061229)
S/o Ram Ashra
H.No.7969/4, Nadi Mohalla,
Near Prem Mandir, Ambala
Haryana.
7. Dhrami Ram Meena, UDC (8061297)
Sh. Ganda Ram Meena
Oundmeena
Mahwa, Dusha.
8. Iqbal Singh, UDC (8061238)
S/o Late Shri Ajit Singh
Vill & Post -Jamaipur
The-Gharaunda
Distt.Karnal (Haryana).



9. Smt. Selvi Praveen Solder, UDC
W/o Sh. Praveen Soldar
C/o Zion Pentecostal Prayer Centre
2/4 Mamta Nagar, Lane No.3
Old Sanghvi, Pune 27 (Mah).
10. Bhikham Ram, UDC (8061248)
S/o Late Sh. Mangloo Ram
Jhikli Nouri,
Jandhpur, Baijnath
Kangra (HP).
11. Shiv Kumar Sharma, UDC (8061204)
R/o Bharasara Vill
Bhojpur Dist.
Bihar.
12. SD Thakur, UDC (8061170)
S/o Sh. Bharat Thakur
Jorar Basti Vill
Namkum PO
Ranchi Dist, Jharkhand.
13. Mhohan Dass, UDC (8061202)
2/80, NEB Extension
Near Transport Nagar
Alwar (Raj) 301001.
14. Issac KA
S/o Late Sh. KA Abraham
Kaithakkottil, Upputhara
Iddukki, Kerala.
15. Om Parkash Binda, UDC (8061252)
HQ Northern Command
C/o 56 APO.
16. Som Raj, UDC (8061261)
HQ Northern Command
C/O 56 APO.
17. Gopal Dutt, UDC (8061062)
S/o Sh.
MF Records,
Delhi Cantt.
18. Smt. Manju Tomar, UDC (8061220)
W/o Sh. SK Tomar
House No.WZ-1220B
Nangal Raya, New Delhi 46.
19. SK Verma, LDC (4325799)
S/o Shiv Chand Prakash Verma
ME AL...

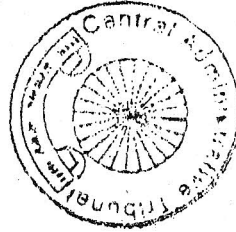


(By Advocate: Sh. M.K. Bhardwaj)

VERSUS

UOI & Ors. through:

1. The Secretary,
Ministry of Defence,
South Block, New Delhi.
2. The QMG,
Ministry of Defence,
Sena Bhawan, New Delhi.
3. The DDG, MF
Deputy Directorate General
Military Farms, IHQ of MoD (Army),
R.K. Puram, New Delhi.



...Respondents

(By Advocate: Ms. Sonia Sharma)

ORDER (ORAL)

MR.G.GEORGE PARACKEN, MEMBER (J):

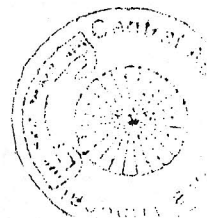
By this OA, the applicants are challenging arbitrary and discriminatory action of the respondents in not granting them the next promotional grade pay of Rs.4200/- on account of grant of benefits of Modified Assured Career Progression (MACP in short) Scheme. According to the learned counsel for the applicants, the issue has since been settled by the Chandigarh Bench of the Tribunal in OA No.1038/CH/2010 decided on 31.05.2011.

2. The brief facts of the case are that the applicants have joined as LDC with respondents between the years from 1985 to 1990. The respondents have granted them the 1st Financial Up-gradation in the pay scale of Rs.4000-6000 under the Assured Career Progression (ACP in short) Scheme dated 09.08.1999. Later on, on the basis of

recommendations of 6th Pay Commission, the respondents have issued the MACP Scheme vide OM dated 19.05.2009, which became operational w.e.f. 01.09.2008. The aforesaid MACP Scheme has been issued in supersession of previous ACP Scheme w.e.f. 01.09.2008. It also envisages merely placement in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay as given in Section 1, Part-A of the first schedule of the CCS (Revised Pay) Rules, 2008.

3. The grievance of the applicants is that the respondents have given them 1st Financial upgradation benefits in the scale of pay of Rs.4000-6000 under the ACP Scheme of 1995. This scale was attached to the next promotional posts of UDC at that time. The next higher grade pay was not given to the applicants of the promotional post of Assistant carrying pay scale of Rs.9300-34800 and the grade pay of Rs.4200/-. The applicants' contention is that they are entitled to the aforesaid pay scale as well as grade pay of the 2nd Financial Upgradation under the MACP Scheme. The respondents' contention is that MACP benefits will be given in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay as given in the recommendations of the 6th Central Pay Commission. In the present case, according to the respondents, the next higher grade pay to which the applicants are entitled to, is Rs.2800/-. The respondents have clarified in paras 2, 3 and 4 of their reply as under:-

"2. That the financial up-gradation under ACP Scheme was initially introduced in the year 1999 and as per this Scheme, a Govt. servant (LDC in the instant case) with 12 years of regular service...



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Financial Upgradation to the pay grade of Rs.2400/- (i.e. the pay of the next higher grade). In the same way, the second up-gradation to the pay grade of Rs.4200/- was admissible after 24 years of regular service. There was no further financial up-gradation in the ACP Scheme.

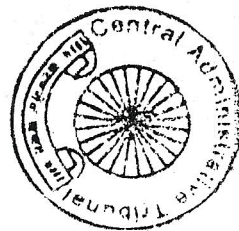
3. That the above ACP Scheme was modified in the year 2008 and it came to be known as Modified Assured Carrier Progression (MACP). It is further stated that under the modified Scheme the above said two financial up-gradations were converted into three up-gradations as under:-

- | | | |
|-----|---|-----------|
| (a) | 1 st up-gradation (on completion of 10 years of service from). | RS.2000/- |
| (b) | 2 nd up-gradation on completion of 20 years of service. | Rs.2400/- |
| (c) | 3 rd up-gradation on completion of 30 years of service. | Rs.2800/- |

In the instant case, the applicants, after 12 years of regular service were granted 1st financial up-gradation to the Grade pay of Rs.2400/- (i.e. the pay of UDC). It is further submitted that before the applicants could become eligible for grant of 2nd up-gradation under the ACP Scheme, the Modified Assured Carrier Progression (MACP) was introduced in the year 2008, as is stated in the preceding paragraph under which the 2nd up-gradation under MACP was admissible after 20 years of regular service. Accordingly, the applicants became eligible for grant of 2nd up-gradation after 20 years of regular service. It is stated and clarified that although the 2nd up-gradation with 20 years of regular service makes an individual eligible to the pay of Rs.2400/- as per MACP, the applicants were granted pay of Rs.2800/- which was otherwise admissible after 30 years of regular service, because the applicants in the mean time were promoted from LDC to UDC and were already in receipt of grade pay Rs.2400/-. For much clarification it is stated that the applicants have already availed three (3) up-gradations including promotion and thus they will not be eligible for any further up-gradation either on completion of 30 years of regular service or on promotion whichever is earlier.

The Modified Assured Carrier Progression scheme is annexed as ANNEXURE-1.

4. That it is pertinent to mention before the Hon'ble Central Administrative Tribunal that the Modified Assured Carrier Progression (MACP) scheme was introduced w.e.f. 1st September 2008 by the Department of Personnel & Training (DOP&T) is applicable to all Central



Govt. employees and is not an exclusive scheme for Military Farm employees only."

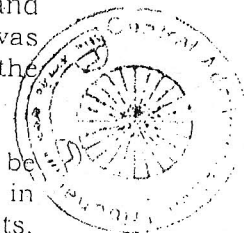
4. We have heard the learned counsel for the parties. The issue raised in the OA has already been considered by the Chandigarh Bench of this Tribunal in **OA No.1038/CH/2010- Rajpal son of Shri Tilak Ram Versus Union of India and others.**

5. In the aforesaid OA, the applicant was working as Photocopier and he was already given 1st Financial Upgradation under the ACP Scheme. According to the applicant, his pay had been wrongly fixed in pay band-1 with grade pay of Rs.2400/- on grant of 2nd Financial Upgradation under the MACP Scheme. This Tribunal held that the applicant therein was entitled for the 2nd Financial Upgradation in the next hierarchy of posts and not in the next grade pay. The posts of Photocopier and that of LDC/Hindi Typist being isolated posts, not having any promotional avenues, the Chandigarh Bench of the Tribunal made the following observations:-

"11. We have heard the learned counsel for the parties and considered the documents on record.

12. There is no dispute that the applicant is holding the post of Photocopier, which is an isolated post, having no avenues for promotion. It is also not disputed that the post held by the applicant had been declared equivalent to the post of LDC/Hindi Typist etc. by the Tribunal as well as the High Court by judicial pronouncements in matters of grant of ACP, which have attained finality and stands implemented also. Accordingly, applicant was granted 1st ACP (under the old ACP) w.e.f. 9.8.99 in the pay scale of Rs. 4000-6000.

13. It has also been settled that the ACP would be granted on completion of the required years of service in the hierarchy of posts for the posts of LDC/Hindi Typists, and not in the next higher scale in the recommended scales. The same principle would have to be applicable in regard to grant of MACP to the applicant. The only



difference is that while in case of ACP two financial upgradations were granted on completion of 12 and 24 years of service, in case of MACP, three upgradations on intervals of 10, 20 and 30 years of service.

14. The respondents have placed reliance on para 13 of the MACPS, which reads as under:

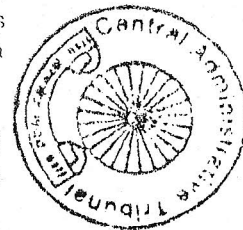
"13. Existing time-bound promotion scheme, including insitu promotion scheme, Staff Car Driver Scheme or any other kind of promotion scheme existing for a particular category of employees in a Ministry/Department or its offices, may continue to be operational for the concerned category of employees if it is decided by the concerned administrative authorities to retain such Schemes, after necessary consultations or they may switch-over to the MACPS. However, these Schemes shall not run concurrently with the MACPS.

Reliance has further been placed on decision taken in the second meeting of the Joint Committee on MACPS held under the Chairmanship of the joint Secretary DoPT was circulated. Item No.3 of the Agenda for the said meeting reads as under:

"The MACP Scheme provides for placement in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay after 10,20 and 30 years of service. On the other hand the earlier ACP Scheme provided for placement to higher pay scale of the next promotion post in the hierarchy of the pay scale after 12 and 24 years of service taken from date of induction in service."

15. Be that as it may, the principle enunciated and settled by the Tribunal/High Court for grant of ACP cannot be changed and the same principle would apply for grant of MACP to him. The only difference is of number of years required to be completed. We find no justification to take a different view in the matter

16. For the foregoing reasons, the impugned order dated 9.8.2010, (Annexure A-1) qua the applicant, fixing his pay in PB-1 with grade pay of FR 2400/- under the second MACP, and the order dated 10.8.2010 (Annexure A-2) are hereby quashed and set aside. Consequently, the respondents are directed to grant second financial upgradation to the applicant under the MACPS from due date fixing his pay in the hierarchy of posts decided in his case earlier and to pay the resultant arrears without interest, within a period of 2 months from the date of receipt of a copy of this order.

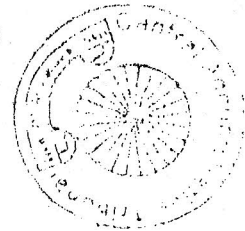


17. The OA stands disposed of in the above terms. No costs."

6. The respondents have challenged the aforesaid order before the Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP NO.19387/2011 decided on 19.10.2011. The Hon'ble High Court of Punjab and Haryana at Chandigarh held that there was no infirmity in the aforesaid order passed by the Chandigarh Bench of this Tribunal.

The relevant observations of the said order are extracted hereunder:

"Upon implementation of the 6th Central Pay Commission, the scale of Rs.3050-4590/- was kept in pay band-I, Rs.5,200-20,200/- with grade pay of Rs.1,900/-, the scale of Rs.4,000-6,000/- was also kept in pay band-I with grade pay of Rs.2,400/- and the scale of Rs.5,500/-9,000/- was kept in pay band-II in pay scale of Rs.9,300-34,800/- with grade pay of Rs.4,200/- increased to Rs.4,600/-. In terms of MACP Scheme, respondent no.1 was granted the lower scale by keeping in pay band -I of Rs.5,200-20,200/- with grade pay of Rs.2,400/-. This was done in terms of order dated 09.08.2010. Accordingly, respondent No.1 approached the CAT contending that he is entitled to be granted the scale of Rs.5,500-9000/- towards the 2nd Financial Upgradation at par with the post of Hind Typist and LDC. Such claim of respondent No.1 has been upheld by the CAT in the impugned order dated 31.05.2011."



7. In our considered view, the present OA is squarely covered by the aforesaid judgment of Chandigarh Bench, as upheld by the Hon'ble High Court of Punjab and Haryana at Chandigarh.

8. In fact, the respondents have wrongly interpreted the terms and conditions mentioned in the MACP Scheme, issued by the Deptt. of Personnel & Training, in the case of the applicants. By the said Scheme, the eligible government servants are to be placed in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay and not merely in the next higher

scale of pay as per the recommendations of the 6th Pay Commission. In the hierarchy after the scale of UDC, the next scale is that of Assistant. Therefore, the respondents should have given the next higher grade pay and pay band attached to the next promotional post in the hierarchy, namely, the Assistants carrying the pay scale of Rs.9300-34800 and the grade of Rs.4200/-.

9. In view of the above position, this OA is allowed. The respondents are directed to grant scale of pay of Rs.9300-34,800/- with grade pay of Rs.4200/- attached to the said promotional post of Assistant/OS from the due date to the applicants.

10. The aforesaid directions shall be complied with within the period of two months from the date of receipt of a copy of this order, subject to the other conditions mentioned in the MACP Scheme.

There shall be no order as to costs.

(Mrs. Manjulika Gautam)
Member (A)

(G.George Paracken)
Member (J)

/jk/

