

(2023) 03 DEL CK 0023
In the Delhi High Court
Case No : Civil Writ Petition No. 2061 Of 2022

Bhoop Singh

APPELLANT

Vs

Union Of India And Anr

RESPONDENT

Date of Decision : 06-03-2023

Acts Referred:

Citation : (2023) 03 DEL CK 0023

Hon'ble Judges : V. Kameswar Rao, J;Anoop Kumar Mendiratta, J

Bench : Division Bench

Advocate : Bhagvan Swarup Shukla, Sarvan Kumar, Vikrant, Sunita Shukla

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J

1. The challenge in this writ petition is to an order dated January 8, 2021 passed by the Central Administrative Tribunal in OA No. 2123/2020, thereby the Tribunal has dismissed the OA filed by the petitioner.

2. The claim of the petitioner before the Tribunal was for a direction to grant him the benefit of 3rd ACP w.e.f November 18, 2014 instead of November 18, 2016.

3. The brief facts are, the petitioner had joined CPWD as a Carpenter in the month of November, 1986. He was extended the benefit of selection grade on completion of 8 years of service in the year 1994. Thereafter, on June 9, 2001 he was promoted as Work Assistant. He was granted the benefit of 2nd MACP on September 1, 2008, i.e., the date of introduction of Modified Assured Career Progression ('MACP', for short) Scheme and 3rd MACP on November 18, 2016.

4. It was his case before the Tribunal that he made representations to the respondents to extend the benefit of 3rd MACP w.e.f November 18, 2014. In support of his submission, he had placed reliance on the clarification issued by the Director General, CPWD on July 12, 2012 which is to the effect that the employees who are extended the benefit of selection grade on completion of 8

years of service are entitled to the benefit of 2nd ACP and 3rd MACP on completion of 18 and 28 years of service respectively.

5. It may be stated here, the petitioner did bring it to the notice of the Tribunal that though the clarification dated July 12, 2012 issued by the CPWD was withdrawn vide OM dated February 13, 2019, but he still would be entitled to the benefit of 3rd MACP on completion of 28 years of service, i.e., on November 18, 2014, which date is much before the issuance of OM dated February 13, 2019. The Tribunal rejected the original application by stating in paragraph nos. 6 to 8 as under:

"6. The applicant himself has indicated the scope of the ACP as well as MACP. There was no necessity to extend him, the benefit of the ACP on completion of 12 years of service because he earned promotion in the stipulated slot. In fact the applicant did not have any qualms about it. The scheme of MACP came into existence thereafter. The merit-cum-seniority to higher scale is made available on completion of 10 years 20 years and 30 years of service, in case the employee did not get promotion or upgradation during those spells. The applicant was extended the benefit of the 2nd MACP on 01.09.2008, the date on which the scheme became operational. The 3rd MACP became payable on completion of 30 years of service. Promptly enough, the respondents extended the same, w.e.f. 18.11.2016 the date on which the applicant completes 30 years of service.

7. The applicant contends that his 3rd MACP should be advanced to 18.11.2014, on the basis of clarification issued by the 2nd respondent. When the scheme is covered by the OM issued by the DOPT and it clearly stipulates the parameters, namely completion of 10 years, 20 years and 30 years any amount of clarification by the department or an official would be of no use. Though the clarification is to the effect that 3rd MACP is to be extended on completion of 28 years of service, the irregularity was noticed and it was rectified in the year 2019. Even if one ignores the OM dated 22.02.2019, the applicant cannot seek any benefit, de hors the OM dated 19.05.2009, through which the MACP was introduced. Para-2 of the OM is mentioned as under:

"The Government has considered the recommendations of the Sixth Central Pay Commission for introduction of MACPs and has accepted the same with further modification to grant three financial upgradations under the MACPs at intervals of 10, 20 and 30 years of continuous regular service."

8. Once the very source of MACP stipulates 30 years as the basis for 3rd MACP, it is just un-understandable as to how that can be meddled with by anyone."

6. The petitioner who appears in person would draw our attention to the MACP scheme more specifically paragraph 28 under the heading Illustrations, which reads as under:

"(i) If a Government servant (LDC) in PB-1 in the Grade Pay of Rs.1900 gets his first regular promotion (UDC) in the PB-I in the Grade Pay of Rs.2400 on

completion of 8 years of service and then continues in the same Grade Pay for further 10 years without any promotion then he would be eligible for 2nd financial upgradation under the MACPS in the PB-1 in the Grade Pay of Rs.2800 after completion of 18 years (8+10+10).

(ii) In case he does not get any promotion thereafter, then he would get 3rd financial upgradation in the PB-II in Grade Pay of Rs.4200 on completion of further 10 years of service i.e. after 28 years (8+10+10)

(iii) However, if he gets 2nd promotion after 5 years of further service in the Pay PB-II in the Grade Pay of Rs.4200 (Asst. Grade / Grade "C"), i.e., on completion of 23 years (8+10+5 years) then he would get 3rd financial upgradation after completion of 30 years, i.e., 10 years after the 2nd ACP in the PB-II in the Grade Pay of Rs.4600."

7. He has also drawn our attention to paragraph 9.10 of a booklet published by the CPWD which reads as under:

"9.10 Grant of Selection Grade to skilled categories of Work Charged staff and effect of ACP/MACP thereon

Consequent upon order dated 25.09.2008 of Hon'ble Delhi High Court, in CM application No. 99/2001 in Case No. 295/1993 in WP (C) No. 2792/1988 selection grade is to be granted to the skilled categories of Work Charged Staff of CPWD/ PWD after completion of eight years of regular service in skilled category after 01.01.1973 w.e.f 01.01.1981 in the pay scale of Rs. 330-480 (3rd CPC); 1800 (4th CPC) and 4000-6000 (5th CPC).

(Ref: Director General OM No. 19/117/2001-EC-X dated 09.06.2011)

As selection grade is to be treated as one promotion/ upgradation for the purpose of grant of ACP/MACP, 2nd MACP may be granted to Direct Recruit workers on completion of 18 years of service (8+10) and 3rd MACP after 28 years (8+10+10)

(Ref: Director General OM No. 08/1/2012-EC-X dated 12.07. 2012)"

8. He also refers to the office memorandum dated July 12, 2012 which reads as under:

"Subject: Clarification regarding Grant of IInd MACP after 18 years and IIIRD MACP after 28 years after the grant of selection grade to the Work-charged staff of CPWD after 8 years of service.

We have been receiving references from various field units of CPWD/PWD seeking clarification from this Directorate regarding Grant of IInd and IIIRD MACP after the grant of selection grade to the skilled categories of Work-charged staff of CPWD on completion of 8 years of service.

The matter has been examined in this Directorate in the light of Department of Personnel and Training's Office Memorandum No. 35034/3/2008-Estt.(D) dated

19.05.2019. As selection grade is to be treated as one promotion / upgradation for the purpose of grant of ACP / MACP, therefore, after grant of selection grade on completion of 8 years of service to skilled category, the IInd MACP may be granted to the Direct Recruit workers on completion of 10 years in a grade i.e. after 18 years (8+10 years) and IIIrd MACP after 28 years (8+10+10 years) as elaborated in the illustration given in Department of Personnel and Training's Office Memorandum No.35034/3/2008-Estt.(D) dated 19.05.2009 (copy enclosed).

As the selection Grade is to be treated as Promotion for the grant of MACP to the Work-Charged staff of the CPWD, the benefit of pay fixation available at the time of regular promotion shall also be allowed at the time of grant of selection grade. There shall, however, be no further fixation of pay at the time of regular promotion, if it is in the same grade pay as granted under selection grade.

This issues with the approval of ADJ (S&P)"

9. He submits that the issue is no more res integra in view of the Judgment of the Chandigarh Bench of the Tribunal in Original Application No. 060/00174/2019, Krishan Chand v. Union of India and Ors., wherein the Tribunal by referring to its earlier Judgment in the case of Kewal Singh v. Union of India and Ors, OA No 060 /00334/16 decided on September 28, 2018, wherein the issue was whether third financial upgradation was rightly granted to the applicant therein; the Tribunal after noting the following paragraphs in Kewal Singh (supra), directed the respondents therein to grant benefit of 3rd MACP on completion of 28 years of service:

"The 2nd respondent was working as a Mason in the petitioner department. He joined on 03.04.1986 and retired on attaining the age of superannuation on 30.04.2016. Throughout his service career, the 2nd respondent did not get any promotion. He was, however, granted first, second and third MACP under the Assured Career Promotion Scheme as modified w.e.f. 01.09.2008 known as MACP. The third MACP was granted to 2nd respondent on completion of 28 years service, i.e., w.e.f. 03.04.2014. The said order was recalled by the petitioners on 29.09.2015 and re-fixed the date of granting 3rd MACP from 03.04.2014 to 03.04.2016. The 2nd respondent challenged the order of re-fixation of 3rd MACP before the Central Administrative Tribunal, Chandigarh Bench and vide the impugned order dated 28.09.2017, his claim has been accepted.

The Tribunal has, for the purpose of determining the controversy, held as follows:-

"...7. Two questions of law have come for consideration before this Court. Firstly, whether the applicant who has been given selection grade on completion of 8 years of service is to be granted 2nd MACP on completion of 10 years of regular service from the date when he was granted selection grade and 3rd financial upgradation on completion of 28 years of service or not. Secondly, whether the respondents can order recovery of amount which they have paid pursuant to a

valid order which has subsequently been rectified by them. To answer first question, it would be appropriate to note down the illustration given in MACP in para 20 and policy which is annexed with this clarification para 28A (I)(II), which reads as under:-

28. Illustrations:-

A(I) If Government servant (LDC) in PB-1 in the Grade Pay of Rs.1900 gets his first regular promotion (UDC) in the PB-1 in the Grade Pay of Rs.2400/- on completion of 8 years of service and then continues in the same Grade Pay for further 10 years without any promotion then he would be eligible for 2nd financial upgradation under the MACPS in the PB-1 in the Grade Pay of Rs.2800/- after completion of 8+10+10 years).

(ii) In case he does not get any promotion, then he would get 3rd financial upgradation in the PB-II in Grade Pay of Rs.4200/- on completion of further 10 years service i.e., after 28 years (8+10+10)".

It may thus be seen that the case of 2nd respondent has been found to be covered under Illustration No.28 as he was granted 1st MACP on completion of 8 years' service and 2nd and 3rd MACP were granted on completion of 10 years services thereafter, respectively. All the MACP were thus admissible and granted to 2nd respondent within the service span of 8+10+10 years. The view taken by the Tribunal thus appears to be legally correct. On a query, learned counsel for the petitioners fairly states that the matter involves very minor financial implication. Respondent No.2 is a retiree.

We are not inclined to interfere with the impugned order on equitable considerations also.

Dismissed."

10. The judgment in Krishan Chand (supra) was taken in appeal before the High Court of Punjab and Haryana, which was decided on December 18, 2019 wherein the High Court also by relying upon its order dated August 23, 2018 in W.P.(C) 13924/2018 dismissed the writ petition. His submission is the benefit of the Judgment as upheld by the Supreme Court need to be granted to him.

11. We are not impressed by the submission. Suffice to state the judgment of the High Court in Krishan Chand and Ors. (supra) became the subject matter of an SLP filed by the Union of India wherein the Supreme Court rejected the SLP. It may be stated here that the judgment of the Punjab and Haryana High Court in W.P.(C) 13924/2018 dated August 23, 2018 (as noted above) does not refer to the clarification dated February 13, 2019, though it has referred to the Illustration-28, which we have already reproduced above.

12. Having said that the mandate to give the 3rd MACP on completion of 28 years of service though was envisaged in the MACP scheme dated September 19, 2009 as is clear from Illustration-28 and it is in term of this Illustration that

respondents had issued an office memorandum dated July 12, 2012 thereby directing grant of 3rd MACP after 28 years, but the fact of the matter is that vide clarification dated February 13, 2019, the same was withdrawn by stating as under:

"Sub: Grant of financial upgradation under MACP scheme dated 19/05/2009 of DoPT, made effective from 01/09/2008

Reference is invited to this Directorate OM No.8/1/2012-EC-X dated 12/07/2012 (copy enclosed) wherein clarification was issued by this Directorate regarding grant of 2nd MACP after 18 years and 3rd MACP after 28 years in case where selection grade had been granted to the work charged staff of CPWD after 8 years of service. It seems that the above clarification has been misunderstood/misinterpreted and therefore, this Directorate OM No.8/1/2012-EC-X dated 12/07/2012 is hereby withdrawn with immediate effect. Henceforth all MACP case of work charged staff will continue to be dealt in accordance with DoPT OM dated 19/05/2009, as modified from time to time.

2. Cases which are already settled may not be reopened

3. This is issued with the approval of DG,CPWD"

(emphasis supplied)

13. The above reveals that by withdrawing clarification dated July 12, 2012, the CPWD has also stated that henceforth all MACP cases of work charged staff will continue to be dealt in accordance with DoP&T OM dated May 19, 2009.

14. Our attention has been drawn by Mr. Bhagwan Swarup Shukla, learned CGSC appearing for the respondent / UOI that in terms of office memorandum dated December 18, 2015, the CPWD has reiterated in the office memorandum that the Modified Assured Career Progression Scheme as applicable to its employees shall be on completion of regular service on 10, 20 and 30 years. In other words, in so far as the grant of benefit of 3rd MACP Scheme as implemented by the CPWD is concerned, the same was on completion of 30 years of service, which according to respondents was in the year 2016 in the case of the petitioner.

15. In the case in hand, the petitioner was not granted the 1st ACP as he was granted the selection grade on completion of 8 years. 2nd MACP was granted to him on September 1, 2008, i.e., the date of implementation of MACP and the 3rd MACP was effectively granted to the petitioner after completion of 8 years of service from the date he was given the 2nd MACP, but on completion of 30 years service from the date of joining the service.

16. If the plea as advanced by the petitioner is accepted, then it shall mean that he shall be entitled to the 3rd MACP on completion of six years of service from the grant of 2nd MACP. It is in this background that the Tribunal relied upon paragraph 2 of DoP&T OM dated May 19, 2009, wherein the scheme contemplates the financial upgradation at intervals of 10, 20 and 30 years of

continuous regular service. The Illustration on which much reliance was placed by the petitioner was construed by the Tribunal as irregularity, which was noticed and rectified by the respondents on February 13, 2019.

17. That apart, we find in so far as reliance placed on the judgment in Krishan Chand (supra) is concerned, the said judgment was rendered before the clarification dated February 13, 2019 was issued.

18. Though during the course of hearing, the petitioner has drawn our attention to an office order issued by the respondents wherein two officers were granted the benefit of 3rd MACP on completion of 28 years, the said plea was contested by Mr. Shukla by stating the same was a mistake and two wrongs cannot make one right. We agree with the said submission of M. Shukla as the benefit of 3rd MACP can be given only after 30 years of service in view of OM dated May 19, 2009, read with clarification dated February 13, 2019. That apart, we notice that, the petitioner has got the benefit of 3rd MACP, effectively after 8 years, though on completion of 30 years of service. If the plea of the petitioner needs to be accepted, then, it shall mean, he shall get the benefit after six years from 2008 and on completion of 28 years of service. It is in view of the above position the Tribunal has in para 8 has stated as under:

"8. Once the very source of MACP stipulates 30 years as the basis for 3rd MACP, it is just un-understandable as to how that can be meddled with by anyone."

19. We do not find merit in the petition. The same is dismissed.