
(2019) 09 DEL CK 0128

In the Delhi High Court

Case No : Civil Writ Petition No. 6469, 7774, 7778, 7779, 7781, 7782, 7783, 7785, 7788, 7789, 7790, 7937, 7938, 7939, 7940, 7941, 7943, 7947, 7949, 7950, 7951, 7962, 8001, 8002, 8003, 8005, 8050, 8063, 8127, 8196, 8203, 8209, 8264, 8265, 8267, 8273, 8282, 8283, 829

Ex. HC/GD Prahalad

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 13-09-2019

Acts Referred:

Citation : (2019) 09 DEL CK 0128

Hon'ble Judges : Dr. S. Muralidhar, J; Talwant Singh, J

Bench : Division Bench

Advocate : O.P. Agarwal, Mohit Kapoor, Anil Soni, Devesh Dubey, Paripoorv Singh

Final Decision : Disposed Off

Judgement

Dr. S. Muralidhar, J

1. All these petitions are by former employees of the Border Security Force ("BSF") who retired either as Head Constables (HC) or Constable (General Duty) ("GD"). The grievance in all these petitions is that the Petitioners have not been given the benefit of the financial upgradation as a result of the Annual Career Progression (ACP) Scheme from the date it was due and Modified Assured Progression ("MACP") Scheme from 1st January 2006. The prayers in each of the petitions are more or less similar. They broadly are as follows:

(1) The grant of benefit of arrears of first financial upgradation in the ACP scheme from the date of completion of 12 years of service till the date of promotion as HC/GD.

(2) Grant of second MACP upgradation on completion of 20 years of service in the pay band of 9300 - 34800 with grade pay of Rs.4200, from the date of completion of 20 years of service till the date of voluntary retirement.

(3) Fixing the pay in the eligible and admissible pay scales as per hierarchy after granting financial upgradation under MACP from the respective due dates in the pay scale of SI with admissible grade pay, and

(4) Issuing of the revised pension order, paying arrears of pension together with reasonable rate of interest on the delayed payment.

2. The stand of the Respondents has been that the benefit of the existing ACP scheme of August 1999 was allowed up to 31st August 2008. The MACP Scheme was issued by the Ministry of Defence (MoD) for Persons Below Officer Rank (PBOR) consequent upon the recommendations of the 6th Central Pay Commission (CPC) and that it was accepted by the Government for implementation in the CAPFs only with effect from 1st September 2008. The contention is that civilian and PBOR personnel were governed by two different resolutions and two different MACP schemes.

3. In order to understand the issue that arises in these petitions, the background in which they arise needs to be examined. The PBORs first approached the Armed Force Tribunal ("AFT") which held that the MACP would be available to them with effect from 1st January, 2006. The appeal of the Union of India against the said decision was dismissed by the Supreme Court in *Union of India v. Balbir Singh Turn* AIR 2018 SC 206 by holding that the grant of ACP is part of the pay structure and that it affects the pay of the employee, inasmuch as such employee gets a higher grade pay even though it should be in the same pay band. The stand of the Union of India that the MACP would be applicable to PBORs only from 1st September, 2008 was rejected by the Supreme Court.

4. Even prior to the above decision of the Supreme Court, a set of Petitioners, who were ASI GDs in the Sashastra Seema Bal ("SSB"), approached this Court in W.P.(C) 11725 of 2015 (*Digambar Singh v. Union of India*) and a batch connected petitions, with two grievances: one, that they were entitled to grant of the ACP benefit in terms of the OM dated 9th August, 1999 from the date each of them completed 12 years of regular service and, two, for release of the MACP benefits after they completed 20 years of service. By an order dated 18th December, 2015, this Court held that in view of the express stipulations in the ACP schemes, the question of denial of ACP benefits after completion of 12 years did not arise. The Court held that the Petitioners were entitled to the ACP benefits at an earlier stage i.e. immediately after 10th August 1999. Arrears were directed to be released within 8 weeks from that date. As far as the MACP benefits were concerned, it was held that it operated independently upon the completion of 20 years of service. It was held that on completion of 20 years of service, each of the Petitioners would be entitled for upgradation in a next higher grade available in the existing scales of pay.

5. Admittedly, the Respondents have accepted the above decision in *Digambar Singh v. Union of India* (supra) and of the Supreme Court in *Union of India v. Balbir Singh Turn* (supra). However, for some reasons the benefit was not

extended across the board to all members of the CAPFs.

6. Constable Vijender Pal filed W.P.(C) 5341 of 2018 seeking the benefit of the MACP scheme with effect from 1st January, 2006. This Court disposed of the said petition on 6th September, 2018 directing the Respondents to comply with the decision in *Union of India v. Balbir Singh Turn* (supra) and pay the requisite amount towards the MACP benefit to the Petitioner.

7. In 2019 Sunil Kumar Tyagi, who was a former HC in the BSF, approached this Court by way of a W.P.(C) 3549 of 2019 with three prayers. The first was that he should be granted the benefit of the ACP with effect from October, 1999 when he completed 12 years of service instead of 30th December, 2000. The second prayer was that the benefit of MACP should be granted with effect from October, 2007 when he completed 20 years of service and the third was that the benefit of the MACP be given to him by placing him in the scale of SI i.e. Rs.5500-9000 (pre-revised).

8. By the time the petition was finally heard on 1st May, 2019 the Respondents of their own had granted Sunil Kumar Tyagi the first prayer i.e. the benefit of ACP with effect from October, 1999 when he completed 12 years of service. As far as the second prayer was concerned, this Court noted that the issue was covered in favour of the Petitioner by the judgment in *Union of India v. Balbir Singh Turn* (supra). As regards the fixing of the correct pay scale of the Petitioner, the Court noted that the second financial upgradation was required to be given in the pay scale of Rs.5500-9000 on the completion of 24 years of regular service during the period 9th August, 1999 to 31st August, 2008. It was noted that the Respondents did not dispute the applicability of the judgment in *Union of India v. Balbir Singh Turn* (supra) or of this Court in *Digambar Singh v. Union of India* (supra).

9. Accordingly, the following directions were issued by this Court in Sunil Kumar Tyagi:

"(i) The Petitioner would be given the benefit of the MACP with effect from October, 2017 instead of 1st September, 2008; and

(ii) The above benefit will be given by placing the Petitioner in the pay scale of Sub Inspector i.e. 5500-9000 (pre-revised).

(iii) The appropriate orders will be issued and the arrears will be paid to the Petitioner within a period of 12 weeks from today, failing which the Respondents will be liable to pay simple interest @ 6% per annum on the arrears for the period of delay."

10. As far as the present petitions are concerned, some of these Petitioners had initially filed writ petitions which were dismissed by this Court by a common order dated 9th July 2018 noting that the letters addressed by the counsel for the Petitioners to the Respondents prior to the filing of the petitions had not even indicated on whose behalf they were being sent. However, this Court in the said

order dated 9th July 2018 permitted the Petitioners "who are aggrieved by the action of the Respondents in failing to grant them the benefits of the MACP Scheme from the due date, to approach the Respondents for relief in the first instance."

11. Pursuant thereto on 10th July 2018, counsel for the Petitioners addressed a letter to the Respondents i.e. the Department of Personnel and Training (DoPT), Government of India seeking inter alia that the judgment of the Supreme Court in Union of India v. Balbir Singh Turn be implemented. Attached with this notice was a list of 105 of the persons, including some of the present Petitioners with the details in four columns i.e. name of the person, last served battalion, date of appointment and the date of retirement. When no response was received to these letters, in the second round, the Petitioners filed fresh writ petitions which were disposed of by this Court by identical orders dated 22nd January, 2019 requiring each of the Petitioners to make individual representations to the Respondents stating full particulars of their respective entitlements. A direction was issued that such individual notices be sent within the next three months; that the Respondents shall process the notices and give a reply individually within a further period of 3 months.

12. Pursuant to the above liberty, each of the present Petitioners submitted to the Respondents a representation dated 24th January, 2019 working out each of their entitlements both under the ACP and the MACP Schemes. However, no reply was received from the Respondents. As a result, the present petitions have been filed separately by the Petitioners.

13. In the first of these petitions i.e. W.P.(C) 8203 of 2019 (Ex. HC/GD Prahalad v. Union of India) the following order was passed by this Court on 30th July 2019:

"Issue notice. Learned counsel for the respondents accepts notice. The grievance of the petitioner relates to the denial of financial upgradation under the ACP Scheme with consequential benefits in terms of OM dated 09.08.1999. He also seeks benefit of second financial upgradation under the MACP scheme with consequential benefits. He places reliance on Union of India and Ors. v. Balbir Singh Turn & Anr., Civil Appeal Diary No. 3744/2016, decided on 8.12.2017.

The detailed representation containing all the relevant facts and circumstances based on the decision of this Court in Ex. HC/GD Jagbir Singh v. Union of India and Ors., W.P.(C) 677/2019, decided on 22.01.2019 is pending and has not been disposed of. We have had occasion to deal with the several such petitions, including W.P.(C) 6440/2019. The said writ petition was disposed of on 30.05.2019. We directed the respondents to dispose of the petitioners' representations within next four weeks. The respondents have yet to take decision on the issue raised by the petitioners in the earlier writ petitions as well as in the present writ petition. In the circumstances, we direct the respondents to positively communicate their reasoned decision on the representations of the petitioner within the next four weeks, failing which the respondent Nos. 2 and 3

shall personally remain present in Court on the next date of hearing.

List on 13.09.2019."

14. Pursuant to the order date above order dated 30th July, 2019, when the matter was called out today, this Court was shown a copy of the letter dated 6th August, 2019 written by Mr. Sanjay Tandon, Commandant (Confidential) in the Directorate General of the BSF (GD) in the instance of the present Petitioner Constable Ex-HC (GD) Prahalad, where inter alia after noticing the orders of this Court in Sunil Kumar Tyagi v. Union of India and Constable Vijender Pal (Retd.) v. Union of India, a reference has been made to the advice received from the Department of Personnel and Training (DoPT) to the Administrative Ministry i.e. Ministry of Home Affairs (MHA) "to consider the matter holistically and take suitable direction with reference to the applicant, since the SLP has been dismissed and a contempt petition has been filed and not to treat this as a precedent".

15. In other words, the advice of the DoPT is that the aforementioned orders of this Court, which were affirmed by the Supreme Court by the dismissal of the SLPs filed against them, are not to be treated as precedents.

16. The Court finds the above stand of the DoPT, which Mr. Sanjay Tandon, who is present in Court, states is binding on the BSF, to be unacceptable. With all these Petitioners being placed in an identical position as Sunil Kumar Tyagi and Vijender Pal, both retired personnel of the BSF, there can be absolutely no justification for not treating the aforementioned orders of this Court as precedents. The above stand of the DoPT will needlessly multiply litigation, by compelling every former employee of the BSF to file individual petitions for securing identical relief.

17. The Court accordingly rejects the above stand and directs that the orders passed by the Court in the aforementioned two cases will apply to all these cases and an identical relief, as granted by this Court in the cases of Sunil Kumar Tyagi (supra) and Vijender Pal (supra), should be extended to each one of them.

18. It will be noticed that in Sunil Kumar Tyagi (supra) itself this Court had noted that the first prayer of Sunil Kumar Tyagi regarding grant of arrears of first ACP with effect from the date he completed 12 years of service till the date of his next promotion was already granted. Therefore, the same relief has to be granted even to these Petitioners. Again, in Sunil Kumar Tyagi (supra) it was noted that the grant of the benefit of MACP on completion of 20 years of service by treating the applicable date as 1st January, 2006 was also accepted. The Court expressly rejected the plea that the MACP would be applicable from 1st September 2008. The third prayer of placing the Petitioner in the appropriate pay scale of SI i.e. 5400 - 900 (pre-revised) was also granted.

19. With the SLP against the order in Sunil Kumar Tyagi having been dismissed and the SLP against the order in Vijender Pal also having been dismissed, and

with there being no difference factually or otherwise between those cases and the case at hand, the Court sees no reason why the same relief ought not to have been granted to the Petitioners. After the decision of the Supreme Court in Balbir Singh Turn the distinction sought to be drawn by the Respondents between civilian and defence personnel in the matter of grant of the MACP benefit from 1st January 2006 is untenable. Again, the mere fact that there may be other service conditions that are applied from a prospective date is not an answer to not implementing the benefit of the above decision in the matter of MACP to all CAPFs uniformly.

20. Accordingly, all these petitions are allowed with the following directions:

- (i) Each of the Petitioners would be given the arrears of the first ACP for the period of completion of 12 years of service till the date of the first promotion;
- (ii) The benefit of the MACP will be given from the date of completion of 20 years of service by treating the MACP as applicable with effect 1st January 2006 onwards;
- (iii) Each of the Petitioners will be placed in the appropriate pay scale of SI/HC etc. as the case may be (for eg. In the case of SIs Rs.9300 - 34800 with grade pay of 4200) from the date of completion of 20 years of regular service up to the date of voluntary retirement; and,
- (iv) The appropriate revised pension orders will be issued and arrears will be paid to each of the Petitioners within a period of 12 weeks, failing which the Respondents would be liable to simple interest at 6% per annum on the arrears of period of delay.

21. The petitions are accordingly disposed of.

22. Order dasti under the signature of the Court Master.