
(2014) 12 MEG CK 0021
In the Meghalaya High Court
Case No : WP(C) No. 27/2014

Milap Chand

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 04-12-2014

Acts Referred:

Citation : (2014) 12 MEG CK 0021

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Judgement

T. Nandakumar Singh, J.—Heard Mr. H.G. Baruah, learned counsel for the petitioner and also Mr. R. Debnath, learned CGC appearing for the respondents.

2. By this writ petition, the petitioner who had retired from service on superannuation in 01.04.2010, is praying for a direction to the respondents to extend the financial upgradation under Modified Assured Career Progression Scheme (for short "MACPS") i.e. to grant the grade pay of Rs. 2,402/- (Rupees two thousand four hundred and two) to Rs. 2800/- (Rupees two thousand eight hundred) w.e.f. 01.09.2008 and also quashing the order dated 06.03.2012 and also an order dated 03.10.2013, whereunder, the financial upgradation had been denied due to ACR criteria to the petitioner.

3. The petitioner was enrolled in Assam Rifles as Rfn/GD on 15.03.1980, and he was promoted to the rank of Hav/GD in the year 2000. On completion of 30 (thirty) years of qualifying service, the Directorate General Assam Rifles discharged the petitioner on retiring pension w.e.f. 01.04.2010 (FN). The petitioner had completed 30 (thirty) years 17 (seventeen) days at the time of discharge from service and he was aged about 56 (fifty-six) years at the time of retirement from service. It is clearly stated that there was no adverse entry in the service record of the petitioner and no Court of Inquiry was convened against him in his entire service. It is the case of the petitioner that the petitioner is entitled to financial upgradation under MACP Scheme in the grade of Rs. 2400/- (Rupees two thousand four hundred) i.e. the grade pay of the Havildar. The

MACPS was implemented by Office Memorandum No. 35034/3/2008-Estt (D); Dated New Delhi, the 19th May, 2009 w.e.f. 01.09.2008. The relevant portions of the MACP Scheme dated 09.05.2009 are quoted as under:-

"No. 35034/3/2008-Estt. (D) Government of India Ministry of Personnel, Public Grievance and Pensions (Department of Personnel and Training) North Block, New Delhi, the 9th May, 2009

OFFICE MEMORANDUM

SUBJECT:- MODIFIED ASSURED CAREER PROGRESSION SCHEME (MACPS) FOR THE CENTRAL GOVERNMENT CIVILIAN EMPLOYEES.

The Sixth Central Pay Commission in Para 6.1.15 of its report, has recommended Modified Assured Career Progression Scheme (MACPS). As per the recommendations, financial upgradation will be available in the next higher grade pay whenever an employee has completed 12 years continuous service in the same grade. However, not more than two-financial upgradations shall be given in the entire career, as was provided in the previous Scheme. The Scheme will also be available to all posts belonging to Group "A" whether isolated or not. However, organized Group "A" services will not be covered under the Scheme.

2. The Government has considered the recommendations of the Sixth Central Pay Commission for introduction of a 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.

3. The Scheme would be known as "MODIFIED ASSURED CAREER PROGRESSION SCHEME (MACPS) FOR THE CENTRAL GOVERNMENT CIVILIAN EMPLOYEES. This Scheme is in supersession of previous ACP Scheme and clarifications issued there under and shall be applicable to all regularly appointed Group "A", "B", and "C" Central Government Civilian Employees except officers of the Organised Group "A" Service. The status of Group "D" employees would cease on their completion of prescribed training as recommended by the Sixth Central Pay Commission and would be treated as Group "C" employees. Casual employees, including those granted "temporary status" and employees appointed in the Government only to ad hoc or contract basis shall not qualify for benefits under the aforesaid Scheme. The details of the MACP Scheme and conditions for grant of the financial upgradation under the Scheme are given in Annexure-1....."

4. Para 1 of the Annexure -I of the MACPS clearly provides that there shall be 3 (three) financial upgradations under the MACPS, counted from the direct entry grade on completion of 10 (ten) years, 20 (twenty) years and 30 (thirty) years service respectively. Financial upgradation will be admissible whenever a person has spent 10 (ten) years continuously in the same grade. Para 17 of the Annexure-1 to the MACPS, further provides the financial upgradation would be on non-functional basis subject to fitness, in the hierarchy of grade pay within PB-1.

5. For upgradation under MACPS, the benchmark "good" would be applicable

under the grade pay of Rs. 6600/- (Rupees six thousand six hundred) in PB-3. The benchmark will be "Very Good" for financial upgradation to the grade pay of 7600/- (Rupees seven thousand six hundred) and above. It is the case of the petitioner that since the petitioner had served 10 (ten) years continuously in the same grade, the petitioner would be entitled to get the first financial upgradation under the MACPS. The petitioner filed the representation dated 07.10.2013 to the Directorate General Assam Rifles for granting financial benefits on completion of 30 (thirty) years of service under the MACPS as applicable to the petitioner. The Directorate General Assam Rifles under the impugned order/letter dated 23.10.2013 informed the petitioner that his name had not been recommended for granting of MACPS due to lacking of ACR criteria and also by the earlier letter dated 26.05.2012 the petitioner was not granted the MACPS due to ACR criteria.

6. Mr. H.G. Baruah, learned counsel for the petitioner contended that the impugned orders/letters dated 26.05.2012 and 23.10.2012 mentioned the lacking of ACR criteria for which the petitioner cannot be granted financial upgradation, but the petitioner was never been informed of any adverse entry in his ACRs. The petitioner, being aggrieved by the said orders of the respondents for not granting financial upgradation due to ACR criteria, filed the present writ petition.

7. The respondents had filed joint affidavit. In paras 10 & 12 of the affidavit-in-opposition, it is stated that although the petitioner had completed 30 (thirty) years of service but he lacked ACR criteria in the 2nd and 3rd financial upgradation under the Assured Career Progression Scheme (for short ACPS) w.e.f. 01.09.2008 on completion of 20 (twenty) years and w.e.f. 12.03.2010 on completion of 30 (thirty) years. For easy reference para 7, 10, 12, 13 & 22 of the affidavit-in-opposition filed by the respondents against the petitioner are quoted hereunder:

"7. That as regard to the statement made in the paragraphs 4 are admitted to the extent that the writ petitioner had served for 30 years. It is stated that, as a combatant soldier the factor which are taken into account to assess the performance during the year are discipline, personal conduct, physically fitness, capability to complete the assigned task without supervision command and control over subordinate, initiative and drive, security consciousness and instructional ability etc. The petitioner was found lacking these qualities and was therefore adjudged "Average" and was "NR" that is "Not Recommended" for promotion to the next higher rank. The poor performance ultimately made him ineligible for grant of financial upgradation from Grade Pay of 2400/- to Grade Pay 2800/-. The recording of red ink entries in service records involvement in court of inquiry is a matter related to discipline and conduct of a government servant and is not the only factor for rating his performance. Hence, the aspect of non existence of punishment records in service dossier is not relevant in this matter granting for financial upgradation. Hence, the writ petition of the writ petitioner deserves to be dismissed.

10. That the statement made in paragraph 7 it is submitted that financial upgradation under Assured Career Progression Scheme (in short ACPS) and thereafter under Modified Assured Career Progression Scheme (in short MACPS) were granted to the eligible incumbent from time to time as their eligibility. The writ petitioner was not entitled for financial up-gradation under ACP hence, it was not granted to him. It is a fact that under Modified Assured Career Progression Scheme at an interval of 10, 20 and 30 years of service, is subject to fulfillment of certain conditions prescribed by the Government vide Annexure to Office Memorandum No. 35034/3/2008-Estt (D) dated 19-5-2009 (under the clause of fitness vide Paragraph 17 of said Annexure - of the writ petition). Although the petitioner had completed 30 years of service but he lacked confidential Report criteria for grant of 2nd & 3rd financial upgradation under Modified Assured Career Progression Scheme w.e.f. 1-9-2008 on completion of 20 years and w.e.f. 12 March 2010 on completion of 30 years of service. Hence, he was not recommended for promotion to next higher rank in Annual Confidential Report for the year 2007. Thereby, the writ petitioner was not qualified for grant of financial upgradation under said Modified Assured Career Progression Scheme.

12. That the statement made in paragraph 9 are admitted to the extent of having rejecting the claim of the writ petitioner due to ACR criteria. It is worthy to mention here that the person deployed and serving in unit well acquainted with his own performances, and they are for all time eagerly awaiting for future prospect in their services. The incumbent who was serving for the last 30 years cannot be a silent spectator and other fellow colleagues are having some advantageous benefit. The performance of the writ petitioner was poor and the writ petitioner was graded "Average" with 2 points and was "Not Recommended" for promotion to the next higher rank by both initiating Officer and Reviewing Officer and hence was not found fit for grant of 1st and 2nd financial upgradation under Assured Career Progression Scheme (ACP). It has been conveyed to writ petitioner vide respondents letter No. 113643/11AR/PGC-2012/1196 dated 23 October 2013.

13. That the statement made in paragraph 10 are denied and states that the petitioner was not in the zone of consideration for financial upgradation in view of the Modified Assured Career Progression Scheme is subject to fulfillment of certain fitness criteria on completion of certain fitness criteria on completion of 10, 20 or 30 years of service and it is not a blanket sanction by the Government. The annexure-paragraph 17 which states that the financial upgradation would be on non functional basis subject to fitness, in the hierarchy of grade pay within the PB-1, thereafter for upgradation under the MACPS the benchmark of good would be applicable till the grade pay of Rs. 6,600.00 in PB-3. The benchmarks will be very good for financial upgradation to the grade pay of Rs. 7,600/- and the Director General Assam Rifles, order for implementation instructions for modified Assured Progression Scheme (MACPS). The ACR criteria is one of the condition governing the Grant of MACPS for the incumbent serving in Assam Rifles, which states that last two ACRs (where applicable) shall be considered for

grant of first financial upgradation under the MACPS and last three ACRs for grant of second and third financial upgradation. All these reports should not be less than "Average" grading with recommendation for promotion to next higher rank." The writ petitioner meet all the criteria for grant of financial upgradation except the Annual Confidential Report criteria. Hence, he was not qualified for grant of financial upgradation with effect from 01.09.2008. Since the petitioner was not qualified as per the conditions for grant of financial upgradation under Modified Assured Career Progression Scheme. The alleged allegation of the writ petitioner is baseless and denied. The writ petitioner is not entitled for financial upgradation as sought for and it deserves to be dismissed in its threshold.

22. That as regard statement made in paragraph 19 your answering respondent has no comments being submission of the writ petitioner."

8. In the affidavit-in-opposition filed by the respondents, the respondents are not denying the case of the petitioner that the respondents did not inform or had not intimated the adverse entry in the service book to the petitioner. Mr. H.G. Baruah, learned counsel for the petitioner by placing reliance on the decision of the Apex Court in *Dev Dutt Vs. Union of India (UOI) and Others*, asserted that the adverse entry in the ACR of the petitioner which had not been brought to the notice of the petitioner, cannot be considered for determining the benchmark for the extending the financial benefits under MACPS. Para 6 and 13 of the SCC in *Dev Dutt's* case (*Supra*) read as follows:

"6. The grievance of the appellant was that he was not communicated the "good" entry for the year 1993-1994. He submitted that had he been communicated that entry he would have had an opportunity of making a representation for upgradating that entry from "good" to "very good", and if that representation was allowed he would have also become eligible for promotion. Hence he submits that the rules of natural justice have been violated.

13. In our opinion, every entry (and not merely a poor or adverse entry) relating to an employee under the State or an instrumentality of the State, whether in civil, judicial, police or other service (except the military) must be communicated to him, within a reasonable period, and it makes no difference whether there is a benchmark or not. Even if there is no benchmark, non-communication or an entry may adversely affect the employee's chances of promotion (or getting some other benefit), because when comparative merit is being considered for promotion (or some other benefit) a person have a "good" or "average" or "fair" entry certainly has less chances of being selected than a person having a "very good" or "outstanding" entry."

9. In the present case, the adverse entry in the ACR which had not been intimated to had been considered for determining the benchmark for granting the financial benefits to the petitioner.

10. In the above factual backdrop, this writ petition is disposed of by directing the respondent No. 2 to communicate the adverse entry in the service book of

the petitioner which was used for determining the benchmark of the petitioner for extending of the financial benefits under MACPS to the petitioner within a period of 1 (one) month from the date of receipt of a certified copy of this judgment and order so as to enable the petitioner to file the representation. The petitioner, after intimation of the said adverse entry, shall file the representation within 2 (two) weeks for upgradation of the adverse entry to the respondent No. 2 who shall dispose of the said representation by passing the reasoned order within a period of the 1 (one) month from the date of receipt of the representation. In case the adverse entry in the ACR is upgraded and eligible for granting the financial upgradation under the MACPS, the financial benefits under the scheme shall be extended to the petitioner.

11. With the above observations and directions, this writ petition is disposed of.