(2014) 12 MAD CK 0201

In the Madras High Court

Case No : Writ Petition No. 19024 of 2014 and M.P. No. 1 of 2014

R. Chandrasekaran APPELLANT

Vs

The Central Administrative Tribunal Madras Bench RESPONDENT

Date of Decision : 08-12-2014

Acts Referred:

Citation : (2014) 12 MAD CK 0201

Hon'ble Judges : Satish K. Agnihotri, J;K.K. Sasidharan, J

Bench : Division Bench

Judgement

1. The contradictory clarifications given by the Ministry of Personnel, Public Grievances and Pensions and the Ministry of Finance, Department of Revenue, Government of India with respect to extension of benefits to first/second financial upgradations under Assured Career Progression Scheme (hereinafter referred to as "ACPS") and the question as to whether the benefits of financial upgradation in the promotional hierarchy under ACPS would be given recognition in the revised pay structure in terms of the clarification given on point of doubt No. 3 of the Annexure to the Office Memorandum dated 9 September 2010 issued by the Department of Personnel and Training, resulted in taking different views by different departments and at times by different officers in the very same department and initiation of Original Proceedings before the Central Administrative Tribunal by those who were aggrieved on account of the consequential action taken in accordance with such clarifications/instruction.

The facts:

2. The petitioner joined the service of Customs and Central Excise Department in 1982. He was promoted to the grade of Superintendent in April 2001. The Central Government introduced a Scheme called ACPS in the year 1999 for the purpose of assuring two career advancements to Central Government Servants who have been languishing without promotion for more than twelve years. The scheme envisaged two financial upgradations after every twelve years of service. The scheme has been further enlarged by issuing Modified Assured Career

Progression Scheme (hereinafter referred to as "MACPS") in the year 2009.

3. The petitioner who was granted third financial upgradation under the erstwhile ACPS was placed in the pay scale of Rs.15600-39100 in Pay Band - 3 with Grade Pay of Rs.5400/-.

4. The petitioner was given third financial upgradation after completing 30 years of service. He was placed in the pay scale of Rs.15600-39100 in Pay Band-3 with Grade Pay of Rs.6600/- by order dated 12 December 2012.

5. The first respondent based on the clarification issued by the department stopped the Grade Pay of Rs.6600/- under the pretext that the Ministry of Finance vide circular dated 8 April 2013 clarified the issue to the effect that any further extension of benefits and III MACP with Grade Pay of Rs.6600/- to Superintendents, who are in receipt of Non-Functional Grade under Pay Band - 2 with Grade Pay of Rs.5400/- along with II ACP, under Pay Band - 3 with Rs.5400/- Grade Pay requires the concurrence of Department of Personnel and Training. The petitioner immediately filed Original Application No. 675 of 2013 challenging the circular dated 8 April 2013 and for a direction to permit him to draw the pay in the Grade Pay of Rs.6600/- with arrears.

6. The Original Application was opposed by the respondents by filing counter affidavit. The fourth respondent in his counter affidavit contended that the petitioner is not covered under the clarification issued by the Department of Revenue dated 20 May 2011 for claiming benefits of Grade Pay of Rs.6600/-.

7. The Central Administrative Tribunal found that MACP Scheme was interpreted by the Chief Commissioner of Central Excise, Commissioner of Central Excise and the Principal Chief Controller of Accounts, Central Board of Excise and Customs in a different manner and the same resulted in chaos and confusion. However, the Tribunal agreed with the submissions made on behalf of the respondents and resultantly the Original Application was dismissed. Feeling aggrieved by the said order the petitioner is before this Court.

8. We have heard the learned counsel for the petitioner. We have also heard the learned counsel for respondents 2 and 3.

Discussion:

9. The issue raised herein came up for consideration before this Court in W.P.No. 11535 of 2014. The Original Application filed by private respondents therein was allowed by the Central Administrative Tribunal in O.A.No. 280 of 2012 and a direction was issued to the respondents herein to restore the benefits given to them earlier. The Tribunal followed the earlier order in O.A.No. 1038 of 2010 on the file of Central Administrative Tribunal, Chandigarh Bench and the related judgment passed by the High Court of Punjab and Haryana dated 19 October 2011 in CWP No. 19387 of 2011 upholding the said decision. We have made the following observation in our order dated 16 October 2014.

"8. The respondents 1 to 3 were given financial upgradation under ACPS. They were also granted third financial upgradation under MACPS in the Grade Pay of Rs.6600/- under PB-3. The order granting them third financial upgradation under MACPS in the Grade Pay of Rs.6600/- under PB-3 was later withdrawn, presumably, on account of audit objection.

9. The Government of India framed the ACPS, pursuant to the recommendations made by the V Central Pay Commission. As per the recommendation, financial upgradation will be available in the next higher Grade Pay, whenever an employee has completed 12 years of service in the same Grade. However, it was stipulated that not more than two financial upgradations shall be given in the entire career. The MACPS, which is the subject matter of this writ petition, provides that there shall be three financial upgradations counted from the Direct Entry Grade on completion of 10, 20, 30 years of service, respectively. The MACPS envisages placement in the immediate next higher Grade Pay in the hierarchy of the recommended revised pay bands and Grade Pay. Therefore it is clear that financial upgradation under the scheme will be available whenever an employee has spent ten years in the same Grade Pay.

10. Financial upgradation given to respondents 1 to 3 in the subject case was revised solely on the ground that Grade Pay of Rs.5400/- in PB-2 and Rs.5400/- in PB-3 shall be treated as separate Grade Pays for the purpose of financial upgradation under MACPS. Such a view was taken by taking a literal interpretation of Clause 8(1) of MACPS without taking into account the purpose for which the very scheme was evolved.

11. Enforcement Officers were given Grade Pay of Rs.5,400/- in PB-2 on non-functional basis after completion of four years of regular service. The officer is eligible for MACPS, which carries the Grade Pay of Rs.5,400/- in PB-3. The immediate next higher Grade of Pay to the Grade Pay of Rs.5,400/- is Rs.6,600/-. Therefore, respondent Nos. 1 to 3 were correctly granted Grade Pay of Rs.6,600/- in PB-3 on completion of thirty years of continuous service. The petitioners proceeded as if Grade Pay of Rs.5,400/- in PB-3 is higher Grade Pay to the Grade Pay of Rs.5,400/- in PB-2.

12. The following table with regard to promotion in the Directorate of Enforcement would make the position clear:

13. While interpreting the Scheme introduced for the purpose of giving financial upgradation to the employees on account of stagnation, the authorities are expected to consider the factors which actually contributed for evolving such a beneficial scheme. The scheme should be interpreted in a meaningful manner. The provisions should be given a workable interpretation. When it is made out that the intention was to give financial upgradation, the attempt should be to grant the benefit rather than to restrict it by taking a too technical view of the matter.

14. The preamble to the Scheme contained the intention of the Government to

give financial upgradation to the employees pursuant to the recommendations made by VI Pay Commission. While considering a scheme like this, the preamble also should be taken note of by the Courts.

15. ....

16. Since the MACP Scheme was framed in the larger interest of employees, Court should give a liberal construction. The primary attempt in such cases should be to achieve the purpose and object of the policy and not to frustrate it.

17. The Grade Pay in this case was initially granted on non-functional basis. The Grade Pay of Rs.5400/- in PB-2 being non-functional scale, the same cannot be a functional Grade to Assistant Director-II, who got promotion from the post of Enforcement Officer.

10. We have dismissed the writ petition filed by the respondents herein and confirmed the order passed by the Central Administrative Tribunal. The circulars and instructions given by the Ministry of Personnel, Public Grievances and Pensions and the earlier circular issued by the Central Board and Excise and Customs dated 20 May 2011, the order dated 21 February 2013 on the file of Central Board of Excise and Customs passed pursuant to the direction in O.A.No. 140 of 2012 on the file of Central Administrative Tribunal, Madras Bench were not before us while considering the writ petition in W.P.No. 11535 of 2014. It was only in the present writ petition the petitioner and the respondents have produced the classificatory circulars dated 25 February 2011, 20 May 2011, and the order passed by the Central Board of Customs and Excise dated 21 February 2013.

11. We have perused the circulars issued by the concerned authorities and the order dated 21 February 2013 on the file of Central Board of Excise and Customs.

12. We agree with the views expressed by the Central Administrative Tribunal in its order dated 24 February 2014 which is impugned in this writ petition to the effect that there were contradictory circulars issued by various departments by interpreting MACP Scheme. The observation made by the Central Administrative Tribunal reads thus:

22. While parting, we are constrained to observe that in this case there was a difference between R3/R4 and R1/R2 in the interpretation of the clarification given by DoPT as indicated in paras 7 and 8 etc. above. In this situation, the CBEC or R3/R4 could have addressed DoPT seeking a specific clarification in the case as provided for in para 9 of the DoPTs OM dated 19 May 2009 by which the MACP Scheme was introduced. It is very odd situation where the different officers in the same department have taken differing stand in a matter where they could have easily made a referent to the DoPT for clarification/Instructions.

13. The Ministry of Finance, Department of Revenue in its circular dated 25 February 2011 clarified the issue relating to financial upgradations under ACPS and the position after the introduction of MACPS. The circular reads thus:

"F.No. A-23011/29/2010-Ad.II-A Government of India Ministry of Finance Department of Revenue CBEC/Ad.IIA.

New Delhi, the 25th February, 2011

To The Chief Commissioner of Central Excise Chennai.

Subject : OA No. 821/2010 filed by Sh.S. Ramachandran, Supdt. of Central Excise (Retd.) before Hon''ble CAT, Madras Bench and other similar OA Nos. 930, 931 and 1098/2010.

Madam,

In continuation of this Department letter of even No. dated 18/02/2011 and with reference to letter dated 21 February 2011, from Sh.K.Ravi Anantha Padmanabhan, Addl. Central Govt. Standing Counsel, Chennai (Copy enclosed), I am directed to say that the matter has been further taken up with the Department of Personnel & Training.

2. The Department of Personnel & Training has finally advised as under:-

"It may be clarified that, prior to introduction of MACPS, the benefits of 1st and 2nd financial upgradations under the ACPS of August, 1999 had been granted in the promotional hierarchy w.e.f. 9.8.1999 or on completion of 12 and 24 years of regular service. The benefits of ACPS of August, 1999 had been allowed till 31.08.2008. However, as per the recommendations of 6th CPC, three financial upgradations have been allowed under MACPS w.e.f. 1.9.2008 or on completion of 10, 20 and 30 years of continuous regular service, whichever is later, in the immediate next higher grade pay in the hierarchy of recommended revised pay bands and grade pay as prescribed in the CCS (RP) Rules, 2008 provided that the Government official has not earned three promotions during the period.

The pay structure on the recommendations of 6th CPC has been made effective w.e.f. 01.01.2006 vide Department of Expenditure''s Notification dated 29.8.2008. The benefits of financial upgradation in the promotional hierarchy under the ACPS have, however, been allowed in the revised pay structure during the period between 1.1.2006 and 31.8.2008 in terms of clarification given on point of doubt No. 3 of Annexure of DOPT''s O.M. dated 9.9.2010.

As per the recommendations of 6th CPC, Superintendents in Department of Revenue with four years of regular service in that grade are eligible for Non-functional Grade in the grade pay of Rs.5400 in PB-2 in the corresponding pay band w.e.f. 01.01.2006.

The benefits of ACPS of August 1999 have been allowed till 31.08.2008 and only functional promotion (s) is/are counted for the purpose of Scheme. Besides, there is no provision for counting of ''Non-functional scale'' for the purpose of ACPS.

In view of the above facts and circumstances, there would be no effect on grant of ''Non-functional scale'' in the PB-2 with grade pay of Rs.5400 during the period between 1.1.2006 to 31.8.2008, as the same is not counted under ACPS and it would not be offset against financial upgradation under the Scheme. However, in terms of para 8.1 of Annexure of MACPS, financial upgradation granted in the grade pay of Rs.5400 in PB-2 and PB-3 would be counted separate upgradation and would be offset against financial upgradation under the Scheme."

3. You are requested to file reply in the above referred OAs on behalf of all the respondents before the Hon''ble CAT, on the basis of advice given by DOP & T in the matter, in consultation with Govt. Counsel well before the next date of hearing i.e. 28/2/2011. This Department may please be apprised of the development in the matter."

14. The Ministry of Finance, Department of Revenue issued another circular dated 20 May 2011 which is extracted below:

"F.No. A-23011/29/2010-Ad.II-A Government of India Ministry of Finance Department of Revenue Central Board of Excise and Customs Ad.IIA Section

New Delhi, the 20th May, 2011

To

All the Chief Commissioners/Directors General under CBEC.

All the Commissioners in charge of Directorates under CBEC.

Subject : Clarification on 6th CPC replacement pay to the pre-revised scale of pay of Rs.8000-275-13,500, granted on account of financial upgradation under the Assured Career Progression (ACP) Scheme.

Sir/Madam,

I am directed to say that the Board is in receipt of various references from the Cadre Controlling Chief Commissioners/Directors General seeking clarification on grant of grade pay of Rs.5400 in the PB-2 and PB-3 on financial upgradation under ACP scheme. Some individual officers have also approached court of law for the redressal of their perceived grievances in this regard.

2. The matter has been examined in the Board in consultation with the Department of Expenditure/ Department of Personnel & Training. Prior to introduction of MACP Scheme, the benefits of 1st/2nd financial upgradations under the ACP Scheme of August, 1999, used to be granted in the promotional hierarchy. The ACP scheme came into operation w.e.f. 9.8.1999. The eligible officers were being allowed the benefits of ACPs w.e.f. 9.8.99 or on completion of 12 and 24 years of regular service. The benefits of ACP scheme of August, 1999 had been allowed till 31.8.2008. However, as per the recommendations of 6th CPC, three financial upgradations have been allowed under MACPS w.e.f. 1.9.2008 or on completion of 10, 20 and 30 years of continuous regular service.

The upgradation is granted in the immediate next higher grade pay in the hierarchy of recommended revised pay bands and grade pay as prescribed in the CCS (RP) Rules, 2008. If an officer gets promotion in the normal course during the relevant period that would be taken into account while determining his eligibility for grant of MACP at a particular state i.e., 1st, 2nd or 3rd.

3. The new pay structure on the recommendations of 6th CPC has been made effective w.e.f. 1.1.2006 vide Department of Expenditure''s Notification dated 29.8.2008. The benefits of financial upgradation in the promotional hierarchy under the ACPS had however, been allowed in the revised pay structure during the period between 01.01.2006 and 31.8.2008 in terms of clarification given on point of doubt No. 3 of Annexure of DOPT''s O.M. dated 9.9.2010.

4. Further, the benefits of ACPS of August 1999 have been allowed till 31.08.2008 and only functional promotion(s) is/are counted for the purpose of Scheme. Besides, there is no provision for counting ''Non-functional scale'' for the purpose of ACP Scheme.

5. In view of the above facts and circumstances, there would be no effect on grant of ''Non-functional scale'' in PB-2 with grade pay of Rs.5400 during the period between 1.1.2006 to 31.8.2008, as the same is not counted under ACPS and it would not be offset against financial upgradation under the Scheme. However, in terms of para 8.1 of Annexure of MACPS, financial upgradation granted in the grade pay of Rs.5400 in PB-2 and PB-3 would be counted separate upgradation and would be offset against financial upgradation under the Scheme.

6. The Hon''ble CAT, Madras Bench vide its judgment and orders passed on 9 March 2011 in the Bunch of O.A Nos. 821, 930, 931 and 1098 of 2010, filed by Shri S.Ramachandiran, Supdt. of Central Excise (Retd.) & Ors. Vs U.O.I. & Ors. has inter alia held that the applicants are entitled to have the pay scale in Pay Band- 3 i.e. Rs.15600-39100 with Grade Pay of Rs.5400/- as the replacement pay scale to the pre-revised scale of Rs.8000-275-13500 which was granted to them as financial upgradation under the ACP Scheme, i.e. the scale of pay of the post in the promotional hierarchy.

7. In view of the facts and circumstances explained above, it is hereby clarified that the officers working in the offices under the Central Board of Excise and Customs (CBEC) who have been granted the pre-revised scale of pay of Rs.8000-275-13500 as financial upgradation in the promotional hierarchy under the ACP Scheme on or before 31.08.2008, may be granted the pay scale in Pay Band - 3 i.e. Rs.15600-39100 with grade pay of Rs.5400/- as per the 6th CPC replacement pay."

15. The Central Administrative Tribunal, Madras Bench issued a direction dated 14 March 2012 in O.A.No. 140 of 2012 to the Ministry of Personnel and Training to pass a reasoned order taking into account the representation submitted by the petitioners therein. The Department of Revenue passed a detailed order in the light of the demand made by All India Association of Central Excise Gazetted

Executive Officers. The said order clarified the earlier instructions in a limited manner. It is a matter of record that different departments have interpreted the clarification in different manner and the same resulted in this unfortunate situation,

16. The Customs and Central Excise Department has granted benefits of MACP to the employees like petitioner herein without taking into account the financial upgradation given on ''non-functional scale''. The departments have earlier maintained that only functional promotions would be counted for the purpose of extending the benefits of ACPS. The employees were all given benefits by taking a position that there was no provision for counting ''non-functional scale'' for the purpose of ACPS. Subsequently, on the basis of further clarification the benefits were all withdrawn. This resulted in filing several original applications before the Central Administrative Tribunal. The Central Administrative Tribunal, Chandigarh Bench rejected the contentions taken by the respondent in O.A. No. 1038 of 2010. The said decision was upheld by the High Court of Punjab and Haryana. Even thereafter several orders were passed by the respondents. We have considered similar writ petitions. In case the concerned departments took earnest efforts to codify all the circulars issued earlier and to issue a fresh circular explaining the nature and scope of MACPS and as to whether non-functional scale would be counted for the purpose of ACPS, it would be possible to avoid cases like this and future cases that are bound to come. We are therefore of the view that instead of deciding the matter one way or the other it would be in the interest of all the parties to direct the Department of Personnel, Public Grievances and Pensions to look into the issue and to take a decision in the light of MACP Scheme.

17. Since the Central Administrative Tribunal has taken a decision not withstanding the claim made by the petitioner and in view of our decision to direct the Department of Personnel, Public Grievances and Pensions to consider the issue once again, we set aside the order passed by the Central Administrative Tribunal dated 24 February 2014 in O.A.No. 675 of 2013 and remit the matter to the Department of Personnel, Public Grievances and Pensions for fresh consideration. The Department of Personnel, Public Grievances and Pensions is directed to consider the issue in extenso in the light of the provisions of MACP Scheme and the benefits given to the employees like the petitioner to count the non- functional scale for the purpose of ACPS. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this writ petition.

18. The writ petition is disposed of as indicated above. Consequently, the connected MP is closed. No costs.

