

(2018) 11 DEL CK 0068

In the Delhi High Court

Case No : Civil Writ Petition No.4760 Of 2018 & C.M. No. 18339 Of 2018

R.K. Sharma

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 13-11-2018

Acts Referred:

Citation : (2018) 11 DEL CK 0068

Hon'ble Judges : Vipin Sanghi, J;A. K. Chawla, J

Bench : Division Bench

Advocate : Prateek Tushar Mohanty, Tushar Ranjan Mohanty, Arun Bhardwaj, Nikhil Bhardwaj

Final Decision : Disposed Off

Judgement

“

Vipin Sanghi, J",,,

1. The petitioner is aggrieved by the order dated 21.02.2017 passed by the Central Administrative Tribunal (CAT/ Tribunal) in O.A. No.38/2014. The,,

petitioners claim for ante-dating his second financial upgradation benefit under the MACP scheme from 01.09.2008 to 01.01.2006 has been rejected,,

by the tribunal.,,,

2. At the outset, learned counsel for the petitioner submits that he limits his claim to preponement of the date of grant of second financial upgradation",,,

under the MACP scheme to 01.01.2006, and he does not claim any benefit under the Non Functional Upgradation (NFU) scheme provided for under",,,

the office memorandum dated 24.04.2009. Learned counsel for the petitioner clarifies that he had sought to rely upon the OM dated 24.04.2009 â?" by,,

which NFU scheme was formulated, only to contend that like the NFU scheme

was made applicable from 01.01.2006, so also the MACP scheme be",,,
made applicable from the said date and not from 01.01.2008 â?" as was sought to be contended by the respondent.,,

3. The petitioner was promoted to the post of Director with effect from 09.02.1994 in BICP (Tariff) Commission in the pre revised scale of 3700-125-,,
4700-1500-5000. He was granted the second financial upgradation under the MACP scheme in pay band IV with grade pay of 8700 with effect from,,
01.09.2008, which was the date on which the respondent claimed that the MACP scheme was implemented. Being aggrieved by the delay of grant of",,,
second financial upgradation from 01.09.2008, and on the basis that he was entitled to the said upgradation with effect from 01.01.2006, he",,,
approached the tribunal after his representation was rejected. As aforesaid, the tribunal has rejected his claim.",,,

4. The submission of learned counsel for the petitioner, firstly, is that vide resolution dated 29.08.2008 issued by the Ministry of Finance, the 6th",,,
Central Pay Commission (CPC) recommendations were implemented. On the aspect of fixation of pay in the revised pay bands, it was provided that",,,
the basic pay drawn as on 01.01.2006 on the existing 5th CPC pay scales will be multiplied by factor of 1.86, and then round off to next multiple of 10.",,,
That would be the pay in the revised running pay band. The grade pay as approved by the government, corresponding to the pre revised pay scale was",,,
then to be added to the pay in the revised pay band, and the total of pay in the pay band and grade pay was to be the revised basic pay as on",,,
01.01.2006. This mechanism for arriving at the basic pay under the 6th CPC was provided in clause (iv) of the opening paragraph of the aforesaid,,
government resolution dated 29.08.2008. This resolution also provided in para 2 and 3 as follows:,,

â??2. The Commissionâ??s recommendations and government decision thereon with regard to revised scales of pay and dearness allowance for,,
civilian employees of the Central Government and personnel of All India Services as detailed in the Part A of the Annex I will be made effective from,,
1st day of January, 2006.",,,

3. The revised allowances, other than dearness allowance, will be effective from 1st day of September, 2008â??.",,,

5. The submission of learned counsel for the petitioner is that the revised scales

of pay and dearness allowance in respect of civilian employees of the,,
Central Government and personnel of All India Services detailed in Part A of Annexure 1 was made effective from 01.01.2006. However, a",,,
distinction was drawn insofar as payment of revision of other allowances (other dearness allowance) are concerned, and the effective date was",,,
consciously prescribed as 01.09.2008. Attention is also drawn to Part A of Annexure 1 and to the ACP scheme incorporated in the 6th CPC. The,,
aforesaid government resolution incorporated the modified ACP scheme, which provided that the financial upgradation under the scheme will be",,,
available whenever a person has spent 10 years continuously in the same grade. Further, three upgradation after 10, 20 and 30 years of service will be",,,
allowed.,,,

6. Learned counsel for the petitioner submits that para materia with the revision of pay scales introduced for the civilian employees of the Central,,

Government, the Central Government also notified the revision of pay scales in respect of the personnel of the Armed Forces. In Union of India &",,,

Ors. v. Balbir Singh Turn & Anr., in C.A. Diary No.3744/2016, decided on 08.12.2017 along with several other similar cases, the issue that arose",,,

before the Supreme Court as to whether the MACP scheme in respect of the defence personnel would be effective from 01.01.2006, or 01.09.2008",,,

â?" as contended by the Government.,,,

7. The Supreme Court extensively considered the provisions of the 6th CPC report and concluded that the financial upgradation under the MACP,,

scheme would apply from 01.01.2006, and not from 01.09.2008. The relevant extract from this decision reads as follows:",,,

â??6. The question that arises for decision is whether the benefit of MACP is applicable from 01.01.2006 or from 01.09.2008.,,,

7. The answer to this question will lie in the interpretation given to the Government Resolution, relevant portion of which has been quoted hereinabove.",,,

A bare perusal of Clause(i) of the Resolution clearly indicates that the Central Government decided to implement the revised pay structure of pay,,

bands and grade pay, as well as pension with effect from 01.01.2006. The second part of the Clause lays down that all allowances except the",,,

Dearness Allowance/relief will be effective from 01.09.2008. The AFT held, and in

our opinion rightly so, that the benefit of MACP is part of the pay",,,
structure and will affect the grade pay of the employees and, therefore, it cannot
be said that it is a part of allowances. The benefit of MACP if given",,,
to the respondents would affect their pension also.,,,
8. We may also point out that along with this Resolution there is Annexure-I.
Part-A of Annexure-I deals with the pay structure, grade pay, pay bands",,,
etc., and Item 10 reads as follows :-",,,
10 Assured Career Progression Scheme for Three ACP,,
PBORs. upgradation,,
The Commission recommends that the after 8, 16 and",,,
time bound promotion scheme in case of 24 years of,,
PBORs shall allow two financial service has been,,
upgradations on completion of 10 and approved. The,,
20 years of service as at present. The upgradation will,,
,"financial upgradations under the
scheme shall allow benefit of pay
fixation equal to one increment along
with the higher grade pay. As regards
the other suggestions relating to
residency period for promotion of
PBORs Ministry of Defence may set up
an Inter-Services Committee to consider
the matter after the revised scheme of
running bands is implemented (Para
2.3.34)",,"take place only
in the hierarchy
of Grade pays,
which need not
necessarily be
the hierarchy in

that particular

cadre.

10. In Balbir Singh Turn (supra), the Supreme Court has held that MACP is a part of the pay structure and would affect the grade pay of the",,

employees and it could not be stated that it is a part of the allowances. The benefit of MACP if given to the employee, would affect his pension also.",,

The Supreme Court has also held that the stand taken by the government that the MACP scheme was made applicable from 01.09.2008 through a,,

conscious decision was ultra vires the resolution of the government, founded upon a cabinet decision.",,

11. The ratio of the decision in Balbir Singh Turn (supra) is squarely attracted even in the present case, since the 6th CPC implemented in respect of",,

the civilian employees of the Central Government is para materia with the scheme implemented in respect of the defence personnel.,,

12. Accordingly, we allow the present petition to the aforesaid extent. The respondent is directed to grant the second financial upgradation to the",,

petitioner under the MACP scheme with effect from 01.01.2006, provided he was entitled to the said benefit from the said date in all other respects.",,

The respondent shall take steps and pass appropriate orders within the next four weeks. The petitioner shall be entitled to costs of Rs.5,000/-.",,

13. The petition stands disposed of in the aforesaid terms.,,