

(2020) 04 MP CK 0001

In the Madhya Pradesh High Court

Case No : Misc. Petition No. 6500 Of 2019

Union Of India And Others

APPELLANT

Vs

Santosh Kumar Chouksey

RESPONDENT

Date of Decision : 30-04-2020

Acts Referred:

Constitution Of India, 1950 — Article 227

Citation : (2020) 04 MP CK 0001

Hon'ble Judges : Atul Sreedharan, J, Sanjay Yadav, J

Bench : Division Bench

Advocate : Himanshu Shrivastava,

Final Decision : Dismissed

Judgement

Sanjay Yadav, J

1. These miscellaneous petitions under Article 227 of the Constitution of India, are directed against common order dated 20.09.2018 passed by Central Administrative Tribunal, Jabalpur Bench, Jabalpur in Original Application Nos.200/00849/2016, 200/00872/2016, 200/00961/2016, 200/01007/2016 and 200/00111/2017.

2. The issue which crops up for consideration is as to "whether the non-functional upgradation can be treated as promotion or financial upgradation for the purpose of Modified Assured Career Progression Scheme (MACPS)".

3. We will go to the facts later, first the MACPS:

The Government of India, Ministry of Personal, Public Grievances and Pensions (Department of Personnel and Training) vide Circular No.35034/3/2008-Estt. (D) dated 19.05.2009 adopted Sixth Central Pay Commission recommendations contained in Para 6.1.15 of its report, the MACPS. As per the recommendations, financial upgradation was made available in the next higher grade pay whenever an employee had completed 12 years continuous service in the same grade. With

the capping that not more than two financial upgradations shall be given in the entire career as was provided in the previous scheme viz. Assured Career Progression Scheme (introduced on 09.08.1999).

4. Vide Notification dated 19.05.2009, the Govt. of India accepted the recommendation with further modification to grant three financial upgradations under the MACPS at intervals of 10, 20 and 30 years. The MACPS was made applicable w.e.f. 01.09.2008 and applied to all regularly appointed Group 'A', 'B' and 'C' Central Government Civilian Employees except officers of the Organized Group 'A' service.

5. The MACP envisaged placement in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay as given in Section I, Part A of the First Schedule of the Central Civil Services (Revised Pay) Rules, 2008. The financial upgradations under the MACPS is admissible upto the highest grade pay of Rs.12000 in PB-4.

6. Para 8, more particularly 8.1 of MACPS, which is crucial in present controversy provides for :

8. Promotion earned in the post carrying the same Grade Pay in the promotional hierarchy as per Recruitment Rules, shall be counted for the purpose of MACPS.

8.1 Consequent upon the implementation of Sixth CPC's recommendations, Grade pay of Rs.5400 is now in two pay bands viz. PB-2 and PB-3. The 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 grant of upgradations under MACP Scheme.

7. The MACPS also stipulated that the benefit of pay fixation available at the time of regular promotion shall also be allowed at the time of financial upgradation under the Scheme. Therefore, the pay shall be revised by 3% of the total pay in the pay band and the grade pay drawn before such upgradation.

8. That, after the implementation of MACPS, the Office of Principal Chief Controller of Accounts requested the DOPT to clarify as to whether the grant of Grade Pay of Rs.5400 in PB-2 along with the benefit of one increment @ 3% may be treated as ACP or not. Responding to said query, the DOPT clarified vide D.No.25/624001/US(D)/2010 dated 21.07.2010 that "the benefit of non-functional grade granted to the Superintendent (Group-B) officers after completion of 4 years would be treated/viewed as upgradation in terms of Para 8.1 of Annexure-I of OM dated 19.05.2009 and the same would be off set against one financial upgradation under MACPS".

9. Following the sue, Ministry of Finance issued Circular No.F.No.23011/29/2010-Ad. IIA dated 04.06.2014 in the following terms :

F. No. 23011/29/2010-Ad.IIA

Government of India

Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

.....

New Delhi, dated the 4th June, 2014.

To,

All Cadre Controlling Authorities under the CBEC.

Subject : Grant of MACP to the Superintendent in CBEC with Grade Pay of Rs.6600/ 5400 in PB-3 - reg.

Sir,

It has been observed by the Office of the Principal Chief Controller of Accounts (Pr.CCA), New Delhi that in some of the Commissionerates, grade pay of Rs.6600/- is being allowed under MACPS to the Superintendents without taking into account NFSG granted after 4 years of service. As per clarification issued by DOP&T vide their Diary No. 62460/US(D)/2010 dated 26.07.2010 (copy enclosed), the benefit of Non-Functional Grade granted to the Superintendent (Gr.B) officers after completion of 4 years would be treated/viewed as upgradation in terms of para 8.1 of Annexure-1 of O.M. dated 19.05.2009 and the same would be off set against one financial upgradation under MACPS.

2. The issue has also been clarified by the Board vide its letter F.No.A-23011/29(ii)/2010-AdJIA dated 6th May, 2013 addressed to the Chief Commissioner, Central

Excise, Jaipur (copy enclosed). It is clear from the letter that NFSG granted during 1.1.2006 to 31.8.2008 would be counted/offset against the financial upgradation under MACPS.

3. You are requested to kindly ensure that no orders giving MACP benefit in contravention to the directions of the Board is issued by your office.

4. This issues with the approval of Member (P&V).

Yours faithfully

Encl: As above (S.A. Ansari)

Under Secretary to the Government of India

10. Thus, Non-functional selection grade granted during 01.01.2006 to 31.08.2008 was counted/off-set against the financial upgradation under MACPS.

11. These clarifications and circulars are the centre of controversy.

12. The respondents (referred as "applicants") were initially appointed as

Inspectors in the year 1982. They were promoted as Superintendent in Pay Scale of Rs.7500-12000. They were granted 2nd upgradation under ACP Scheme 1999 on completion of 24 years service as regular Superintendents; accordingly, were fixed the pay scale of Rs.8000-12500.

13. That, in furtherance to the stipulations contained in Para 7 of Letter F.No.A-23011/29/2010-Ad.IIA dated 20.05.2011 (Annexure P/7), the officials who were granted pre-revised scale of pay of Rs.8000-12500 as financial upgradation in the promotional hierarchy under the ACP Scheme of 1999 on or before 31.08.2008, were 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. The applicants who were granted 2nd ACP in 2006 i.e. upto the date of operation of ACP Scheme i.e. 31.08.2008 and were in the pay scale of Rs.8000-12500 were, accordingly, placed in the replacement scale in Pay Band 3 i.e. 15600-39100 with Grade Pay of Rs.5400.

14. That, with the introduction of MACPS w.e.f. 01.09.2008 in pursuance to Office Memo No.35034/3/2008-Estt.(D) dated 19.05.2009, the applicants who had secured one promotion during their service career prior to 01.09.2008 were given 3rd advancement/upgradation by MACPS in the Pay Scale of Rs.15600-39100 (PB 3) with Grade Pay of Rs.6600/-.

15. That, the applicants were promoted (i.e. 2nd regular promotion) as Assistant Commissioner, Central Excise vide order dated 22.10.2014 with no financial benefits. Thus, as per the applicants, they got Grade Pay of Rs.5400 as a non-functional upgradation in Pay Band 2 and got pay scale of Pay Band 3 with Grade Pay of Rs.5400 as replacement scale against the Pay Scale of Rs.8000-12500 in which the applicants were already placed prior to Sixth Central Pay Commission regime. Thus, on both the occasions, the applicants were not given any financial upgradation.

16. Pertinent it is to note that the letter dated 20.05.2011 on the basis whereof the applicants were extended of MACPS turned on the decision by the Madras Bench of Central Administrative Tribunal in its order of 09.03.2011 in batch of Original Application wherein it was held that they 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 granted to them as financial upgradation under the ACP Scheme i.e. the Scale of Pay of the post in the promotional hierarchy. Accordingly, the decision was taken 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 and/or 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"

17. These benefits were later decided to be withdrawn vide decision

communicated vide Letter No.F.No.A-23011/25/2015- Ad.IIA dated 20.06.2016 issued by the Central Board of Excise and Customs, which is reproduced for ready reference :

F.No.A-23011/25/2015-Ad.IIA

Government of India

Ministry of Finance

Department of Revenue

Central Board of Excise and Customs

North Block

New Delhi, the 20th June 2016

Subject: Clarification of MACP - Grant of 3rd MACP to the Superintendents in CBEC who were granted non- functional grade pay of Rs.5400/- in Pay Band-2 - Reg. Sir/Madam,

I am directed to say that the Board is in receipt of various references/ representations from field officers/officers seeking clarifications on the issue of grant of 3rd financial upgradation under MACP Scheme to Superintendents who were granted non functional grade pay of Rs.5400/- in Pay Band 2.

2. The matter regarding counting of non functional Grade pay of Rs.5400/- in Pay Band-2 to the Superintendents as one financial upgradation for the purpose of MACP Scheme has been re-examined in consultation with Department of Personnel & Training (DoP&T). DoP&T has now advised in consultation with Department of Expenditure that the grant of non functional grade pay of Rs.5400/- in PB-2 to the Superintendents needs to be counted as one financial upgradation for the purpose of MACP Scheme. DoP&T has drawn attention to the specific provision in Para 8.1 of Annexure-1 of O.M. No.35034/3/2008-Estt.(D) dated 19th May, 2009 read with FAQ No.16 (copy enclosed) which indicate that the Non functional scale in grade pay of Rs.5400/- in PB-2 is to be treated as a financial upgradation under MACP Scheme. DoP&T has also advised that court cases including the case of R. Chandrasekaran may be agitated/defended as per MACP Scheme vide DoP&T O.M. dated 19/05/2009.

3. The Board's letter of even number dated 26.05.2015 addressed to Chief Commissioner of Central Excise, Chennai Zone in the case of Shri R. Chandrasekaran has been treated as withdrawn.

4. All Cadre Controlling Authorities are requested to take appropriate action to settle MACP cases accordingly. Also, appropriate action may be taken to defend the cases emerging out of the case of Shri R. Chandrasekaran, on behalf of Union of India.

5. This issues with the approval of Chairman, CBEC.

Yours faithfully

(A.K. Qasim)

Deputy Secretary to the Government of India

18. The order dated 20.06.2016 and consequential action thereof came to be questioned by the applicants before the Tribunal on the ground that they were rightly granted the 3rd upgradation under MACPS in the pay scale of Rs.15600-39100 + GP of Rs.6600/- as

the grant of non-functional grade to the applicants does not involve any kind of higher assignment and charge and were not granted higher pay scale as would tantamount to promotion. It was urged that the grade pay of Superintendent and non-functional grade is same; therefore, cannot be treated as promotion.

19. The present petitioner i.e. Union of India and its functionaries filed reply. Denying the contention that non-functional upgradation cannot be treated as an advancement in the pay, it was urged that Para 8.1 of the Circular dated 19.05.2009 being self explanatory were wrongly interpreted by the applicants.

20. The Tribunal relying on the decision by the High Court of Madras in Writ Petition Nos.33946/2014, 24602/2014 and 27798/2014 decided on 14.02.2017 and of High Court of Delhi in WP(C) No.9357/2016 dated 20.12.2017 and the decision by the Tribunal Mumbai Bench in Original Application No.633/2015 decided on 21.06.2017, upheld the claim. The Tribunal held :

15. It is the case of the applicants that they are similarly situated to that of R. Chandrasekaran and are also entitled for the similar benefit, as has been extended to him. The applicants, in Para 4.9 of the O.A have stated that after the order passed by the Hon'ble Madras High Court in the case of R. Chandrasekaran, the respondents issued an order dated 26.05.2015, whereby, it was directed to implement the order passed by the Hon'ble Madras High Court. Though the respondents have stated that vide the impugned order dated 20.06.2016 (Annexure A-1), they have withdrawn their earlier order dated 26.05.2015 in the case of R. Chandrasekaran and a decision has been taken to defend the cases, emerging out of the case of R. Chandrasekaran, however, there is no denial regarding the applicants being similarly situated to that of R. Chandrasekaran. Since, the judgment passed by the Hon'ble High Court of Madras in the case of R. Chandrasekaran (supra) is judgment in rem, as has been held by the coordinate Bench at Mumbai in the case of Prakash Vasant Ratnaparkhi (supra) and there is no such denial that the applicants are not dissimilar to that of R. Chandrasekaran, therefore, we hold that the applicants are also entitled for the similar benefit, as has been extended to R. Chandrasekaran.

21. Review Applications (Review Application Nos.200/00007/2019,

200/00009/2019, 200/00012/2019, 200/00014/2019 and 200/00017/2019) preferred by the Union of India and its functionaries were dismissed on 03.05.2019.

22. Aggrieved, the present petitions are filed. Various grounds are raised. Reference is made to the decision by the High Court of Delhi in WP(C) No.8515/2014 decided on 09.11.2016. And, the decisions by the Tribunals at Ernakulam and Ahmedabad, to substantiate the contention that the grant of non-functional grade is a financial upgradation under MACPS. And, that the financial upgradation under the schemes of ACP and MACP are policy decisions of the Government of India and they are to be implemented strictly in terms of the schemes. It is urged that any interpretation inconsistent with the scheme cannot be acceded to Para 8.1 of MACPS which in unambiguous terms states that Grade Pay of Rs.5400 in PB 2 and the Grade Pay of Rs.5400 in PB 3 are to be treated as separate grade pays for the purpose of grant of financial upgradation under the MACPS. It is contended that in the 6th CPC revised pay structure after completion of four years of service in the PB 2 with grade pay of Rs.4800/- a higher grade pay of Rs.5400/- is granted in PB 2 which being treated as separate grade pay under Para 8.1 of MACPS, the action taken by the Government cannot be faulted. On these contentions, the petitioner seeks indulgence.

23. It is borne out from record that against the order dated 13.11.2018 in WPC No.4760/2018 passed by High Court of Delhi; order dated 14.02.2017 in WP Nos.27798/2014, 34602/2014 and 33946/2014 passed by High Court of Madras and order dated 24.06.2013 in OP No.2000/2013 passed by High Court of Kerala at Ernakulam, Union of India and its functionaries preferred special leave petitions forming subject matter of SLP(C) Nos.15572/2019, 41910/2017 and 8271/2014 respectively. Whereas, in SLP(C) No.8271/2014 (Union of India vs M.V. Mohanan Nair), operation of the impugned orders shall remain stayed vide order dated 08.08.2014. However, in SLP(C) No.41910/2017 (Union of India vs S. Ranjit Samuel) and SLP(C) No.15572/2019 (Union of India vs R.K. Sharma), only contempt proceedings are stayed. Be that as it may. We propose to examine the issue on its own merit rather than the reasons which prevented with the Tribunal.

24. Considered the submissions. Perused the record.

The issue is :

Whether non-functional grade pay of Rs.5400 in Pay Band 2 granted to the Superintendents on completion of four years service can be counted as one financial upgradation for the purpose of MACPS ?

25. Any scheme or the policy, in relation to service, providing progression has an element of upgradation, which barring few exceptions, is distinct from promotion. While promotion involves advancement in rank, grade or both and is always a step towards advancement to higher position, grade or honour, upgradation does not involve promotion to a higher position and the pedestal of the employee

remains the same and the employee is merely conferred some financial benefits by granting a higher pay scale, to overcome stagnation. (Please see : Bharat Sanchar Nigam Limited vs R. Santhakumari Velusamy (2011) 9 SCC 510 : Paragraph 13(i)).

26. The MACPS is one such scheme brought in vogue in furtherance to recommendations of Sixth Central Pay Commission (referred as Commission) as per Para 6.1.15 of its report. Though the Commission recommended the availability of financial upgradation in the next higher grade pay whenever an employee completes 12 years continuous service in the same grade. And that, not more than two financial upgradation shall be given in the entire career. The Central Government accepted the recommendations with further modification whereby instead of two, it granted three financial upgradation under MACPS at intervals of 10, 20 and 30 years of continuous regular service.

27. That, prior to introduction of MACPS, the benefits of first and second financial upgradation under the ACP Scheme of August, 1999 which was granted in promotional hierarchy w.e.f. 09.08.1999 whereby, the eligible officers were allowed the benefits of ACPS w.e.f. 09.08.1999 or on completion of 12 and 24 years of regular service. The benefits under said scheme was allowed till 31.08.2008. As noted supra, the MACP as per 6th CPC recommendation with three financial upgradations was made effective from 01.09.2008 or on completion of 10, 20 and 30 years of continuous regular service.

28. The upgradation under MACPS 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 (Revised Pay) Rules, 2008. Thus, only when an officer gets promotion in the normal course during the relevant period is taken into account while determining his eligibility for grant of MACPS at stage one, two and three. The ACPS does not complete the effect of grant of non-functional grade in PB 2 with grade pay of Rs.5400 during the period between 01.01.2006 to 31.08.2008.

29. In the case at hand, reverting to the facts, the applicants were appointed as Inspectors in 1982. They were promoted as Superintendents and were given the pay scale of Rs.7500-12000 and got their second ACP in the year 2006 on completion of 24 years of service as per ACP 1999 regime between 01.01.2006 to 31.08.2008 and were fixed in the pay scale of Rs.8000-12500. The Sixth Central Pay Commission made effective from 01.01.2006 placed them in the pay scale of Rs.9300-34800 with grade pay of Rs.4800/- as on 01.01.2006. Being a non-functional fixation of pay in PB 2, they were given one increment of 3% with Grade Pay of Rs.5400/- on completion of 4 years of service as regular Superintendents.

30. As the applicants were getting the pre-revised scale of pay of Rs.8000-12500 as financial upgradation in the promotion hierarchy under ACP 1999 between 01.01.2006 to 31.08.2008 in the 6th CPC regime, they were accordingly placed in the replacement scale in PB 3 i.e. Rs.15600-39100 with grade pay of

Rs.5400/-.

31. The question is, can a replacement scale in PB 3 i.e. Rs.15600-39100 in the Sixth CPC which is in lieu of the earlier scale of Rs.8000-12500 be termed as financial upgradation for MACPS ? In our considered opinion, in view of above analysis, the answer has to be in negative. Merely because of the implementation of Sixth CPC's recommendation Grade Pay of Rs.5400/- is in two pay bands viz. PB 2 and PB 3, the Grade Pay of Rs.5400 in PB 2 and Rs.5400 in PB 3 is erroneously treated as separate grade pays for the purpose of grant of upgradations under MACPS. Evidently, the applicants got one promotion and 2nd ACP under ACP 1999 regime prior to implementation of MACPS w.e.f. 01.09.2008, are thus held entitled for third MACPS on completion of 30 years of service.

32. As we do not perceive any error in the decision by the Tribunal, though for the reasons different; we decline the interference.

33. In the result, the petitions are dismissed. No costs.