

(2014) 12 MEG CK 0014
In the Meghalaya High Court
Case No : WP (C). No. 237 of 2014

Union of India

APPELLANT

Vs

Rajini Kanta Deka

RESPONDENT

Date of Decision : 04-12-2014

Acts Referred:

Citation : (2014) 12 MEG CK 0014

Hon'ble Judges : Uma Nath Singh, Acting C.J.; T. Nandakumar Singh, J

Bench : Division Bench

Judgement

Uma Nath Singh, Actg. C.J.

1. Mr. R. Deb Nath, learned Advocate, appears for petitioner-Union of India.
2. This writ petition has been filed against judgment and final order dated 03-04-2014 passed by Central Administrative Tribunal, Guwahati Bench in Original Application No. 75 of 2013, whereby a prayer for grant of Grade Pay of Rs. 2800/- on 2nd financial upgradation in terms of Modified Assured Career Progression Scheme was allowed with direction to comply within a period of three months.
3. Learned counsel for Union of India, Mr. R. Deb Nath, submitted that the department which has filed this writ petition was not a party to the writ petition filed before Central Administrative Tribunal, Principal Bench, Delhi and Chandigarh, though the matter was challenged also before the Punjab and Haryana High Court and the Apex Court, which have dismissed the writ petition and Special Leave Petition of the Govt. of India.
4. Learned counsel also submitted that he had filed this writ petition only on the basis of instruction received from the Police Coordination Section, Ministry of Home Affairs, Govt. of India, dated 24-6-2014. The said letter on reproduction would read as:

"File No. 23012/26/2014-PC Govt. of India Ministry of Home Affairs (Police

Coordination Section)

New Delhi-110001 Dated, the 24th June, 2014.

Subject: OA No. 75 of 2013 filed by Shri RK

Deka and 32 other Constable in Ld. CAT Guwahati Bench-approval of SFC on the proposal-Reg.

The undersigned is directed to refer Director NEPA's letter dated 02.06.2014 and Hon''ble CAT Guwahati Bench's judgment dated 03.04.2014 and to say that the matter has been examined in the DoP & T and it is observed that under the provisions of the ACP Scheme of 1999, financial up-gradations were granted in the then existing promotional hierarchy which gave rise to uneven benefit to employees falling in the same pay scale since several organizations adopted different hierarchical pattern.

2. The 6th CPC recommended a systemic change in the ACPs whereby all employees, irrespective of the hierarchical structure as prevalent in their organization/cadre, would get the same benefit under it. Accordingly, the ACP scheme was replaced by Modified ACP (MACP) scheme which provided three up-gradations after 10, 20 and 30 years, respectively, in the successive grade pay in the hierarchy of recommended revised pay band and grade pay as prescribed in the CCS (RP) Rules, 2008 and not in the promotional hierarchy as was available under the ACP scheme. The MACPS is in supersession of previous ACP Scheme. Wherever the ACP scheme is applicable in any cadre of the Government, the benefits of MACP Scheme would automatically be extended to such cadre.

3. The request for grant of financial upgradation under MACPS in the promotional hierarchy entails the advantages provisions of both the ACP Scheme as well as MACP Scheme and hence would be contrary to the provision of the MACPS and the recommendations of the 6th CPC as modified and accepted by the government.

4. In view of the above, DoP & T has advised to agitate the matter by filing WP in the matter suitably incorporating the facts mentioned in the DoP & T's ID No. 998398/2014/CR, dated 23.06.2014 (copy enclosed) in consultation with department of Legal Affairs. Therefore, NEPA is requested to take necessary action accordingly.

(G.C. Yadav) Deputy Secretary to the Govt. of India".

5. However, learned counsel for Union of India, also submits that the Modified Assured Career Progression Scheme is of 2009 and the Special Leave Petition was dismissed by Hon''ble the Supreme Court on 2013. The Tribunal has relied upon the earlier judgments and has granted relief also in view of the fact that the writ petition of Union of India was dismissed by Punjab and Haryana High Court and the Special Leave Petition was rejected by Hon''ble the Supreme Court. Para 9, 10 and 11 of the judgment of the Tribunal on reproduction would read as:

"9. We find that the issue has been dealt with by the Chandigarh and Principal Benches of the Tribunal as well as by the Hon'ble High Court of Punjab and Haryana and the Apex Court. The Chandigarh Bench of the Tribunal in OA No. 1038/CH/2010 (Rajpal vs. Union of India and Others) has passed the following observation and orders:-

"13. It has also been settled that the ACP would be granted on completion of the required years of service in the hierarchy of posts for the post of LDC/Hindi Typist, and not in the next higher scale in the recommended scales. The same principle would have to be applicable in regard to grant of MACP to the applicant. The only difference is that while in case of ACP two financial upgradations were granted on completion of 12 and 24 years of service, in case of MACP, three upgradations on intervals of 10, 20 and 30 years of service.

14.....

15. Be that as it may, the principle enunciated and settled by the Tribunal/High Court for grant of ACP cannot be changed and the same principle would apply for grant of MACP to him. The only difference is of number of years required to be completed. We find no justification to take a different view in the matter.

16. For the foregoing reasons the impugned order dated 9.8.2010 (Annexure A-1) qua the applicant. Fixing his pay in PB-1 with grade pay of FR 2400/- under the second MACP, and the order dated 10.8.2010 (Annexure A-2) are hereby quashed and set aside. Consequently, the respondents are directed to grant second financial upgradation to the applicant under the MACPS from due date fixing his pay in the hierarchy of posts decided in his case earlier and to pay the resultant arrears without interest, within a period of 2 months from the date of receipt of a copy of this order."

The respondents therein have challenged the aforesaid order before the Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP No. 19387/2011. The Hon'ble High Court vide judgment and order dated 19.10.2011 while dismissing the said CWP has observed as under:-

".....the contention raised by the learned counsel for the petitioners to the effect that the earlier scheme of ACP stood superseded by MACP scheme is being noticed only to be rejected. The entire objective of introduction of ACP/MACP scheme is to alleviate stagnation as regards an employee who has a number of regular years of service on the same post without any avenue of promotion. It is under such circumstances that a financial incentive is sought to be granted to an employee upon completion of a certain number of years of service on the same post. Under the ACP scheme of 1999, the financial upgradations were to be granted upon completion of 12 years and 24 years of regular service whereas under the MACP scheme such financial upgradation are envisaged upon completion of 10/20 or 30 years of service. The contention raised on behalf of the petitioners if accepted would defeat the very objective for which such Schemes have been introduced".

The SLP preferred before the Apex Court was dismissed on 15.04.2013. The Principal Bench in a similar matter being OA No. 904/2012 vide its order dated 26.11.2012 held as under:-

"8. In fact, respondents have wrongly interpreted the terms and conditions mentioned in the MACP Scheme, issued by the Deptt. of Personnel & Training, in the case of the applicants. By the said Scheme, the eligible government servants are to be placed in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay and not merely in the next higher scale of pay as per the recommendations of the 6th Pay Commission. In the hierarchy after the scale of UDC, the next scale is that of Assistant. Therefore, the respondents should have given the next higher grade pay and pay band attached to the next promotional post in the hierarchy, namely, the Assistants carrying the pay scale of Rs. 9300-34800 and grade pay of Rs. 4200/-".

Accordingly, the respondents were directed to grant scale of pay of Rs. 9300-34,800/- with Grade Pay of Rs. 4200/- attached to the said promotional post of Assistant/OS from the due date to the applicants. In a considered view, the present OA is squarely covered by the decision, relied upon. In this case, in the hierarchy after the scale of Head Constable, the next pay scale is of Sub-Inspector. Therefore, the respondents ought to have granted the next higher Grade Pay and Pay Band attached to the next promotional post in the hierarchy, namely, the Sub-Inspector carrying the pay scale of Rs. 5200-20200 with Grade Pay of Rs. 4200/-.

10. Accordingly, respondents are directed to grant Grade Pay of Rs. 2800/- instead of Rs. 2000/- to the applicants from their respective date on which they have been granted 2nd financial upgradation. The said direction shall be complied with within a period of three months from the date of the receipt of this order.

11. OA is allowed, as indicated above. There will be no order as to cost".

6. As the matter has attained finality and the Govt. of India had enough opportunity to raise this point before the Punjab and Haryana High Court as well as Hon"ble the Supreme Court, it would not be appropriate for us to re-open the matter at this stage by taking a different view.

7. Hence, the writ petition is dismissed.