

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.19387 of 2011 (O&M)
Date of Decision : 19.10.2011

Union of India & others

... Petitioners

versus

Raj Pal & another

... Respondents

**CORAM: HON'BLE MR. JUSTICE PERMOD KOHLI
HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA**

Present : Mr. D.K.Bhishnoi, Advocate
for the petitioners.

Tejinder Singh Dhindsa, J.

The Central Administrative Tribunal (hereinafter be referred as 'CAT') Chandigarh Bench, Chandigarh while disposing of OA No.1038/CH of 2010 vide order dated 31.05.2011 has held respondent No.1 to be entitled for a financial upgradation in pay band-II in the scale of ₹ 9,300- ₹34,800/- with grade pay of ₹ 4,600/- under the Modified Assured Career Progression Scheme (hereinafter be referred as 'MACP Scheme'). The petitioners have filed the present writ petition assailing the aforementioned order dated 31.05.2011 passed by CAT.

Facts in brief may be noticed. Respondent No.1 who was earlier working in the Election Department, State of Haryana came on deputation to the Central Administrative Tribunal, Chandigarh Bench, Chandigarh on the post of Photocopier and joined on 21.04.1986. He was absorbed on the post of Photocopier w.e.f. 12.10.1986 in the pay scale of ₹ 3050-4590/-. The post of Photocopier is an isolated post.

IN THE HIGH COURT FOR THE STATES PUNJAB AND HARYANA AT CHANDIGARH

For Private Use
Examiner,
High Court
Auth.
CWP.NO. 1672 of 2011
Section 11

1. Union of India through Secretary to Govt. of India, Ministry of Personnel, Public Grievances & Pensions, DOP&T, North Block, New Delhi.
2. The Principal Registrar, Central Administrative Tribunal, Principal Bench, 61/35, Copernicus Marg, New Delhi-110001.
3. Registrar, Central Administrative Tribunal, Chandigarh Bench, Chandigarh.
4. Deputy Registrar, central Administrative Tribunal, Chandigarh Bench, Chandigarh.

... Petitioners

VERSUS

1. Shri Raj Pal son of Shri Tilak Ram presently working as Photocopier in the Central Administrative Tribunal, Chandigarh Bench Opposite Hotel Shivalikview, Sector 17, Chandigarh. Respondent
2. The Central Administrative Tribunal, Chandigarh Bench, Chandigarh through its Registrar

... Performa Respondent

CIVIL WRIT PETITION UNDER ARTICLES 226/227 of the constitution of India for Issuance of a Writ, in the nature of certiorari for quashing the impugned order dated 31.05.2011 (Annexure-P-4) passed by Central Administrative Tribunal, Chandigarh, And the operation of the order dated 31.05.2011 passed by Ld. CAT may kindly be stayed during the pendency of the writ petition in the interest of Justice.

Earlier in terms of issuance of office memorandum dated 09.08.1999 the Government of India (Ministry of Personnel, Public Grievances & Pensions, Department of Personnel and Training) New Delhi had introduced the Assured Career Progression Scheme (hereinafter be referred as 'ACP Scheme') whereby Central Government Civilian employees were to be granted two financial upgradations on the completion of 12 years and 24 years of regular service respectively on the same post. Thereafter, vide office memorandum dated 19.05.2009 the MACP Scheme was notified in supersession of the earlier ACP Scheme of 1999. In terms of MACP Scheme the Central Government Civilian employees were to be granted three financial upgradations i.e. on completion of 10 years, 20 years and 30 years of regular service on the same post. Suffice it to say that such financial upgradations were in the nature of financial incentive to an employee serving on a post wherein no promotion avenues were available.

Upon Introduction of the ACP Scheme in the year 1999, respondent No.1 was granted the next higher scale in the general hierarchy of scales i.e. ₹ 3,200 - ₹ 4590/- vide order dated 12.10.1999 on completion of 12 years of regular service. At that point of time, respondent No.1 claimed parity with other posts like Hindi Typist which was also an isolated post as also sought parity with the post of LDC which were also in equivalent pay scale of ₹ 3050 - ₹ 4590/- and had been placed in the scale of ₹ 4,000 - ₹ 6000/- on the grant of 1st financial step up upon completion of 12 years of regular service and had been placed in the scale of ₹ 5,500 - ₹ 9000/- towards 2nd Financial step up on completion of 24 years of regular service. Respondent No.1

was at that point of time constrained to file OA No.278/CH of 2004 claiming the aforesaid parity and the same was allowed by CAT on 30.08.2004 whereby respondent No.1 was held entitled to the benefit of higher pay scale under the ACP Scheme of 1999 as applicable for the similar post i.e. Hindi Typist and LDC. The order dated 30.08.2004 passed by CAT in favour of respondent No.1 was impugned by the present petitioners in terms of filing of CWP No.7356/CAT of 2005. This Court dismissed the petition on 23.05.2007 holding respondent No.1 to be entitled to the benefit of ACP Scheme at par with the post of Hindi Typist/LDC.

Upon implementation of the 6th Central Pay Commission, the scale of ₹ 3050 - ₹ 4590/- was kept in pay band - I, ₹5,200 - ₹ 20,200/- with grade pay of ₹1,900/-, the scale of ₹4,000 - ₹6,000/- was also kept in pay band -I with grade pay of ₹2,400/- and the scale of ₹5,500 - ₹9,000/- was kept in pay band -II in pay scale of ₹9,300 - ₹34,800/- with grade pay of ₹4,200/- increased to ₹4,600/-. In terms of MACP Scheme, respondent No.1 was granted the lower scale by keeping in pay band - I of ₹5,200 - ₹20,200/- with grade pay of ₹2,400/-. This was done in terms of order dated 09.08.2010. Accordingly, respondent No.1 approached the CAT contending that he is entitled to be granted the scale of ₹5,500 - ₹9,000/- towards the 2nd Financial upgradation at par with the post of Hindi Typist and LDC. Such claim of respondent No.1 has been upheld by the CAT in the impugned order dated 31.05.2011.

Learned counsel for the petitioners has been heard at length. Learned counsel has relied upon the Summary Record of discussion held during the 3rd Meeting of the Joint Committee of MACP

Scheme held on 15.03.2011 under the Chairpersonship of the Joint Secretary (Estt.) DOPT. Para 3 of the Summary Record of the discussion was referred to in particular and the same is reproduced hereunder:

"The Staff Side reiterated their demand that the financial up-gradations under the MACP Scheme should be granted in the promotional hierarchy of posts instead of the Grade Pay hierarchy. The Staff Side stated that the erstwhile ACP Scheme was implemented on the recommendations of the 5th CPC and, as such, has become a part of the service conditions of the employees. The Staff Side, therefore, contended that the Government cannot impose the MACP Scheme thereby altering the service conditions to the detriment of the employees.

The Official side stated that the 6th CPC recommended two financial upgradations in the Grade Pay hierarchy. However, the government improved upon the recommendations of the 6th CPC and has implemented MACP Scheme with three financial upgradations in the Grade Pay hierarchy after 10-20 and 30 years. Referring to earlier discussions held in the matter, the Official Side stated that the government was willing to consider revision in para 13 of the MACP Scheme to the effect that organisations/cadres shall have the option either to choose either the ACP Scheme or the MACP Scheme. However, the Staff Side pointed that such a dispensation will not be practical and hence there is a need to explore other alternatives to solve the issue. After discussion, it was agreed that there is no need to change the basic structure of MACP Scheme. However, there is a need to separately examine those cases where MACP Scheme is less advantageous than the ACP Scheme. Accordingly, it was decided that the Official Side will write to the Ministry of Railways, Defence, Urban Development, Home and the Department of Posts to forward information in respect of

the specific categories of employees where the MACP Scheme is less advantageous than the erstwhile ACP Scheme. The Official Side also requested the Staff Side to collect and forward such information to the Department of Personnel and Training for further necessary action."

Relying on para 3 of the Summary Record of the discussion it has been argued that CAT has erred in passing the impugned order inasmuch as the matter with regard to the further improvements in the grant of financial upgradations to the various employees was under active consideration at the hands of the Joint Committee and the matter should not have been adjudicated upon by CAT. It is also contended that the earlier ACP Scheme stood superseded by the MACP Scheme and both the Schemes cannot run concurrently.

We have given our thoughtful consideration to the matter. The contentions raised on behalf of the petitioners are wholly misconceived. Respondent No.1 had approached CAT upon an order having been passed whereby he had been granted a lower financial upgradation as compared to the one he was entitled to. Not only that, even his representation against such order granting him a lower financial upgradation had been rejected. As such it would not be open for the petitioners to contend that the matter was still under consideration at the hands of the Joint Committee. An order adversely affecting an employee in terms of grant of financial upgradations had already been passed which entailed civil consequences and as such CAT had rightfully proceeded to adjudicate upon the matter. That apart 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 the 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 upgradations 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.

Even otherwise, it is an admitted position of fact that the post of Photocopier stands equated with that of Hindi Typist and LDC in so far as the grant of financial upgradations under the ACP Scheme is concerned. We find that there can be no basis in law to deny such parity between the post of Photocopier and that of Hindi Typist/LDC in so far as grant of financial upgradations under the MACP Scheme are concerned.

We find no infirmity in the order dated 31.05.2011 passed by CAT in OA No.1038/CH of 2010. The petition stands dismissed.

sol/-
(Permod Kohli)
Judge

sol/-
(Tejinder Singh Dhindsa)
Judge

October 19, 2011
sonia

Handwritten signature
Certified to be true Copy
Pramod Kumar