

Ramesh Kumar Vs Union Of India Through General Manager, North Central Railway, Headquarters Office, Subedarganj, Allahabad & Ors.

Court: Central Administrative Tribunal - Allahabad Bench, Allahabad

Date of Decision: Jan. 23, 2025

Hon'ble Judges: Om Prakash VII, Member (J); Mohan Pyare, Member (A)

Bench: Division Bench

Advocate: P.K Mishra, Rajesh Kumar, S.C. Mishra

Final Decision: Dismissed

Judgement

Om Prakasah -VII, Member (J)

1. By means of present original application, applicant has sought following relief (s):-

(a) This Hon'ble Tribunal will be pleased to call for the service record as well as records which led to the pay fixation of the applicant;

(b) Issue an order or direction in the nature of mandamus to the respondent No. 3 to grant the second financial upgradation under the

Assured Career Progression Scheme in short ACP to the applicant from the date when it was due.

(c) Issue an order or direction in the nature of mandamus to the respondent No. 3 to re-fix the pay and pension of the applicant accordingly

with all consequential benefits.

(d) Issue an order or direction in the nature of mandamus to the respondent No. 3 to pay the arrear and other terminal benefits to the

applicant with 16% interest.

(e) Issue any further orders or direction, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

(f) award the appropriate cost in favour of the applicant.

2. Brief facts of this case are that the applicant was appointed as Khalasi Helper and was continuously working on the said post. He was retired from

service on 31.05.2019. In the year 1999, the scheme for promoting the employee of the department was introduced, which was adopted by the

department. The scheme was called Assured Career Progression Scheme. After implementation of Assured Career Progression (ACP) Scheme,

applicant was granted first ACP in pay scale of Rs. 2610-3540 w.e.f. 03.06.1991. Further on completion of 24 years of service, 2nd financial

upgradation which was due on 03.06.2003 under the ACP was not granted to the applicant. In this regard, applicant contacted with the concerned

officials and he was informed that his service book is not traceable at present and concerned official has informed him orally that he will be given the

benefit of 2nd financial upgradation as and when his service book is traced. Consequently applicant retired at basic pay of Rs. 37500/- whereas his

junior colleague was granted 2nd financial upgradation under the ACP scheme and fixed their basic pay of Rs. 39800/-. On 19.05.2009, the

Government of India introduced the scheme in place of the earlier scheme, which is called Modified Assured Career Progression (MACP) Scheme.

Applicant was granted financial upgradation under the M.A.C.P. Scheme in the Grade Pay of Rs. 2400/- but the applicant was not granted 2nd

financial upgradation due to fault of respondents. Being aggrieved with the above unjust action, applicant preferred a representation dated 12.01.2019,

which is still pending consideration

3. On notice, respondents have filed counter affidavit wherein it has been submitted that applicant was granted 1st financial upgradation under the

ACP scheme w.e.f. 01.10.1999 and his pay was fixed at Rs. 3345/-w.e.f. 01.10.1999. After completion of 24 years of service, the applicant was

granted the benefit of 2nd financial upgradation due on 03.06.2003 by implementing the concept of MACP on 01.09.2008. Applicant has been given all

financial benefits, hence no financial upgradation is due under ACP/MACP scheme. Applicant has been given three financial benefits in Grade Pay

Rs. 1900/-, Rs. 2000/- and Rs. 2400/- as per rules.

4. Rejoinder affidavit has also been filed by the applicant in which the applicant has reiterated the facts as stated in the OA and denied the contents of

the counter affidavit.

5 We have heard Shri Rajesh Kumar, learned counsel for the applicant and Shri S.C. Mishra, learned counsel for the respondents and perused the

record.

6. Submission of the learned counsel for the applicant is that applicant joined service in the respondents department on 3.6.1979 and was

superannuated on 31.5.2019. First financial upgradation under ACP scheme on completion of 12 years of service in the pay scale of Rs. 2610-3540/-

was fixed w.e.f. 3.6.1991 but second ACP which was due in the year 2003 was not allowed to the applicant. He made several request from the

competent authority but no action was taken on the pretext of unavailability of the service record. It was also argued that on implementation of the

MACP scheme, financial upgradation was allowed to the applicant. This fact itself shows that records were available with the respondents but due to

some ulterior motive they did not allow the second ACP to the applicant. Thus, applicant suffered heavy loss. Junior to the applicant who were

allowed second ACP retired on a higher salary/pay scale than the applicant. Thus, referring to the entire facts and circumstances disclosed in the OA

and documents annexed therewith, learned counsel for the applicant argued to allow the OA and to direct the competent authority amongst the

respondents to grant the applicant's second ACP due to the applicant.

7. Learned counsel for the respondents referring to the counter affidavit argued that first financial upgradation was allowed to the applicant as has

been admitted by him. Since MACP scheme was launched, thus, applicant was allowed second and third upgradation under MACP scheme. There

was a bar not to reopen the past cases. Due to this reason, applicant on implementation of the MACP scheme was allowed second and third MACP

in light of 6th and 7th Pay Commission. Plea taken by the applicant in the OA is not acceptable. Since MACP scheme has been launched which is

more beneficial to the employee, thus, no claim can be made under old ACP scheme, thus, prayer was made to dismiss the OA

8. We have considered the rival submissions of learned counsel appearing for both the parties and perused the entire documents on record.

9. The main question at hand is whether the applicant's case in this O.A. belongs under the category of "past cases," as stated in paragraph 11 of

DoPT OM No.35034/3/2008-Estt. (D) dated May 19, 2009, which states that cases should not be "re-opened." The relevant paragraphs 9 and 11 of

the aforementioned DoPT OM of May 19, 2009, regarding the Modified Assured Career Progression Scheme, are cited below in order to address this

matter:

9. Any interpretation/clarification of doubt as to the scope and meaning of the provisions of the MACP Scheme shall be given by the

Department of Personnel and Training (Establishment-D). The scheme would be operational w.e.f. 01.09.2008. In other words, financial

upgradations as per the provisions of the earlier ACP Scheme (of August, 1999) would be granted till 31.08.2008.

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11. It is clarified that no past cases would be re-opened. Further, while implementing the MACP Scheme, the differences in pay scales on

account of grant of financial upgradation under the old ACP Scheme (of August 1999) and under the MACP Scheme within the same cadre

shall not be construed as an anomaly.

10. In the case of Shri Krishan Kumar Vs. Union of India decided on 11.03.2014 in OA No. 955/2013 by CAT, Principal Bench has held that no past

cases would be re-opened.

11. In addition to the DOPT circular's clarification that no stepping up of pay in the pay band or grade pay would be admissible with regard to juniors

receiving higher pay than seniors due to pay fixation under the MACP Scheme, the aforementioned judgment and DOPT circular make it clear that no

previous cases involving financial upgradation would be reopened under the MACP scheme. Therefore, the applicant's argument that his junior has

taken more pensions from him is rejected. The applicant has already been extended the benefits of the MACP Scheme, receiving second and third

financial upgradations in accordance with the rules of the 6th and 7th Pay Commissions. This indicates that the applicant's career progression has

been duly addressed under the MACP Scheme. Since the applicant has already benefited from MACP scheme after its implementation, any additional

plea for parity with juniors does not fall within the purview of scheme.

12. In view of the above observations, the OA is dismissed. No order as to costs. All associated MAs are disposed of.