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Court : Central Administrative Tribunal CAT Delhi

Decided On : Apr-20-2012

Judge : The Honourable Mr. Shailendra Pandey, Member (a) & the Honourable Dr. K.B. Suresh, Member (J)

Appeal No. : O.A.No.3334 of 2011 & M.A.No.2452 of 2011

Appellant : Shiv Kumar Sharma and Others

Respondent : Delhi Development Authority Through Its Vice Chairman Vikas Sadan, I.N.A., New Delhi and Others

Advocate for Pet/Ap. : For the Applicants: Sidharth Joshi, Advocate. For the Respondents: Karunesh Tandon, Advocate.

Judgement :

Shailendra Pandey, Member (A):

M.A.No.2452/2011:

1. The MA for joining together is allowed.

O.A.No.3334/2011:

2. In this OA, the applicants (52 in number) are aggrieved by E.O.No.911 dated 12.07.2011 (Annexure A1) issued by Respondent No.4 (Deputy Director, DDA, New Delhi) in terms of which the second financial upgradation granted to them under the ACP Scheme of the Government of India have been ordered to be withdrawn.

3. The case of the applicants [who are working as UDC in the Delhi Development Authority], is that the above EO should not have been issued as they had been granted 2nd ACP, as per the Assured Career Progression Scheme of August, 1999, vide EO No.468 dated 13.02.2009, which was before the issue of the OM dated 19.05.2009 pertaining to introduction of the Modified Assured Career Progression Scheme (MACPS) of the Government. Further, while making the MACPS effective from 01.09.2008 it was clearly provided in Clause 11 of the Scheme that 'no past cases would be re-opened'. It is stated that the respondents are wrongly proposing to make recovery on account of withdrawal of the second ACP granted to them and that resultantly arrears already paid to them would be recovered from their salary. Hence, the present OA has been filed praying for the following reliefs:

Set aside and quash the order vide EO No.911 dated 12.07.2011 at Serial No.82 and 91 regarding withdrawal of Second ACP of the applicants.

Restrain the respondents from withdrawing the 2nd ACP already granted vide EO No.300 dated 29.01.2009 and EO No.468 dated 13.02.2009 in respect of the applicants and further restrain the respondents from recovering the arrears of pay and allowances already received by the applicants on account of grant of 2nd ACP.

Allow the second ACP already granted to the applicants vide EO No.300 dated 29.01.2011 and E.O.No.468 dated 13.02.2009.

Award all consequential benefits.

3. The learned counsel for the applicants states that all the applicants were allowed 2nd ACP after completion of 24 years of service in D.D.A. during the

period from September, 2008 to January, 2009, i.e., much before the date of issue of the Do PT OM dated 19.05.2009. Therefore, withdrawal of second ACP which was admissible under the ACP and granted in accordance with the Scheme and after due process of law is unjustified, and particularly so because of the specific mention in Clause 11 of the MACP Scheme that 'no past cases would be reopened'. According to the applicants the order at Annexure A1 would put them in a less advantageous position by giving them MACP of 6th CPC while their other colleagues have already enjoyed the ACP Scheme of August, 1999.

3.1. The applicant's counsel has also relied on the following Judgments of the Hon'ble Apex Court in support of the applicant's submission that no recovery can be made from them on account of withdrawal of the second ACP already granted to them as this was granted and paid to them by the respondents as per rules and without any misrepresentation on their part:

Shyam Babu Verma and Ors. v. Union of India and Ors., (1994) 2 SCC 521.

Nand Kishore Sharma and Others v. State of Bihar and Others, 1996 SCC (LandS) 124.

BiharStateElectricity Board and Another v. Bijay Bhadur and Another, (2000) 10 SCC 99.

4. The respondents have opposed the OA and have stated that the financial upgradation under the ACP Scheme of 1999 was introduced on the recommendation of the 5th CPC and the benefits were granted w.e.f. 09.08.1999. It is submitted that the applicants were granted second financial upgradation under the ACP Scheme of 1999 vide Establishment Order dated 13.02.2009 and 29.01.2009 on the completion of regular service of 24 years as LDC. However, thereafter the MACP Scheme was introduced as per the recommendations of the 6th CPC vide OM dated 19.05.2009 which interalia provided for three financial upgradations under MACPS, counted from the direct entry grade on completion of 10, 20 and 30 years of service respectively. The said MACP Scheme though promulgated in May, 2009 would be operational and effective w.e.f. 1.09.2008. In other words, financial upgradation as per the provisions of the earlier ACP

Scheme of August, 1999 would only be granted till 31.08.2008. Thus, after coming into force of the MACP Scheme, officials completing 24 years of regular service after 31.08.2008 are not entitled for the benefits under the previous ACP Scheme. They have further stated that the Ministry of Urban Development vide its letter dated 10.05.2011 (Annexure R1) had forwarded to them the following clarification received from Do PT wherein it has been mentioned as under:

“The benefits of MACPS have been allowed w.e.f. 1.9.2008 vide Do PT’s OM dated 19.05.2009 and the benefits of ACPS have been discontinued after 31.08.2008. Hence, the benefits of ACPS allowed/granted after 31.08.2008 to the Government servants would be withdrawn immediately. In such cases, the term ‘past cases would not be reopened’ would not be applicable.”

Accordingly, pursuant to the said Mo UD’s letter dated 10.05.2011 and Do PT OM dated 19.05.2009, the benefits of ACP allowed/granted after 31.08.2008 have been withdrawn from the applicants with the approval of the competent authority vide order dated 12.07.2011. In view of this, they pray that the OA be dismissed.

5. We have heard the counsel for both the parties and have been through the pleadings on record.

6. The issue for decision in this case is whether as a result of introduction of the MACPS, to which benefits the applicants would now be entitled, the benefits already granted under the earlier ACP Scheme can be recovered, even if this is less advantageous, when it is specifically prescribed that ‘no past cases would be reopened’ at Clause 11 of the MSCP Scheme.

6.1. The admitted facts in this case are that the applicants had been granted 2nd Financial Upgradation as admissible to them under the ACP Scheme of 1999 before the issue of the OM introducing the MACP Scheme. It is also an admitted fact that the MACP Scheme was made applicable w.e.f. 01.09.2008 but Clause 11 of the Scheme (OM dated 19.05.2009), also provided that ‘no past cases would be reopened’.

6.2. The MACP Scheme for Central Government Employees was introduced in supersession of the earlier ACP Scheme. Under the MACP Scheme three financial Up-gradations are allowed on completion of 10,20,30 years of regular service, counted from the direct entry grade. The MACPS envisages placement in the immediate next higher grade pay as given in Section I, Part-A of the first schedule of the CCS (Revised Pay) Rules 2008, in case no promotion has been earned by the employee during this period. The MACPS has also been made effective w.e.f. 01.09.2008 or on completion of 10, 20 and 30 years of continuous regular service, whichever is later. Financial upgradation will also be admissible whenever a person has spent 10 years continuously in the same grade pay.

6.3. It would be useful in this connection to extract the following Clauses of the MACP Scheme:

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.

10. No stepping up of pay in the pay band or grade pay would be admissible with regard to junior getting more pay than the senior on account of pay fixation under MACP Scheme.

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.”

(Emphasis supplied)

7. Thus, there is a clear prescription that past cases would not be reopened and more importantly that any interpretation/clarification relating to the MACP Scheme shall be given by the Do PT.

8. In the present case, the respondents have issued the impugned order (Annexure A1) on the strength of a letter dated 10.05.2011 forwarding the following clarification stated to have been received from the Do PT:

“The benefits of MACP Scheme has been allowed w.e.f. 1.9.2008 vide Do PT OM dated 19.05.2009. Hence, the benefits of ACP allowed/granted after 31.08.2008 to the Government Servants would be withdrawn. In such cases, the term ‘past cases would not be reopened’ would not be applicable.”

However, a perusal of R-I does not throw any light on the clarification sought by Mo UD, and that received.

9. Further, it is noticed from the letter dated 05.05.2011 that the issue, relating to cases in which the MACPS benefits are less advantageous than the ACP benefits, is under the consideration of Do PT, as is evident from the letter dated 05.05.2011, which is extracted below:

“No. 42012/1/2011-Estt (D)

Government of India

Ministry of Personnel, Public Grievances and Pensions

(Department of Personnel and Training),

Establishment (D)

North Block, New Delhi,

Dated 05th May, 2011

Subject:- Grant of financial upgradation in the promotion hierarchy instead of grade pay hierarchy under the MACPS furnishing the information regarding.

Based on the discussion with Staff Side in 3rd meeting of the Joint Committee of Modified Assured Career Progression Scheme (MACPS) held on 15.03.2011 under the chairmanship of the Joint Secretary (Establishment) Department of Personnel and Training, it has been decided that the necessary information it has

been decided that necessary information in respect of specific categories of employees where the MACPS is less advantageous than the erstwhile ACPS may be called for from Ministries of Railways, Defence, Urban Development, Home Affairs and Department of Posts for taking a conscious Decision in the matter."

2. The Ministries of Railways, Defence, Urban Development, Home Affairs and Department of Posts are therefore, requested to send their information in the matter to this Department at the earliest.

(Prakash Nevatia)

Director (Estt. D/B)"

Therefore, it would have been appropriate to consult the Do PT formally with reference to the case of the applicants before issue of the impugned order at Annexure A1, particularly, as it appears to adversely affect the interests of the applicants. This is even necessary in the context of the provision 9 of the MACPS that any clarification/interpretation of the provisions of the MACP Scheme shall be given by the Department of Personnel and Training (Establishment D).

10. In view of the above, we are of the view that the interest of justice would be met by remitting the matter back to the respondents to reconsider the cases of the applicants, after consulting the Do PT specifically about their cases, and pass appropriate orders in accordance with rules and the decision of the Do PT within a period of two months from the date of receipt of a copy of this order.

11. In any case, no recovery should be made from the applicants (except, of course, by way of adjustment from fresh MACP benefits accorded (if higher)) as the amounts paid to them under the ACP Scheme were without any misrepresentation on their part.

12. The OA is disposed of in terms of the aforesaid directions. No costs.

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