

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.28431 of 2013

Date of Decision:31.08.2016

H.B.L. Meena and others

... Petitioners

Vs.

Union of India and others

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. Navdeep Singh, Advocate for the petitioners.

Mr. Parminder Singh Kanwar, Advocate for UOI.

P.B. BAJANTHRI J.

Through the instant writ petition, the petitioners have prayed for quashing of Annexure P-1 relating to fixation of second financial up-gradation from grade pay of Rs.4600/- to Rs.4800/- in the next higher scale under MACP scheme.

The petitioners are in the cadre of Inspector in the Central Industrial Security Force. The next avenue of promotion is to the post of Assistant Commandant (Executive) in the pay scale of Rs.15600-39100 with grade pay of Rs.5400/-. The respondents while implementing the Modified Assured Career Progression Scheme (MACPs) instead of granting second ACP with reference to promotional cadre Assistant Commandant (Executive) grade pay of Rs.5400/-, it has been extended with reference to scale namely Rs.4800/- which is next higher scale to Rs.4600. The petitioner is aggrieved by the extension of second MACP at the scale of Rs.4800/-. Hence, this petition.

Learned counsel for the petitioners submitted that on 9.8.1999, Assured Career Progression Scheme was introduced. Para-3 of the official memorandum dated 9.8.1999 reads as under:

“3. GROUP 'B', 'C' AND 'D' SERVICES/POSTS AND ISOLATED POSTS IN GROUP 'A','B','C' AND 'D' CATEGORIES

3.1 While in respect of these categories also promotion shall continue to be duly earned, it is proposed to adopt the ACP Scheme in a modified form to mitigate hardship in cases of acute stagnation either in a cadre or in an isolated post. Keeping in view all relevant factors, it has, therefore, been decided to grant two financial up-gradation (as recommended by the Fifth Central Pay Commission and also in accordance with the Agreed Settlement dated September 11, 1997 (in relation to Group 'C' and 'D' employees) entered into with the Staff Side of the National Council (JCM)) under the ACP Scheme to Group 'B', 'C' and 'D' employees on completion of 12 years and 24 years (subject to condition no.4 in Annexure-I) of regular service respectively. Isolated posts in Group 'A', 'B', 'C' and 'D' categories which have no promotional avenues shall also qualify for similar benefits on the pattern indicated above. Certain categories of employees such as casual employees (including those with temporary status), ad-hoc and contract employees shall not qualify for benefits under the aforesaid Scheme. Grant of financial up-gradation under the ACP Scheme shall, however, be subject to the conditions mentioned in Annexure-II (attached).”

The said scheme is to extend benefit of first ACP on completion of 12 years and second ACP on completion of 24 years. On 19.5.2009, Modified Assured Career Progression Scheme (MACPs) was introduced while replacing the ACP scheme issued on 9.8.1999. Only difference between the two schemes is that 1999 ACP Scheme provided two ACPs after completion of 12 and 24 years whereas 2009 MACP scheme provides three ACPs after completion of 10, 20 and 30 years of service. Even perusal of para-2 of MACP scheme shows that there is no much change. It is with reference to grade pay attached to the next promotion post in the hierarchy of the concerned cadre/organization will be given only at the time of regular promotion. Therefore, the respondents have committed

error in granting next scale from Rs.4600/- to Rs.4800/- to the petitioners instead of Rs.5400/- (Promotional post of Assistant Commandant (Executive)).

Learned counsel for the petitioners relied on decision of the Division Bench of this Court passed in CWP No.19387 of 2011 dated 19.10.2011. In the abovesaid case, Central Administrative Tribunal considered case relating to the post of Photocopier which is an isolated post in the Central Administrative Tribunal wherein higher grade pay has been taken into consideration not with reference to the next scale. Union of India and others filed the above cited writ petition. This Court confirmed the order passed by the Central Administrative Tribunal observing that for grant of MACP next scale is not relevant. Next promotional post is the relevant.

Per contra, learned counsel for the respondents submitted that perusal of ACP scheme read with MACP scheme shows that it is only with reference to pay scale and not to the promotional post. Therefore, the respondents have not committed any error, even though, certain scale of pay and posts are not available in a particular organization then for the purpose of granting ACP or MACP next scale of pay would be granted. Thus, there is no infirmity in Annexure P-1. The petitioners cannot claim pay scale attached to the next promotional post which is Rs.5400/- and is higher than the next scale of Rs.4600/-.

Heard learned counsel for the parties.

Object of ACP/MACP is to grant financial benefit to employees who were stagnated in a post for 12 and 24 years under ACPs and 10, 20 and 30 years under MACPs. From the perusal of ACP scheme dated 9.8.1999, it is evident that even for an isolated post, there is financial up-

gradation. Whereas in the present case the petitioners are in the cadre of inspector and the promotional post is Assistant Commandant (Executive) and the pay attached to the post of Assistant Commandant (Executive) is to be extended for the reasons that in between Inspector and Assistant Commandant (Executive), there are no post in the Central Industrial Security Force so as to extend the benefit of next higher scale to the post of Inspector i.e. Rs.4600/- to Rs.4800/-.

In view of these facts and circumstances, annexure P-1 is set aside. The respondents are directed to re-fix the second ACP of the petitioners with reference to the promotional post to the inspector cadre i.e. Assistant Commandant (Executive). In other words, the petitioners are entitled to second ACP from Rs.4600/- to Rs.5400/-. The same shall be fixed and consequential benefits be made available to the petitioners within a period of four months from today.

The petition stands allowed.

31.08.2016
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**