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

CWP No.12002 of 2017
Date of Decision.04.09.2017

Union of India and others ....Petitioners

Vs

Pardeep Singh and another ....Respondents

Present: Mr. Vivek Chauhan, Advocate
for the petitioners.

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The Union of India has approached this Court by invoking the extraordinary jurisdiction under Article 226/227 of the Constitution of India for setting aside the order dated 23.11.2016 (Annexure P-1) passed by the Central Administrative Tribunal (hereinafter called as "Tribunal") in OA No.060/00216/2016.

The facts emanated from the writ petition and the order of CAT are that the applicant-private respondent approached the Tribunal seeking following relief:-

"Quash para No.13 of Annexure attached with DOPT OM dated 10.02.2000 (Annexure A-1), which stipulates that Ex-Servicemen re-employed as civilian employees, shall be entitled for upgradation under the Scheme on completion of 12/24 years of service after direct recruitment in the civil employment also such category of persons would already be drawing pension on the basis of their service in the armed forces, as mentioned in order dated 19.10.2015, as there cannot be discrimination on the basis of department particularly applicant is not drawing any retiral

benefits.

(ii) Quash clarification issued under para 4 of the Amnnexure of DOPT OM dated 09.09.2010 (Annexure A-2), which stipulates that benefit under MACP would be available from the date of actual joining of the posting the entry grade.

(iii) Quash para 9 of Annexure of DOPT OM dated 19.5.2009 (Annexure A-3), which stipulates 'Regular Service' for the purpose of MACP shall commence from the date of joining of the post in direct entry grade on a regular basis either on direct recruitment or on absorption/re-employment basis, being arbitrary and discriminatory and having no nexus with the object sought to be achieved, which create classification on the basis of department and there being no such restriction even for other who were serving under the Ministry of Defence while joining the service in civil employment either by way of being surplus or otherwise.

(iv) Quash order No.AN/XI/11051/MACP/2015/Vol.II dated 19.10.2015 (Annexure A-4) passed by respondent No.2, whereby the claim of the applicant for counting of service rendered by him in the Indian Army for the period from 12.09.19777 to 14.05.1985 for the purpose of ACP/MACP has been declined.

(v) Quash order No.AM/III/1800/MACP dated 06.11.2015 (Annexure A-5) passed by respondent no.3, whereby request of the applicant for counting of service rendered by him in the Indian Army for the period from 12.09.1977 to 14.05.1985 for the purpose of ACP/MACP has been rejected and even it has been declined to consider the case of the applicant in the light of directions of the Hon'ble Principal Bench of Central Administrative Tribunal in OA No.1293/2007 and OA No.1441/2010.

(vi) Issue directions to the respondents for counting service rendered by the applicant for the period from 12.09.1977 to 14.05.1985 in Indian Army for the purpose of ACP/MACP with all consequential benefits with effect from due date."

The petitioner, being an Ex-Army Personnel, joined the Indian Army as Havildar in Education Corps on 12.09.1977 and was discharged on compassionate ground from Army service on 14.05.1985. In response to the advertisement issued by the Staff Selection Commission, he applied for the post of Auditor. He was selected and offered appointment on 26.08.1987 in the office of Defence Pension Disbursement Office, Jammu. The Tribunal accepted the prayer of the petitioner, particularly, taking into consideration the letter dated 30.06.1992 (Annexure A-7) whereby his service rendered in the Army was reckoned for the purpose of Pension under the provisions of Rules i.e. CCAS (Pension) Rules, 1971 as well as on certain other points.

Mr. Vivek Chauhan, learned counsel appearing on behalf of the petitioner-Union of India submits that after having appointed as Auditor on 26.08.1987, the applicant-private respondent was promoted as Senior Auditor on 22.06.1995. Meanwhile, the Government of India vide notification dated 09.08.1999 notified 'Assured Career Progression (ACP) Scheme' for its employees for financial upgradation on completion of 12/24 years of service. Subsequently, the Government of India vide notification dated 19.5.2009 introduced a new scheme as 'Modified Assured Career Progression (MACP) Scheme' w.e.f. 01.09.2008 wherein financial upgradation was to be granted on completion of 10, 20 and 30 years of service respectively. In pursuance to the said notification, the applicant-private respondent was granted second financial upgradation under MACP on 01.09.2008. The applicant-private respondent made a representation on

31.07.2015 claiming entitlement to second ACP on completion of 24 years of service in December, 2003 after counting the Army service, on account of the fact that on his promotion as Senior Auditor he was not granted first ACP and became entitled to third financial upgradation under MACP in December, 2009 after completion of 30 years of service by counting Army service. The representation, *ibid*, was rejected by the petitioner vide order dated 19.10.2015 i.e. claim made by the applicant-private respondent for counting service rendered in the Army for the period from 12.09.1977 to 14.05.1985 for the purpose of ACP/MACP. The Tribunal has erroneously allowed the aforementioned OA by not appreciating that there was inordinate gap of 2 years 3 months and 11 days. As such, the said Scheme was not applicable to the facts and circumstances of the case. The Tribunal has also committed illegality in directing the petitioner to consider the claim of the applicant-private respondent for grant of second Assured Career Progression after completion of 24 years of service on the basis of the judgment of the Principal Bench of Central Administrative Tribunal, New Delhi passed in OA No.1074 of 2014 on 28.04.2016 titled as '***HC (Exe) Ashok Kumar Vs. GNCT of Delhi and others***', which is not applicable to the facts and circumstances of the present case and could not be applied *in rem.*

We have heard learned counsel for the petitioners, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Chauhan, as the Principal Bench of Central Administrative Tribunal, New Delhi vide order dated 28.04.2016 passed in OA No.1074 of 2014 titled as '***HC (Exe) Ashok Kumar Vs. GNCT of Delhi and others***' had put the similar controversy to rest by granting identical relief. The aforementioned decision rendered by the Principal Bench has not been challenged or upset so far. The Tribunal while granting the relief to the applicant-private respondent extracted the observation rendered in the aforementioned judgment, which for the sake of brevity reads thus:-

> *"8. We have heard the learned counsel for parties and also carefully perused the judgment dated 04.03.2011 passed in OA No.1445/2010. The judgment has attained finality and has not been assailed till date. The observations of this Tribunal in para 9 quoted hereinabove in unequivocal terms allow the benefit of the past Defence service to an ex-serviceman recruited to civil service for purposes of ACP/MACP benefit. The applicant cannot be treated differently. This Tribunal while considering the claim of ex-Defence personnel for grant of ACP benefit heavily relied upon clarification 13 rendered by DOP&T, which inter alia provides for grant of financial upgradation under the ACP Scheme on completion of 12/24 years of service after direct recruitment in the civil employment. We find no reason to disagree with the observations made in the aforesaid judgment, as noticed by us.*
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> *9. This application is accordingly allowed. The orders impugned are hereby quashed. The respondents are directed to consider the claim of the applicant for grant of second financial upgradation on completion of 24 years of service, and third financial upgradation under MACP Scheme on completion of 30 years of service by counting his past service rendered in Army w.e.f. 30.09.1976 to 30.03.1983. Let the process of consideration be completed within a period of three months and consequential benefits released within one month thereafter. No costs."*

The factum whether the order of the Principal Bench was assailed was also confronted to the counsel for the petitioners and the answer was that it is still holding field. Accordingly, the Tribunal directed Union of India to reconsider the case of the applicant in the light of the aforesaid decision and grant him the benefit by counting his past service rendered in Indian Army w.e.f. 12.09.1977 to 14.05.1985 as eligible one for ACP/MACP.

Keeping in view the aforementioned facts and circumstances, we are of the view that there was no necessity for the Union of India to challenge the order having passed in terms of the decision in Ashok Kumar (supra) case whereby the similarly situated persons like the applicant-private respondent had been granted benefit of computation of his past service in the Army. Since the applicant-private respondent in the instant case had rendered his service w.e.f. 12.09.1977 to 14.05.1985, he has rightly been held to be eligible for ACP/MACP.

No ground for interference is made out. The order passed by the Tribunal is upheld and the writ petition stands dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(AMIT RAWAL)
JUDGE

September 04, 2017
Pankaj*

Whether speaking/reasoned **Yes**

Whether reportable **Yes**