

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

**Civil Writ Petition No.22178 of 2017**

Union of India and another ...Petitioners

Versus

Safdar Ali and another ...Respondents

**and**

**Civil Writ Petition No.22337 of 2017**

Union of India and another ...Petitioners

Versus

Dharam Chand and another ...Respondents

Reserved on : January 21, 2019

**Date of decision: March 12, 2019**

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,  
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr.Arvind Moudgil, Senior Panel Counsel  
for the petitioners.

Mr.K.B.Sharma, Advocate  
for respondent No.1 (in both cases).

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HARINDER SINGH SIDHU, J.

This judgment shall dispose of two writ petitions, bearing CWP Nos 22178 of 2017 and 22337 of 2017 as the issue raised therein is identical. However, the facts are being referred from CWP No.22178 of 2017.

The Union of India and the General Manager, Canteen Stores Department, Ministry of Defence have filed the present writ petition

impugning the order dated 15.12.2016 of the Central Administrative Tribunal, Chandigarh Bench whereby O.A. No.063/00126/2015 filed by the respondent No.1 has been allowed.

Respondent No.1 had filed the Original Application for quashing order dated 28.07.2017 to the extent that instead of granting first and second ACP in the pay scale of Rs.5500-8000 and 6500-10500 w.e.f. 09.08.1999 and Third MACP in the Pay Band of Rs.9300-34800 with Grade Pay Rs.5400, the same had been granted in the lower pay scale of Rs.5000-8000 and Rs.5500-9000 w.e.f. 09.08.1999 and 3<sup>rd</sup> MACP in the Pay Band of Rs.9300-34800 with Grade Pay of Rs.4600 w.e.f. 01.09.2008.

Respondent No.1 initially joined Beas Construction Board (BCB) as Clerk in 1975. He was declared quasi-permanent on completion of 3 years of service. He was declared surplus in the year 1984 and re-deployed in the Canteen Stores Department, Ministry of Defence on 27.02.1985 as Lower Division Clerk (LDC). His transfer was treated as in public interest with benefit of pay protection. His GPF was transferred to Canteen Stores Department by the BCB Authorities. In Beas Construction Board, he was getting the pay scale of Rs.400-600. On joining after re-deployment, he was granted the pay scale of Rs.260-400, which was revised to Rs.950-1500 w.e.f. 01.01.1986. He was granted in situ financial upgradation in the pay scale of Rs.1200-2040 w.e.f. 01.04.1991, which was revised to Rs.4000-6000 w.e.f. 01.01.1996. He was promoted as Store Keeper (SK)-III w.e.f. 01.04.2002 in the pay scale of Rs.4000-6000/-.

The Government of India introduced 'Assured Career

Progression Scheme' vide circular dated 09.08.1999 providing for two financial up-gradations on completion of 12 and 24 years service respectively. Government of India issued clarification dated 10.02.2000 that an employee declared surplus was to get the benefit of service rendered in BCB for the purpose of ACP in the department where he was subsequently absorbed. Consequently, he was granted benefit of 2<sup>nd</sup> ACP w.e.f. 09.08.1999 in the pay scale of Rs.5000-8000. Later that order was withdrawn. Respondent No.1 along with three others filed OA No.562/HR/2005, which was decided on 06.07.2006. The OA was allowed. The orders withdrawing ACP were quashed. Direction was issued to the petitioners to reconsider the case of the applicant for grant of benefit of 2<sup>nd</sup> ACP.

Number of OAs were filed by former employees of BCB claiming proper revised pay scale on their personal pay scale pattern and in that context those who were in the pay scale of Rs.400-600, were held entitled to the pay scale of Rs.1350-2200 w.e.f. 01.01.1986 and Rs.4500-7000 w.e.f. 01.01.1996. Similar benefit of upgraded pay scale was granted to the respondent No. 1 also. There ensued yet another round of litigation with regard to Assured Career Progression Benefit to former employees of BCB. This controversy was settled by the Tribunal through a number of OAs including O.A. No.336/HP/2010 whereby persons who were in the pay scale of Rs.400-600 became entitled to the pay scale of Rs. 5500-9000 and Rs.6500-10500 as first and second ACP on completion of 24 years of total service. Writ Petition No.8772 of 2012 filed there against was dismissed

vide order dated 16.11.2012.

The case of Respondent No. 1 was that he was similarly situated and had become entitled to first and second ACP in the pay scale of Rs.5500-9000 and Rs.6500-10500 w.e.f. 09.08.1999 after counting service rendered in the BCB by ignoring in situ financial upgradation, it being in a scale lower than his personal pay scale which was higher than the upgradation pay scale. The pay scale of Rs.6500-10500 was revised w.e.f. 01.01.2006 in the Pay Band of Rs.9300-34800 with Grade Pay of Rs.4600/- . The Government of India introduced MACP Scheme vide Memorandum dated 19.05.2009. According to this scheme there shall be three financial up-gradations counted from direct entry grade on completion of 10, 20 and 30 years service respectively. This scheme is operational w.e.f. 01.09.2008. In terms of MACP Scheme w.e.f. 01.09.2008 he had become entitled to third MACP w.e.f. 01.09.2008 in the Pay Band of Rs.9300-34800 with Grade Pay of Rs.5400/-. However, the same was not granted to him.

Meantime, he retired on 29.02.2012 on attaining the age of superannuation. He was released his retiral benefits by taking his pay in the pay scale of Rs.5000-8000 whereas he is entitled to second ACP in the Pay Band Rs.9300-34800 with Grade Pay of Rs.4600/- w.e.f. 01.01.2006 and third MACP w.e.f. 01.09.2008 in PB-2 Pay Bank Rs.9300-34800 with Grade Pay of Rs.5400/- with all consequential benefits of arrears of pay and revised retiral benefits. Identical issue was raised by the employees serving under the Controller General of Defence Accounts, who were similarly situated and the Central Administrative Tribunal in O.A. No.614/HP/2013

decided on 09.05.2014 directed the petitioners to consider their claim for grant of pay scale of Rs.6500-10500 w.e.f. 09.08.1999 and third MACP in the pay band of Rs.9300-34800 with Grade Pay of Rs.5400 w.e.f. 01.09.2008 with all consequential benefits including arrears of pay and allowances and revised retiral benefits.

Relying on all the aforementioned cases and claiming to be similarly placed Respondent No.1 filed OA No.063/00072/2015 praying for directions to grant him first ACP in the Pay Scale of Rs.5500-9000, second ACP in the Pay Scale of Rs.6500-10500 w.e.f. 09.08.1999 revised to Pay Band Rs.9300-34800/- Grade Pay of Rs.4600/- w.e.f. 01.01.2006 and third MACP in Pay Band of Rs.9300-34800/- with Grade Pay of Rs.5400/- w.e.f. 01.09.2008. The OA was disposed of vide order 06.05.2015 with directions to decide the legal notice by passing a reasoned order. Pursuant thereto order dated 28.07.2015 was passed granting him first and second ACP in the pay scale of Rs.5000-8000/- and Rs.5500-9000/- w.e.f. 09.08.1999 and third MACP in the Pay Band of Rs.9300-34800/- with Grade Pay of Rs.4600/- w.e.f. 01.09.2008 instead of granting him first ACP in the pay scale of Rs. 5500-9000, second ACP in the pay scale of Rs. 6500-10500 w.e.f., 09.08.1999 revised to Pay Band Rs. 9300-34800/- Grade Pay of Rs. 4600/- w.e.f., 01.01.2006 and third MACP in the Pay Band of Rs. 9300-34800 with Grade Pay of Rs. 5400/- w.e.f., 01.09.2008 as claimed. Aggrieved thereby, the OA was filed.

As pleaded in the OA it was contended on behalf of respondent No.1 that similar benefits had been granted to similarly situated

persons in the Ministry of Defence and that there could not be two different yardsticks in regard to the same set of employees. In compliance with orders passed and directions issued in the case filed by them they were granted 2<sup>nd</sup> ACP in the Pay Scale of Rs.6500-10500/- and third MACP in the Pay Band of Rs.9300-34800/- with Grade Pay of Rs.5400/-. He also argued that in large number of judgments it has been held that former BCB employees were in a class by themselves and their Pay Scale and Grade Pay as personal to them from time to time had to be taken into account while considering their case for ACP/MACP benefits. In view thereof it was contended that the same benefit ought to have been granted to him by petitioners on their own instead of him having to file an OA.

The petitioners on the other hand contended that while granting ACP to him financial up-gradation was given as per next promotion hierarchy as under:-

| <i>Sr. No.</i> | <i>Financial upgradation/<br/>Revised Pay</i> | <i>Pay Scale</i>              | <i>Date</i>       | <i>Remarks</i>                                                                                                                                          |
|----------------|-----------------------------------------------|-------------------------------|-------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>1</i>       | <i>I-ACP</i>                                  | <i>5500-150-8000</i>          | <i>09.08.1999</i> | <i>Next Promotional hierarchy pay scale of SK II<br/>Already Granted</i>                                                                                |
| <i>2.</i>      | <i>II-ACP</i>                                 | <i>5500-175-9000</i>          | <i>09.08.1999</i> | <i>Next Promotional hierarchy pay scale of SK I</i>                                                                                                     |
| <i>3</i>       | <i>VI CPC revised pay</i>                     | <i>9300-34800<br/>GP-4600</i> | <i>01.01.2006</i> |                                                                                                                                                         |
| <i>4</i>       | <i>III MACP</i>                               | <i>9300-34800<br/>GP-4600</i> | <i>01.09.2008</i> | <i>Next Promotional hierarchy of recommended grade pay as prescribed in CCS (RP) Rules, 2008 (As per OM NO.35034/3/2008-Estt. (D) dated 09.9.2010).</i> |

The ACP was granted as per the norms and guidelines issued

by the DOPT and also taking into account the next promotional channel available.

Learned Tribunal noted the fact that respondent No.1 had already had several rounds of litigation. His claim was covered by earlier judgments of the Tribunals affirmed by the High Court regarding first and second ACP being granted in the Pay Scale of Rs.5500-9000/- and Rs.6500-10500/- w.e.f. 09.08.1999 and third MACP in the Pay Scale of Rs.9300-34800/- with Grade Pay of Rs.5400/- in respect of employees who were in the pay scale of Rs.400-600 while they were working in the BCB. His case ought to have been considered in the light of the judgments in similarly situated cases. The OA was allowed. The petitioners herein were directed to grant the ACP and MACP as claimed.

Ld. Counsel for the petitioners mainly contended that the the OA ought not to have been entertained as it was hit by delay and laches having been filed on 06.05.2015 more than than three years after his retirement on 29.02.2012. The relief was claimed in respect of the first and second ACPs payable w.e.f., 09.08.1999. Secondly the judgments relied on were in respect of former BCB employees who were re-deployed in different departments and not in the Canteen Services Department where respondent No. 1 was re-deployed.

Both these arguments are without merit. As recorded by the Tribunal before filing the present OA respondent No.1 and similarly situated erstwhile employees of BCB have had several rounds of litigation in relation to the ACP/MACP claims which were allowed in their favour.

Some cases have been filed by former employees of BCB who were re-deployed in different departments of the Ministry of Defence. It is not the case of the petitioners that the terms of re-deployment were different in their case from those re-deployed in the Canteen Services Department. No rationale has been pointed out as to how the ratio of those decisions do not apply to those re-deployed in the CSD.

Accordingly, there is no infirmity in the impugned order warranting interference.

Dismissed.

**(RAJIV SHARMA)      (HARINDER SINGH SIDHU)**  
**JUDGE                      JUDGE**

**March 12, 2019**  
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|-----------------------------|----------|
| Whether Speaking / Reasoned | Yes      |
| Whether Reportable          | Yes / No |