

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 4704 of 2019 (O&M)

Date of Decision: 09.12.2022

Date of Reserved: 30.11.2022

Union of India and others

.....Petitioner

Vs.

Central Administrative Tribunal and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Anil Chawla, Advocate,
for the petitioners.

Mr. Ashok Kumar, Advocate,
for respondent no. 2.

HARPREET KAUR JEEWAN, J.

The challenge in the present Civil Writ Petition is against the order dated 01.12.2017 (Annexure P-1), passed by the Central Administrative Tribunal, Chandigarh Bench, (hereinafter referred to as 'the CAT'), whereby the application filed by respondent no. 2, Ashok Kumar, for quashing the order dated 09.01.2014 was allowed.

2. The brief facts of the case are that respondent no. 2/applicant was appointed as LDC with the petitioner-department in the pay scale of Rs. 3,050-4,590, on the basis of the recommendation made by the Departmental Promotion Committee (the 'DPC'). The applicant was promoted as an Assistant Cashier, vide order dated 10.04.2004. On completion of 10 years of service, he was entitled for IInd Modified Assured Career Progression Scheme (for short 'MACP Scheme') w.e.f.

21.04.2014. However, instead of granting him the relief, the respondent vide order dated 16.10.2014 ordered the applicant to relinquish the post of Assistant Cashier w.e.f. 01.07.2011. In spite of that order, he was performing his duty of Assistant Cashier without any benefit as the pay scale on the post of UDC/Assistant Cashier is the same, i.e. Rs. 4,000-6,000/- which was revised to PB-1 Rs. 5,200/-20,200/-+2400 grade pay w.e.f. 01.01.2006. After making many representations, he was informed that he is not entitled as per letter dated 09.09.2016. Hence, he approached the CAT by way of filing an OA.

3. The appellants/respondents contested the petition by way of filing the written statement, wherein, it was admitted that the applicant was promoted as an Assistant Cashier with the higher pay scale of Rs. 4,000-6,000/-, vide order dated 10.04.2004, and he assumed the duties of Assistant Cashier w.e.f. 21.04.2004. However, it was alleged that while working as an Assistant Cashier, the applicant was promoted to the post for UDC w.e.f. 01.07.2011, vide order dated 16.10.2014, therefore he was not entitled to the relief sought under the MACP Scheme 2008, as he was granted the promotion to the post of UDC. It was further alleged that the appointment of Assistant Cashier is not a regular promotion.

4. The CAT had allowed the claim of respondent no. 2 observing that respondent no. 2 (applicant) was continuously working as an Assistant Cashier, w.e.f. 21.04.2004. By way of passing the order dated 16.10.2014, the appellants/respondents have erred in posting him as UDC with retrospective effect. Hence, the appellants were directed to grant the benefit of the IInd MACP Scheme w.e.f. 21.04.2014 on completion of 10

years regular service with all consequential benefits.

5. Learned counsel for the petitioners has submitted that there is no promotion rank in between LDC (Lower Division Clerk) and UDC (Upper Division Clerk). While holding the appointment of Assistant Cashier, respondent no. 2 was also on the seniority role of LDC. Respondent no. 2 got his first promotion to the post of UDC w.e.f. 01.07.2011 in his original cadre and he was not eligible for the Ist and the IInd MACP Scheme. The CAT while passing the impugned order has overlooked these facts.

6. We have considered the aforesaid submissions and perused the record.

7. The submissions of the learned counsel for the petitioners that there is no promotion rank in between LDC and UDC are merit less. It is the case of respondent no. 2 that he was originally appointed as LDC on 03.07.2002 and was promoted as an Assistant Cashier, vide order dated 10.04.2004. This fact is not disputed by the appellants. In paragraph No. 6 on merits in the written statement, the appellants have categorically admitted that respondent no. 2 was promoted as an Assistant Cashier as per the order dated 10.04.2004. This fact is also not disputed that the pay scale of the LDC on which respondent no. 2 was initially appointed was Rs. 3,050-4,590/-, whereas the pay scale on which respondent no. 2 was promoted as Assistant Cashier was Rs. 4,000-6,000/-. In view of the said admission made in the written statement, the observation made by the CAT that the applicant was continuously working as an Assistant Cashier w.e.f. 21.04.2004 till the passing of the order dated 16.10.2004 is well justified.

8. The contention of the appellants that the applicant was given first promotion for the post of UDC w.e.f. 01.07.2011 are also without merit and has been rightly rejected by the CAT. It is observed that as per a letter dated 07.06.1969, addressed to the Army Ordinance Corps Record Office (Annexure R-3 before the CAT), some guidelines have been provided regarding promotion to the post of Assistant Cashier and thereafter, promotion to UDC and Cashiers. As per the said guidelines only the volunteers of UDC will be considered for promotion as Assistant Cashiers and they will be considered in their seniority for promotion to UDC. However, on such promotion the option of the individual is required to be taken as to whether he wants to continue as Assistant Cashier or he wants to assume a UDC's appointment (other than Assistant Cashier).

The relevant portion of the said guidelines is as under:-

“(a) Assistant Cashiers

(i) Only volunteers LDCs will be considered for promotion as Assistant Cashier and a select list be drawn up by the DPC from amongst volunteers. While holding the appointment of Assistant Cashiers they should be borne on the rolls of LDC.

(ii) They will also be considered in their seniority for promotion to UDC by DPC. Such of them as are placed on panel for promotion to UDC by DPC will be promoted in their turn. On such promotion the individual will have the option to continue as Assistant Cashier or assume a UDCs appointment (other than Assistant Cashier) and they will be

borne on UDC seniority roll.

xxx xxxx xxxx xxxx”

(Emphasis applied by this Court).

9. Upon query, learned counsel for the petitioners could not show as to whether any such option was obtained from respondent no. 2 at the time of passing the order dated 16.10.2014 by posting respondent no. 2 as UDC with retrospective effect w.e.f. 01.07.2011. The said order dated 16.10.2014 having retrospective effect and being contrary to the contents of the aforesaid letter (Annexure R-3) has been rightly considered by the CAT as erroneous. Respondent no. 2 could not have been forced with a promotion without his consent with retrospective effect after a period of 3 years. It is apparent that when he requested for grant of MACP benefit, a letter was issued to him on 16.10.2014 that you are given promotion w.e.f. 01.07.2011, whereas neither any order of promotion was passed on 01.07.2011, nor the consent of respondent no. 2 was taken to know if he was willing for such promotion as per the aforesaid instructions.

10. At the end, the learned counsel for the petitioners has submitted that the MACP envisages merely placement in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay. This fact has not been appreciated by the learned Central Administrative Tribunal while allowing the O.A. filed by respondent no. 2.

11. We have considered the said submissions. The Hon'ble Supreme Court of India has held in Union of India and others vs. M.V. Mohanan Nair 2020 (2) S.C.T.366, that MACP Scheme granting financial

upgradation in next grade pay is not unjust.

The observation by the Hon'ble Supreme Court of India reads as under:-

“15. The distinction between the ACP Scheme and MACP Scheme can be well understood by reference to the Pay Scale under the Fifth Central Pay Commission and the revised pay structure under the Sixth Central Pay Commission and the corresponding Grade Pay thereon as stated in Section-1, Part-A of the First Schedule of CCS (Revised Pay) Rules, 2008.

THE FIRST SCHEDULE

(SEE RULES 3 & 4)

PART – A

SECTION I

Revised Pay Bands and Grade Pays for posts carrying present scales in Group ‘A’, ‘B’, ‘C’ & ‘D’ except posts for which different revised scales are notified separately.

Present Scale

Revised Pay Structure

Sl.No.	Post/Grade	Present Scale	Name of Pay Band/Scale	Corresponding pay Bands/Scales	Corresponding Grade Pay
(1)	(2)	(3)	(4)	(5)	(6)
5.	S-4	2750-70-3800-75-4400	PB-1	5200-20200	1800
6.	S-5	3050-75-3950-80-4590	PB-1	5200-20200	1900
7.	S-6	3200-85-4900	PB-1	5200-20200	2000
8.	S-7	4000-100-6000	PB-1	5200-20200	2400
9.	S-8	4500-125-7000	PB-1	5200-20200	2800
10.	S-9	5000-150-8000	PB-2	9300-34800	4200
11.	S-10	5500-175-9000	PB-2	9300-34800	4200
12.	S-11	6500-200-6900	PB-2	9300-34800	4200
13.	S-12	6500-200-10500	PB-2	9300-34800	4200
14.	S-13	7450-225-11500	PB-2	9300-34800	4600
15.	S-14	7500-250-12000	PB-2	9300-34800	4800

“16. Upon implementation of the Sixth Central Pay Commission, the Pay Scale of 3050-75-3950-80-4590 was kept in Pay Band-1 i.e. Rs.5200-20200 with Grade Pay of Rs.1900/-. Likewise, the Pay Scale of 3200-85-4900 was kept in Pay Band-1 i.e. 5200- 20200 with

Grade Pay of Rs.2000/-. Pay Scale of Upper Division Clerk 4000-100-6000 was also kept in the same Pay Band-1 i.e. 5200-20200 but with Grade Pay of Rs.2400/-. Under the ACP Scheme, the Government employee who was working as Lower Division Clerk in the Pay Scale of 3050-75-3950-80-4590, on completion of 12 years of service, would be entitled to the financial upgradation in the next promotional hierarchy i.e. in the cadre of UDC i.e. Pay Scale of 4000-100-6000 while working in the same capacity as LDC. Whereas under the MACP Scheme, the Government servant who is Lower Division Clerk in the Pay Band-1 i.e. Rs.5200-20200/- with Grade Pay of Rs.1900/-, on completion of 10 years of service upon grant of financial upgradation, would be getting the immediate next higher Grade Pay of Rs.2000/- and not the grade pay on promotional hierarchy. Following the erstwhile ACP Scheme (as per which financial upgradation was granted in promotional hierarchy), the respondents are claiming the benefit of Grade Pay of Rs.4200/-(which is in the next promotional hierarchy). While the respondents are granted financial upgradations as per the prevailing rules of MACP Scheme, they can only claim the immediate next higher Grade Pay and not the Grade Pay in the next promotional hierarchy. “

12. Similarly, in **Union of India and others vs. Ex. HC/GD Virender Singh** 2022 (4) SCT 66, while partly allowing the appeals filed by UOI, it was held that under MACP Scheme, the employees are not entitled to financial upgradation equivalent to the next promotional post but they are entitled to the financial upgradation equivalent to the immediate next grade pay in the hierarchy of the pay bands as stated in

Section 1, Part-A of the First Scheduled to the Central Civil Services (Revised Pay) Rules, 2008.

13. In view of the facts of the present case and the ratio of the aforesaid decisions, the present writ petition stands disposed off with modification in the order of the Tribunal to the extent that respondent no. 2 shall not be entitled to the grant of second MACP in grade pay of Rs. 4,200/- as claimed by him. However, he shall be entitled to next grade pay in the hierarchy of the present pay band as stated in Section-I, Part A of the First Schedule to the Central Civil Services (Revised Pay) Rules, 2008, i.e. Pay Band: PB-I; Corresponding Pay Band/Scales: 5200-20200; Corresponding Grade Pay: 2800, to which even counsel for respondent no. 2 has no objection and has taken necessary instructions.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

December 09, 2022
nitin

Whether Speaking	Yes
Whether Reportable	Yes