

UNION OF INDIA & ORS.

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v.

BALBIR SINGH TURN & ANR.

(Civil Appeal Diary No. 3744 of 2016)

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DECEMBER 08, 2017

[MADAN B. LOKUR AND DEEPAK GUPTA, JJ.]

Service Law – Army Personnel – Persons Below Officer Rank (PBOR) – Modified Assured Career Progression (MACP) – Benefit of – Denial – Propriety of – Respondents, PBORs retired after 01.01.2006 but prior to 31.08.2008 – Respondents claimed that in terms of Govt. Resolution dated 30.08.2008, they are entitled to the benefit of MACP w.e.f. 01.01.2006, i.e. the date from which the recommendation of 6th Central Pay Commission (CPC) with regard to pay and benefits were made applicable by Central Govt. – Plea of appellant that since the MACP was applicable only w.e.f. 01.09.2008, therefore, the respondents who had retired prior to the said date were not entitled to the benefit of MACP – Held: Plea of appellant not tenable – Clause (i) of the 2008 Resolution, whereby the recommendation of 6th CPC was accepted w.r.t. pay structure, pay scales, grade pay etc., clearly indicates that Central Govt. decided to implement the said revised pay structure of pay bands, grade pay and pension w.e.f. 01.01.2006 – Further, this decision of the Cabinet could not have been modified by issuing executive instruction dated 30.05.2011 – Benefit of MACP in terms of 2008 Resolution was payable w.e.f. 01.01.2006 – Administrative law.

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Service Law – Modified Assured Career Progression (MACP) – Benefit of, denied to the respondents by appellants holding the same to be a part of allowances and thus applicable w.e.f. 01.09.2008 and not from 01.01.2006 as claimed by respondents – Held: Benefit of MACP is part of the pay structure and will affect the grade pay of the employees and, therefore, it cannot be said that it is a part of allowances.

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A **Disposing of the appeals, the Court**

B **HELD: 1.1 A bare perusal of Clause(i) of the 2008 Resolution clearly indicates that the Central Government decided to implement the revised pay structure of pay bands and grade pay, as well as pension with effect from 01.01.2006. The second part of the Clause lays down that all allowances except the Dearness Allowance/relief will be effective from 01.09.2008. The Armed Forces Tribunal (AFT) rightly held that the benefit of Modified Assured Career Progression (MACP) is part of the pay structure and will affect the grade pay of the employees and, therefore, it cannot be said that it is a part of allowances. The benefit of MACP if given to the respondents would affect their pension also. [Para 7] [426-B-D]**

D **1.2 Further, along with this Resolution there was Annexure-I. Part A of Annexure-I deals with the pay structure, grade pay, pay bands etc.. Part-B of Annexure-I deals with allowances, concessions & benefits and Conditions of Service of Defence Forces Personnel. It is apparent that the Government itself by placing MACP in Part-A of Annexure-I was considering it to be the part of the pay structure. Grant of ACP is part of the pay structure. It affects the pay of the employee and he gets a higher grade pay even though it may be in the same pay band. [Paras 8, 10] [426-H; 428-B]**

F **2.1 After the Resolution was passed by the Central Government on 30.08.2008 MACP Scheme was initially notified vide Special Army Instructions on 11.10.2008 dealing with revision of pay structure. The Scheme was called the Modified Assured Career Progression Scheme for Personnel Below Officer Rank in the Indian Army. Thereafter, another letter was issued by the Adjutant General Branch on 03.08.2009 as per which the new ACP was made applicable w.e.f. 1 Jan 2006. Finally, on 30.05.2011 another letter was issued by the Ministry of Defence as per which the MACP Scheme was made operational from**

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1st Sep. 2008. Therefore, even as per the understanding of the Army and other authorities up till the issuance of the letter dated 30.05.2011 the benefit of MACP was available from 01.01.2006. [Para 9] [427-B-C, G-H] A

2.2 Resolution dated 30.08.2008 whereby the recommendation of the Pay Commission was accepted with modifications and recommendations with regard to pay structure, pay scales, grade pay etc. was made applicable from 01.01.2006. This was a decision of the Cabinet. This decision could not have been modified by issuing executive instruction. The letter dated 30.05.2011 flies in the face of the Cabinet decision reflected in the Resolution dated 30.08.2008. Thus, administrative instruction dated 30.05.2011 is totally *ultra vires* the Resolution of the Government. [Para 11] [428-E-H] B C

P.K. Gopinathan Nair & Ors. v. Union of India and Ors. [Order dated 22.03.2017 of High Court of Kerala in WP(C) No. 23465 of 2013 (G)] ; *Delhi Urban Shelter Improvement Board v. Shashi Malik & Ors.* [Order dated 1.09.2016 of High Court of Delhi in LPA 405 of 2016] ; *K.K. Anandan & Ors. v. The Principal Accountant General Kerala (Audit) & Ors.* [Order dated 08.02.2013 of Central Administrative Tribunal in O.A. No. 541 of 2012] – held inapplicable. D E

CIVIL APPELLATE JURISDICTION : Civil Appeal Diary No. 3744 of 2016. F

From the Judgment and Order dated 21.05.2014 and 02.02.2015 of the Armed Forces Tribunal, Chandigarh, Regional Bench at Chandimandir in O.A. No. 2147 of 2012 and M.A. No. 9647-48 of 2014 in O.A. No. 2147 of 2012 respectively G

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Civil Appeal Diary Nos. 5183, 5184, 6249 and 7888 of 2017.

Civil Appeal Diary Nos. 18265, 31768, 38019, 42810 and 42879 of 2016. H

A Civil Appeal No. 244 of 2017.

Diary No. 4546, 11491, 11871, 13664, 13665, 13666, 18186, 18048, 18045, 18185, 22593, 30116, 23164, 11493 and 28798 of 2017.

B Col. R. Balasubramanian, Tara Chandra Sharma, R. R. Rajesh, Rakesh Upadhyay, Mukesh Kumar Maroria, V. R. Anumolu, Santosh Kr. Vishwakarma, Ms. Aarti Sharma, Ms. Aarti Sharma, Bharat Singh, Pravesh Thakur, Ms. Manjula Gupta, B. V. Balaram Das, Advs for the Appellants.

C Manoj Prasad, Sr. Adv., Sukhjinder Singh, Alok Gupta, Rajiv Kumar, Kusum Chaudhary, Prabodh Kumar, Kaustubh Anshuraj, Pankaj Mehara, Ms. Shweta Soni, Parmod Kali Rana, Anand Shankar Jha, Md. Ali, Abhishek Gautam, Abhimanue Shrestha, Pranab Prakash, Sant Ram, Ashutosh Dubey, Advs for the Respondents.

D Udhav Shankar Maurya (Respondent-in-person).

The Judgment of the Court was delivered by

DEEPAK GUPTA, J. 1. Applications for condonation of delay in filing and refiling the appeals are allowed.

E 2. This bunch of appeals is being disposed of by a common judgment since similar questions of law are involved.

F 3. The 6th Central Pay Commission was set up by the Government of India to make recommendations in matters relating to emoluments, allowances and conditions of service amongst other things. The Pay Commission also made recommendation with regard to armed forces personnel. On 30th August, 2008, the Central Government resolved by a resolution of that date to accept the recommendation of the 6th Central Pay Commission ('CPC' for short) with regard to the Personnel Below Officer Rank (PBOR) subject to certain modifications. Clause (i) of the Resolution reads as follows :-

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H "(i) Implementation of the revised pay structure of pay bands and grade pay, as well as pension, with effect from 01.01.2006 and revised rates of allowances (except Dearness Allowance/relief with effect from 01.09.2008;"

Clause 9 of the Resolution reads as follows :- A

“(ix) Grant of 3 ACP up-gradation after 8, 16 and 24 years of service to PBORs;”

4. Under the recommendations made by the 5th CPC there was a provision for Assured Career Progression (ACP). Vide this scheme, if an employee was not promoted he was entitled to get the next higher scale of pay after completion of 12/24 years of service. The 6th CPC recommended the grant of benefit of ACP after 10 and 20 years of service. The Union of India, however decided to grant 3 ACP upgradations, after 8, 16 and 24 years of service to PBORs, as per Clause (ix) extracted above. However, it would be pertinent to mention that the 6th CPC did away with the concept of pay scales and reduced the large number of pay scales into 4 pay bands and within the pay bands there was a separate grade pay attached to a post. B C

5. For the purpose of this judgment we are dealing with the facts of Civil Appeal Diary No. 3744 of 2016. It would be pertinent to mention that all the petitioners before the Armed Forces Tribunal (‘AFT’ for short) who are respondents before us are persons below officer rank. The respondents in this case retired after 01.01.2006 but prior to 31.08.2008. They claim that the benefit of the Modified Assured Career Progression (‘MACP’ for short) was denied to them on the ground that the MACP was made applicable only with effect from 01.09.2008. The respondents approached the AFT praying that they are entitled to the benefit of MACP w.e.f. 01.01.2006, i.e., the date from which the recommendation of the 6th CPC with regard to pay and benefits were made applicable. The stand of the Union of India was that the MACP was applicable only w.e.f. 01.09.2008 and, therefore, the respondents who had retired prior to the said date were not entitled to the benefit of the MACP. The AFT vide the impugned order dated 21.05.2014 held that the benefit of ACP granted to an employee is part of the pay structure which not only affects his pay but also his pension and, therefore, held that the ACP is not an allowance but a part of pay and, therefore, in terms of Clause (i) of the Government Resolution the MACP was payable w.e.f. 01.01.2006. D E F G H

A 6. The question that arises for decision is whether the benefit of MACP is applicable from 01.01.2006 or from 01.09.2008.

B 7. The answer to this question will lie in the interpretation given to the Government Resolution, relevant portion of which has been quoted hereinabove. A bare perusal of Clause(i) of the Resolution clearly indicates that the Central Government decided to implement the revised pay structure of pay bands and grade pay, as well as pension with effect from 01.01.2006. The second part of the Clause lays down that all allowances except the Dearness Allowance/relief will be effective from C 01.09.2008. The AFT held, and in our opinion rightly so, that the benefit of MACP is part of the pay structure and will affect the grade pay of the employees and, therefore, it cannot be said that it is a part of allowances. The benefit of MACP if given to the respondents would affect their pension also.

D 8. We may also point out that along with this Resolution there is Annexure-I. Part-A of Annexure-I deals with the pay structure, grade pay, pay bands etc., and Item 10 reads as follows :-

E	10	Assured Career Progression Scheme for PBORs.	Three ACP
F		The Commission recommends that the time bound promotion scheme in case of PBORs shall allow two financial upgradations on completion of 10 and 20 years of service as at present. The financial upgradations under the scheme shall allow benefit of pay fixation equal to one increment along with the higher grade pay. As regards the other suggestions relating to residency period for promotion of PBORs Ministry of Defence may set up an Inter-Services Committee to consider the matter after the revised scheme of running bands is implemented (Para 2.3.34)	upgradation after 8, 16 and 24 years of service has been approved. The upgradation will take place only in the hierarchy of Grade Pays, which need not necessarily be the hierarchy in that particular cadre.
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H Part-B of Annexure-I deals with allowances, concessions & benefits and Conditions of Service of Defence Forces Personnel. It is

apparent that the Government itself by placing MACP in Part-A of Annexure-I was considering it to be the part of the pay structure. A

The MACP Scheme was initially notified vide Special Army Instructions dated 11.10.2008. The Scheme was called the Modified Assured Career Progression Scheme for Personnel Below Officer Rank in the Indian Army. After the Resolution was passed by the Central Government on 30.08.2008 Special Army Instructions were issued on 11.10.2008 dealing with revision of pay structure. As far as ACP is concerned Para 15 of the said letter reads as follows:- B

“15. Assured Career Progression. In pursuance with the Government Resolution of Assured Career Progression (ACP), a directly recruited PBOR as a Sepoy, Havildar or JCO will be entitled to minimum three financial upgradations after 8, 16 and 24 years of service. At the time of each financial upgradation under ACP, the PBOR would get an additional increment and next higher grade pay in hierarchy. C D

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Thereafter, another letter was issued by the Adjutant General Branch on 03.08.2009. Relevant portion of which reads as follows:- E

“.....The new ACP (3 ACP at 8, 16 and 24 years of service) should be applicable w.e.f. 1 Jan 2006, and the old provns (operative w.e.f. the Vth Pay Commission) would be applicable till 31 Dec. 05. Regular service for the purpose of ACP shall commence from the date of joining of a post in direct entry grade. F

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Finally, on 30.05.2011 another letter was issued by the Ministry of Defence, relevant portion of which reads as follows:- G

“5. The Scheme would be operational w.e.f. 1st Sep. 2008. In other words, financial up-gradations as per the provisions of the, earlier ACP scheme (of August 2003) would be granted till 31.08.2008.” H

A Therefore, even as per the understanding of the Army and other authorities up till the issuance of the letter dated 30.05.2011 the benefit of MACP was available from 01.01.2006.

B 10. As already held by us above, there can be no dispute that grant of ACP is part of the pay structure. It affects the pay of the employee and he gets a higher grade pay even though it may be in the same pay band. It has been strenuously urged by Col. R. Balasubramanian, learned counsel for the UOI that the Government took the decision to make the Scheme applicable from 01.09.2008 because many employees would have lost out in case the MACP was made applicable from 01.01.2006 and they would have had to refund the excess amount, if any, paid to them. His argument is that under the old Scheme if somebody got the benefit of the ACP he was put in the higher scale of pay. After merger of pay scales into pay bands an employee is only entitled to higher grade pay which may be lower than the next pay band. Therefore, there may be many employees who may suffer.

E 11. We are only concerned with the interpretation of the Resolution of the Government which clearly states that the recommendations of 6th CPC as modified and accepted by the Central Government in so far as they relate to pay structure, pay scales, grade pay etc. will apply from 01.01.2006. There may be some gainers and some losers but the intention of the Government was clear that this Scheme which is part of the pay structure would apply from 01.01.2006. We may also point out that the Resolution dated 30.08.2008 whereby the recommendation of the Pay Commission has been accepted with modifications and recommendations with regard to pay structure, pay scales, grade pay etc. have been made applicable from 01.01.2006. This is a decision of the Cabinet. This decision could not have been modified by issuing executive instruction.

F The letter dated 30.05.2011 flies in the face of the Cabinet decision reflected in the Resolution dated 30.08.2008. Thus, administrative instruction dated 30.05.2011 is totally ultra vires the Resolution of the Government.

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12. Col. R. Balasubramanian, learned counsel for the UOI relied upon the following three judgments viz. *P.K. Gopinathan Nair & Ors. v. Union of India and Ors.*¹, passed by the High Court of Kerala on 22.03.2017, *Delhi Urban Shelter Improvement Board v. Shashi Malik & Ors.*², passed by the High Court of Delhi on 01.09.2016, *K.K. Anandan & Ors. v. The Principal Accountant General Kerala (Audit) & Ors.*³ passed by the Central Administrative Tribunal, Ernakulam Bench, Kerala on 08.02.2013. In our view, none of these judgments is applicable because the issue whether the MACP is part of the pay structure or allowances were not considered in any of these cases.

13. In this view of the matter we find no merit in the appeals, which are accordingly disposed of. All pending applications are also disposed of.

Divya Pandey

Appeals disposed of.

¹WP(C) No.23465 of 2013(G)

²LPA 405 of 2016

³O.A. No. 541 of 2012