

COURT NO.1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****O.A. No. 69 of 2016**

Wednesday, this the 10th day of January, 2018

**“Hon’ble Mr. Justice D.P. Singh, Member (J)
Hon’ble Air Marshal BBP, Sinha, Member (A)”**

Ramesh Chandra Tiwari 06377346 Ex N, Rank, Hon - NV- Sub
Son of Late Dev Kumar Tiwari Resident of Village Basantpur
Tiwariipur Post Chandour District Sultanpur.

..... **Applicants**

Ld. Counsel for the : **Shri M.C. Shukla, Advocate**
Applicant

Versus

1. Union of India, Through the Secretary, Ministry of Defence, New Delhi- 110001.
2. Records Officer, A.S.C. Records (South) Bangalore-7
3. Chief Manager C.P.P.C, Allahabad Bank Main Branch Hazratganj Lucknow (U.P.).
4. Branch Manager Allahabad Bank Main Branch Near Bus Stand Sultanpur (U.P).
5. Office of Principal C.D.A. (Pension) Allahabad.

--- Respondents

Ld. Counsel for the : **Shri Sunil Sharma, Advocate,**
Respondents. Sr. Central Government Standing Counsel

Assisted by : Maj Salen Xaxa, OIC Legal Cell.

ORDER (Oral)

1. Present O.A has been preferred under section 14 of the Armed Forces Tribunal Act, 2007 for the relief of pensionary benefits flowing from MACP of the post of Havildar as well as of the post of Naib Subedar in terms of Sixth Pay Commission.
2. We have heard learned counsel for the Applicant as also learned counsel for the respondents and perused the material facts on record.
3. The facts in nutshell are that the Applicant was enrolled in the Indian Army on 31.07.1982 as soldier and was discharged on 31.07.2008 after completion of service tenure under Army Rule 13 (3) Item (iii) (i) of 1954. The grievance of the applicant is that the respondent no 5 i.e. Office of Principal C.D.A (Pension) Allahabad, has not paid the pensionary benefits in terms of 6th Pay Commission whereby the pensionary benefits have been revised to Rs 10,029/- while the pensionary benefits granted to him come to Rs 8205/- only of the rank of Havildar. On the other hand, the case of the respondents is that the Applicant is not entitled to MCACP because benefits of MACP have been given effect to from 01.09.2008 and on

that date, the Applicant was not in service. Feeling aggrieved with the omission and commission of the respondents, the Applicant preferred various representations right from 2009 upto 2015 but none of the representations elicited any positive response from the respondents. It is argued by the applicant that one junior Havildar namely Ram Raj Tripathi has been granted benefits and his pay scale has been revised granting MACP vide order dated 17.01.2013.

4. Learned counsel for the Applicant placed credence on a decision of the Apex Court in **Civil Appeal Diary No 3744 of 2016, Union of India and Ors Vs Balbir Singh Turn and Anr decided on Dec. 8,2017** (AIR 2018 SC 206) . In the aforesaid case, the Apex Court noted the fact that initially MACP was applicable from 01.01.2006 but later-on, it was revised to 01.09.2008. In ultimate analysis, the applicability of MACP has been held to be arbitrary by the Apex Court. Paras 10,11 and 12 of the said decision being relevant are quoted below.

“ 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.

11. We are only concerned with the interpretation of the Resolution of the Government which clearly states that the recommendations of 6th PCP 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. 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.

12. Co. 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 Sheltr 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. WP (c) No. 23465 of 2013 (G) LPA 405 of 2016 O.A.. No. 541 of 2012.”

5. The crux of the judgment and order passed by the Apex Court is that the resolution of the Govt of India clearly states that recommendations of 6th Pay Commission as modified by the Central Govt in so far as they relate to structure, pay scales, Grade Pay etc will apply from Ist Jan 2006. Their Lordships further held that intention of the Government was too clear that this scheme is the part of pay structure and will apply from Ist Jan 2006. The Apex Court took note of the fact that the resolution dated 30.08.2008 whereby the recommendations of 6th Pay Commission have been accepted with modification and recommendation with

regard to structure; pay scales Grade Pay etc have been made applicable from 1st January 2006. It is the decision of Cabinet and this decision could not have been modified by Executive Instructions.

6. Otherwise also, it is well settled law that resolution and decision taken by the Union of India through Cabinet decision cannot be modified by Executive Instructions. The Executive Instructions are subordinate legislation and it is not open to override the decision taken by the sovereign dealing with pay structure. Thus, there is no room for doubt that injustice has been done by the respondents while deciding the issue pertaining to MACP in so far as Applicant is concerned.

7. As a result of foregoing discussions, we are of the view that the Applicant is entitled to MACP from 01.01.2006 with all consequential benefits which would include revision of pension.

ORDER

8. In the result, O.A is allowed. The respondents are directed to provide MACP to the Applicant as applicable wef 01.01.2006 till the date of his superannuation from service alongwith Arrears which would include difference of

pensionary benefits to the applicant expeditiously within four months from today and shall continue to provide benefits in terms of the observations made above.

9. There shall be no order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice D.P. Singh)
Member (J)

Dated: 10 January, 2018

MH/-