

Central Administrative Tribunal  
Principal Bench

OA No. 1613/2015

New Delhi, this the 12<sup>th</sup> day of February, 2020

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman  
Hon'ble Mr. A. K. Bishnoi, Member (A)**

D.P. Saxena, Retd. FNEO,  
Aged about 62 years,  
S/o Sh. MBL Saxena,  
R/o D-12, Upper Bela Road,  
Delhi Govt. Flat, Civil Lines,  
Delhi-110054

- Applicant

(By Advocate: Shri M.K. Bhardwaj)

Versus

Govt. of NCT of Delhi & Ors, through

1. The Chief Secretary,  
New Secretariat, IP Estate,  
New Delhi
2. The Principal Secretary-cum-Commissioner,  
(Development)  
Development Department,  
5/9 under Hill Road, Delhi-54 - Respondents

(By Advocate: Ms. Sangita Rai)

**: O R D E R (ORAL) :**

**Justice L. Narasimha Reddy :**

The applicant was appointed as a Food & Nutrition Extension Officer (FNEO) in the Department of Development, GNCTD, on 30.06.1983. He was issued a charge memo on 17.08.1995, and ultimately,

punishment of stoppage of three increments for a period of three years, without cumulative effect; was imposed through order dated 01.12.2001. He was extended the benefit of 1<sup>st</sup> ACP w.e.f. 01.12.2004 through order dated 07.08.2008.

2. The applicant approached the Public Grievance Commission of GNCTD with a representation that he was unlawfully denied the benefit of an ACP, and even the one, that was extended to him was inadequate. According to him, the ACP ought to have been in the form of financial upgradation in the pay scale of Rs.10,000-15200; whereas he was put in the pay scale of Rs.7450-11500. The Commission passed an order dated 16.12.2014, rejecting his claim. In this background, the applicant filed this OA with a prayer to direct the respondents to extend him, the benefit of 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> financial upgradations in the pay scale of Rs.10000– 15200, 12000-16500 and Grade Pay (GP) of Rs.8700 respectively, with effect from the relevant dates and to award exemplary costs.

3. The respondents filed a counter affidavit, opposing the OA. It is stated that the post of FNEO was an isolated one, without any promotional avenues





and on completion of 12 years of effective service, he was extended the benefit of 1<sup>st</sup> ACP in the form of the next higher pay scale. It is also stated that the applicant was issued charge memo and imposed punishment, and till the date of expiry of the punishment, he was not entitled to the benefit of 2<sup>nd</sup> ACP. It is also stated that by the time the 3<sup>rd</sup> MACP became due, he retired from service.

4. We heard Shri M.K. Bhardwaj, learned counsel for the applicant and Ms. Sangita Rai, learned counsel for the respondents.

5. The entry of the applicant into the service was on 30.06.1983. By 30.06.1995, he completed 12 years of service. Since it is an isolated post without any promotional avenues, he was entitled to be extended the benefit of 1<sup>st</sup> ACP. As a matter of fact, the respondents allowed that in the year 2004 obviously because disciplinary proceedings were pending against him. Invariably, the 1<sup>st</sup> ACP is referable to the period from 1983 to 1995. The question is as to the scale of pay referable to that upgradation.

6. The pay scale for the post of FNEO is Rs.6500-10500. The applicant contends that for similarly

situated persons in the Department, the first ACP was given in the pay scale of Rs.10000-15200. The respondents, on the other hand, stated that the upgradation in the form of pay scale attached to the next promotional post was granted, and such a facility does not exist for the post of FNEO.

7. In the Assured Career Progression Scheme introduced through OM dated 09.08.1999, the manner in which the benefit shall be extended in respect of isolated posts, is dealt with in Para 7 of the OM. It reads as under:-

“7. Financial upgradation under the Scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts without creating new posts for the purpose. However, in case of isolated posts, in the absence of defined hierarchical grades, financial upgradation shall be given by the Ministries/Departments concerned in the immediately next higher (standard/common) pay scales as indicated in Annexure-II which is in keeping with Part-A of the First Schedule annexed to the Notification dated September 30, 1997 of the Ministry of Finance (Department of Expenditure). For instance, incumbents of isolated posts in the pay-scale S-4, as indicated in Annexure-II will be eligible for the proposed two financial upgradations only to the pay scales S-5 and S-6. Financial upgradation on a dynamic basis (i.e, without having to create posts in the relevant scales of pay) has been recommended by the Fifth Central Pay Commission only for the incumbents of isolated posts which have no avenues of promotion at all. Since financial upgradations under the Scheme shall be personal



to the incumbent of the isolated post, the same shall be filled at its original level (pay-scale) when vacated. Posts which are part of a well-defined cadre shall not qualify for the ACP Scheme on 'dynamic basis. The ACP benefits in their case shall be granted conforming to the existing hierarchical structure only."



8. It is clearly mentioned that for isolated post, the upgradation in the form of next higher pay scale is mentioned in Annexure-II. In Annexure-II, the pay scale of Rs.6500-10500 occurs in SI. No.11, and one in SI. No. 12 is Rs.7450 - 11500.
9. Though the applicant places reliance upon a clarification issued by the DoPT on 10.02.2000, his case does not fall into that. He is not able to mention that in the same Department, hierarchy for similar posts exists and that the ACP for the post of FNEO was extended in the form of next pay scale of Rs.10000-15200. We do not agree with that contention.
10. Another grievance of the applicant is that except that he was sanctioned 1<sup>st</sup> ACP, he was not extended any other benefit despite his 30 years of service. In this behalf, the period from the date on which the applicant was issued charge memo, i.e. 17.08.1995 till the date of expiry of punishment, i.e., 01.12.2004, needs to be excluded. The reason is that during that

period, he was not entitled to be promoted at all, and ACP is a substitute for promotion. The benefit of ACP/MACP is only subject to an employee being otherwise eligible to be promoted.

11. The MACP was introduced through OM dated 19.05.2009. According to this, an employee shall be entitled to be extended the benefit of higher pay scales on completion of 10, 20 and 30 years of service. However, for each of the spells, the employee is required to complete 10 years of service in the same scale of pay. Though the applicant was extended the benefit of 1<sup>st</sup> ACP in the year 2004, it is required to be treated effective from 30.06.1998 and viewed in that context, he completes 10 years of service in the same scale of pay, thereby he becomes entitled to be extended the benefit of MACP.

12. The benefit of 1<sup>st</sup> ACP was given to the applicant in 2004. However, he did not raise any objection at that time. Till he retired from service, he remained silent. Strictly speaking, the entire claim deserves to be treated as barred by limitation. However, having regard to the fact that the applicant was wrongfully denied the benefit, we partly allow the OA, directing



that the applicant shall be extended the benefit of 2<sup>nd</sup> MACP in the form of revision of pension and not in the form of arrears in any manner. This exercise shall be completed within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs.



**(A.K. Bishnoi)**  
**Member (A)**

**(Justice L. Narasimha Reddy)**  
**Chairman**

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