



**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No. 1584/2020

This the 03rd day of December, 2020

(Through Video Conferencing)

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

Sh. Ashok Kumar Gautam,
Age 62 years,
S/o Late Madan Lal Gautam,
R/o B 70, Sidhartha Kunj,
Appts, Plot 17, Sector 7, Dwarka, Delhi – 110075,
Retired as Assistant Director in DGHRD under
The Central Board of Indirect Taxes & Customs.

...Applicant

(Applicant in person)

VERSUS

1. The Union of India through the Secretary,
Department of Revenue, North Block, New Delhi.
2. The Central Board of Indirect Taxes & Customs
Through the Chairman, CBIC, North Block, New Delhi.
3. The Secretary, Department of Personnel and Training,
North Block, New Delhi.
4. The Pr. Chief Controller of Accounts,
Central Board Indirect Taxes and Customs,
A.G.C.R. Building (1st Floor) New Delhi – 110009.
5. The Chief Commissioner of Central Excise & CGST,
Delhi Zone, C. R. Building, I.P. Estate, New Delhi –
110009.
6. The Directorate General of Human Resource
Development,
Through the Director General,



2nd and 3rd Floor, Bhai Veer Singh Marg,
Sahitya Sadan, New Delhi – 110001.

...Respondents

(By Advocate: Mr. Gyanendra Singh)

ORDER (Oral)

Justice L. Narasimha Reddy:-

The applicant joined the service of Central Excise and Customs Department, as Inspector on 21.09.1982. He was promoted to the post of Superintendent on 30.09.1997. Thereafter, he did not earn promotion for quite some time and was extended the 2nd Assured Career Progression (ACP) on 21.09.2006. The applicant was also granted the benefit of Non Functional Upgradation (NFU) w.e.f. 01.01.2006, through order dated 29.08.2008. He was also extended the benefit of 3rd Modified Assured Career Progression (MACP) on completion of 30 years of service on 21.09.2012. The NFU extended to the applicant was withdrawn in the year 2013. Aggrieved by that, the applicant filed OA before this Tribunal. It was allowed on the ground that the applicant was not put on notice and accordingly, the NFU was restored.

2. The applicant retired from service on 31.12.2018. Through an order dated 13.06.2019, the 3rd MACP granted to the applicant was withdrawn and corresponding amount was recovered. This was on the basis of clarification



issued by Ministry of Finance, Department of Revenue on 20.06.2016. The Ministry has also issued another letter dated 07.12.2016. This OA is filed challenging the orders dated 20.06.2016, 07.12.2016 and the order of recovery dated 13.06.2019. The clarification given by the Ministry is to the effect that the 3rd MACP is not available in view of the paragraph 8.1 of the OM dated 29.08.2008. The applicant contends that paragraph 8.1 cannot be applied to his case. He contends that NFU is a special benefit and it cannot be treated either as promotion or upgradation; and in that view of the matter, the withdrawal of the 3rd MACP was without any basis.

3. The OA was listed earlier and the respondents were given time to file reply. Today, it is submitted by Mr. Gyanendra Singh, learned counsel for respondents that the issue has since been decided by the Hon'ble Supreme Court in **Union of India and others Vs. M. V. Mohanan Nair**(CA No. 2016/2020& batch) by judgment dated 05.03.2020.

4. We heard the applicant who argued his case in person and Mr. Gyanendra Singh, learned counsel for the respondents, through video conferencing.



5. The benefits of ACP and, thereafter, MACP were introduced to avoid stagnation of employees in the service. The MACP benefits were extendable twice, to employees, who did not earn promotion in the spell of 12 years each. The MACP benefits are extendable on completion of 10, 20 and 30 years, in case an employee did not earn promotion or upgradation during those spells. The first ACP stood set of on account of his promotion on 30.09.1997 as Superintendent. 2nd MACP was granted to him on 21.09.2006.

6. The applicant, no doubt, completed 30 years by 2012. However, after the grant of 2nd MACP, he was extended the benefit of NFU in the Grade Pay of Rs. 5400/- w.e.f. 01.01.2006. This, naturally has offset the 3rd MACP. Paragraph 8.1 of the Scheme is very clear. Unlike in case of ACP and MACP would be granted, if only an employee did not earn 'promotion' or 'upgradation', in the pay scale. Since the upgradation has taken place in the span between 20 and 30 years of service, there was no occasion to grant him 3rd MACP. Therefore, that was withdrawn and a clarification was issued by Ministry of Finance, which was also taken into account. Though the applicant has made a prayer to the effect that Paragraph 8.1 of the Scheme does not relate to him, he is not able to substantiate it. This Tribunal has taken the view that not only a promotion but



also a financial upgradation of any kind, whatever, earned by an employee would set off the corresponding MACP. The final word was said in the recent judgment of Hon'ble Supreme Court in CA No. 2016/2020 dated 05.03.2020.

6. We do not find any merit in the OA. It is accordingly dismissed. There shall be no order as to costs.

(A.K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/sunil/rk/ankit/sd