

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/021/01194/2014

HYDERABAD, this the 14th day of October, 2020

Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member



Muralidhar Deshpande S/o Dattatreya Deshpande,
Hindu, Aged 64 years, Retired as Inspector of
Central Excise and Customs, Hyderabad,
R/o H.No.1-8-702/33/27/3, MCH No.24,
Street No.1, Vidyanagar, Hyderabad-500 044.

...Applicant

(By Advocate : Mr.T.P.Acharya)

Vs.

- 1.Union of India, Ministry of Finance,
Represented by its Secretary,
Department of Revenue, Shastri Bhavan,
New Delhi-110 001.
2. The Commissioner of Customs,
Central Excise & Service Tax, Hyderabad-I
Commissionerate,
Kendriya Shulk Bhavan, Basheerbagh,
Hyderabad-500 004.
3. The Commissioner of Customs,
Central Excise & Service Tax, Hyderabad-II
Commissionerate,
Kendriya Shulk Bhavan, Basheerbagh,
Hyderabad-500 004.

....Respondents

(By Advocate : Mrs.K.Rajitha, Sr.CGSC)

ORAL ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:



2. The OA has been filed in regard to grant of financial upgradation under MACP Scheme.

3. Brief facts of the case are that the applicant was appointed as LDC on 16.09.1975 and thereafter, he was promoted as UDC in 1980. He was further promoted to the post of Tax Assistant on 30.05.1988. Finally, he got promotion as Inspector of Central Excise & Customs on 01.06.1989. Subsequently, the Recruitment Rules were revised on 29.11.2002. After implementation of the 6 CPC, the MACP scheme came into vogue. Since the applicant was not granted financial upgradation under the said Scheme, he represented on 09.03.2010, but of no avail. Applicant retired as Inspector on 30.06.2010. Therefore, he sought information under the RTI Act on 06.02.2014 and it was informed that the applicant's service particulars were sent to the 3rd respondent on 14.02.2014. The applicant received the impugned letter dt.11.03.2014 rejecting his request for the grant of appropriate financial upgradation. Aggrieved, the applicant submitted another representation on 24.03.2014 and he got a reply that too under the RTI Act on 19.09.2014 reiterating the same reply as was given in the impugned letter.

4. The contentions of the applicant are that he has put in 21 years of service in the cadre of Inspector of Central Excise before he retired. Since he spent more than 10 years of service in the grade of Inspector, he is

entitled for financial upgradation under MACP Scheme as per the Government of India OM dt. 19.05.2009. Applicant submitted that he was promoted as Tax Assistant on 27.06.1988 with a condition that he will be on probation for a period of 2 years. However, he was promoted as Tax Inspector on 01.06.1989 within one year from the date of his promotion as Tax Assistant and before his probation was declared in the cadre of Tax Assistant, by considering 12 years service rendered in the cadres of LDC and UDC as per the then existing rules. The promotion of Tax Assistant is deemed to have been waived by the respondents themselves since he was promoted as Inspector by considering the service rendered in the cadres of LDC and UDC. The respondents have mis-interpreted the MACP and rejected the case of the applicant.



5. The respondents opposed the contentions of the applicant by submitted that the applicant was appointed as LDC on 16.09.1975; promoted as UDC w.e.f. 17.01.1981 and thereafter, promoted as Tax Assistant w.e.f. 27.06.1988. Finally, he was promoted as Inspector on 08.06.1989 and retired as such on 30.06.2010. As per the recruitment rules, UDC with 5 years of service are eligible for the cadre of Inspector. Further, pending the amendment of Recruitment Rules for the post of Inspector of Central Excise, the Ministry of Finance vide letter dt. 05.08.1988 decided that the Tax Assistants would be eligible for promotion to the grade of Inspector of Central Excise. As per the Ministry's decision, Tax Assistant with 2 years service in the grade or with 5 years total service in the grades of UDC and Tax Assistant, if any, taken together would be eligible for



promotion to the grade of Inspector of Central Excise. Ministry made it clear that while considering for promotion as Inspector, Tax Assistants will be placed enbloc over the UDC in the seniority. Consequently, during the relevant period, both the UDC and Tax Assistant were eligible for promotion to the cadre of Inspector. The issue regarding treatment of promotion granted to UDCs against the 1/3 posts upgraded to Tax Assistant on 11.03.1988 for grant of second and third financial upgradations under MACP Scheme was clarified by the Ministry of Finance vide letter dt. 20.10.2014 that placement of existing incumbents to the upgraded post will be treated as promotion. The clarification No. 8 of Annexure to DOPT OM dt. 09.09.2010 makes it clear that the Government servant, who has earned 3 promotions and still stagnated in one grade for more than 10 years, would not be eligible for any further financial upgradation under MACP Scheme. The applicant having got 3 promotions namely, UDC, Tax Assistant and Inspector of Central Excise, he is not entitled for any financial upgradation.

The applicant has filed a rejoinder wherein he stated that as on the date of his promotion as Inspector of Central Excise and Customs on 01.06.1989, the Recruitment Rules 1979 were in force and as per the said Rules, the post of Tax Assistant was not a feeder cadre to the post of Inspector and thus, his promotion to the post of Inspector on 1.06.1989 was based on his service of 13 years in the cadres of LDC and UDC, as UDC was feeder cadre to the post of Inspector. Therefore, the promotion of the applicant as Tax Assistant given to him on 27.06.1988 was given up by the respondents themselves. Thus, the clarification relied upon by the

respondents in the reply statement contending that he has been promoted considering his service in the cadre of Tax Assistant and UDC has no force.

The applicant submits that he was promoted from the post of UDC to Tax Assistant on 27.06.1988 and was placed on probation for a period of two years from that date, but, within one year, he was promoted as Tax Assistant. Thus, the respondents themselves have given up his promotion and considered his service rendered in the cadres of LDC and UDC as per Recruitment Rules existing as on 01.06.1989.



6. Heard both the counsel and perused the pleadings on record.

7(I) The applicant was promoted by the respondents from LDC to UDC, then promoted as Tax Assistant, and finally as Inspector of Central Excise & Customs on 01.06.1989. He retired on 30.06.2010. The claim of the applicant is that since he has spent 21 years in the Inspector grade, he is eligible for financial upgradation under MACP Scheme since he has stagnated in the said post for 21 years. Applicant submits that the respondents waived his promotion to the post of Tax Assistant from the cadre of UDC and therefore, if the said promotion is not taken into consideration, he is eligible for one financial upgradation. However, the issue regarding the treatment of promotion from UDC against 1/3 posts upgraded to the grade of Tax Assistant on 11.3.1988 for grant of second and third financial upgradations under MACP Scheme was clarified by the Ministry of Finance vide letter dt. 20.10.2014. Para 3 of the said letter reads as under:

“In terms of clarification No. 35 on ACPS issued by DOPT, where only a part of the posts are placed in a higher scale and rest are retained in the existing grade, thereby involving re-distribution of



posts, it involves creation of another grade in the hierarchy requiring framing of separate RRs for the upgraded posts. Placement of existing incumbents to the extent of upgradations involved, in the upgraded post will also be treated as promotion/ upgradation and offset against entitlements under ACPS. Also, in terms of para 3(ii) of DOP&T's OM No. AB-14017/66/2008-Estt.(RR) dated 09.03.2009, where the upgradation or merger is part; where the upgraded post will be the promotion grade for the posts left in the lower grade, normal DPC procedure will apply. Hence, promotion of UDC (Rs.4000-6000) to the grade of TA (Rs.4500-8000) further upgraded to (Rs.5000- 8000/-) would be counted as a promotion/ upgradation for the purpose of ACP/MACP benefits."

Therefore, in view of the above clarification, the applicant's promotion to the cadre of Tax Assistant has to be counted as promotion for the purpose of grant of ACP/MACP. Moreover, the DOPT vide OM No.35034/3/2008-Estt.(D) dt. 09.09.2010 has also made it explicit that in case an employee gets 3 promotions in his career and still stagnated in one grade for more than 10 years, then he will not be eligible for any further financial upgradation under MACP Scheme. The clarification given by the DOPT is extracted hereunder for reference:

8	<i>In a case where the Government servant have already earned three promotions and still stagnated in one grade for more than 10 years, whether he would be entitled for any further upgradation under MACPs.</i>	<i>No. Since the Government servant has already earned three promotions, he would not be entitled for any further financial upgradation under MACPS.</i>
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The applicant himself has admitted in his rejoinder that he was promoted from the post of UDC as Tax Assistant on 27.06.1988 and he was placed in probation for a period of 2 years, but within one year thereafter, the respondents, considering his service rendered in the cadre of LDC and UDC as per the Recruitment Rules, 1989, promoted him as Inspector on 01.06.1989. Therefore, the applicant himself also admitted that he has been

promoted as Tax Assistant. It is immaterial whether he was promoted to the post of cadre of Inspector before or after completion of the probation in the cadre of Tax Assistant. Important aspect is as to whether he got promotion or not. The facts on record and as admitted by the applicant in his rejoinder, he got a promotion as Tax Assistant. By reckoning, the promotion as Tax Assistant, applicant is not eligible for financial upgradation, as sought, under MACP Scheme.



II. Therefore, from the above, it is evident that the applicant has got 3 promotions and therefore, he would not be eligible for further financial upgradations under the MACP Scheme. The assumption of the applicant that the respondents themselves have waived off the promotion to the post of Tax Assistant is sweeping and unreasonable. The applicant has also not annexed any order of the respondents to this effect. In the absence of such order, the contention of the applicant that his promotion to the post of Tax Assistant is deemed to have been waived by the respondents is not maintainable. Hence, in view of the facts stated above, there is no merit in the OA and hence, dismissed with no order.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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