

CENTRAL ADMINISTRATIVE TRIBUNAL.
ERNAKULAM BENCH

Original Application No. 44 of 2012

Thursday, this the *3rd* day of December, 2015

CORAM:

Hon'ble Mr. Justice N.K. Balakrishnan, Judicial Member
Hon'ble Mrs. P. Gopinath, Administrative Member

Valsa T. Dharan, Aged 61, W/o. N. Thulasidharan,
Avibha, Pullattukari, Kazhakkuttom Post,
Thiruvananthapuram – 695 582.

..... **Applicant**

(By Advocate : Mr. Vishnu S. Chempazhanthiyil)

V e r s u s

1. The Senior Administrative Officer, Vikram Sarabhai Space Centre, Department of Space, Thumba, ISRO Post, Thiruvananthapuram – 695 022.
2. The Chief Controller, Vikram Sarabhai Space Centre, Department of Space, Thumba, ISRO Post, Thiruvananthapuram – 695 022.
3. The Secretary, Department of Space, Antariksh Bhavan, New BEL Road, Bangalore – 560 231.

..... **Respondents**

(By Advocate : Mr. Anilkumar, Sr. PCGC ®)

This application having been heard on 19.11.2015, the Tribunal on

03.12.2015 delivered the following:

ORDER


Hon'ble Mr. Justice N.K. Balakrishnan, Judicial Member -

Complaining of denial of grant of 3rd MACP under MACP (Annexure A4) the applicant has filed this Original Application for a direction to be given to the respondents to extend the benefit of MACP scheme to the applicant and to grant her the 3rd financial upgradation with effect from 1.9.2008.

2. The case of the applicant is stated in brief as follows:-

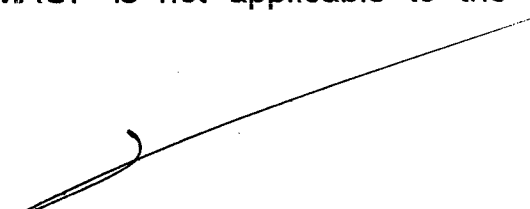
She joined as a Nurse on 7.1.1974 in VSSC. She was granted promotion on 1.10.1982 as Nurse-C vide Annexure A1. She was granted another promotion as on 1.4.1986, as Nurse-D as per Annexure A2, and later she was promoted as Nurse-E as per Annexure A3 dated 10.4.2003. The post of Nurse-D and Nurse-E were re-designated as Senior Nurse-A and Senior Nurse-B respectively. As per the recommendations of the VIth CPC the posts of Senior Nurse-A and Senior Nurse-B got merged. Thus according to the applicant she had only two promotions. Annexure A4 MACP scheme was introduced by the Government and as per Clause-5 therein the promotions earned/upgradations granted under the ACP scheme has to be ignored. The MACP scheme is applicable to Scientists covered under FCS. A request was made to the 2nd respondent to grant the applicant 3rd financial upgradation. The applicant had superannuated on 31.5.2010. She had completed 36 years as on 1.9.2008. Annexure A5 request made by her was followed by a reminder Annexure A6. The request was rejected as per Annexure A7. The applicant contends that Annexure A7 is illegal and arbitrary.

After the argument was over it is seen that application for amendment also has been filed by the applicant to contend that Annexure A10 order dated 22.8.2011 is unsustainable and so that also has to be set aside. Considering the nature of the case and the fact that this application (OA) was pending for more than three years the present request to amend the OA has been turned down as it was highly belated. However, the argument advancement by the learned counsel for the applicant regarding the same is also considered.



3. The respondents raised the following contentions to oppose the claim made by the applicant.

The orders/guidelines issued by various Ministries/Departments of Government of India including Department of Personnel & Training with respect to the personal policies of the employees under their control are as such not applicable to the ISRO/Department of Space. This Department is empowered to formulate itself the personal policies including norms for recruitment and promotion of its personnel by virtue of presidential notification dated 18.7.1972. This Department has also been exempted from the purview of consultation with the UPSC in filling up of all technical and administrative posts by virtue of another notification dated 14.11.1974. Therefore, the claim made by the applicant based on MACP scheme is untenable. The applicant got the promotions as Nurse-C on 1.10.1982 and Nurse-D on 1.4.1986 and then as Nurse-E on 1.4.2003. Subsequently the scale of Nurse-E was revised to Rs. 15600-39100/- (PB-3) plus Grade Pay of Rs. 5400/- with effect from 1.1.2006. The post of Nurse-E was created during 2003. Subsequently it was re-designated as Nurse-B with effect from 19.10.2006 with the same Grade Pay. The applicant has thus already earned three promotions in her career and she retired on superannuation on 31.5.2010. Though MACP scheme is applicable to Scientists covered under Flexible Complementary Scheme (FCS) as per OM dated 10.9.2010 of DOP&T, subsequently it was clarified as per OM dated 22.8.2011 that since scientific and technical personnel in DOS/ISRO are not covered by FCS guidelines issued by the DOP&T but are covered under merit promotion scheme (MPS) the guidelines contained in DOP&T OM dated 10.9.2009 including MACP is not applicable to the Scientist/Technical

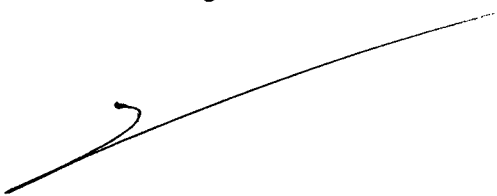


Personnel of DOS/ISRO vide Annexure R2. The career progression earned by the applicant while in service had been governed by MPS and therefore, guidelines issued by the DOP&T OM dated 19.5.2009 and 19.10.2010 are not applicable in her case. Nurses are coming under para-medical cadre. It is categorized as Scientific/Technical category in DOS/ISRO. Their career progression is covered under MPS. The entire set of OM dated 19.5.2009 produced as Annexure R3 will clarify the position. The applicant cannot thus rely upon Annexure A4. Time bound promotion and MACP scheme cannot run concurrently in a Department. DOS vide Annexure R4 OM clarified that Scientists/Technical personnel of the DOS are not eligible for MACP scheme as they are governed by MPS scheme. As such the guidelines issued by DOP&T as per OM dated 10.9.2010 is not applicable to Scientists/Technical personnel of the respondent organization as they are not covered by Flexible Complementing Scheme of DOP&T. Thus, the respondents contend that the applicant is not entitled to get the relief as prayed for.

4. The point for consideration is whether the applicant is entitled to get the benefit of financial upgradation under the MACP scheme ?

5. We have gone through the pleadings and documents and have heard the learned counsel appearing for both sides.

6. The learned counsel for the applicant has very much relied upon a decision rendered by this Tribunal in OA No. 839/2002 dated 22.12.2005 in support of his submission that this Tribunal has taken the view that the employees of the VSSC are entitled to get benefit under the ACP scheme.




The facts dealt with in the aforesaid case are totally different. There the claim was under the Assured Career Progression Scheme (ACPS) which envisaged two financial upgradations to Group-C and Group-D employees on completion of 12 years and 24 years of regular service. The aforesaid case was disposed of by this Tribunal directing the respondents to consider the applicant for grant of the scale of Rs. 6500-10500/- from the date of issuance of ACP scheme with effect from 9.8.1999 with all consequential benefits. As stated earlier the facts are entirely different. In that case the respondents contended that the applicant was governed by the FCS scheme and so ACP scheme cannot be made applicant to her as both schemes will not run concurrently. It was observed by this Tribunal that the respondents have implemented the ACP scheme but it was limited only to those categories of employees who are governed by the Vacancy Oriented Promotion Scheme.

7. Annexure A9 is the Flexible Complementing Scheme. Clause (v) therein reads:

"(v) Henceforth, the benefits of FCS shall be extended only in such Departments as are involved in creating new scientific knowledge or innovative engineering, technological or medical techniques or which are predominantly involved in professional research and development and / or application for scientific knowledge. The modified criteria for identifying departments as scientific and technical and parameters for determining scientific activities and services scientists and engineers and scientific posts will be as in the Annexure II to this scheme."

There is an office memorandum dated 10.9.2010 appended to Annexure A9. This has been relied upon by the learned counsel for the applicant in support of his submission that it was stated that the VIth CPC has recommended that the existing scheme of FCS with necessary modifications has to be continued for R&D professionals in all S&T

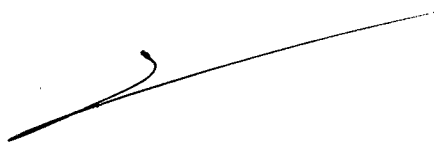


organization and the merit based promotion scheme in the Department of Atomic Energy, Space and DRDO would also need to be persisted with. It was also stated that the commission has recommended certain features to be incorporated in the existing schemes of FCS and merit based promotion scheme so as to make them more relevant to the context. It is pointed out that the DOS/ISRO was following merit based promotion scheme and it was not directed to be discontinued as per Annexure A9 issued by the Government of India, Ministry of Personnel, Public Grievances and Pension, Department of Personnel & Training.

8. The learned counsel for the respondents relies upon Annexure R4 the OM dated 3.8.2009 issued by the Government of India, Department of Space. A clarification was sought to DOS to which the following reply was given:

04	Para 13 of order dated 19.5.2009 states that the Modified ACP Scheme shall not concurrently run with the existing Time Bound Promotion Scheme, Staff Car Driver Scheme, etc. In ISAC, there are a few technical personnel who have not got any promotion even after 20 years of service (either they were being not found fit for promotion or not attended the test/interview). It is felt that the Modified ACP Scheme is not to be applied in such cases as they are governed under the Merit Promotion Scheme. This may kindly be clarified/confirmed.	Persons governed by LFCS/ MPS are not eligible for MACPS
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9. Therefore, what has been said with respect to Flexible Complementing Scheme has no application to the case on hand. It is also pertinent to note that as per Annexure R2 OM No. A.12013/1/1998, dated 22.8.2011 of Government of India, Department of Space, (when query was made as to the applicability of OM dated 10.9.2010 so far as it relates to




MACP, for Scientific and Technical personnel of DOS/ISRO) it was clarified as:

"The undersigned is directed to state that there have been enquiries from some of the Centres/Units of DOS/ISRO regarding applicability or otherwise of OM No. AB-14017/37/2008-Estt.(RR) dated September 10, 2010 of Department of Personnel & Training in so far as it relates to MACP for Scientific & Technical personnel of DOS/ISRO.

2. The matter has been examined in the Department of Space in consultation with Department of Personnel & Training and it is hereby clarified that since the Scientific & Technical personnel in DOS/ISRO are not covered by Flexible Complementing Scheme guidelines issued by DoPT, the guidelines contained in DoPT OM dated 10.9.2010 including MACP will not be applicant to S&T personnel of DOS/ISRO."

10. From Annexure R2 it is clear that the OM was issued in consultation with Department of Personnel & Training and it was clarified that the Scientific and Technical personnel in DOS/ISRO are not covered by flexible complementing scheme/guidelines issued by DOP&T and that the guidelines contained in DOP&T OM dated 10.9.2010 including MACP will not be applicable to S&T personnel of DOS/ISRO. Therefore, it is idle for the applicant to contend that the FCS scheme and MACP scheme are applicable to the scientific and technical personnel of DOS/ISRO.

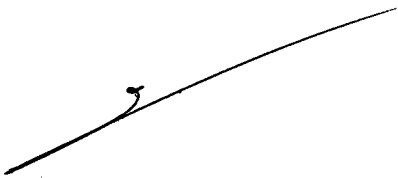
11. Learned counsel for the applicant wanted this Tribunal to rely upon the order in OA No. 839 of 2002 dated 22.12.2005 to contend that MACP should be made applicable and the claim made by the applicant should be allowed. It is important to note that OA No. 839 of 2002 was disposed of by this Tribunal on 22.12.2005, more than three years prior to the introduction of MACP scheme. Annexure A2 is not an interparty judgment. When the claim is made on the basis of MACP scheme (Annexure R3) and when the provisions therein itself would resolve the dispute, it is inconceivable how



Annexure A7 order dated 22.12.2005 can help the applicant. There was no occasion for the Tribunal to interpret the provisions of Annexure R3 while considering Annexure A7. In Annexure R4 OM dated 3.8.2009 the Department of Space (DOS) has referred to the DOP&T letter dated 19.5.009 on MACP scheme and based on the same the clarification was issued in respect of paragraph 13 of Annexure R3. It was explained that persons covered by LFCS/MPS are not eligible for MACP. It has already been stated that MPS is applicable to the applicant and so the contention that the applicant is also entitled to get the benefit of MACP cannot be sustained. Annexure R2 and the letters referred to therein would make it clear that DOS has taken a decision to retain the scheme; namely MPS. There is nothing to show that the Department has switched over to MACP. Annexure A7 order in OA No. 839 of 2002 passed on 22.12.2005 cannot cover Annexure R4 MACP scheme which was introduced more than 3 years after Annexure A7.

12. The applicant wanted to rely upon Annexure A4 OM issued by DoPT on 19.5.2009 in respect of the Central Government Civilian Employees. The respondents contended that it is only a part of the OM. Annexure R3 is the very same OM dated 19.5.2009, which was filed by the applicant as Annexure A4. Paragraph 13 of the Annexure appended to Annexure R3 reads as follows: It is pertinent to note that this Annexure, appended to the OM dated 19.5.2009, has not been produced by the applicant.

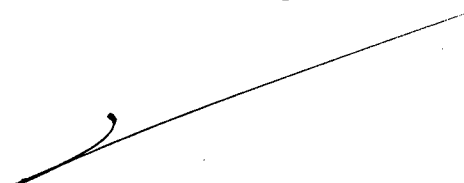
"13. Existing time-bound promotion scheme, including in-situ promotion scheme, Staff Card Driver Scheme or any other kind of promotion scheme existing for a particular category of employees in a Ministry/Department or its offices, may continue to be operational for the concerned category of employees if it is decided by the concerned administrative authorities to retain such Schemes, after necessary consultations or they may switch-over to the MACPS. However, these Schemes shall not



run concurrently with the MACPS.”

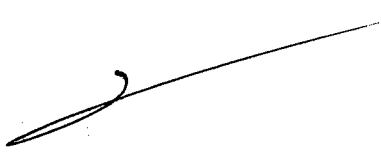
13. Therefore, the applicability of any other scheme would depend upon the decision to be taken by the concerned administrative authority as can be seen from the Office Memorandum issued by the Government of India/DOS. It is indubitably clear that the Department has decided to retain Merit Based Promotion Scheme which was in existence in the Department (DOS/ISRO) and that the Department has not taken any decision to switch over to MACPs. It is made clear in paragraph 13 quoted above that such scheme shall not run concurrently with the MACPs. The decision was only to retain Merit Based Promotion Scheme. The learned counsel for the respondents submit that on this ground also the decision relied upon by the applicant in OA No. 839/2002 can have no application at all. Even otherwise the facts are entirely different. It has already been stated.

14. The learned counsel for the applicant contends that office memorandum dated dated 22.8.2011 issued by the Government of India, Department of Space has to be set aside, for, according to the learned counsel this Annexure A10 is against Annexure A8 order passed by the Tribunal in OA No. 839/2002 which was disposed of by the Tribunal on 22.12.2005. It has already been pointed out that the issue involved is pertaining to the applicability of MACP which itself was introduced only in 2008, three years after Annexure A8 order mentioned above. It is also pertinent to note that it is that Department which was expected to take a conscious decision as to whether the MACP scheme is to be adopted in the particular department. Simply contending that the Department should not have issued such a notification the applicant cannot contend that this Tribunal should issue a mandamus directing the Department to apply

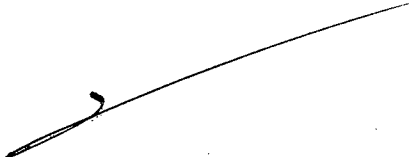


MACP to that Department notwithstanding the fact that earlier orders issued in this behalf are in vogue. According to the respondents benefits were given to the employees under MPS which was the Scheme made applicable to the Department. Therefore, the contention that Annexure A10 order dated 22.8.2011 should also be set at naught does not stand to rhyme or reason. The competent authority/Department has specifically stated that Science & Technological person in DOS/ISRO are not covered by the flexible complementing scheme issued by the DOP&T. The guidelines contained in DOP&T OM dated 10.9.2010 including MACP will not be hence applicable to Scientists and Technical persons of DOS/ISRO.

15. The competency or authority of the Government of India, Department of Space to issue such a notification is unassailable because the Department was empowered to formulate its own personnel policy including norms for recruitment and promotion of its personnel by virtue of the presidential notification dated 18.7.1972. That aspect was not seriously challenged by the applicant as well. It is contended by the respondents that the Department (DOS) has also been exempted from the purview of consultation with the UPSC in filling up of technical and administrative post by virtue of another notification dated 14.11.1974. It is true that the notifications of 1972 and 1974 are not before this Tribunal but the fact remains that those two notifications were not challenged in this case. It is further contended that notifications and orders were issued from that department from time to time with regard to the service conditions of scientific and technical staff and also of para medical staff and similarly placed other personnel of that Department. When separate orders and notifications are prevalent in that Department with regard to the conditions



of service, promotions, etc., the provisions of MACP cannot be held applicable to that Department solely because of the fact that one of the employees wanted to get benefits under the MACP scheme. According to the respondents the career progression made available to para-medical staff had been reviewed many times and additional promotional avenues were created in the hierarchy in the past to meet the organizational requirements. The fact that the applicant was promoted as Nurse-C and then as Nurse-D and again as Nurse-E has been put forward by the respondents to substantiate the plea that DOS has taken sufficient care to see that their employees are given due and timely promotions. The post of Nurse-E was created in 2003. It is not disputed that the post was re-designated as Senior Nurse-B with effect from 19.10.2006. Thus according to the respondents the applicant had earned three promotions in her career. It is not very much necessary to dwell upon on those matters since it is made clear that the MACP scheme is not made applicable to the category of employees to which the applicant belongs as has been clarified many a time by the Department of Space. The different notifications and official memoranda relied upon by the respondents would clearly show that the concerned administrative authority; namely the Department of Space/ISRO had taken a conscious decision to retain such schemes like MPS and they did not decide to switch over to MACP. When MPS (merit promotion scheme) was made applicable to the DOS/ISRO the applicant cannot contend that MACP scheme should also be made applicable so as to grant the benefit sought for by the applicant. It is not a case where there was no promotion or that there was complete stagnation. The notifications and official memoranda issued by the DOS/ISRO from time to time will show that the Department had taken care the interest of its employees by



creating additional promotional avenue and by re-designating certain posts in order to help the employees.

16. We find no force in the belated challenge made by the applicant against Annexure A10 office memorandum dated 22.8.2011 issued by the Department of Space. We are also of the considered view that the applicant is not entitled to get the benefit under the MACP scheme for the reasons stated earlier. As such the Original Application fails and the same is dismissed. No order as to costs.


(P. GOPINATH)
ADMINISTRATIVE MEMBER


(N.K. BALAKRISHNAN)
JUDICIAL MEMBER

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