

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD**

Reserved on 23.3.2019

Original Application No. 330/00743/2013

This the 24th day of April, 2018

**Hon'ble Mr. Justice Dinesh Gupta, Chairman
Hon'ble Mr. Gokul Chandra Pati, Member (A)**

Dr. Prithvish Nag, Director (Retd.) National Atlas & Thematic Mapping Organization, Kalkatta, now Vice Chancellor, Mahatma Gandhi Kashi Vidyapith, Varanasi, U.P. s/o late Dr. Pradyumna Chandra Nag, r/o Mahatma Gandhi Kashi Vidyapith, Varanasi, U.P.

.....Applicant

By Advocate: Sri A. Srivastava

Versus

1. Union of India through Secretary, Department of Science and Technology, Technology Bhawan, New Mahrauli Road, New Delhi.
2. Secretary, Department of Personnel & Training, Govt. of India, New Delhi.
3. Director, National Atlas & Thematic Mapping Organization, Kolkata, West Bengal.

.....Respondents

By Advocate: Sri S. Srivastava.

O R D E R

By Hon'ble Mr. Gokul Chandra Pati, Member (A)

The applicant filed this O.A. u/s 19 of the Administrative Tribunals Act, 1985 for the following main reliefs:-

- "i) Quash the impugned order dated 12.2.2013 passed by the respondent No. 1 (Annexure A-1).*
- ii) Issue the directions to the respondent No. 1 to convene screening committee *denovo* and assess the suitability of financial upgradation in HAG scale under MACP Scheme with all consequential benefits including the arrear of pay and allowances."*

2. The brief facts emerging from the O.A. are that on the basis of interview conducted by the Union Public Service Commission (In short UPSC), the applicant was selected and appointed to the post of Director in the Office of National Atlas & Thematic Mapping Organization Kolkata, West Bengal (in short NATMO) on 9.9.1994. The NATMO is an attached organization under the Department of Science and Technology, Govt. of India (in short DST). The post of Director, NATMO was governed by recruitment rules 'the Director (National Atlas and Thematic Mapping Organization) Recruitment Rules, 1989' (Annexure A-2). According to column 11 of Recruitment Rules, 1989, the post of Director is filled up 100% by direct recruitment on contract/tenure for 5 years, which may be extended by the Central Govt. for a further period of five years. The contract/tenure system shall not apply in case a departmental officer is selected by the UPSC.

3. The applicant prior to his appointment to Director, NATMO was Joint Director ,NATMO as such the provision of contract/ tenure as existed in the Recruitment Rules 1989 was not applicable in the case of applicant. Therefore, the applicant continued as Director, NATMO from 09.09.1994 to 31.07.2011, except for a period of about three years of deputation to Survey of India as Surveyor General of India from 03.12.2001 to 28.02.2005. Hence, the applicant has served as Director for almost 14 years excluding the period of deputation to Survey of India.

4. It is stated in the OA that Sixth Central Pay Commission recommended introduction of Modified Assured Career Progression (in short MACP) Scheme for grant of three financial up-gradations at interval of 10, 20 and 30 years of continuous regular service. The Union of India (respondent No.1) considered and accepted the said recommendation of the Pay Commission and brought the MACP Scheme for the Central Govt. employees vide O.M. dated 19th May, 2009 (Annexure A-4). According to first para of the said O.M. dated 19th May, 2009, the said MACP scheme is also available to all post belonging to Group A whether isolated or not. However, organized Group 'A' service is not covered under the MACP scheme. According to para 3 of Annexure 1 of the said O.M. the financial up-gradation under MACP scheme is admissible up to the highest grade pay of Rs. 12000/- in PB-4, which was subsequently changed to the HAG scale of Rs. 67000-79000 vide DOP&T O.M. dated 24th December 2010.

5. It is stated in the O.A that the respondent No. 1 has already clarified vide letter dated 11.5.2010 that the Group A services of NATMO including the post of Director cannot be considered as organized Group A service. The applicant having claims the benefit of MACP on the ground of 14 years regular service in the grade of Director and service of Group A cadre of NATMO not being an organized Group A service. Since the case of applicant was eligible for grant of financial up-

gradation under MACP scheme, the cadre controlling authority i.e. DST according to provision contained in para 7 of O.M. dated 19th May, 2009, was required to constitute the Screening Committee within a month from the date of issue of MACP instructions to consider the cases maturing upto 30th June 2009 for grant of benefits under the MACP.

6. The Screening Committee met on 26.2.2010 and as stated in the O.A, instead of assessing the candidature of the applicant for grant of MACP, the Committee raised following points which are stated in O.A:-

- i) The post of Director, NATMO which is a subordinate office of DST, is a single post and the incumbent is Head of that organization recruited under well defined and duly constituted service rules directly selected by UPSC. Normally, in such a situation, the question of stagnation does not arise, as there can be normally no promotion position above the Head of a Organization.
- ii) In present case, Dr. Nag while getting selected as direct recruit candidate by UPSC as Director, NATMO was an internal candidate of NATMO having worked in different position and got various promotions till he got selected as direct recruits Head of the Organization.
- iii) Allowing MACP in such a case will have implications for many other similarly placed positions in DST as well as other scientific/ Ministries and their subordinate offices. It was also seen that there are some Scientist G in DST who have not got any promotion in the last more than 10 years because they are covered under FCS scheme, which stops at Scientist G level. Whether

such Scientists G, who are not also part of organized Group A service can claim benefit of MACP if they complete 10 years as Scientist G.

iv) In the present case, the proposal is to grant him a Higher Administrative Grade (HAG) under the 6th CPC i.e. pay scale of Additional Secretary to Govt. of India's post. Whether it will indirectly amount to temporary up-gradation of the post of Head of Organization.

v) It was also seen that the original appointment of Dr. Nag being in the JS grade, was with the approval of ACC. Hence, it was not clear whether grant of MACP in such case would also require of ACC.

vi) Even if Dr. Nag is found to fulfill eligibility condition for grant of MACP under existing guide lines of DOP&T, it was considered necessary to have his case reviewed by duly constituted peer group to assess his suitability and contribution to the organization during his tenure, as he is to be granted a HAG in the rank of Additional Secretary to Govt. of India.

7. In view of the above, the committee decided that his case may be referred to DOP&T for seeking suitable clarification about eligibility of grant of MACP. Respondent No. 1 forwarded the case of applicant vide letter dated 13.5.2010 to DOP&T and in response of the above letter, DOP&T raised question on recruitment rules of Director NATMO and raised apprehension that the said rules of Director have not been framed in consultation with DOP&T vide their note dated 20.1.2011. Respondent No. 1 replied the same vide letter dated 7.2.2011 (Annexure A-11) stating that Recruitment Rules of Director were framed in consultation with DOP&T and after receiving the

reply, DOP&T desired to furnish some additional information vide note dated 04.04.2011 which were furnished vide note dated 29.04.2011. DOP&T finally intimated to respondent No.1 vide note dated 05.09.2012 as below:-

"The proposal pertaining to grant of benefit under MACP scheme in the HAG scale Rs. 67000-79000/- to Dr. Nag, Director NATMO, a subordinate office under the Department of Science & Technology has been further examined in this Department in the light of observation made by the DOP&T. The recommendations of the Screening Committee which considered the issue in its meeting held on 26.2.2010 as contained in paras i to vi above of the minutes of the said meeting are quite germane to issue. The reasons brought out therein for not finding it feasible to allow the benefit of MACP in this case are unassailable. In view of this Department has not found it feasible to agree to the proposal."

8. The respondent No. 1 on the basis of DOP&T observation, has finally rejected the claim of applicant for grant of MACP vide letter dated 12th February, 2013 (Annexure A-1), which is impugned in this O.A.

9. Notices were issued to the respondents who in turn filed the counter reply through which the facts of the case as stated in the O.A are admitted. It is stated that the case of the applicant was considered by the Screening Committee which made certain observations. The case was referred to the DOP&T and in consultation with the DOP&T, respondents decided to reject the proposal for grant of financial up-gradation to the applicant under MACP scheme.

10. Heard the learned counsel for applicant Sri A. Srivastava and learned counsel for respondents Sri L.M. Singh on behalf of Sri S. Srivastava and perused the pleadings available on record.

11. It is the case of the applicant that he has completed more than 10 years of service as Director, NATMO as on 01.09.2008, the date from which MACP Scheme was implemented and hence, he should be entitled to financial up-gradation to HAG Scale of pay under MACP. MACP Scheme has been introduced after appropriate modification of Assured Career Progression Scheme (in short ACPS) which was launched based on recommendation of Fifth Pay Commission vide Circular dated 09.08.1999. Regarding the objective of ACPS, the following statements are relevant as quoted from the DOP&T Circular dated 09.08.1999 : -

"The ACP Scheme needs to be viewed as a 'safety net' to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. Accordingly, after careful consideration it has been decided by the Government to introduce the ACP Scheme recommended by Fifth Central Pay Commission with certain modifications...."

MACP Scheme was modification of ACP Scheme introduced based on the recommendation of Sixth Central Pay Commission. But the main objective of MACP Scheme remained the same as the ACPS, although the details of benefit as per the MACP are different from ACPS. Hence, the MACP Scheme is to address the problem of genuine stagnation and hardship of the employees due to lack of promotional avenues.

12. We note from the information in respect of the applicant's career as furnished in the Annexure CA-1 to the Counter Affidavit filed by the respondents, that the applicant was first appointed as Research Officer, NATMO on 15.06.1976 and continued till 31.10.1986. Then he was selected as a Scientist

in ISRO (by direct selection) till 14.02.1988 and then as Deputy Director, NATMO by direct selection from 17.02.1988 to 30.05.1992. Then he went for a consultancy till 27.03.1994. Therefore, he was promoted from Deputy Director to Joint Director, NATMO from 29.03.1994 to 8.09.1994. Then he was appointed as Director, NATMO where he continued from 09.09.1994 till 30.11.2001 by direct selection by UPSC. Then he was selected by UPSC for deputation as Surveyor General of India (at a pay scale higher than the pay scale of Director, NATMO) from 31.12.2001 till 28.02.2006. After his tenure as Surveyor General of India, he came back as Director, NATMO in second phase from 14.03.2005 till his superannuation on 31.07.2011.

13. From above, it is obvious that the applicant's case is not that of genuine stagnation or hardship due to lack of promotional facility, which is the basic objective for implementing the MACP Scheme. Within NATMO, the applicant had got three direct selection to a higher grade post or promotion to a higher grade post i.e. from Research Officer to Deputy Director, then to the post of Joint Director and then to the post of Director, NATMO. Hence, within NATMO, there is no stagnation for him. The guidelines of MACP Scheme does not specifically state whether selection to a higher grade post by direct selection will not be counted. In fact the FAQ in DOP&T portal on MACP at para 24 (Annexure A-15) states the

following question in respect of transfer of a government servant to another Department:-

“24. In case of transfer including unilateral transfer own request, whether regular service rendered in previous organization/office shall be counted alongwith the regular service in the new organization for the purpose of MACPS.”

And the answer to the above question as given in the DOP&T portal is as under:-

“Yes. OM No.35034/3/2008-Estt(D) dated 01/11 /2010”

Thus, even when a government servant is transferred to a new department, his past services will be counted and his past promotions/selection to higher post will be counted for MACP purpose. Hence, the applicant will be considered as having got three promotions, for which he will not be entitled for the benefit of MACP Scheme.

14. Examining the case from another angle, the applicant's tenure as Director, NATMO, in the first spell was for about 7 years 3 months. Then the applicant went on the next higher pay scale (HAG Scale) on deputation for about 4 years 2 months as Surveyor General of India and after his tenure, he was re-posted as Director, NATMO for second spell for about than six years and four months. Hence, there is no stagnation for the applicant continuously for a period of 10 years as Director, NATMO.

15. In view of reasons mentioned above, we are not inclined to interfere with the decision taken by the respondents in the case and do not find adequate justifications for the OA. Accordingly, the OA is dismissed. No costs.

**(Gokul Chandra Pati)
Member (A)**

/pc/

**(Justice Dinesh Gupta)
Chairman**