

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.38/2014

M.A.No.51/2014

Order reserved on 27th October 2016

Order pronounced on 21st February 2017

Hon'ble Mr. Raj Vir Sharma, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

R K Sharma
Director (S&T)
Terrif Commission
Ministry of Commerce & Industry
Lok Nayak Bhawan
Khan Market, New Delhi

..Applicant

(Applicant in person)

Versus

Union of India through

1. Secretary
Department of Industrial Policy & Promotion
Ministry of Commerce & Industry
Udyog Bhawan, New Delhi
2. Secretary
DOP&T
Ministry of Home Affairs
North Block, New Delhi
3. Secretary
Department of Expenditure
Ministry of Finance
North Block, New Delhi
4. Chairman
Tarrif Commission
Department of Industrial Policy & Promotion
Ministry of Commerce & Industry
7th Floor, Lok Nayak Bhawan, New Delhi

..Respondents

(Mr. H K Gangwani, Advocate)

O R D E R

Mr. K.N. Shrivastava:

Through the medium of this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following main reliefs:-

“8.2 That this Hon’ble Tribunal may be further pleased to direct the respondents to implement the career progression scheme for the applicant w.e.f. 1st January, 2006 as made applicable to the officers of Organized Group ‘A’ Services for whom also, the respective career progression scheme was introduced for the first time on the recommendation of 6th Pay Commission, directing the respondents to give all consequential benefits.”

2. Brief facts of the case are as under:-

2.1 The applicant, a graduate in Electrical Engineering, was selected by the Union Public Service Commission (UPSC) as Group ‘A’ officer for the post of Deputy Director (Engineering) in the erstwhile Bureau of Industrial Costs and Prices (BICP). The BICP has since been rechristened as Tariff Commission.

2.2 The applicant was promoted to the post of Director w.e.f. 09.02.1994 in BICP (Tariff Commission) in the pre-revised scale of Rs.3700-125-4700-1500-5000. He was granted second financial upgradation under the Modified Assured Career Progression (MACP) Scheme in Pay Band 4 + Grade Pay of Rs.8700/- w.e.f. 01.09.2008, the date when the MACP Scheme was implemented in the Central Government.

2.3 The applicant's claim is that in terms of Annexure A-5 O.M. dated 24.04.2009, he should have been given the second financial upgradation w.e.f. 01.01.2006.

2.4 The representations of the applicant for grant of the second financial upgradation under MACP Scheme w.e.f. 01.01.2006 have been considered by the respondents on three different occasions and have been turned down vide Annexure A-1 order dated 03.12.2010, Annexure A-2 order dated 25.10.2011 and Annexure A-3 order dated 18.05.2012.

3. The main ground on which the applicant's case for antedating his second financial upgradation is rejected by the respondents is that the MACP Scheme itself has been implemented by the Central Government w.e.f. 01.09.2008. As such his request for antedating the said financial upgradation w.e.f. 01.01.2006 cannot be considered.

Aggrieved by the action of the respondents, the applicant has filed the instant O.A. praying for the relief, as indicated in paragraph (1) above.

4. Pursuant to the notice, the respondents entered appearance and filed their counter reply wherein they have broadly submitted as under:-

4.1 The MACP Scheme is modified version of earlier Assured Career Progression (ACP) Scheme of August, 1999. The MACP Scheme has come into existence as per the recommendations of 6th Central Pay Commission (CPC). The Central Government, after due deliberation, had decided to implement the MACP Scheme w.e.f. 01.09.2008. Accordingly, the applicant has been granted second financial upgradation under the MACP scheme from that date.

4.2 The Non-Functional Upgradation (NFU) provided for under the Annexure A-5 O.M. dated 24.04.2009 was a new concept recommended by 6th CPC. The NFU is entirely different from MACP. The MACP is granted on completion of 10, 20 and 30 years of service, whereas the benefits under the NFU are linked with the posting of IAS officers at the Centre.

4.3 For benefits under NFU, all the prescribed eligibility criteria and promotional norms, including benchmark are required to be met at the time of screening, whereas the benefits under MACP are not linked to eligibility requirements for promotion. This distinguishes the NFU from MACP.

5. The applicant filed his rejoinder. The respondents thereafter filed an additional affidavit, to which a rejoinder was also filed by the applicant. Arguments of the parties were heard on 27.10.2016.

6. The applicant, who appeared in person, stated that he belongs to GCS Group 'A' Services. The ACP Scheme implemented in the year 1999 applied only to Groups 'B', 'C' & 'D' officers and to those GCS Group 'A' officers, who were on isolated posts. The ACP Scheme was not applicable to GCS Group 'A' officers, who were holding other than isolated post. As such, the applicant could not get the benefits of ACP Scheme. The 6th CPC, for the first time, provided avenues for promotions to GCS Group 'A' officers (holding other than isolated post) along with the Organized Group 'A' Services. Accordingly, the Scheme of NFU came to be notified by the Department of Personnel & Training (DoPT) vide Annexure A-5 O.M. dated 24.04.2009. The applicant is basically clamouring for grant of benefits of *ibid* Annexure A-5 O.M to him. He argued that granting the benefits of

Annexure A-5 O.M. to Organized Group 'A' Services and denying the same to GCS Group 'A', who were holding other than isolated post, is highly discriminatory.

7. The applicant stated that GCS Group 'A' officers (holding other than isolated post), to which he belongs, remain to be the worse sufferers, as they were excluded not only from any financial upgradation during the period 01.01.2006 to 31.08.2008 but also deprived of the benefit of exercising option of getting their pay fixed in the higher grade of pre-revised pay scale prior to pay revision on their financial upgradation, thus creating serious anomaly and discrimination against him.

8. Criticizing the DoPT response to the applicant's representation dated 22.03.2012, the applicant submitted that the DoPT adopting different dates for grant of financial upgradation for GCS Group 'A' officers (holding other than isolated post) under MACP Scheme and for Organized Group 'A' Services is absolutely illegal, unconvincing and without application of mind. Such a discriminatory decision of DoPT cannot be termed as conscious decision. The DoPT, being the nodal Department for framing Rules in the Government, is expected to resolve issues of anomaly /discrimination and to be fair and reasonable to all.

9. The applicant vehemently argued that it would have been reasonable and logical if the ACP Scheme (August 1999) was allowed to continue beyond 01.01.2006 and up to 31.03.2008, and its adoption made optional. This would have been beneficial to one and all. He further submitted that the career progression scheme, both for Organized Group 'A' Services and GCS Group 'A' officers (holding other than isolated post), to which category

applicant belongs, was introduced, for the first time, as per the 6th CPC recommendations in order to grant parity and equity to GCS Group 'A' officers (holding other than isolated post). It would have been fair and just to allow its implementation w.e.f. 01.01.2006 for GCS Group 'A' officers (holding other than isolated post). He said that the DoPT's apprehension that implementation of MACP Scheme w.e.f. 01.01.2006 could have entailed into huge recovery from those employees, who are covered under the earlier ACP Scheme, was absolutely meaningless.

10. The applicant argued that the MACP Scheme provides three financial upgradations on completion of 10, 20 and 30 years of service. The Scheme is applicable to both Organized Group 'A' Services as well as GCS Group 'A' officers (holding other than isolated post). Different dates of implementation of the Scheme in respect of these two categories of Group 'A' officers is discriminatory.

Concluding his arguments, the applicant prayed for granting the reliefs and allowing the O.A.

11. *Per contra*, learned counsel for respondents, besides reiterating the arguments put-forth in the reply, submitted that the benefits of NFU cannot be extended to the applicant and that he can only get the benefits of MACP Scheme, which has been implemented w.e.f. 01.09.2008 in respect of all the Central Government employees across the Government and the applicant cannot be an exception to it. He said that the NFU and MACP Schemes are entirely different Schemes having different eligibility criteria and promotional avenues, including benchmark.

12. The learned counsel also placed reliance on the judgment of the Hon'ble Apex Court in **Sudhir Kumar Consul v. Allahabad Bank** [(2011) 3 SCC 486] to say that the Government can prescribe cut-off date with proper rationale for granting service benefits to different class of employees. The relevant excerpt of the said judgment is extracted hereinbelow:-

“18. Moreover, the fixing of the cut-off date for granting retirement benefits such as gratuity or pension under the different schemes incorporated in the subordinate legislation, thereby, creating two distinct and separate classes of employees is well within the ambit of Article 14 of the Constitution. The differential treatment of two sets of officers appointed prior to the notified date would not offend Article 14 of the Constitution. The cut off date may be justified on the ground that additional outlay as involved or the fact that under the terms of appointment, the employee was not entitled to the benefit of pension or retirement.”

Concluding his arguments, the learned counsel prayed for dismissal of the O.A.

13. We have given our careful consideration to the arguments put-forth by the applicant as also the learned counsel for respondents and perused the pleadings and documents annexed thereto.

14. Admittedly, the applicant does not belong to Organized Group 'A' Services. He belongs to GCS Group 'A' Services (holding other than isolated post). His basic claim is that he should be granted the benefits Annexure A-5 DoPT O.M. dated 24.04.2009 whereby NFU Scheme has been introduced for the officers of Organized Group 'A' Services in Pay Bands 3 & 4. This Scheme is implemented w.e.f. 01.01.2006. The applicant belonging to GCS Group 'A' Services (holding other than isolated post) has also got the benefits of financial upgradation under the MACP Scheme w.e.f.

01.09.2008. But he wants it to be antedated w.e.f. 01.01.2006. A close reading of the NFU Scheme (Annexure A-5) indicates that this Scheme is applicable to IAS Officers as well as Organized Group 'A' officers, who are posted in the Central Government. Pertinent to mention that for posting of IAS and other Organized Group 'A' Service officers, a system of empanelment is adopted. All such officers automatically do not get entitled to be posted in the Central Government. There are numerous cases where IAS officers and officers of Organized Group 'A' Services have been getting the service benefits in their respective Cadres/Services but all have to conform to different norms when they are to work in the Central Government on appointment. They have to pass through the empanelment process. The NFU Scheme, as clarified by the DoPT in terms of Annexure A-5 O.M., is applicable in respect of only such officers. The applicant, who belongs to GCS Group 'A' Services (holding other than isolated post), has not gone through this process of selection for posting in the Central Government. Hence, his claim for grant of benefits of NFU Scheme is unjustified.

15. As regards different cut-off dates for different sets of employees for grant of service benefits, the Central Government's powers in this regard have been affirmed by the Hon'ble Apex Court in **Sudhir Kumar Consul's** case (supra).

16. In the conspectus of the discussions in the foregoing paragraphs, we are of the firm view that the claim of the applicant for antedating his financial upgradation benefits under MACP Scheme w.e.f. 01.01.2006

cannot be countenanced. As such, the O.A. is dismissed being found devoid of any merit. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Raj Vir Sharma)
Member (J)

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