

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

OA-596/2013

Reserved on : 12.08.2015.

Pronounced on : 13.08.2015.

Hon'ble Mr. G. George Paracken, Member (J)
Hon'ble Mr. Shekhar Agarwal, Member (A)

Dr. Rajendra Prasad,
S/o late Sh. Har Prasad,
Aged about 63 years
Retired Joint Director,
National Atlas and Thematic
Mapping Organization, Kolkata
Presently residing at
House No. E-1354,
D-1, Ramleela Ground,
2nd 60 ft Road, Moldband
Extension, Near Badarpur Border,
New Delhi-110044. Applicant

(through Sh. Praveen Swarup, Advocate)

Versus

1. Union of India through
The Secretary,
Ministry of Science & Technology,
Department of Science & Technology,
Govt. of India, Technology Bhavan,
New Mehrauli Road,
New Delhi-100016.
2. The Secretary,
Ministry of Personnel,
Public Grievances and Pension,
Department of Personnel and Training,
Govt. of India, Loknayak Bhavan,
Khan Market, New Delhi-110003.
3. The Director,
National Atlas & Thematic Mapping
Organization (NATMO)
CGO Complex, 7th Floor,
DF-Block, Salt Lake,
Kolkata-700064. Respondents
(through Sh. Rajeev Kumar, Advocate)

ORDER**Mr. Shekhar Agarwal, Member (A)**

The applicant joined National Atlas & Thematic Mapping Organization (NATMO) (respondent No.3) as a Research Officer on 30.05.1978. On 19.10.1990, he got selected for the post of Deputy Director through UPSC against 50% direct recruitment quota. The Recruitment Rules at that time envisaged filling up the post of Deputy Director 50% by promotion and 50% by direct recruitment. On 17.03.2008, he got promoted as Joint Director and retired from service on 31.12.2009. The grievance of the applicant is that the respondents have denied to him the benefit of financial up-gradation under the MACP Scheme on the ground that his regular service for the purpose of MACP is to be counted from 19.10.1990, the date on which he was appointed as Deputy Director as a direct recruit. He made a representation on 26.06.2012 to the respondents, which was rejected by them vide impugned letter dated 12.07.2012.

Hence, he has filed this O.A. seeking the following relief:-

“(a) Direct the respondents to grant the financial up-gradation to the applicant under the MACP Scheme counting his regular service from his direct entry as Research Officer in Group A i.e. 30/05/1978.

(b) Direct the respondents to pay the arrears of pensionary benefits to the applicant w.e.f. the date of his retirement i.e. 31.12.2009.

(c) Pass any such order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of this case."

2. The contention of the applicant is that the respondents have totally ignored the provisions of MACP Scheme, which envisages up-gradation after an employee has completed 10, 20 and 30 years of regular service. In his case, he had joined as a Research Officer in 1978 and had retired only on 31.12.2009 i.e. after completing more than 30 years of service. Hence, he was entitled to benefit of 3rd MACP Scheme. However, the respondents have ignored the service rendered by him from 30.05.1978 till his appointment as Deputy Director on 19.10.1990 and have wrongly denied him this benefit. The applicant has compared himself with one Dr. B.P. Singh, who was junior to him on the post of Research Officer having joined on that post on 11.09.1978 i.e. almost four months after the applicant. Dr. B.P. Singh did not get selected as a direct recruit for the post of Deputy Director but earned promotion to that post on 26.10.1994 i.e. more than four years after the applicant. Thereafter, Dr. B.P. Singh did not get promoted as Joint Director either and retired from service on 31.05.2011. Yet the respondents have given benefit of two financial benefits to Dr. B.P. Singh, 1st MACP benefit w.e.f. 01.09.2008 and 2nd MACP benefit from 11.09.2008. Consequently, Dr. B.P. Singh is drawing more pay and pension as compared to the applicant despite being junior to him in service as well as not having been selected as a direct recruit Deputy Director.

Applicant has stated that due to wrong interpretation of rules by the respondents the applicant is suffering because of his selection as a direct recruit to the post of Deputy Director. Thus, instead of getting credit for succeeding in getting appointment as direct recruit, he has been put in a disadvantageous position. The applicant has further stated that the respondents have rightly counted his service from 1978 onwards for the purpose of pension but are ignoring the same for MACP benefits.

3. In their reply, the respondents have stated that in terms of MACP Scheme, three financial up-gradations after 10, 20 and 30 years of service are provided for. Further, under this Scheme, financial up-gradation is admissible whenever an employee has spent 10 years continuous service in the same grade pay. For the purpose of this Scheme, regular service commences from the date of joining of a post in direct entry grade on regular basis be it as a direct recruit or absorbee or re-employment. It is further provided in the Scheme that financial up-gradation under the MACP shall be purely personal to the employees and shall have no relevance to his seniority position. As such, there shall be no additional financial up-gradation for a senior employee on the ground that a junior in the grade is getting higher pay/grade pay because of MACP benefit. DoP&T letter No. 35034/03/2008-Estt.(D) dated 19.05.2009 states that no stepping up of pay in

the pay band or grade pay would be admissible to an employee on the ground that the junior is getting more pay than him on account of pay fixation under the MACP Scheme. Thus, in the case of applicant since he had joined the post of Deputy Director as a direct recruit, his regular service was counted from that date and he was not found to be eligible for the purpose of MACP since he had earned one promotion as a Joint Director before his superannuation and had retired on 31.12.2009 before becoming eligible for benefit of MACP.

4. We have heard both sides and have perused the material on record. We have also seen the MACP Scheme as issued by the Department of P&T vide their O.M. No. 35034/3/2008-Estt.(D) dated 19.05.2009. The details of the Scheme are spell out in Annexure-I of this O.M. In our opinion, Para-9 of this Annexure is relevant for resolving the controversy in the present case, which reads as follows:-

“9. 'Regular service' for the purposes of the MACPS shall commence from the date of joining of a post in direct entry grade on a regular basis either on direct recruitment basis or on absorption/re-employment basis. Service rendered on adhoc/contract basis before regular appointment on pre-appointment training shall not be taken into reckoning. However, past continuous regular service in another Government Department in a post carrying same grade pay prior to regular appointment in a new Department, without a break, shall also be counted towards qualifying regular service for the purposes of MACPS only (and not for the regular promotions). However, benefits under the MACPS in such cases shall not be considered till the satisfactory completion of the probation period in the new post.”

A reading of this para would make it clear that counting of regular service for the purpose of MACP Scheme commences from the date of joining the post in direct entry grade on regular basis. This is mentioned in the context of ad hoc or contract service not being eligible for being counted for the purpose of this Scheme. This is obvious from the second sentence of the para quoted above. Thereafter, it is also stated that past continuous service rendered by an employee in another Government department in the same grade pay shall be taken into account. However, there is no mention in this para as to how past regular service rendered by an employee in Government department in a post carrying lower pay/grade pay prior to his regular appointment on a higher post, is to be treated. The case of the applicant falls in this category. We notice that the Scheme is silent on this issue. There is no mention in the Scheme to ignore this service all together as has been done by the respondents. If this is done, an employee like the applicant would be put at disadvantageous position as compared to his juniors as well as compared to those who could not succeed in selection for a higher post on direct recruitment basis. This would be grossly unfair to an employee like the applicant who was not only senior but has also been adjudged to be more meritorious having qualified for selection as Deputy Director on direct recruitment basis. In

our opinion, proper course of action for the respondent department would have been to refer this matter to DoP&T and seek their advice as to how to deal with such a case since the instructions issued by them were silent on this issue. However, the respondents have wrongly interpreted the provisions of the Scheme and rejected applicant's representation.

5. We, therefore, allow this O.A. and quash the impugned letter dated 12.07.2012 by which the representation of the applicant was rejected. We further direct the respondents department to reconsider the representation of the applicant in consultation with DoP&T within a period of eight weeks from the date of receipt of a certified copy of this order in the light of observations made in Para-4 above. In case the representation is decided in favour of the applicant, he shall be considered for grant of MACP benefits. If found eligible he shall also be entitled to payment of arrears of pay as well as pension arising out of re-fixation of his pay after grant of the MACP benefit. In case the applicant is still aggrieved by decision on his representation, he shall be at liberty to approach this Tribunal again by means of fresh judicial proceedings. No costs.

(Shekhar Agarwal)
Member (A)

(G. George Paracken)
Member (J)

/Vinita/

