

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.668 OF 2013

New Delhi, this the 14th day of September 2017

CORAM:

**HON'BLE SHRI SHEKHAR AGARWAL, ADMINISTRATIVE MEMBER
AND**

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

.....

Mahjabeen Akhtar,
Daughter of late Ranaq Ali Siddiqui,
1478, Ajman Khari Street,
Ballimaran, Delhi 110006 í í . Applicant
(By Advocate: Mr.Suryanath Pandey)
Vs.

1. Union of India,
Secretary,
Ministry of Culture,
Shastri Bhawan,
C-Wing, New Delhi.
2. The Director,
National Gallery of Modern Art,
Jaipur House,
New Delhi 110003 í í í Respondents
(By Advocate: Mr.H.K.Gangwani)

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ORDER

Per RAJ VIR SHARMA, MEMBER(J):

The applicant has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:

- õi) The respondents may be directed to grant benefits of ACP/MACP w.e.f. the date she became eligible, with arrears and interest. Her pay may accordingly be re-fixed and arrears released with interest.

- ii) All consequential benefits may be granted to the Applicant.
- iii) Any other relief, which this Honøble Tribunal may deem fit and proper in the circumstances of the case, may also be passed in favour of the Applicant.
- iv) Cost of the proceedings be awarded in favour of the Applicant and against the Respondents.ö

2. Resisting the O.A., the respondents have filed a counter reply and additional reply.

3. We have carefully perused the records, and have heard Mr.Suryanath Pandey,the learned counsel appearing for the applicant, and Mr.H.K.Gangwani, the learned counsel appearing for the respondents.

4. The brief facts of the case, which are not in dispute, are that the applicant was initially appointed as a Technical Assistant in the Bureau for Promotion of Urdu, Ministry of Education & Culture, Department of Education, in the pay scale of Rs.425-700/- on 22.11.1978. On the recommendation of the Departmental Promotion Committee, the Bureau for Promotion of Urdu, by office order dated 17.7.1985 (Annexure A/2), 27.1.1982 (Annexure A/1), appointed the applicant as Research Assistant on regular basis in the pay scale of Rs.550-900/- with effect from 24.5.1985. Consequent upon conversion of the Bureau for Promotion of Urdu into an autonomous organization, namely, National Council for Promotion of Urdu Language (NCPUL), the applicant opted to remain in Government service. Therefore, she was redeployed from the Surplus Cell and nominated to National Gallery of Modern Art for appointment to the post of Librarian in the pay scale of Rs.5500-9000 (Fifth CPC) corresponding to the Fourth

CPC pay scale of Rs.550-900/-, vide order dated 1.4.1998. Subsequently, consequent upon declaration of the Library of the NGMA as Category II Library, the post of Librarian (Rs.5500-9000/-) was upgraded to the post of Assistant Library & Information Officer (ALIO) in the pay scale of Rs.6500-10500/-, vide Ministry of Culture's order No.F.1-51/96-M.II dated 20.10.1999. Accordingly, the applicant was appointed to the post of ALIO (Group -B Gazetted) in the pay scale of Rs.6500-10500/- with effect from 1.4.1998 and was granted all the benefits attached to the upgraded post of ALIO, vide NGMA's order dated 17.11.1999.

5. OA No.799 of 2009 filed by the applicant claiming financial upgradations under the ACP Scheme was dismissed by the Tribunal, vide order dated 11.5.2010, which is reproduced below:

“We have heard both the learned counsel.

2. A perusal of the impugned order shows that the applicant is supposed to have received two promotions one as Research Assistant and the second as ALIO. Perusal of the Supreme Court judgment confirms that the appointment as Research Assistant was a promotion. The promotion as ALIO is not disputed. As such we find that the applicant has received two promotions. Therefore in terms of the material on record the case of the applicant for grant of ACP is not found tenable and O.A. is dismissed.

3. Learned counsel for the applicant, however, states that others have been granted such ACP. No details or particulars of such persons are available in the pleadings. We leave it open to the applicant to approach the respondents by detailed representation within four weeks from the date of receipt of a certified copy of this order which should be considered in the normal course and applicant informed. No costs.”

5.1 Copy of the judgment of the Hon'ble Supreme Court, referred to by the Tribunal in its order dated 11.5.2010(ibid), has been filed by the

respondents as Annexure A-14 to RA No.123 of 2014. The said judgment was passed by the Honøble Supreme Court on 1.11.2007 in Civil Appeal No. 5087 of 2007(arising out of SLP (C) No.6635 of 2005) (*Union of India and another Vs. Mahajabeen Akhtar*) which was filed against the judgment dated 19.8.2004 passed by the Division Bench of the Honøble High Court of Delhi dismissing Civil Writ Petition No.3719 of 2002. Civil Writ Petition No.3719 of 2002 was filed by the Union of India and another against the order dated 11.9.2000 passed by the Tribunal in OA No.52 of 2000 (*Mahajabeen Akhtar Vs. Union of India and another*).

5.2 In paragraph 4 of the judgment dated 1.11.2007(ibid), the Honøble Supreme Court clearly observed thus:

öRespondent herein was appointed as Technical Assistant of Urdu Language in the Bureau of Promotion of Urdu Language. She was placed in the pay scale of Rs.425-7000. She was promoted as Research Assistant in the scale of pay of Rs.550-900. The said pay scale was revised to Rs.1640-2900 on the recommendation of the Fourth Pay Revision Commission.ö

6. In terms of the observation made by the Tribunal in its order dated 11.5.2010(ibid), the applicant made further representation claiming benefits under the ACP Scheme. When the respondents rejected the aforesaid representation, the applicant filed OA No.841 of 2012 (*Mahajabeen Akhtar Vs. Union of India and another*). The Tribunal disposed of OA No.841 of 2012, vide its order dated 14.3.2012, the relevant portion of which is reproduced below:

õThe grievance of the applicant is that vide order dated 16.10.2010 his representation for grant of ACP has wrongly been rejected by the respondents.

2. It is the case of the applicant that his upgradation from the post of Librarian in the pay scale of Rs.5500-175-9000/- to the post of ALIO in the pay scale of Rs.6500-200-10500/- was not a promotion but merely an upgradation, but that it has been wrongly treated as a promotion by the respondents.

3. He has also stated that the order dated 16.10.2010 has been issued without consulting the DOPT which, in para 11 of ACP Scheme (Annexure A-15) has clearly provided that:-

õ11. Any interpretation/clarification of doubt as to the scope and meaning of the provisions of ACP Scheme shall be given by the Department of Personnel and Training (Establishment-D).ö

The learned counsel requests that a direction be given to the respondents to re-consider his case after reference to the DOPT and then take a decision in the matter in accordance with the clarifications received.

4. In view of the above limited request, this OA is disposed of at the admission stage itself (without going into the merits of the case) by directing the respondents to refer the case of the applicant to DOPT (Estt.D) for necessary clarification and thereafter to pass appropriate orders in accordance with the clarification received. The final order passed may be communicated to the applicant through a reasoned and speaking order within a period of three months from the date of receipt of a copy of this order.

5. The OA stands disposed of as above. No costs.ö

7. In compliance with the Tribunal's order dated 14.3.2012(ibid), respondent no.2 referred the applicant's case to the Department of Personnel & Training, which gave the following clarification:

õ2. The matter has been examined. Smt. M.Akhtar, who initially appointed as Technical Assistant was promoted to the post of Research Assistant in the scale of Rs.550-900(Rs.1640-2900/- revised). Consequent to being declared as surplus, she was re-deployed as Librarian in NGMA in the same scale.

3. In pursuance of MoF, D/o Expenditure O.M.No.19/1/IC/86 dated 24.07.1990 on categorization of Libraries, the post of Librarian in the NGMA has been upgraded and re-designated as ALIO in the pay scale of Rs.6500-10500/-. In terms of para 4.2 of the abovementioned

O.M., in case the existing incumbent is in a lower scale of pay than the scale determined based on the categorization, he may be considered for appointment in the higher scale provided he fulfills the recruitment qualifications laid down for that post. RRs for the post of ALIO which is Group B Gazetted post requires higher educational qualification and with 3/8 years experience in the pay scales at Rs.1640-2900/Rs.1400-2600 pay scales in terms of DOE O.M.dated 24.07.1990. Hence, appointment of Smt. M.Akhtar, Librarian, to the upgraded post of ALIO in the pay scale of Rs.6500-10500/- is to be treated as a promotion for the purpose of grant of financial upgradations under ACP/MACP Scheme.ö

8. After getting the above clarification from the DoP&T, respondent no.2 issued an order dated 6.7.2012 which is reproduced in extenso:

öNo.F.48001/2009/NGMA
National Gallery of Modern Art
Jaipur House, New Delhi 110003
Dated 6th July 2012

Subject:- Grant of benefit under ACP Scheme.

Pursuant to the order dated 14.03.2012 of Central Administrative Tribunal, Principal Branch, New Delhi in O.A.No.841/2012, Mrs.Mahjabeen Akhtar, ALIO is hereby informed that the matter of grant of financial upgradation under the ACP Scheme has been carefully examined by the competent authority and she is intimated as under:

2. The main contention of the O.A.No.841/2012 filed by Smt. Mahjabeen Akhtar, ALIO is that the upgradation of the post of Librarian too the grade of ALIO was merely an upgradation and that it has been wrongly treated as a promotion. In this connection, it is informed that in the instant case, the post of Librarian in the scale of pay of Rs.5500-9000 (pre-revised), a non-gazetted post, has been upgraded to the level of Assistant Library & Information Officer in the scale of pay of Rs.6500-10500 (pre-revised), which is a gazette post carrying higher duties & responsibilities. When a post is upgraded, the incumbents in the feeder grade with requisite qualifications are considered by the competent authority and in case the incumbent is considered fit, he/she shall be deemed to have been promoted to the higher grade, otherwise his/her case will be reviewed every year and till such time he/she continues to hold the post in the lower grade. Thus appointment of individual to the upgraded post is

not automatic and it has to be regularized only after following the normal procedures. Hence the above contention of Smt. Mahjabeen Akhtar, ALIO is not acceptable.

3. Upon her appointment to the post of ALIO in NGMA, Smt. Mahjabeen Akhtar has availed two promotions, i.e. (i) from the post of Technical Assistant to the post of Research Assistant in BPU and from Librarian to the post of ALIO in NGMA during the past 24 years of her Government service and as such she is not eligible for any further financial upgradation under the ACP Scheme at this stage. However she could be considered for financial upgradation under the MACP Scheme on completion of 30 years of regular service.

4. This issues in pursuance of the directions of Honøble Central Administrative Tribunal (Principal Bench) New Delhi in O.A.No.841/2012 and in consultation with the Department of Personnel & Training (Estt.D) vide their U.O.No. 4903/12/CR dated 04.07.2012.

(Prof.Rajeev Lochan)
Director

To
Smt. Mahjabeen Akhtar,
ALIO,
National Gallery of Modern Art,
New Delhi-110003

Copy to:

1. A.O.(Admin.), NGMA, New Delhi.
2. Smt. Sunita, UDC for the personal file of the officer.ö

9. In the present O.A. filed on 21.2.2013, the applicant has not challenged the above order dated 6.7.2012 issued by respondent no.2.

10. In the aforesaid view of the matter, we have no hesitation in holding that the present O.A. filed by the applicant claiming the benefits under the ACP Scheme on completion of 24 years of service, besides being barred by *res judicata*, is without any substance.

11. As regards the applicant's claim for being granted benefits under the MACP Scheme, it has been fairly submitted by the respondents not only in the order dated 6.7.2012 (ibid) but also in the counter reply filed on 25.5.2013 that the applicant is entitled to third financial upgradation

under the MACP Scheme on completion of 30 years. During the course of hearing on 1.9.2017, the learned counsel appearing for the parties were unable to apprise us as to whether or not the applicant's case for grant of third financial upgradation under the MACP Scheme has been considered and she has been granted the third financial upgradation with effect from the date she completed thirty years of service. Therefore, we deem it just and proper to direct the respondents to consider the applicant's case for grant of third financial upgradation under the MACP Scheme with effect from the due date and take appropriate decision within a period of three months from today, if the applicant's case has not already been considered and appropriate decision has not already been taken by the date of this order. Ordered accordingly.

12. With the above observation and direction, the O.A. is disposed of. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SHEKHAR AGARWAL)
ADMINISTRATIVE MEMBER

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