

**Central Administrative Tribunal
Principal Bench**

OA No.1198/2014

Arguments heard on : 08.10.2015

Pronounced on : 27.10.2015

**Hon'ble Mr. Justice Syed Rafat Alam, Chairman
Hon'ble Mr. P. K. Basu, Member (A)**

Dr. H. K. Sharma
S/o Late S. N. Sharma
Aged about 63 years,
R/o H. No.111, Second Floor,
Plot No.A-15, 16,
Ramnagar Omvihar, Uttam Nagar (West)
New Delhi 110 059. Applicant.

(Applicant is present in person).

VS.

The Hon'ble Commissioner
Municipal Corporation of Delhi (North)
4th Floor, Dr. S. P. Mukherjee Civic Centre,
Jawahar lal Nehru Marg,
New Delhi. Respondents.

(By Advocate : Mrs. Anupama Bansal)

: O R D E R :

By Hon'ble Mr. P. K. Basu, Member (A) :

The applicant is aggrieved by the order of the North Delhi Municipal Corporation dated 07.02.2014 rejecting his claim for grant of 3rd financial upgradation under MACP Scheme and, therefore, has sought the following reliefs:-

- “(i) To set aside and quash the rejection letter of dated 7/2/2014.
- “(ii) Direct the respondents to implement MACP Scheme in my scheme to revise my pension etc. as per the rule as I

have completed 30 years of regular service on 21/10/2005.

- (iii) To pass any other order/s as may deemed to be fit and proper to the circumstances of the case.
- (iv) Award the cost."

2. We have heard the applicant who is present in person and Mrs. Anupama Bansal, learned counsel appearing for the respondents.

3. The applicant's service career has been as follows:-

Description of appointment/promotion with designations	Department Concerned	Date of appointment / promotion
Food Field Investigator (330-560)	Central Research Institute, Kasauli	21/07/1975 to 16/05/1977
Supervisor	Central Research Institute, Kasauli	17/05/1977 to 04/03/1988
Asstt. Technical Officer (1640-2900)	Central Research Institute, Kasauli	05/03/1988 to 20/06/1990
Bacteriologist	Govt. of Pondicherry	26/06/1990

4. The applicant in his Application has written that after he started working as Junior Bacteriologist, a Group 'A' employee in MCD (now in North MCD), he received two financial upgradations so far, i.e., 1st w.e.f. 29.09.2011 and the 2nd w.e.f. 29.09.2006. His claim is that he is entitled to another financial upgradation under the MACP Scheme. He has retired from service after attaining the age of superannuation on 31.03.2011.

5. The respondents have rejected his request vide letter dated 07.02.2014 on the ground that he does not complete the required

length of service in the MCD. According to the applicant, counting his service from his initial appointment in 1975, he has completed more than thirty years of service and, therefore, he is entitled to the upgradation under MACP Scheme.

6. The applicant also relies on para 22 of the MACP Guidelines, which reads as under:-

“22. If Group “A” Government employee, who was not covered under the ACP Scheme has now become entitled to say third financial upgradation directly, having completed 30 years’ regular service, his pay shall be fixed successively in next three immediate higher grade pays in the hierarchy of revised pay-bands and grade pays allowing the benefit of 3% pay fixation at every stage. Pay of persons becoming eligible for second financial upgradation may also be fixed accordingly.”

In view of the above, learned counsel for the applicant has stated that the applicant’s case should be governed by the provisions of the aforesaid paragraph.

7. The response of the respondents is that during his period of service from 21.01.1975 till 31.03.2011, the applicant has secured four promotions as would be evident from the table quoted above and, therefore, there is no case of his getting any further upgradation under the MACP Scheme as the said benefits accrued to only those who do not get any promotion. The respondents also pointed out that paragraph 13 of the MACP Guidelines provides as follows:-

“13. Existing time-bound promotion scheme, including in-situ promotion scheme, Staff Car 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 consultation or they may switch over to the MACPS.

However, these Schemes shall not run concurrently with the MACPS.”

It was pointed out that the Ministry of Health and Family Welfare (Department of Health) vide notification dated 28.11.1990 introduced a Scheme for Group ‘A’ Gazetted, Non Medical Scientific and Technical post In-Situ Promotion Rules, 1990. Accordingly, the Special Officer exercising the powers of the Municipal Corporation of Delhi vide Decision No.5055/GW/Corpn. Dated 29.01.1996 accorded approval for placing all the post of Biochemist and Bacteriologist in MCD in the uniform pay scale and for adoption of Ministry of Health Group ‘A’ Gazetted, Non-medical Scientific and Technical post In-Situ Promotion Rules, 1990 *mutatis mutandis* in MCD. As per provisions laid down in para 3 (a), (b) & (c) of the aforesaid rules, it is stipulated that:-

“.....(a) Scientist 1 level Officer working in the grade of Rs.2200-4000 (pre-revised) shall be promoted to the S-2 level in the grade of Rs.3000-4500 (Non-technical)/Rs.3000-5000 (Technical) on completion of 5 years of regular service in the grade of Rs.2200-4000 (pre-revised) on the basis of assessment.

- (b) Scientist 2 level Scientists/officers working in the grade of Rs.3000-4500/3000-5000 shall be promoted to S-3 level in the scale of Rs.3700-5000 on completion of 5 years of regular service in the grade of Rs.3000-4500/3000-5000 on the basis of assessment.
- (c) Scientist 3 level Scientist/Officers working in the grade of Rs.3700-5000 shall be promoted to the Scientist 4 level in the scale of Rs.4500-5700 on completion of 5 years of regular service in the grade of Rs.3700-5000 on the basis of assessment...”

8. In view of the above provisions, the applicant herein had been given benefit of promotion under In-Situ Promotion Rules, 1990 duly adopted by MCD vide Decision No.5055/GW/Corpn. Dated 29.01.1996 to the scale of Rs.10,000-15,200 w.e.f. 29.09.2011 vide

office order No.F.18(6)/CED(M)/98/2003/163/11155 dated 25.06.2003 and to the scale of Rs.12000-16500/- (pre-revised) w.e.f. 29.09.2006 on ad hoc basis vide office order No.UDC(M)-I/CED(M)/2010/1258 dated 16.03.2010. Since the applicant has got benefits under the said promotion Scheme, he will not get any benefit under the MACP Scheme as two schemes cannot run concurrently as per the above quoted provisions of para 13 of the MACP Scheme. The 3rd promotion under the In-Situ Promotion Rules, 1990 becomes due after 15 years of regular service. Counting his regular service on the post of Junior Bacteriologist from the date of his employment, i.e., 30.09.1996, 15 years of service would have fallen on 29.09.2011, whereas the applicant was retired from the municipal service on his superannuation before that date, i.e., on 31.03.2011. Thus, he is about six months short in completing the requisite period for 3rd financial upgradation and hence not entitled to the 3rd financial upgradation in the pay scale of Rs.37400-67000+ Grade Pay of Rs.8700/-.

9. We have heard the learned counsel for the parties and perused the relevant documents placed on record.

10. It is clear that the applicant was covered by a special In-Situ Promotion Scheme, 1990 and obtained two promotions under that Scheme after 5 and 10 years of regular service as a Junior Bacteriologist. Before completion of required 15 years of regular service for the 3rd financial upgradation, he retired. Therefore, he is not entitled to the 3rd promotion under the In-Situ Promotion Scheme. As regards his claim for upgradation under the MACP

Scheme, para 13 of the same makes it clear that in case there is already a time bound promotion scheme applicable in the department, it cannot run concurrently along with the MACP Scheme, and, therefore, the MACP Scheme would not apply in the case of the applicant.

11. In view of this, the claim of the applicant cannot be accepted and the OA deserves to be dismissed. It is accordingly dismissed.

(P. K. Basu)
Member (A)

(Syed Rafat Alam)
Chairman

/pj/