

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 1222/2014

Order reserved on: 9.12.2015

Order pronounced on:16.12.2015

Hon'ble Mr. V. Ajay Kumar, Member (J)

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

Dr. Shakuntala Sharma

F-580, Sarita Vihar,

New Delhi-110076

... Applicant

(Through Ms. Sriparna Chatterjee, Advocate)

Versus

1. Council of Scientific and Industrial Research,
Through Joint Secretary,
Rafi Marg, New Delhi-110001

2. National Physical Laboratory
Through Director
Dr. K.S. Krishnan Marg,
New Delhi-110012

... Respondents

(Through Mrs. K. Iyer, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

The applicant joined National Physical Laboratory (NFL) under the Council of Scientific and Industrial Research (CSIR) on 22.02.1979 as a Hindi Teacher. She was re-designated as Senior Translator vide NPL Office Order No.74 dated 15.07.1985.

2. CSIR has a Scheme notified vide order No.6 dated 12.11.1981 for providing promotional avenues to the incumbents of isolated posts (not falling under any of the notified cadres), which stipulates as follows:

- “1. That incumbents of all isolated posts in the scale of Rs.1500-2000 may be considered for the next higher grade (Rs.2000-2250). After they have been held up for one year at the maximum of the grade on merit and on the recommendation of Departmental Promotion Committee who shall invite the candidates for personal discussions.
2. That incumbents of all other isolated post may be considered for promotion to the

next approved higher scales of pay after they have rendered 11 years of service in their respective grades on merit and on the recommendation of a Departmental Promotion Committee who shall invite the candidate for personal discussions.

NOTE-(1) On promotion as above the post held by them will be deemed to have been placed in the respective higher scales of pay on a personal basis in the event of promotee vacating the post on account of resignation and retirement etc. The post should automatically convert to its usual pay scale according to the recruitment rules applicable.

(2) All promotions to higher posts in the respective isolated posts shall need the prior approval of the DGSIR.”

3. Applicant's post is an isolated post and falls in the 'category' of posts pertaining to para (2) above. Based on this policy, she was placed in the higher grade of Rs.2000-3500 from Rs.1640-2900 with effect from 22.02.1990 on her completing 11 years in the said grade on 21.02.1990. She was again placed in the higher pay scale of Rs.10000-15200 from Rs.6500-10500 on 22.02.2001 after completion of 22 years of service according to aforesaid order No.6 dated 12.11.1981. The applicant retired from service on

30.06.2009. Since she did not complete 11 years in the pay scale of Rs.10000-15200, she was not granted third upgradation.

4. The CSIR adopted the Modified Assured Career Progression Scheme (MACPS) notified by the Department of Personnel and Training (DoP&T) for CSIR employees. The MACPS was adopted by the respondents vide letter dated 13.05.2010 but made operational from 1.09.2008.

5. Para 13 of Annexure I of MACPS reads 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 consultations or they may switch-over to the MACPS. However, these Schemes shall not run concurrently with the MACPS.”

6. Since the applicant belongs to isolated category of posts and was covered under the earlier Scheme of 1981,

the CSIR took a decision not to adopt MACPS for such post. The CSIR further took a decision vide letter dated 17.05.2012 in respect of isolated category staff (except Raj Bhasha Staff) reducing the residency period of 11 years for promotion to the next higher grade to 10 years. The applicant's grievance is:

- i) that she was denied third upgradation after 30 years of service and had MACPS been adopted for isolated posts also as in case of other employees, she would have got third upgradation as well; and
- ii) even the benefit of reduction in residency period from 11 years to 10 years was denied to her.

7. When the applicant represented before the authorities, she was informed vide letter dated 2.08.2013 that MACPS is not applicable in her case until such time CSIR adopts the MACPS for the isolated category staff. It is further stated in this letter that a copy of the representation

is being forwarded to CSIR for examination and appropriate action/ decision by Policy Division, CSIR.

8. Being aggrieved by the action of the respondents, the applicant has filed the instant OA seeking the following reliefs:

- (a) To quash the letter/ reply dated 2.08.2013 passed by Respondent no.2; and/or
- (b) To pass an order/ direction directing the Respondents to modify the existing career progression scheme so as to incorporate the provision of entitlement of 3 promotions or benefit in lieu thereof, for the holders of the isolated posts, during the period of 30 years of service as available under the MACPS or modify the existing scheme with better prospects than that available under the MACPS within a specified time frame; and / or
- (c) To pass an order/ direction directing the Respondents to pass necessary orders for making the benefits of the 3rd Financial Upgradation under the MACPS available to the Applicant; and/or
- (d) To call the records and hold that the act of the respondents has been arbitrary and in violation of the settled principles of natural justice and not in public interest and/or
- (e) pass any other order or orders may deem fit in the circumstances of the case.

9. The applicant states that there is no reason for MACPS not being made applicable to isolated posts when it is made applicable to all other employees of CSIR as that is more beneficial since it grants three upgradations to an employee whereas under 1981 Scheme for isolated posts, the applicant has obtained only two upgradations. It is argued that since MACPS is more beneficial, it should be adopted for the benefit of the employees. It is further argued that denial of reduction in residency period from 11 years to 10 years in respect of isolated posts other than Rajbhasha Staff is also discriminatory and, therefore, denial of third upgradation under MACPS and reduction of residency period in case of the applicant falls in the category of discrimination and thus violative of articles 14 and 16 of the Constitution of India.

10. The learned counsel for the applicant further drew our attention to the minutes of the meeting held on 9.09.2010 to consider similar demand in the case of similarly placed employees of CSIR in which the Committee recommended

that MACPS may be extended to incumbents holding isolated posts in CSIR to bring them at par with other cadre based employees for the purpose of financial upgradation.

11. Learned counsel for the respondents stated that as per para 13 of Annexure-1 of MACPS, it was for the respondents to take a considered view whether to retain the same Scheme or to adopt MACPS and they took a policy decision to continue with the old Scheme. It is well settled that policy decisions of government cannot be questioned before Court unless these are shown to be arbitrary and discriminatory. In **CMD/ Chairman, B.S.N.L. and others Vs. Mishri Lal and others**, Civil Appeal No.1405/2007, the Hon'ble Supreme Court held as follows:

“14. Hence, the approach of the High Court, in our opinion, was totally incorrect. In **State of Punjab and others Vs. Arun Aggarwal and others**, (2007) 10 SCC 402, it was observed (in para 30):

“There is no quarrel over the proposition of law that the normal rule is that the vacancy prior to the new Rules would be governed

by the old Rules and not the new Rules. However, in the present case, we have already held that the Government has taken a conscious decision not to fill the vacancy under the old Rules and that such decision has been validly taken keeping in view the facts and circumstances of the case.”

15. In the present case, a conscious decision was taken in 2005 providing that all the posts in question should be filled up by Limited Internal Competitive Examination. This was a policy decision and we cannot see how the High Court could have found fault with it. It is well settled that the Court cannot ordinarily interfere with policy decisions.”

12. It is contended on behalf of respondents that there has been no arbitrariness in the decision making and since the applicant has been enjoying Time Bound Scheme for isolated category where under she actually received promotions instead of upgradation as in MACPS, the respondents decided to stick to the old Scheme.

13. The reasoning for not giving applicant advantage of reduced residency period from 11 years to 10 years is,

however, not very clear from the reply of the respondents.

The learned counsel for the respondents, however, clarified that in order to bring pay parity of CSIR Raj Bhasha staff with Central Secretariat Official Language Staff based on educational qualification and the nature of work, CSIR has forwarded a note to MoF for approval, which is still pending. However, she fairly conceded that there has been no finality of decision on the issue even after almost two years.

14. We have heard the learned counsel for the parties and gone through the pleadings available on record as also the written submissions given by the learned counsel for the applicant.

15. It is settled law that the Tribunal shall not interfere in the matters of policy unless there is blatant arbitrariness. In this case, a decision had to be taken by the Respondents whether or not to adopt MACPS when a Time Bound Scheme is already existing, which was incorporated in para 13 of Annexure 1 of the MACPS itself. Respondents, for

cogent reasons, took a policy decision not to adopt it for isolated posts as they already had a good Scheme granting promotion instead of upgradation. The applicant is unhappy because she could not get third upgradation after 11 years as she retired on 30.06.2009, after serving 30 years and had MACPS been applicable, she would have got third upgradation under the said Scheme. Unfortunately, she did not complete 33 years of service as envisaged under the Career Development Scheme for staff belonging to isolated category and thus could not get third upgradation under that Scheme either. However unfortunate it may seem, the policy of the government cannot be changed to accommodate individual cases of perceived hardship.

16. On the question of isolated posts being deprived of the advantage of reduction in residency period from 11 years to 10 years, we find that the applicant completes 22 years of service on 22.02.2001. Even if reduction in residency period is made, she would have retired before completing 10 years in 2011 as these orders cannot be applied from

retrospective effect but only prospective effect. In fact, the order itself says that it will be effective with immediate effect.

17. Thus on both counts, the prayer of the applicant fails.

The OA is, therefore, dismissed. No costs.

(P.K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

/dkm/