

**Central Administrative Tribunal
Principal Bench**

OA No.3476/2014

Reserved on : 23.09.2015
Pronounced on : 06.10.2015

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

Shri Rishi Raj
S/o Late Jage Ram
Conductor (B. No.20296, P.T. No.44670)
Delhi Transport Corporation,
Bawana Depot,
Delhi
R/o Village & Post Office Katewada,
Delhi 110 039.
Address for service of notices
C/o Sh. Pradeep Kr.,
Advocate Ch. No.665, Western Wing,
Tis Hazari Courts,
Delhi 110 054. ... Applicant.

(By Advocate : Shri Sant Lal)

Vs

1. Delhi Transport Corporation
Through its Chairman cum Managing Director,
IP Estate,
New Delhi 110 002.

2. The Regional Manager (Rural)
Delhi Transport Corporation,
Peera Garhi Depot,
New Delhi.

3. The Depot Manager
Delhi Transport Corporation
Bawana Depot,
Delhi 110 039. ... Respondents.

(By Advocates : Shri D. S. Mishra for Shri Anand Nandan)

: O R D E R :

P. K. Basu, Member (A) :

The applicant joined the service of Delhi Transport Corporation (DTC) as a Conductor on daily wages w.e.f. 02.02.1983. He was regularised w.e.f. 11.02.1984 and confirmed on the said post successfully on completion of period of probation.

2. The Government introduced Assured Career Progression Scheme (ACP Scheme) w.e.f. 09.08.1999 whereby it was decided to grant financial upgradations on completion of 12 and 24 years of regular service in one grade subject to certain conditions. The DTC adopted this Scheme w.e.f. 12.08.2002. Accordingly, the DTC employees became eligible for such financial upgradation on completion of 12/24 years of regular service w.e.f. 12.08.2002.

3. The applicant has completed 12 years of regular service on 11.02.1996. However, he was not granted the benefit of first financial upgradation under the ACP Scheme w.e.f. 12.08.2002.

4. Later, the Government of India introduced Modified Assured Career Progression Scheme (MACP Scheme) wherein it was decided to grant three financial upgradations to the employees in their career on completion of 10, 20 and 30 years of regular service in their grades respectively. This Scheme

was made effective from 01.09.2008. The applicant was granted the benefit of first MACP w.e.f. 01.04.2011.

5. The first grievance of the applicant is that whereas he deserves first financial upgradation from 2002, he was denied that and granted the same under the new MACP Scheme w.e.f. 01.04.2011, i.e., after a delay of more than eight years. It is further stated by the applicant that the 2nd financial upgradation under the MACP Scheme is due after 20 years of regular service and even after adding the deferred period of eight years and more, the applicant became eligible for this on 30.09.2012. However, this has not been granted to him.

6. On his filing a representation, reply was sent by the respondents vide letter dated 09.05.2014 (Annexure A-1), which reads as under:-

“Reference your appeal dated 26.03.2014 to R.M (R) in regard to grant IIInd MACP w.e.f. 30.09.2012, Shri Rishi Raj, Conductor, B. No.20296 is hereby informed that your appeal has been considered thoroughly by the R.M (R) but found that 1st ACP could not be granted on the date of implementation i.e. 12.08.2002 due to adverse ACR from 2000 to 31.08.2008. You were granted 1st MACP w.e.f. 01.04.2011. In this case deferred period comes to 8 years, 7 months and 19 days, therefore, IIInd MACP cannot be granted due to deferred period. The recommendation is not in order. Hence, the appeal is hereby rejected.”

In the meantime, the applicant had made an appeal/representation dated 08.05.2014 to the Chairman-cum-Managing Director, DTC. This was replied to by the DTC vide letter dated 02.06.2014 stating that the matter of 2nd

MACP has been seen thoroughly and the request does not deserve consideration.

7. Being aggrieved by these two orders, the applicant has filed this OA seeking the following reliefs:-

“1. To quash the impugned orders dated 9.05.2014 and 2.06.2014 passed by the Respondents (Annexures A-1 & A-2 respectively).

2. To direct the respondents to grant the benefits of 2nd financial upgradation under the MACP Scheme to the Applicant (placement in the next higher scale of pay) w.e.f. 30.9.2012;

3. To grant all consequential benefits of revision of pay and arrears of pay & allowances from 30.9.2012 accruing on account of such revision of pay to the applicant;

4. To award interest on the aforesaid arrears of pay & allowances becoming due on account of such revision in pay @ 12%p.a. or at such other rate as may be deemed appropriate w.e.f. 30.9.2012;

5. To grant such other or further orders as this Hon’ble Tribunal may deem fit in the interest of justice.”

8. The applicant’s claim is that since he has completed 30 years’ of service, he should get three upgradations in his career, which he has been denied. He deserves 2nd financial upgradation after completion of 20 years of regular service in the grade and by adding the deferred period of eight years, seven months and nineteen days, this was due on 30.09.2012. Therefore, the 2nd financial upgradation cannot be denied to him from this date. It is further stated that the order dated 02.06.2014 is not a reasoned order but a cryptic order and hence is in violation of the principles of natural justice. In this

regard, learned counsel for the applicant relies on the judgment of the Apex Court in ***Ravi Yashwant Bhoir Vs. District Collector, Raigad & ors.*** (AIR 2012 SCC 1339), wherein their Lordships have observed as under:-

“46. The emphasis on recording reason is that if the decision reveals the ‘inscrutable face of the sphinx’, it can be its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind of the authority before the court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made. In other words, a speaking out, the inscrutable face of the sphinx is ordinarily incongruous with a judicial or quasi-judicial performance.”

9. Learned counsel for the respondents' states that the applicant could not be granted first financial upgradation under the ACP Scheme on the date of implementation, i.e., 12.08.2002 due to adverse ACRs from 2000 to 31.08.2008 and the applicant was granted first MACP w.e.f. 01.11.2011. Thus, the deferred period works out to eight years, seven months and nineteen days. According to learned counsel, para 15 of the MACP Scheme provides as follows:-

“15. If a financial upgradation under the MACPS is deferred and not allowed after 10 years in a grade pay, due to the reason of the employees being unfit or due to departmental proceedings, etc., this would have consequential effect on the subsequent financial upgradation which would also get deferred to the extent of delay in grant of first financial upgradation.”

Based on these guidelines, 2nd MACP becomes due after adding the deferred period of eight years, seven months and nineteen days and, therefore, the 2nd financial upgradation is not yet due.

10. Regarding the CMD's order being cryptic, it is stated that the Regional Manager is the Appellate Authority and has considered the appeal of the applicant and passed the order dated 19.05.2014. It is stated that there is no provision in the rules for a second appeal to the CMD and since the Regional Manager's order contain the detailed reasoning for rejection of his claim, all that has been said in the letter dated 02.06.2014 is that the matter has been seen thoroughly and the request does not deserve consideration. Thus, the respondents have considered his appeal as per representation to the Regional Manager and passed a speaking order and there was no scope for passing any speaking order by the CMD as per rules.

11. We have heard learned counsel for the parties and perused the material placed on record.

12. The fact is that the first financial upgradation under the ACP Scheme w.e.f. 12.08.2002 could not be granted to the applicant due to adverse ACRs from 2000 to 31.08.2008, as a result of which, there was a deferment period of eight years, seven months and nineteen days. As the first financial upgradation could only be granted under the new MACP

Scheme w.e.f. 01.04.2011, as cited above, the subsequent financial upgradation also gets deferred to the extent of delay in grant of first financial upgradation and, therefore, this would be due only after eight years, seven months and nineteen days counting from 01.04.2011 and the applicant would thus not be eligible for 2nd financial upgradation under the MACP Scheme before that date.

13. The applicant in his rejoinder application has also tried to question the deferment of first financial upgradation under the ACP Scheme on the ground that the so called adverse ACRs did not justify delay in grant of first upgradation under ACP Scheme. However, since this is not a prayer before us in this OA, we are not in a position to examine the same. The applicant has to raise it in a separate Application.

14. We also find that the respondents vide their letter dated 09.05.2014 have passed a speaking order giving reasons as to why the appeal of the applicant has been rejected and the order dated 02.06.2014 is just an intimation that it has been thoroughly seen and the request does not deserve consideration.

15. As clarified by the respondents, there is no provision for second appeal to the CMD, and, therefore, this allegation that no reasoned order is passed cannot be treated as a defect.

16. In the circumstances explained above, we find no merit in this OA. It is accordingly dismissed.

(P. K. Basu)
Member (A)

(Syed Rafat Alam)
Chairman

/pj/