

**Central Administrative Tribunal
Principal Bench**

OA No.3528/2012

Reserved on : 17.09.2015
Pronounced on : 06.10.2015

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

Shri J. S. Sharma
S/o Late E. S. Sharma,
Aged 58 years,
R/o 6/H, Shahpur Jat, PO Andrews Ganj,
New Delhi 110 049. Applicant.

(By Advocate : Shri Sachin Chauhan)

Versus

1. Union of India through
Through the Secretary
Ministry of H & FW, Govt. of India,
Nirman Bhawan,
Govt. of India,
New Delhi.
2. The Director General
Directorate General of Health Services
Govt. of India,
New Delhi.
3. The Airport Health Officer
Airport Health Organisation,
NSCB Int. Airport,
Dum-dum, Kolkata 700052. Respondents.

(By Advocate : Shri Subhash Gosain)

: O R D E R :

P. K. Basu, Member (A) :

The applicant was appointed directly as Sanitary Inspector on 01.08.1977. The designation of Sanitary Inspector was changed to Health Inspector vide letter dated 09.10.2009.

2. With effect from 29.11.2001, the pay scale of the applicant was upgraded from Rs.4000-6000 to Rs.5500-9000 (pre-revised). He got his first upgradation under Assured Career Progression Scheme (ACP Scheme) in the pay scale of Rs.6500-10500 (pre-revised) vide Ministry of Personal, Public Grievances and Pension (DOPT) letter dated 9.08.1999 and DGHS letter dated 16.10.2003. Vide letter dated 24.05.2011, he got 2nd financial upgradation under ACP Scheme in the pay scale of Rs.7500-12000 (pre-revised) after completion of 24 years of regular service w.e.f. 18.08.2004.

3. The applicant's grievance is that the 2nd financial upgradation under ACP Scheme should have been in the pay scale of Rs.10,000-15200/-(pre-revised scale) and not in the pay scale of Rs.7500-12000.

4. Learned counsel for the applicant drew our attention to letters dated 12.10.2011 and 24.05.2011 of DGHS and stated that the respondents have treated his post as an isolated post whereas it is not an isolated post. In this regard, he cited Clarification No.31 of DoP&T OM dated 10.02.2000, which reads as follows:-

"Isolated post is a stand alone post having neither feeder grade nor promotional grade. As such, a post having no promotional grade but having a feeder grade and vice versa shall not be treated as isolated post for the purpose of ACPS."

It is argued that as per Recruitment Rules for Sanitary Inspectors (Annexure A-6), Column 11 provides that 25% of the posts are kept apart to be filled up by promotion from Insect Collectors. This clearly proves that there is a feeder cadre. It is stated that even in their letter dated 12.10.2011, the respondents have accepted that the post of Health Inspector is a feeder post. It is further argued that in OA No.1764/2003, ***M. N. Ghosh vs. Union of India & Ors.*** decided on 14.05.2004, the applicant therein had challenged his financial upgradation to the pay scale of Rs.7500-12000 under ACP Scheme on the ground that the respondents have wrongly treated his present post of Deputy Manager (Photo Litho) as an isolated post and after examining the definition of isolated post and the hierarchy of the cadre, the Tribunal had directed to consider granting first financial upgradation under ACP Scheme to him in a pay scale of analogous grade in a cadre/post available in other ministries as provided in clarification No.32 of the aforesaid OM dated 10.02.2000, which reads as under:-

“32 (i) If such cadre/hierarchy exists in the Ministry/Department concerned, the second upgradation may be allowed in keeping with the pay scale of an analogous grade of a cadre/post in the same Ministry/Department. However, if no such grade exists in the Ministry/Department concerned, comparison may be made with an analogous grade available in other Ministries/Departments.”

Clearly, in that case, the Tribunal found that the matter was covered under Clarification No.32 of the aforesaid OM.

5. Learned counsel for the applicant states that similarly in his case, instead of being granted the replacement scale of Rs.7500-12000, he should have been given the pay scale of Rs.10000-15200 as analogous cadres in other Ministries have been given that scale. In this regard, it is stated that under the provisions of Right to Information Act, 2005, the applicant has obtained information regarding several other cadres, namely, Librarians Cadre (Annexure A-17), Examiners Cadre in Central Vigilance Commission (Annexure A-19), Hindi Officers Cadre (Annexure A-20) and CSS Cadre (Annexure A-21). In all these cadres, the next pay scale after Rs.6500-10500 in the hierarchy of the cadre is Rs.10000-15200. He further drew our attention to DoP&T OM dated 09.09.2010 which contain clarifications on certain doubts regarding MACP Scheme and specifically to clarification No.3 in which the following clarification has been given:-

“(B) in the case of normal promotional hierarchy:-

Date of appointment in entry Grade in the pre-revised pay scale of Rs.5500-9000: 01.10.1982.

1st ACP granted to 09.08.1999 : Rs.6500-10500 (pre-revised).

2nd ACP due on 01.10.2006 (as per the existing hierarchy) : Rs.10000-15200 (pre-revised).

Therefore, 2nd ACP would be in PB-3 with Grade Pay of Rs.6600 (in terms of hierarchy available).

3rd financial upgradation under MACPS would be due on 01.10.2012 in the immediate next higher grade pay in the hierarchy of recommended revised pay band and grade pay of Rs.7600.”

In view of the above arguments, the applicant seeks the following reliefs:-

“8 (i) To quash and set aside order dated 12.10.11 whereby despite admitting that the post of the applicant is having feeder post the benefit of the 2nd ACP in the pay scale of 10000-15200 is being denied to the applicant at A-1, order dated 24.5.2011 whereby the representation of the applicant for grant of benefit of 2nd ACP Scheme in the pay scale of 10000-15200 is being denied to the applicant at A-2 and order dated 11.2.11 whereby the 2nd ACP benefit is granted to the applicant in the pay scale of 7500-12000 w.e.f. 18.8.2004 at A-3 and to further direct the respondents to grant the benefit of the 2nd ACP Scheme in the pay scale of 10000-15200 w.e.f. 18.8.04 with all consequential benefits including pay and allowances and arrears.”

Learned counsel for the applicant states that while issuing the impugned order, the department had rejected the claim of the applicant considering his post to be an isolated post but now have taken a completely contradictory stand that the case is covered by clarification No.32 of DoP&T OM dated 10.02.2000, which they legally cannot.

6. Learned counsel for the respondents pointed out that nowhere in the impugned order dated 12.10.2011, nor in the order dated 24.05.2011, it has been stated that the respondents are treating this as an isolated post. In fact, the department has followed strictly the provisions of MACP

guidelines and clarification of DoP&T from time to time. From the perusal of the instructions of DoP&T dated 10.02.2000, as quoted, it is clear that under clarification No.32 in such cadres where hierarchy is limited to two grades, the second financial upgradation may be allowed keeping in view the cadre post in the same Ministry, and only if such an analogous post is not available is the department supposed to compare it with such grades in other ministries/departments. However, in the applicant's department an analogous post of Technical Officer is available as the post of Senior Technical Assistant is in the pay scale of Rs.6500-10500 and a feeder grade to the post of Technical Officer in the scale of Rs.7500-12000. Therefore, since such an analogous post was available, the respondents adopted that scale of Rs.7500-12000 for the applicant. It is further argued that the present case is not an identical one to that of **Shri M. N. Ghosh** (supra) as in that case no analogous post was available in the same Ministry. Therefore, to that extent the facts are different and **M. N. Ghosh's case** (supra) cannot be applied in the present case.

7. Heard learned counsel for the parties and perused the relevant rules/judgments.

8. The short issue here is that the department has gone by the clarification No.32 in the case of the applicant and having found an analogous post in Technical Officers they have

adopted the first financial upgradation in that scale. We also see that neither in the order dated 12.10.2011 nor in 24.05.2011, the department has taken the stand that the applicant's post is an isolated post. Therefore, this argument of learned counsel for the applicant that while issuing the impugned order, the Department had treated the applicant's post as an isolated post and now in the counter reply they have taken a different stand of application of clarification of No.32 is not borne out by facts.

9. The respondents have been consistent in their stand and have strictly adhered to the provisions of MACP guidelines and clarification issued thereon by the DoP&T. We find no illegality or irregularity in the impugned order 12.10.2011 and letter dated 24.05.2011. The OA being bereft of merit is dismissed. No costs.

(P. K. Basu)
Member (A)

/pj/

(Syed Rafat Alam)
Chairman