

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.3684/2013

This the 28th day of November, 2016

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. Shekhar Agarwal, Member (A)**

Ashok Kumar Agarwal, Scientist 'B' (Retd.),
Ministry of Water Resources (MOWR),
R/o KG-1/460, Vikas Puri,
New Delhi-110018.

... Applicant

(By Advocate: Mr. S. P. Sethi)

Versus

1. Union of India through
Secretary, Ministry of Water Resources (MOWR),
Sharam Shakri Bhawan,
New Delhi-110001.
2. Director, Central Soil & Materials
Research Station (CSMRS),
Olof Palme Marg, Hauzkhlas,
New Delhi-110016.
3. Secretary, Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi-110011. ... Respondents

(By Advocate: Mr. D. S. Mahendru)

O R D E R

Justice Permod Kohli, Chairman :

The applicant was initially appointed as Research Assistant in the Central Water Commission (CWC), Ministry of Water Resources on 16.11.1972. The Central Soil and Materials Research Station

(CSMRS), which was earlier part of CWC was de-linked from CWC and directly put under the Ministry of Water Resources in the year 1981. The applicant chose to remain with the CSMRS cadre. He was promoted to the post of Assistant Research Officer on 15.05.1987, and to the post of Research Officer (later re-designated as Scientist 'B') on 21.09.2000. The post earlier held by the applicant, i.e., Research Officer/Scientist 'B' was brought under the Flexible Complementing Scheme (FCS) of 1983 for promotion, as notified by the Ministry of Irrigation (now Ministry of Water Resources) vide GSR No.869 dated 29.10.1983.

2. CSMRS Group 'B' R&D Professionals Association approached the Principal Bench of this Tribunal by filing OA No.317/2003 for providing promotional avenues to Assistant Research Officers (AROs) to the post of Senior Research Officer (SRO)/Scientist 'C'. While disposing of the said OA vide order dated 29.04.2004, the Tribunal restrained the Government from making any selection/appointment to the post of SRO/Scientist 'C' till necessary changes in the recruitment rules are effected as per the directions of the Tribunal. The Ministry of Water Resources challenged the order of the Tribunal before the Hon'ble Delhi High Court and the writ petition (WP(C) No.1483/2005) was disposed of vide order dated 02.08.2011 modifying the order of the Tribunal insofar as the direction for restraining the Government from making any

appointment till recruitment rules were to be amended, is concerned. The applicant made representations for his consideration for promotion to the post of Scientist 'C' on the basis of his eligibility. In the meantime, the applicant retired from Government service on attaining superannuation on 31.10.2011.

3. After retirement of the applicant, he was asked to submit his bio data for promotion to the next higher grade under FCS vide office order dated 10.01.2012 (Annexure A-8). Similar information was sought from other officers. Name of the applicant figured at serial number 3 of the said list and he is shown retired on 31.10.2011. Two more officers, namely, Naresh Kumar and R. B. Shivali who had retired from service on 31.05.2011 and 01.05.2011 respectively, were also asked to submit their bio data. It is stated by the applicant that he submitted his bio data in July, 2012 in response to the aforesaid communication. However, nothing was heard of his promotion. To the contrary, as many as six Scientists 'B' were promoted to the post of Scientist 'C' vide office order dated 14.11.2012. It is this order which is impugned in the present OA. Out of the six promotees, four officers are said to be junior to the applicant.

4. Before the aforesaid promotions were made, the applicant was granted third financial upgradation vide office order dated 19.07.2012 (Annexure A-9) w.e.f. 21.09.2010. He made a

representation dated 04.10.2012 seeking benefit of MACP w.e.f. 01.09.2008 instead of 21.09.2010. According to the applicant, he was promoted as Scientist 'B' (earlier Research Officer) on 21.09.2000, and he had completed 30 years of service in November, 2002. However, the MACP scheme came to be notified on 01.09.2008. It is accordingly submitted that the applicant is at least entitled to the benefit of third financial upgradation under MACP when the scheme was notified, as has been done in case of various other officers. The applicant has also placed on record copy of office order dated 19.01.2010 whereby two scientists, namely, Virender Kumar and Pushplata, who joined service on 19.09.1975 and 03.01.1976 and completed 30 years of service in September, 2005 and January, 2006 respectively, were granted benefit of 3rd MACP w.e.f. 01.09.2008. These Scientists are junior to the applicant. This fact has not been disputed by the respondents in the counter affidavit. Even though the relief claimed by the applicant in the OA is for his promotion to the grade of Scientist 'C' from the date his juniors were promoted, however, keeping in view the fact that he has been granted benefit of MACP instead of FCS, the applicant is entitled to only one benefit, either under FCS or under MACP scheme. He has already been granted benefit under MACP scheme, but the benefit has been granted to him w.e.f. 21.09.2010, whereas he was entitled to the benefit of third financial upgradation under MACP scheme on completion of 30

years of service, i.e., in the year 2002. However, the MACP scheme itself having been brought in w.e.f. 01.09.2008, the applicant is at least entitled to the benefit of third financial upgradation under MACP with effect from the said date. In case of Virender Kumar and Psshplata, referred to above, they have been granted benefit of MACP with effect from the date of enforcement of the Scheme, i.e., 01.09.2008, though they were appointed later in point of time and completed 30 years of service in the years 2005 and 2006 respectively.

5. Keeping in view the above circumstances, the applicant has not been treated fairly and he has been denied benefit of financial upgradation in accordance with the mandate of the MACP scheme, which has adversely affected his retiral and other benefits.

6. In this view of the matter, this OA is allowed with the following directions:

- (1) The benefit of MACP granted to the applicant w.e.f. 21.09.2010 be ante-dated w.e.f. 01.09.2008.
- (2) In-service and retiral benefits of the applicant, i.e., his pay and other related allowances etc. be re-fixed by taking into consideration the MACP benefit w.e.f. 01.09.2008.
- (3) Arrears of salary up to the date of retirement of the applicant on 31.10.2011 be re-determined and paid to him

within three months, failing which the applicant shall be entitled to interest at the rate of 6% *per annum* on the amount of arrears so determined, both on salary and pension. Similarly, on re-fixation of the salary, retiral benefits of the applicant be also re-calculated and paid to him within the aforesaid period of three months.

There shall be no order as to costs.

(Shekhar Agarwal)
Member (A)

(Justice Permod Kohli)
Chairman

/as/