

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.4174/2016

this the 10th day of October 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Himangshu Kumar Kundu S/o Hemendra Nath Kundu,
Working in the office of HQ, DQA(N),
West Block-V, R. K. Puram,
New Delhi-110066.

... Applicant

(Mr. A. K. Trivedi, Advocate)

Versus

1. Union of India through its Secretary
(Deptt. Of Defence Production),
Ministry of Defence, South Block,
DHQ, PO, New Delhi-110011.
2. Director General of Quality Assurance,
'H' Block, Ministry of Defence, DHQ-PO,
New Delhi-110011.
3. ADGQAN,
DQA (Naval),
West Block-V, R.K. Puram,
New Delhi-110066.
4. Controller of Defence Accounts
(Pay Army Sec), Rajendra Path,
Patna-800019.
5. Asstt. Controller of Defence Accounts,
Area Accounts Office, EM Block, Sector-V,
Alt Lake, Kolkata-91.
6. The CGDA,
Ulan Batar Road, Palam,
Delhi-cantt-110010.

7. The SQAQ, SQAQ (EE),
S-2/2, Commissionerate Road,
Hastings, Kolkata-700122.

... Respondents

(Mr. Ramesh Kumar Shukla for Mr. Manjeet Singh Reen, Advocate)

O R D E R

Justice Permod Kohli:

The applicant is aggrieved of the order dated 15.02.2016 whereby his LPC has been issued indicating an over-payment of Rs.4,63,239/- and order for its recovery from the applicant. The further prayer of the applicant is to restore the grade pay of Rs.5400/- w.e.f. 01.09.2008 towards third MACP, preceding with a declaration that the action of the respondents in reducing the grade pay of the applicant from Rs.5400/- to Rs.4800/- is illegal, unjust, arbitrary, discriminatory and violative of the principles of natural justice.

2. Briefly stated, the facts of the case are that the applicant was appointed to the post of Chargeman-II on 30.12.1983. He was promoted to the post of Chargeman-I on 09.04.1987. The post of Chargeman-I and Chargeman-II were merged into a single post and re-designated as Junior Engineer (QA). The applicant was later promoted to the post of Assistant Foreman on 01.07.1988 and to the post of Junior Technical Officer on 18.02.2008. The posts of Assistant Foreman and Junior Technical Officer were merged w.e.f. 01.01.2006 and re-named as Assistant Engineer (QA). The applicant was

promoted as Junior Scientific Officer-II w.e.f. 26.08.2015. The post of Junior Scientific Officer was also merged with Senior Scientific Officer-II w.e.f. 08.03.2016. The applicant is serving as such in the office of the respondents.

3. The applicant was granted third MACP w.e.f. 01.09.2008 in the grade pay of Rs.5400/- in terms of the DOP&T instructions and on the recommendation of the screening committee with the approval of the competent authority vide order dated 30.03.2011. The said order was approved by the Area Accounts Office, Kolkata after verification. Vide the impugned order dated 20.01.2014 the entry regarding grant of third MACP in respect of the applicant was ordered to be deleted without assigning any reason and without any show cause notice to the applicant. After passing of the aforesaid order, the competent authority is said to have re-considered the matter and vide order dated 25.03.2014 apprised the Controller of Quality Assurance (Engg Eqpt), Pune that the applicant had earned only one promotion in his service career till date since he joined his service as Chargeman-II w.e.f. 30.12.1983, and that upon earning his first promotion in the grade of Assistant Foreman (Grade Pay Rs.4600/- in PB-2) w.e.f. 01.07.1988, the applicant is entitled to third financial upgradation under MACP in the grade pay of Rs.5400/- in PB-2 w.e.f. 01.09.2008 on completion of 20 years of service in the

grade of Assistant Foreman. The decision was duly communicated to the AAO, Pay Fixation Cell, Kolkata vide letter dated 09.04.2014 by the Sr. Quality Assurance Estt. (EE), Kolkata with a request to reconcile the directions issued. The office of AAO, Kolkata vide letter dated 08.05.2014 sought expert opinion from CDA, Patna. The applicant also made a representation dated 21.07.2014 addressed to the CGDA, Delhi Cantt. There was a recommendation by the Kolkata office in favour of the applicant on the analogy of similarly situated persons. The applicant was transferred from Kolkata and posted to DQA (N), New Delhi, but his LPC and service book were not forwarded to the New Delhi office. After some correspondence, the basic pay of the applicant has been reduced from Rs.27,380/- to Rs.26,300/- and the grade pay from Rs.5400/- to Rs.4800/- without affording any opportunity to the applicant. This action is on account of withdrawal of the third MACP granted to the applicant. In the meantime the applicant has retired from service on 31.05.2017.

4. On being put to notice, the respondents have filed a counter-affidavit wherein the claim of the applicant is admitted. Para 1 of the preliminary submission is reproduced hereunder:

“1. That the present OA filed against the order No.AAO/KOL/DGQA/477/Cell-VIII dated 15 Feb 2016 of Area Accounts Office Salt Lake, Kolkata-700009. Since the applicant has already been informed by the administrative authority that the 3rd MACP is

correct and is strictly in keeping with the instructions/order/clarification/guidelines issued on the subject matter by DOP&T. Hence it is not feasible the department to change the stand adopted earlier which was correct as per DGQA/Adm-10 (authority to approve MACP)."

5. The respondents having admitted the right and claim of the applicant regarding validity of the third MACP and having already granted him third MACP, the applicant is entitled to the relief prayed for.

6. This OA is accordingly allowed. The impugned order dated 15.02.2016 is hereby set aside. The applicant is found entitled to third MACP w.e.f. 01.09.2008. The action of the respondents withdrawing the MACP granted vide order dated 30.03.2011 is hereby set aside. Consequently, the order of recovery of Rs.4,63,239/- ordered against the applicant on account of alleged over-payment is also set aside. The respondents are directed to restore the pay and grade pay of Rs.5400/- to the applicant w.e.f. 01.09.2008, and consequently re-determine the retiral benefits to be paid within a period of three months from the date of receipt of copy of this order.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

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