

**Central Administrative Tribunal  
Principal Bench  
New Delhi**

**OA No.1813/2014  
MA No.2187/2015**

Reserved on : 15.11.2018  
Pronounced on : 27.11.2018

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman  
Hon'ble Mr. Pradeep Kumar, Member (A)**

K.K. Sharma S/o Shri O. P. Sharma,  
Retired Under Secretary of Delhi Area,  
Dept. Of Heavy Industry,  
Resident of 360, Vikas Kunj,  
Vikas Puri, New Delhi – 110018. ... Applicant

( By Ms. Richa Ojha for Mr. A. K. Ojha, Advocate )

Versus

1. Secretary, Deptt. of Heavy Industry,  
Ministry of Heavy Industry and Public  
Enterprises, Udyog Bhawan, New Delhi.
2. Secretary, Deptt. Of Personnel & Training,  
North Block, New Delhi. ... Respondents

( By Shri Rajeev Kumar, Advocate )

**O R D E R**

**Justice L. Narasimha Reddy, Chairman :**

The applicant joined the Ministry of Heavy Industry and Public Enterprises as a Stenographer Grade-II in February, 1978. He was promoted as Section Officer in the year 1986 on the basis of his performance in the Limited Departmental

Competitive Examination. Thereafter, he was promoted as Under Secretary on *in situ* basis w.e.f. 20.08.1999, and on regular basis w.e.f. 09.07.2003. He retired from service on attaining the age of superannuation, and by that time he had put in 36 years of service.

2. The Assured Career Progression (ACP) Scheme was introduced in the year 1999. This provided for financial upgradation to the employees up to certain categories, if there did not exist any promotional avenues for them at the end of 12 years and 24 years of service. That was replaced by the Modified Assured Career Progression (MACP) Scheme w.e.f. 01.08.2009. The periodicity of the benefit which was 12 years in the ACP was modified to 10 years under the MACP, and an employee is entitled to three upgradations. This, however, is subject to his not getting any promotions at the relevant stages.

3. The applicant submitted representations dated 14.05.2010 and 07.09.2011, stating that though he was entitled to be extended the second MACP, he was denied that benefit, and only third MACP was granted. On a consideration of the same, the competent authority passed an order dated 26.08.2011, stating that the applicant got two promotions and one Non

Functional Selection Grade (NFSG) at the relevant stages, and that he was not entitled to any more upgradation under the MACP. The same is challenged in this OA.

4. The applicant contends that whatever may be the justification for denial of the first and third financial upgradations on completion of ten and thirty years of service, there was no basis for denial of the second one. It is stated that the NFSG was extended uniformly to every officer of the grade on completion of four years, and it cannot be treated as equivalent to promotion, for denying the financial upgradation under the MACP.

5. The respondents filed a counter affidavit denying the allegations made by the applicant. According to them, the applicant got the benefit of three upgradations, out of which, two are in the form of promotions, i.e., from Stenographer Grade-II to Section Officer, and Section Officer to Under Secretary. It is stated that the applicant had the benefit of the NFSG, and though it was not a bar under the ACP, it is treated as such, under the MACP through the office memorandum dated 12.04.2010 issued by the DoP&T.

6. We heard Ms. Richa Ojha, learned counsel for the applicant, and Mr. Rajeev Kumar, learned counsel for the respondents.

7. It has already been mentioned that the ACP provided for upgradation of the emoluments of an employee at two stages on completion of 12 and 24 years of service, and the MACP provided for the same at three stages, i.e., on completion of 10, 20 and 30 years of service. Apart from the periodicity of the benefits, there existed a quantitative difference in the two Schemes referred to above. While under the ACP, only a regular promotion, and not any financial upgradation, was to disentitle the employee from getting the benefit of the ACP; even the NFSG or other similar benefits are treated on par with promotion, under the MACP.

8. The applicant did not get the benefit of the first upgradation under the ACP because of his promotion from the post of Stenographer Grade-II to Section Officer. By the time he completed 24 years of service, the MACP came into force. The second upgradation under MACP became due on completion of 20 years of service. At that stage, the applicant got the benefit of NFSG in the post of Section Officer. Though it was

not personal to any officer similar to the applicant, and was extendable on completion of four years of service, it was an important step, resulting in substantial enhancement of salary. The question as to whether an upgradation of this nature can be treated as a factor to deny the benefit of MACP, was dealt with by the DoP&T in its office memorandum dated 12.04.2010. It reads as under:

“In supersession of this Department's O.M. of even number dated 12<sup>th</sup> January, 2010, the undersigned is directed to say that it has been further clarified by the Establishment (D) Section of this Department that DR Assistants/DR Grade 'C' Stenographers who have got Non-functional grade (NFG) in the grade pay of Rs.5400/- would only be entitled for 3<sup>rd</sup> financial upgradation in the immediate higher grade pay of Rs.6600/- on completion of 30 years of continuous service or on completion of 10 years stagnation in a single grade pay, whichever is earlier. No further financial upgradation would be admissible to such officials.

All the cadre/sub-cadre authorities are requested to deal with such cases accordingly.”

The case of the applicant fits into this. The second MACP is eclipsed by the NFSG. What was left, was only the third MACP. By the time it became due, the applicant got promotion to the post of Under Secretary, and thereafter he retired from service. Hence, there was no occasion for the respondents to

extend the benefit of second MACP to the applicant. The impugned order clarifies this from the factual and legal angles. The applicant is not able to demonstrate that the impugned order suffers from any legal or factual infirmity.

9. The OA is accordingly dismissed. There shall be no order as to costs.

**( Pradeep Kumar  
Member (A)**

**( Justice L. Narasimha Reddy )  
Chairman**

/as/