

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 290/00292/14

**JODHPUR, THIS THE 5TH DAY OF JANUARY,
2018
CORAM**

**HON'BLE MR. PRASANNA KUMAR PRADHAN, ADMINISTRATIVE MEMBER
HON'BLE MR. SURESH KUMAR MONGA, JUDICIAL MEMBER**

BIKASH DAS S/O SH. MANIDRA KUMAR DAS AGED ABOUT 57 YEARS, R/O QUARTER NO. 24/6 AIR FORCE COLONY, CWE (AF) BIKANER, RAJASTHAN. PRESENTLY WORKING ON THE POST OF EE IN THE OFFICE OF CWE (AF) BIKANER RAJASTHAN.

.....APPLICANTS

BY ADVOCATE:- MR S.K. MALIK.

VERSUS

- 1. UNION OF INDIA THROUGH THE SECRETARY, MINISTRY OF DEFENCE, RAKSHA BHAWAN, NEW DELHI.**
- 2. DIRECTOR GENERAL (PERSONNEL) MILITARY ENGINEER SERVICE, ENGINEER-IN-CHIEF'S BRANCH, INTEGRATED HEADQUARTER OF MOD (ARMY), KASHMIR HOUSE, DHQ NEW DELHI 110011.**
- 3. THE COMMANDER WORKS ENGINEER (AF) BIKANER, RAJASTHAN.**

.....RESPONDENTS

BY ADVOCATE : MR B.L. BISHNOI.

ORDER

PER PRASANNA KUMAR PRADHAN, MEMBER(A)

THE APPLICANT HAS FILED THE PRESENT ORIGINAL APPLICATION SEEKING FOLLOWING RELIEF(S):

(I) BY AN APPROPRIATE WRIT ORDER OR DIRECTION IMPUGNED ORDERS DATED 15.04.2013 AT ANNEX. A/1, ORDER DATED 30.05.2014 AT ANNEX. A/2 & ORDER DATED 30.07.14 AT ANNEX. A/3 QUA THE APPLICANT BE DECLARED ILLEGAL AND BE QUASHED AND SET ASIDE.

(II) BY AN ORDER OR DIRECTION RESPONDENTS MAY BE DIRECTED TO GRANT 3RD MACP IN THE PAY SCALE OF RS 15600-39100/- WITH GRADE PAY RS 7600/- W.E.F. 04.05.2012 WITH ALL CONSEQUENTIAL BENEFITS

INCLUDING ARREARS OF PAY AND ALLOWANCES ALONGWITH 18% INTEREST PER ANNUM.

2. THE APPLICANT SUBMITS THAT HE WAS INITIALLY APPOINTED TO THE POST OF E/M IN MAY, 1992 AND RECEIVED PROMOTION TO THE POST OF E/M I IN SEPTEMBER, 1990 AND AE E/M W.E.F. 02.10.2001. HE WAS GRANTED 2ND ACP W.E.F. 04.05.2006 VIDE LETTER DATED 28.01.2009. HE WAS PROMOTED TO THE POST OF EXECUTIVE ENGINEER W.E.F. 13.06.2011 IN THE PAY SCALE OF RS 15600-39100/- WITH GRADE PAY OF RS 6600/-, WHICH IS THE SAME SCALE THAT WAS ALLOWED TO HIM UNDER ACP. FOLLOWING THE 6TH CPC RECOMMENDATIONS, GOVT. OF INDIA INTRODUCED THE MODIFIED ASSURED CAREER PROGRESSION (MACP) SCHEME, REPLACING THE EARLIER SCHEME OF ACP, WHICH PROVIDES FOR THREE FINANCIAL UPGRADATIONS ON COMPLETION OF 10, 20, 30 YEARS OF REGULAR SERVICE. THE APPLICANT COMPLETED 30 YEARS SERVICE ON 04.05.2012. THEREAFTER, HIS CASE WAS FORWARDED TO HIGHER AUTHORITY VIDE LETTER DATED 11.04.2012 ALONGWITH DETAILED SERVICE RECORD FOR SANCTION OF 3RD FINANCIAL UPGRADATION UNDER MACP SCHEME. HOWEVER, THE RESPONDENT AUTHORITY BY IMPUGNED ORDER DATED 15.04.2013 REJECTED THE CASE OF THE APPLICANT SAYING THAT HE IS WORKING IN GROUP 'A' ORGANISED SERVICE SINCE 13.06.2011 AND HENCE, IS NOT ENTITLED TO 3RD MACP BENEFITS. THE APPLICANT, HOWEVER, CONTENDS THAT 3RD FINANCIAL UPGRADATION UNDER MACP IN THE GRADE PAY OF RS 7600/- WAS ALLOWED TO SIMILARLY SITUATED EXECUTIVE ENGINEERS VIDE LETTER DATED 26.07.2013 (A/7). THE APPLICANT MADE FURTHER REPRESENTATION REFERRING TO DOPT LETTER DATED 13.06.2012 AND CITING EXAMPLES OF SHRI CHHOTE LAL NIGAM WHO WAS GRANTED 3RD MACP BUT HIS CASE WAS NOT CONSIDERED. HENCE, HE HAS APPROACHED THIS TRIBUNAL SEEKING RELIEFS MENTIONED EARLIER.

3. THE RESPONDENTS HAVE FILED A REPLY STATEMENT IN WHICH THEY SUBMITTED THAT THE MACP SCHEME WHICH SUPERSEDED PREVIOUS ACP SCHEME WILL APPLY TO ALL REGULARLY EMPLOYED GROUP 'A', 'B', 'C' EMPLOYEES EXCEPT OFFICERS OF THE ORGANIZED GROUP 'A' SERVICE. REFERRING TO THE CASE OF SHRI CHHOTE LAL NIGAM WHICH HAS BEEN POINTED OUT BY THE APPLICANT, THEY SUBMIT THAT SHRI NIGAM COMPLETED 30 YEARS OF SERVICE ON 09.05.2008 BEFORE HE BECAME GROUP 'A' OFFICER OF ORGANIZED SERVICE ON 04.07.2011 AND HENCE ENTITLED TO 3RD MACP BENEFITS. THE APPLICANT HAS COMPLETED 30 YEARS OF REGULAR SERVICE ON 04.05.2012 AFTER BECOMING GROUP 'A' OFFICER OF THE ORGANIZED SERVICE. HENCE, 3RD FINANCIAL UPGRADATION UNDER MACP IS NOT APPLICABLE IN HIS CASE. IN THE CASE OF THE APPLICANT, PAY PARITY WILL BE PROCESSED AFTER COMPLETION OF 5 YEARS OF REGULAR SERVICE IN THE EXECUTIVE ENGINEERS' GRADE AS PER RECRUITMENT RULES. THEY HAVE ALSO REFERRED TO DOPT OM DATED 13.06.2012 (R/1).

4. THE APPLICANT HAS FILED A REJOINDER IN WHICH HE

SUBMITTED THAT THE DOPT OM DATED 13.06.2012 MAKES IT VERY CLEAR THAT FINANCIAL UPGRADATION UNDER MACP HAS TO BE ALLOWED W.E.F. THE DUE DATE TO THOSE OFFICERS WHO ARE INCLUDED UNDER THE ORGANIZED GROUP A SERVICES WHEN THEY ARE NEARING RETIREMENT. IN THIS CASE, THE APPLICANT RETIRED ON 31.03.2017 BUT HAS NOT BEEN GRANTED 3RD MACP WITH GRADE PAY OF RS 7600/- FROM THE DUE DATE. HE IS ENTITLED FOR THE SAME IN TERMS OF THE SAME OM AND SHOULD BE GRANTED.

5. WE HAVE HEARD THE LEARNED COUNSEL FOR BOTH SIDES. BOTH THE LEARNED COUNSELS PRACTICALLY REITERATED THE SUBMISSIONS ALREADY MADE IN THE OA AND THE REPLY STATEMENT SUPPORT OF THEIR CONTENTIONS.

6. THE ISSUES RAISED IN THE PRESENT CASE IS IN A VERY NARROW COMPASS AND AS TO WHETHER THE CLAIM OF THE APPLICANT FOR 3RD MACP IS JUSTIFIED ON THE ANALOGY OF 3RD MACP BENEFIT GRANTED TO SHRI CHHOTE LAL NIGAM AND SHRI P. NAGASWERA RAO AND IN THE LIGHT OF DOP&T OM DATED 13.06.2012. AS FAR AS THE CASE OF SHRI CHHOTE LAL NIGAM AND SHRI P. NAGASWERA RAO, WHICH WAS REFERRED TO BY THE APPLICANT, IS CONCERNED, WE NOTE THAT THEY WERE GRANTED 3RD FINANCIAL UPGRADATION UNDER MACP SCHEME ON COMPLETION OF 30 YEARS OF REGULAR SERVICE ON 01.09.2008 AND 16.11.2009 BEFORE THEY WERE PROMOTED TO THE POST OF EXECUTIVE ENGINEER AND BECOME PART OF THE ORGANIZED GROUP 'A' SERVICE. HENCE GRANT OF FINANCIAL UPGRADATION TO THEM UNDER MACP IS PERMISSIBLE UNDER THE GUIDELINES. ON THE OTHER HAND THE APPLICANT WAS PROMOTED TO EXECUTIVE ENGINEER AND PART OF GROUP 'A' SERVICE IN 2011 WHICH IS PRIOR TO HIS COMPLETION OF 30 YEARS' OF SERVICE IN 2012 AND HENCE DOES NOT COME UNDER THE PURVIEW OF MACP GUIDELINES. HENCE, THE APPLICANT CANNOT CLAIM PARITY WITH SHRI CHHOTE LAL NIGAM AND SHRI P. NAGASWERA RAO FOR THE GRANT OF 3RD MACP.

7. BOTH THE SIDES HAVE MADE REFERENCES TO OM DATED 13.06.2012 ISSUED BY THE DOPT PROVIDING CLARIFICATION REGARDING GRANT OF MACP TO OFFICERS WHO HAVE LATER ON INCLUDED INTO ORGANIZED GROUP A SERVICES, WHICH READS AS FOLLOWS:
IN TERMS OF CLARIFICATION GIVEN ON POINT OF DOUBT NO. 2 OF ANNEXURE OF THIS DEPARTMENT'S O.M. DATED 09.09.2010, NO BENEFITS UNDER THE MACPS WOULD BE APPLICABLE TO GROUP A OFFICERS OF ORGANISED GROUP A SERVICES, AS THE OFFICER UNDER ORGANIZED GROUP 'A' SERVICES HAVE ALREADY BEEN ALLOWED PARITY OF TWO YEARS ON NON-FUNCTIONAL BASIS WITH THE OFFICERS OF THE INDIAN ADMINISTRATIVE SERVICE (IAS). IN THIS REGARD, THIS DEPARTMENT IS IN RECEIPT OF A NUMBER OF REFERENCES FROM VARIOUS DEPARTMENTS IN RESPECT OF OFFICERS WHO ARE DEPRIVED OF THE BENEFITS OF MACPS DUE TO THEIR INDUCTION INTO THE ORGANISED GROUP A SERVICES AT A LATER STAGE OF THEIR SERVICE.

2. THE ISSUE HAS BEEN CONSIDERED BY THIS DEPARTMENT IN CONSULTATION WITH DEPARTMENT OF EXPENDITURE. IT HAS BEEN DECIDED TO ALLOW GRANT OF FINANCIAL UP-GRADATIONS UNDER MACPS WITH EFFECT FROM THE DUE DATE TO THOSE OFFICERS WHO ARE INDUCTED TO THE ORGANIZED GROUP 'A' SERVICES WHEN THEY ARE NEARING RETIREMENT SUBJECT TO THE CONDITION THAT ONLY AT THE TIME OF RETIREMENT AN EVALUATION OF UP GRADATIONS/ PROMOTIONS EARNED BY THE OFFICER WOULD BE MADE. IN CASE SUCH OFFICERS HAVE ALREADY ATTAINED THREE FINANCIAL UPGRADATIONS UNDER MACP SCHEME, THEY SHALL NOT BE ENTITLED FOR NFU TO THE SAME GRADE FROM A LATER DATE.

8. DURING THE COURSE OF HEARING, WE ENQUIRED FROM THE LEARNED COUNSEL FOR BOTH SIDES AS TO WHETHER THE APPLICANT HAS BEEN GRANTED NON-FUNCTIONAL UPGRADATION (NFU) AND THE ANSWER WAS IN THE NEGATIVE. THE AFORESAID OM CLARIFIES THAT AN OFFICER WHO HAS BEEN INDUCTED TO GROUP 'A' SERVICES COULD BE ALLOWED FINANCIAL UPGRADATION UNDER MACP WHEN HE IS NEARING HIS RETIREMENT SUBJECT TO THE CONDITION THAT ONLY AT THE TIME OF RETIREMENT AN EVALUATION OF UPGRADATIONS/PROMOTION COMPULSORILY BE MADE AND HE WILL NOT BE ENTITLED FOR NFU TO THE SAME GRADE. THEREFORE, IN TERMS OF THE SAID OM THE GRANT OF MACP BENEFIT TO THE APPLICANT CAN BE CONSIDERED SINCE HE WAS NEARING RETIREMENT WHEN HE MADE REPRESENTATION TO THAT EFFECT SUBJECT TO FULFILLING OF OTHER CONDITIONS. HE HAS ALSO NOT BEEN GRANTED NFU.

9. THEREFORE, ON DETAILED CONSIDERATION OF THE MATTER, WE REMIT THE MATTER TO THE RESPONDENTS TO CONSIDER THE ISSUE OF GRANT OF 3RD MACP TO THE APPLICANT IN TERMS OF PARA 2 OF THE DOPT OM DATED 16.06.2012 SUBJECT TO FULFILMENT OF STIPULATED CONDITIONS UNDER THE MACP AND PASS APPROPRIATE ORDER. THIS SHALL BE DONE BY THE RESPONDENTS WITHIN 03 MONTHS FROM THE DATE OF RECEIPT OF A COPY OF THIS ORDER. THE OA IS DISPOSED OF IN TERMS OF THE AFORESAID DIRECTIONS. NO ORDER AS TO COSTS.

(SURESH KUMAR MONGA)
MEMBER (J)

(PRASANNA KUMAR PRADHAN)
MEMBER (A)

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