

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

**ORIGINAL APPLICATION NO.1020 of 2013
DATED THIS THE 8th DAY OF JANUARY, 2016**

**HON'BLE SHRI DR.K.B.SURESH, MEMBER (JUDL.)
HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (ADMN.)**

Smt. S.Geethanjali
Technical Officer Gr-A
D/o. N.Shivanna
Aged about 55 years
Aeronautical Development
And Establishment
New-Tippasandra
Bangalore-560075.

.....Applicant

(By Sri N.G.Phadke, Advocate)

Vs.

1. The Union of India represented by
Its Secretary
Ministry of Defence
South Block
New Delhi-110 001.
2. Defence Research and
Development Organisation
Ministry of Defence
DRDO Bhavan, Rajaji Marg
New Delhi-110105
Represented by the Scientific
Advisor to the Raksha Mantri &
Director General.
3. Aeronautical Development
Establishment
New-Tippasandra
Bangalore-560075
Represented by its Director.

.....Respondents

(By Sri M.Vasudeva Rao, Sr.PC)

ORDER

(PER HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (ADMN.))

The applicant has filed the OA under Section 19 of the AT Act, 1985
seeking the following relief:



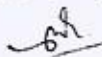
- a) Direct the III-Respondent to comply with the direction issued by the II-Respondent at Annexure-A3 letter/direction dated 20.5.2009;
- b) Direct the III-Respondent to grant the II-financial up gradation to the applicant in the pay scale of pay of Rs.8,000-13,500 w.e.f. 31.12.2005 under ACP Scheme at Annexure:A1;
- c) Direct the III-Respondent to grant the II financial upgradation to the applicant in the pay scale of Rs.15,600-39,100 with Grade Pay of Rs.6600/- in the pay band of PB-3 w.e.f. 01.09.2008 under the MACPS at Annexure-A2;
- d) Direct the III-Respondent to grant the III financial upgradation to the applicant in the pay scale of Rs.15,600-39,100 in the pay band PB-3 with grade pay of Rs.7600 w.e.f. 31.12.2011;
- e) Direct the III-Respondent to pay the up-to-date arrears of pay to the applicant;
- f) Grant such other relief(s) by passing/issuing appropriate orders/direction as this Hon'ble Tribunal deems fit in the facts and circumstances of the case, in the interest of justice.

2. The applicant joined the Aeronautical Development Establishment (ADE) i.e. the organisation of 3rd respondent in 31.12.1981 as Junior Scientific Assistant Grade-I and was then promoted as Senior Scientific Assistant on 15.3.1985. She was re-designated as Technical Officer Grade 'A' w.e.f. 26.8.1995 which comes under the Defence Research and Technical cadre and belongs to the category-III in Defence Research and Technical Service. The next higher grade is Technical Office 'B' having pay scale of Rs.9,300-34,800 with grade pay Rs.5,400 and the next higher grade is Technical Officer 'C' with the pay scale of Rs.15,600-39,100 with the grade pay of Rs.6,600. According to the applicant, she got only one promotion in March, 1985 and thereafter she is continuing in the same grade only. The applicant has referred to the Modified Assured Career Progression(MACP) Scheme for the Central Government Civilian employees issued vide OM No.35034/3/2008-Estt.(D) on 19.05.2009 and the ACP Scheme issued prior to that on 9.8.1999 (Annexures-A1 & A2) and submits that the DRDO issued a direction on the file No.DHRD/16342/VI CPC/1/C/M/01 on 20.5.2009 to all the Laboratories and the Establishments under its command and control to grant ACP benefits for the period upto 31.8.2008 and benefits under MACPS w.e.f. 01.09.2008(Annexure-A3). The applicant came to know about the said direction in the year 2011 and thereafter represented to the 2nd respondents vide letter dated 20.12.2011 for granting benefits available under the said schemes



(Annexure-A4), to which she is yet to get any response. Since the applicant has completed 24 years of service on 31.12.2005 with only one promotion, she claimed to be entitled for II financial upgradation w.e.f. that date under ACP scheme and thereafter she is entitled to III financial upgradation under MACP w.e.f. 31.12.2011 when she completed 30 years of continuous regular service. Therefore aggrieved by the non-sanction of these financial benefits, she approached this Tribunal praying for the relief as sought for.

3. The respondents have filed their reply statement wherein they submitted that the applicant is covered by the Flexible Complementing Scheme(FCS). They submitted that the Director General, Research and Development, Defence Research and Development Organisation had published the Defence Research and Development Organisation Technical Cadre Recruitment Rules, 2000 (DRTC Rules) vide SRO 296 dated 05th December, 2000 (Annexure-R3) and as per Rule 6 of the said rules, the promotion from one grade to another grade in the Defence Research and Development Technical Cadre is to be made under the Flexible Complementing System through assessment. As per Rule 7 of the DRTC Rules, on promotion from one grade to next grade, the post held by an individual in the lower grade stands upgraded automatically. They have also submitted that as per the Government of India (Allocation of Business) Rules, 1961, the Scientific & Technical Services of Department of Research and Development are exempt from the purview of DOP & T in matter related to recruitment, promotion and Seniority (Annexure- R4). They further submitted that the Government of India, Ministry of Personnel, Public Grievances and Pensions, (Department of Personnel and Training), New Delhi vide Office Memorandum No.35034/1/97-Estt.(D) dated 09th August, 1999 had announced the Assured Career Progression Scheme for Central Government Civilian Employee of Group B, C & D as a result of V Central Pay Commission which was circulated to all labs vide Directorate of manpower Planning and Development, R&D Hqrs, new Delhi letter No.DRDO/76213/Policy/MPD dated 01st September, 1999(Annexure-R1). Under



the ACP Scheme, the employees of Group B, C & D were eligible for first Financial upgradation after completing 12 years of regular service without any promotion (including in-situ promotion) and for second financial upgradation after completing 24 years of regular service with not more than one promotion (including in-situ promotion). The regular service was to be counted from the date the individual was directly recruited. In respect of Group 'A' Central Services (Technical/Non-Technical) no financial upgradation under the Scheme was being proposed for the reason that promotion in their case must be earned. Hence, it had been decided that there shall be no benefits under the ACP Scheme for Group 'A' Central Services (Technical/Non-Technical). It is further submitted that as per para 2 (iii) of Directorate of Manpower Planning and Development, R & D Hqrs, New Delhi letter No.DRDO/76213/Policy/MPD dated 01 September, 1999 (Annexure- R1) the ACP Scheme was not to be applicable to :-

- i. The posts covered by flexible complementing scheme,
- ii. The adhoc/contract/casual employees and
- iii. Those who have already got two regular promotions (including in-situ promotions) in their career.

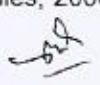
It is submitted by the respondents that as per 6th Central Pay Commission, Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, new Delhi vide Office Memorandum No.35034/3/2008-Estt (D) dated 19th May 2009 (Annexure-R5) has announced Modified Assured Career Progression Scheme (MACPS) for the Central Government Civilian Employees. This scheme is in supersession of previous ACP Scheme and is applicable to Group A, B & C employees. There are three financial upgradations under MACP Scheme counted from the Direct Entry Grade on completion of 10, 20 & 30 years of service respectively. The financial upgradation under the Scheme is admissible whenever as person has spent 10 years continuously in the same grade pay.



4. It is further stated that as per Para 13 of the Annexure-I of MACP Scheme notified vide Office Memorandum No.35034/3/2008-Estt (D) dated 19th May, 2009 (Annexure-R5), the existing time-bound scheme, including in-situ promotion scheme, staff car driver scheme or any other kind of promotion scheme existing for a particular category of employees in a Ministry/Department or its offices, will continue to be operational for the concerned category of employees if it is decided by the concerned administrative authorities to retain such schemes, after necessary consultations or they may switch over to the MACPS. However, these schemes shall not run concurrently with the MACPS. Directorate of HRD, R&D Hqrs., New Delhi vide their letter NO.DHRD/76213/MACPS/C/M/01 dated 22nd December, 2009 (Annexure-R2) has clarified about the applicability of MACPS to DRTC cadre that ACP Scheme promulgated in 1999 has not been made applicable to DRTC due to merit based promotion under Limited Flexible Complementing Scheme. Therefore, the MACP is also not applicable DRTC. In view of the facts mentioned above, the claim of the applicant for grant of benefit of ACP/MACP Schemes is wrong and hence denied.

5. The respondents have further contended that the OA is not filed within the prescribed time limit and is not a continuous cause of action as contended by the applicant and hence it is liable to be rejected on this ground also.

6. The applicant has filed a rejoinder and submitted that her post is not covered under Flexible Complementing Scheme(FCS), but is covered under Limited Flexible Complementing Scheme (LFCS). Under the FCS, all the candidates with the prescribed merit are entitled to promotion, whereas under LFCS, despite having merit, not all the candidates get promotions, the applicant has not been given with any promotion even after implementation of LFCS. To meet such situations, the ACP Schemes are evolved. The applicant belongs to Group 'B', Gazetted, Non-Ministerial and not Group 'A' service. The DRDO Technical Cadre Recruitment Rules, 2000 do not bar the benefits under ACP or




MACP Schemes. That, none of the schemes, such as time bound promotions scheme, in-situ promotion scheme or staff car driver scheme etc., prevalent in DRDO are applicable to the applicant.

7. The respondents have filed additional reply in which they have submitted that the department had very specifically mentioned vide its letter dated 01st Sept, 1999 (Annexure-R1 of the reply) that the ACP Scheme shall not be applicable to the posts covered by Flexible Complementing Scheme (FCS). In this regard it may be mentioned that as per rule 6(1) of the DRTC Rules 2000 (Annexure-R3 of the Reply), promotions in the DRTC cadre are made under the merit based Limited Flexible Complementing Scheme. Therefore, the ACP scheme is not applicable to the DRTC cadre since 1999. The applicant has never challenged the same in all these years and therefore the OA filed at this stage is not maintainable due to delay and laches, it is also submitted that the department is exempt from the purview of DOP&T for matters related to recruitment, seniority and promotion as per the Allocation of Business Rules, 1961 (Annexure-R4 of the reply). It is further submitted that para 13 of Annexure-1 the DOP&T OM dated 09th August, 1999 (Annexure-A1 of the OA) specifically stipulates that the ACP scheme shall not run concurrently along with any other existing time bound/in-situ promotion schemes. So far as MACP scheme is concerned as per para 1 of Annexure-1 of DOP&T OM dated 19th May 2009 (Annexure-A2 of OA) the above position has been reiterated by the Government. Accordingly the respondent No.2 also vide circular dated 22nd Dec., 2009 (Annexure-R2 of the reply) had clarified to all the Labs/Estts. of the organization that the MACP scheme is not applicable to the DRTC.

8. Heard the Learned Counsel for both the parties.

9. The Ld.Counsel for the applicant reiterated the submission made in the OA and rejoinder and referred to the Schedule-III of the Recruitment Rules 1995



which indicates that for promotion from Technical Officer-A to Technical Officer-B, the percentage of eligible employees who could be promoted to the next grade in annual assessment is only 30%. That means 70% of the employees even though eligible cannot be promoted to the next grade. Therefore, there is possibility that a person even though eligible and fulfil all the criteria will remain within the unsuccessful 70%. A person who could not come within the 30% and hence could not be promoted in subsequent years also may therefore continue in the same post permanently as it has happened in the case of the applicant. Ld.Counsel further submitted that the applicant attended 8 times the Assessment Board but was not promoted. Therefore she stopped attending the Assessment Board thereafter on the ground that the authorities are not inclined to consider her case and appearing further before the Assessment Board will only be a futile exercise. The applicant is clearly covered under the ACP and MACP schemes and since she had only one promotion so far, she is entitled to the 2nd financial upgradation under ACP and 3rd financial upgradation under MACP.

10. The Ld.Counsel for the respondents on the other hand reiterated the submission made in the reply and additional reply and highlighted the fact that the Technical Officers under DRDO are guided by the Flexible Complimenting Scheme and the benefits under the ACP and MACP are not applicable to them. He has also mentioned that when the applicant herself has not appeared before the Assessment Board, the question of her promotion to the next higher grade does not arise. He referred to the communication of the respondents dated 22.12.2009 which clearly indicated that the ACP scheme promulgated in 1999 has not been made applicable to DRTC due to merit based promotion under Limited Flexible Complementing Scheme. They further clarified that MACP scheme is also not applicable to the DRTC. Therefore he contended that the OA lacks merit and is liable to be dismissed.



11. We have carefully considered the pleadings and submissions made by either side.

12. It is evident from the records that the applicant is guided by the Defence Research and Development Organisation Technical Cadre Recruitment Rules, 2000. Rule-6(1) of the said rules indicates promotions from one grade to another grade which is based on Flexible Complementing System. Rule-6(3) of the said scheme mentioned as follows:

"The maximum number of employees in a grade who can be promoted to the next higher grade shall be a percentage of the total eligible employees in that grade at each annual assessment as given in Schedule-III subject to the provision of sub-rule (6) of rule 3. The employees shall be promoted on the basis of their overall merit as decided by the Assessment Board."

Schedule-III indicates the percentage of eligible employees who could be promoted to the next grade in annual assessment. In case a Technical Officer 'A' and Technical Officer 'B' it is stipulated that only 30% of the eligible employees could be promoted to the next grade in annual assessment. In other words, 70% of the eligible employees cannot be promoted to the next grade even if they may be meeting the required criteria. Therefore, there is a theoretical possibility that the persons who come within the 70% category i.e who could not be promoted may continue to come in the same 70% per cent of employees who though eligible cannot be promoted in an annual assessment held in the subsequent year. This may happen from year to year and theoretically speaking an employee may not come within the 30% of the employees who could be promoted to the next grade in an annual assessment under the Flexible Complimenting System in any of the years. In other words, such an employee can continue to remain in the same grade till his or her retirement.

13. When the ACP Scheme was introduced in 1999, the DRDO has issued a communication on 1.9.1999 stating that the ACP Scheme which is introduced from 9th August, 1999 shall not be applicable to the posts covered by the Flexible



Complementing Scheme. Subsequent to the 6th Central Pay Commission recommendation, the DOPT issued OMs dated 10.9.2010 and 1.5.2012 pertaining to the Modified Flexible Complementing Scheme for the scientists based on the recommendations of the Sixth Central Pay Commission which stipulated the following:

"The modified ACP as approved for Central Government Civilian employees would also be applicable to Scientists covered under FCS. This is expected to provide an alternate channel for development for Scientists and is expected to maintain the rigors of assessment required for assessment under FCS. Some illustrations are given below for clarity:

A Scientist 'B' is considered but does not get upgradation under the FCS. He would be entitled to grade of Scientist 'C', 'D' and 'E' on completion of 10/20/30 years of service subject to provisions of MACP notified vide O.M.No.35034/3/2008-Estt. (D), dated the 19th May, 2009.

A Scientist 'B' gets upgradation to Scientist 'C' under FCS in second chance after 4 years. After prescribed residency, he does not qualify under FCS for three successive years for upgradation to Scientist 'D'. After completion of ten years in the grade pay of Scientist 'C' i.e., after 14 years of service he is upgraded to Scientist 'D' under MACPS, subject to provisions of MACP notified vide O.M.No.35034/3/2008-Estt. (D), dated the 19th May, 2009. After prescribed residency of 4 years in Scientist 'D', he would again be considered for upgradation to Scientist 'E' under FCS. In case he does not qualify for three successive years, he would be upgraded to Scientist 'E' after completion of 10 years in the grade pay of Scientist 'D' i.e., after 24 years of service. Further upgradation to Scientist 'F' and Scientist 'G' would only be under FCS as the Scientist would have got three upgradations and no further upgradation under MACPS would be permissible.

If a Scientist gets three upgradations under the FCS scheme, there would be no claim for any further upgradation under MACPS as the MACP scheme only allows three financial upgradation in the hierarchy of Pay Bands and Grade Pay on completion of 10, 20 and 30 years of service respectively.

14. It is apparent from the above that this provision regarding applicability of the MACP to Scientists covered in the FCS is intended to cover such cases of scientists who could not get promoted under the merit based Flexible Complementing Scheme since there is a ceiling up to which the eligible employees can be promoted from one grade to another grade. As mentioned earlier there could be case where, even if a person meets the required bench mark, because of the ceiling limit for promotion he cannot be considered for promotion to the next grade. Therefore under normal circumstances one should be entitled to the financial benefits as provided under the MACP. Under the

Flexible Complimenting Scheme, a person is required to have a minimum 5 years of regular service to become eligible for the assessment to the next grade. But in MACP only after 10 years, he shall be entitled to get the financial benefits.

15. It appears from the records that the applicant got only one promotion in September, 1983 and she is still continuing in the same grade only. She did appear in the assessment board on several times over next few years but was not considered by the Board for promotion may be due to the ceiling limit. On having failed on number of times, she did not appear before assessment board in future.

16. When the Flexible Complementing Scheme was introduced in 1998, there was no such provision/mention regarding ACP benefit, since the ACP Scheme was introduced/became applicable later on 09.08.1999. The DRDO had also issued a circular indicating the non-applicability of the ACP to the posts covered by flexible complementing scheme. However, the modified complementing scheme based on the 6th Central Pay Commission says that the modified ACP would also be applicable to the scientists covered under FCS to provide an alternative channel for development. Had there been no ceiling in the number of eligible employees to be promoted to the next higher grade under the FCS then the question of any alternative financial progression under the MACP would not have arisen. In spite of the fact that under Flexible Complimenting Scheme, the promotion from one grade to another grade in a cadre is not post based but by automatic upgradation of the existing post, there is a ceiling limit which bars 70% of the employees from getting promotion each assessment year even if they might meet required bench mark. Therefore rightly the Modified Flexible Complimenting Scheme allows for applicability of the MACP to the persons covered under FCS. So that a person gets financial upgradation at least thrice in his/her service period instead of remaining stagnant in any grade throughout.



17. In the back drop of the above, we are of the view that the stand of the respondents that MACP shall not be applicable to the persons who come under the Flexible Complementing Scheme is totally incorrect especially in terms of the Modified Flexible Complimenting Scheme following 6th CPC recommendations. The applicants should be eligible for financial upgradation under the MACP provided they meet the required bench mark stipulated for the promotion. It has also been specified in the guidelines that MACP was expected to provide an alternate channel for development for Scientists and is expected to maintain the rigors of assessment required for assessment under FCS. Therefore the applicant is to meet the stipulated bench mark for getting benefits under MACP.

18. Therefore, after considering the entire facts and circumstances of the case, we hold that the applicant is entitled to be considered under MACP scheme and the respondents are therefore directed to constitute an Assessment Board for considering the case of the applicant for financial upgradation under MACP within three(3) months from the date of receipt of copy of the order. The respondents shall lay down the bench mark for grant of such financial benefits taking into account the normal standards adopted for granting promotion. In case the applicant meets the required stipulation for grant of MACP benefit, then she shall get the 2nd MACP w.e.f. 01.09.2008 and 3rd MACP on completion of 30 years of service.

19. The OA is accordingly, allowed in terms of the above direction. No order as to costs.



Sd-

(P.K.PRADHAN)
MEMBER (A)



Sd-

(DR.K.B.SURESH)
MEMBER (J)