

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No. 816/2013

Date of CAV: 02.1.2019

Date of Pronouncement: 11.01.2019

Between:

D. Rajeshwar Rao, S/o. late Sri D. Venkaiah,
Aged about 59 years, Occ: Assistant (Retired),
Geological Survey of India,
Southern Region, Bandlaguda, Hyderabad – 500 068.

... Applicant

And

1. Union of India, represented by its Secretary,
Ministry of Mines, Shastri Bhavan, New Delhi,
The Director General, Geological Survey of India,
27, J.N. Road, Kolkata – 700 016.
2. The Dy. Director General,
Geological Survey of India, Southern Region,
Bandlaguda, Hyderabad – 500 068.

... Respondents

Counsel for the Applicant ... Mr. K. Phaniraj

Counsel for the Respondents ... Mrs. K. Rajitha, Sr. CGSC

CORAM:

Hon'ble Mr. Justice R. Kantha Rao, Member (Judl)

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORDER
{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. The OA is about challenging the non grant of 3rd MACP to the applicant.
3. The challenge emerges from the fact that the applicant though he has put in 40 years of service and got only two promotions, has been denied the 3rd MACP. The forty years of service in the respondents organisation commenced as Group D in 1972, then as LDC under 10% examination quota from 1981, thereafter as UDC in 1989 and finally as Asst in 2011. Applicant retired in June

2012. The respondents denied the 3rd MACP by treating the movement from Group D to LDC as a promotion which the applicant hotly contests. Aggrieved over the stand of the respondents the OA is filed.

4. The contentions of the applicant are that his career advancement from Group D to LDC grade should not be treated as a promotion as per the judgment of this Tribunal in OA728 of 2010. Having put in more than 30 years with only two promotions, he is eligible for 3rd financial upgradation under MACP scheme. Applicant claims that the statutory rules are in his favour.

5. Respondents take the line that the DOPT Memo dated 10.2.2000 has clarified that the promotion of Group D staff under 10% quota to the post of LDC has to be treated as promotion and not as direct recruitment. Accordingly, the applicant has got 3 promotions in his career starting from Group D to LDC, LDC to UDC and finally as Asst. Therefore his claim for 3rd financial upgradation under MACP scheme is untenable.

6. Heard the learned counsel and perused the documents and pleadings made in detail.

7(A) The contest is about grant of 3rd MACP. To resolve the same one need to understand that the MACP scheme is an anti stagnation measure to motivate employees for higher productivity. Financial upgradation is given to an employee in intervals of 10, 20 and 30 years of service, in case he stagnates at a given grade for 10 or more years. The employee is eligible for 3 financial upgradations in a span of 30 years of service. Reverting to the case of the applicant, he was promoted from Gr-D to LDC, under 10% quota in LDC grade for Group D employees. Thereafter, applicant was promoted as UDC before retiring as Asst. Respondents claim that he has thus got 3 promotions and hence

ineligible. Applicant contests, by claiming that he got only 2 promotions. Hence he is eligible for 3rd financial up gradation. The dispute revolves around the aspect of promotion to LDC grade from Group D cadre through a departmental exam. Apparently respondents theory of 3 promotions appears to be correct but if one goes into the details the scenario changes. This Tribunal has exactly done the same while dealing with an identical issue in OA 728/2010 pertaining to the respondents organisation. At para 9 of the said judgment it was observed that the recruitment rules do not provide for any promotion quota for LDC grade and therefore the 10% quota indicated in LDC grade for Group D employees should not be treated as promotional quota. Tribunal also observed that the notification for promotion has stipulated that the Group D employees selected on the basis of competitive exam to the post of LDC shall be treated as direct recruits. The observation of the Tribunal holds good to this day since the reply statement does not state about any change in the recruitment rules or in the notification norms. Besides, it is evident that the applicant was selected to the post through a competitive exam held for different group D cadres of the Geological Survey of India. Interestingly, the recruitment rules also spell out that the qualifications ought to be similar to that of direct recruitment except in regard to age and service. Incidentally those Group Ds who are promoted as LDC will also be on probation for a period of 2 years like direct recruits as per respondents letter no 1272/A-34012/2/2005-15A Dt. 25.11.2009. Thus the rules orient in a direction wherein the applicant promotion to LDC grade has to be treated as direct recruitment. It is not out of place to state that the promotion was evidently not based on seniority. If it were to be based on seniority then the respondents stance could have some basis to rely upon. It being not so, we can safely construe that it is a direct recruitment to the grade of LDC. This finding finds an echo in the

observation of the Honourable High Court of A.P. in WP No.36697 of 2012, which is extracted here under:

"A person can be said to have been promoted to a superior post, only when he moves to that post, purely on the basis of length of service, he has rendered in the post of the lower category. If he is subject to a selection process of giving promotion, at the best , it would be the appointment through transfer; if there is any objection to employ the expression 'direct recruitment' ."

(B) By treating the LDC promotion as direct recruitment, the applicant would obviously be eligible for the 3rd financial up gradation under MACP scheme. Defacto, the issue in question being fully covered by the judgment of the Honourable High court of A.P. and of this Tribunal we need to abide by the same as per Honourable Supreme Court observation in ***Sub-Inspector Roopal v. Lt. Governor, (2000) 1 SCC 644.***

(C) Thus based on the aforesaid, the applicant has made out a case which succeeds. Hence the respondents are directed to consider as under:

- i) To consider grant of 3rd financial up gradation under MACP scheme to the eligible grade pay from the date due with all consequential benefits there off.
- ii) Time calendared to implement the order is 3 months from the date of receipt of this order.

(D) OA is allowed with the above directions. There shall be no order as to costs.

**(B.V. SUDHAKAR)
MEMBER (ADMN.)**

**(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)**

Dated, the 11th day of January, 2019

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