

CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

O.A. No. 689/2016

Date Of Decision: 13<sup>th</sup> February, 2019.

CORAM: R. VIJAYKUMAR, MEMBER (A).  
RAVINDER KAUR, MEMBER (J).

Shri J.K. Dhar,  
Aged about 61 years,  
presently posted as  
Director,  
Indian Maritime University-Mumbai Campus,  
Palm Beach Block, Karave, Nerul,  
Navi Mumbai- 400 706.

Resi. Add..  
48, Chhadva Apts., Diamond Garden,  
Sion-Trombay Road, Chembur- 400 071.

...Applicant.

(By Advocate Shri S V Marne)

Versus

1. Union of India,  
Through the Secretary,  
Ministry of Shipping,  
Transport Bhawan 1, Parliament Street,  
New Delhi-110 011.
2. Director General of Shipping,  
9<sup>th</sup> Floor, Beta Building,  
i-Think Techno Campus, Kanjurmarg(East),  
Mumbai- 400 042.
3. Vice Chancellor,  
Indian Maritime University,  
East Coast Road, Uthandi,  
Chennai- 600 119.

...Respondents

(By Advocate Shri N K Rajpurohit for R-1 & R-2  
and Shri R G Walia for R-3.)

Reserved on : 17.01.2019

Pronounced on : 13.02.2019



ORDERPER:- R. VIJAYKUMAR, MEMBER (A).

This application has been filed on 26.09.2016 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"(a) that the Hon'ble Tribunal may be graciously pleased to call for the records of the case from the Respondents and after examining the same be pleased to quash and set aside the impugned order dated 15th September 2016 and hold and declare that the Applicant is entitled to HAG pay scale since he had spent 10 years of continuous service in the same grade pay of Rs.10000/-;

(b) that this Hon'ble Tribunal be further pleased to direct the Respondents to forthwith release pension along with other retirement benefits to the Applicant on the basis of pay drawn by him in the last month of his service;

(c) any other and further reliefs as this Hon'ble Tribunal may deem fit in the nature and circumstances of the case;

(d) that this Hon'ble Tribunal be pleased to grant costs of this Application."

2. The applicant was serving as Deputy Director under the administrative control of the DG, Shipping, Ministry of Surface Transport, Government of India and was posted at the Lal Bahadur Shastri College, Mumbai as



Deputy Director(PB-IV. with GP of Rs. 8700/-) to which he was promoted in 1988. After the Indian Institute of Maritime Studies was formed as a Society in 2002, the applicant was compulsorily transferred as a deemed deputationist and in 2004, he was appointed on officiating basis as Principal(PB-IV with GP of Rs. 10,000/-) where he continued until the Society was closed and a University was established, called the Indian Maritime University, in 2008 to which all the employees of IIMS who had now reverted to Government employment were transferred en masse to the IMU as deemed deputationists. No benefits of MACP were granted to them in the Office of DG, Shipping when the Scheme was introduced in 2008. The IMU granted MACP benefits to 197 deemed deputationists who fell under Article 49(i) of the Indian Maritime University Act, 2008(No. 22 of 2008) dt. 11.11.2008 which reads as under:

"49. Notwithstanding anything contained in this Act, or in the Statutes or the Ordinances, consequent upon merger of the Training Ship Chanakay, Mumbai, the



Marine Engineering and Research Institute, Mumbai, the Marine Engineering and Research Institute, Kolkata, Lal Bahadur Shastri College of Advance Maritime Studies, Mumbai, the National Maritime Academy, Chennai, Indian Institute of Port Management, Kolkata and the National Ship Design and Research Centre, Visakapatnam into the Indian Maritime University, all the assets and employees shall stand transferred to the University and such employees shall have the following options:

(i) the employees of the four taining institutes under Indian Institute of Maritime Studies who shall stand transferred to Indian Maritime University shall have the option to continue on deemed deputation in Indian Maritime University on the terms and conditions in force of the Central Government and also continue to retain or to be allotted government residential accommodation on turn and avail of the Central Government Health Scheme facilities till their retirement;

(ii) the employees of the National Maritime Academy, Chennai, Indian Institute of Port Management, Kolkata and the National Ship Design and Research Centre, Visakhapatnam shall have the option to continue on the terms and conditions of their respective institutes till their retirement; and

(iii) all employees shall have the option to join University as per the service conditions of the University."

3. These 197 deemed deputationists were



granted benefits between 2009 and 2016 by the University itself by conducting a DPC and one such case was that of the applicant who had been continuing in the Grade Pay of Rs. 10,000/- from 01.01.2004 and he, therefore, received 3<sup>rd</sup> MACP in HAG Scale w.e.f. 01.01.2014 in orders passed on 12.05.2014. The applicant retired on 31.01.2016 and following his retirement, when retirement benefits were to be sanctioned, audit examination of his case led to a determination that he should have been given 2<sup>nd</sup> MACP of Rs. 8900/- in 2008 based on his promotion as Deputy Director in 1998 and since he retired in 2016, he was not entitled to further upgradation. Therefore, the Audit recommended recovery of excess payments. These audit remarks actuated the Department into a series of actions and expression of objections and opinions on all aspects of the applicant's career from his eligibility to be appointed as Principal, his officiating capacity as Principal, his position in the IMU, the selection by IMU of the applicant as



Director in 2012 through an advertisement process, and the grant of 3<sup>rd</sup> MACP in 2014 to HAG Scale. Therefore, the official respondents not only wish to effect recoveries from the applicant but also directed reduction of his pension to accord with the views expressed in audit. They have simultaneously raised objections in regard to his absorption status in the University by virtue of a letter of 2007 issued by the Department of Pension & Pensioners' Welfare and clarification issued in July 2016 disempowering the Autonomous Bodies, in this case the IMU, from the final authority to grant MACP to deemed deputationists. The applicant has argued his case in the OA to which reply was filed by the respondents and opposition expressed to the interim orders granted by this Tribunal. Following the rejoinder of the applicant, several additional affidavits have been filed by both parties. The Respondent No. 3, the IMU, has also filed an affidavit in reply. All these pleadings and submissions of the learned



counsels for parties has been taken into consideration for the purpose of these orders and the rules have been carefully perused.

4. The applicant joined service with the respondents in the Engineering Wing of the Lal Bahadur Shastri(LBS) College, Mumbai administered directly by the DG, Shipping, Govt. of India and was duly selected under the aegis of the UPSC. He joined service on 11.09.1989 and secured his first promotion on 09.11.1998 in the revised scale of PB-IV with GP of Rs. 8700/-. The Government established the Indian Institute of Maritime Studies(IIMS) as a registered autonomous society of the Central Government on 06.06.2002 and transferred all the assets and the staff on deemed deputation basis to the IIMS. In letter No. ST-13011/1/2004-MT dt. 25.06.2004, the Director(Shipping Wing), Ministry of Shipping, Govt. of India has advised the Secretary, IIMS that the IIMS is a registered society and as per its bylaws, it has full powers to make appointments to all posts of the training institutes



including administration and technical posts. In particular, in letter No. A-11011/2/2002-MT dt. 12.08.2002, the Ministry has advised the Society that it has such full powers to make appointments and requested it to take further action to fill up the post of Principal, LBS College, Mumbai. A proposal was formulated by the DG Shipping, respondent No. 2 who was the administrative authority for the IIMS in the Department for filling up this post of Principal. As noted in the agenda for item No. 6 circulated('Filling up the post of Principal, LBS College'), a proposal was formulated by the DG Shipping, Respondent No. 2, in letter No. PB-16(6)/2001 dt. 30.09.2003 for filling up the post of Principal which was to fall vacant on 01.10.2003 due to superannuation of the incumbent. The note proposed that, as in the past, a DPC headed by the DG Shipping could be constituted. The note also mentioned the Recruitment Rules for promotion of the staff available in the feeder cadre and mentioned that as per rules, Shri J.K. Dhar, Deputy



Director, Marine Engineering and Research Institute, Mumbai is the only eligible candidate for promotion to the post of Principal, LBS College. This proposal was considered in the 6<sup>th</sup> Meeting of the Board of Governors of IIMS, Mumbai, held on 16.10.2003 at 11:30 AM in the conference room of DG Shipping and the Board recorded the following decision:

**"AGENDA ITEM NO. 6**

**FILLING UP THE POST OF PRINCIPAL, LBS COLLEGE**

The proposal for constitution of committee for filling up the post of Principal, LBS College was approved by the Board. It was decided to include Mr. A. R. Chitnis in the Committee as a member since there was no one in the Committee from the Engineering Discipline.

It was also decided that the Committee will look into the succession of Shri A. K. Sehgal, Principal LBS CAMSAR who is due to retire on 31st October 2003, by considering promotion of the candidates from the feeder grade(s) in accordance with the existing Government Rules. If selection can not be made due to non-availability of a suitable candidate from the feeder grade(s) and the Committee feels that the applications should be invited from outsiders for direct appointment or if the candidate selected by the Committee does not accept the offer of promotion given by IIMS, then the post should be thrown open to the outsiders for direct recruitment.

If, however, a suitable candidate is selected for promotion by the committee, he should be offered promotion by IIMS to



hold charge of the post of Principal in officiating capacity and parallelly the process of holding a DPC as laid down in the Government Recruitment Rule, should be taken up.

**BOARD OF GOVERNORS RESOLUTION NO. 14  
(BOGR14)**

"It was resolved that a committee shall be formed with the following members:

1. Shri G.S. Sahni - Chairman.  
Director General of Shipping  
& Ex-officio Additional Secretary.
2. Capt. Rajesh Tandon, FOSMA - Member.
3. Shri S. Hajara, INSA - Member.
4. Capt. E.B. Pereira, MASSA - Member.
5. Shri A.R. Chitnis - Member."

5. Perusal of the records submitted by parties shows that no Recruitment Rules had been formulated by the IIMS and they had evidently adopted, under the superintendence of the DG Shipping (Respondent No. 2), the Recruitment rules that had been in place when the entire Institution was directly under the control of the Government of India through respondent No. 1. These Recruitment Rules require the following kind of a DPC under Column 13 to be formed for considering promotion and for confirmation which, as we have noted from the proposals of the DG, Shipping for this case differ and had admittedly not been followed in the past:



"(column 13):

Group 'A' DPC consisting of (for considering promotion)

1. Chairman/Member, Union Public Service Commission - Chairman
2. Secretary or Additional Secretary dealing with the Administration of the 'Directorate General of Shipping in the Ministry of Transport, Department of Surface Transport - Member.

Group 'A' DPC consisting of-  
(for considering confirmation)

1. Secretary, Ministry of Transport, Department of Surface Transport- Chairman
2. Additional Secretary dealing with the Administration of Directorate General of Shipping, Ministry of Transport, Department of Surface Transport- Member

Note: The proceedings of the DPC relating to confirmation shall be sent to the Commission for approval. If, however, these are not approved by the Commission, a fresh meeting of the DPC to be presided over by the Chairman of a Member of the Union Public Service Commission shall be held."

6. The Departmental Promotion Committee as formed under the recommendations of the respondents considered the candidates available and it is recorded in the Action Taken Report reviewed during the 7<sup>th</sup> Meeting of the Board of Governors of IIMS held on N.A. (Annexure A6) as follows and it is clear that appointment orders had already been issued by the DG, Shipping even prior to this



Board meeting.

Regarding filling up the post of Principal, LBS College.	<p>The proposal for constitution of committee for filling up the post of Principal, LBS College was approved by the Board. It was decided to include Mr. A.R. Chitnis in the Committee as a member since there was no one in the Committee from the Engineering Discipline.</p> <p>"It was resolved that a committee shall be formed with the following members.</p> <ol style="list-style-type: none"> <li>1. Shri G.S. Sahni-Chairman, Director General of Shipping &amp; Ex-officio Additional Secretary.</li> <li>2. Capt. Rajesh Tandon, FOSMA-Member.</li> <li>3. Shri S. Hajara, INSA-Member.</li> <li>4. Capt. E.B. Pereira, MASSA-Member.</li> <li>5. Shri A.R. Chitnis-Member</li> </ol>	<p>Accordingly, DPC was held on 29<sup>th</sup> December 2003, Shri J.K. Dhar, Dy. Director, MERI, Mumbai has been promoted to the post of Principal, LBS College of AMSAR, vide DGS Office Order No. PB-16(6)/2001 dated 1<sup>st</sup> January 2004.</p>
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7. The Office of the DG Shipping issued orders in No. PB-16(6)/2001 dt. 01.01.2004 with the approval of the DG Shipping and Chairman of the Managing Committee of IIMS appointing the applicant as Principal on officiating basis in the scale recommended by the Board of Governors.

8. Thereafter, the DG Shipping issued orders on 28.01.2004 for fixation of pay of



the applicant as Principal of LBS, Camсар recording as follows:

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Fixation of Pay of Shri J.K.Dhar, Principal of  
LBS CAMSAR.

Consequent to this promotion to the post of Principal, LBS College of Advanced Maritime Studies & Research, Mumbai by Indian Institute of Maritime Studies(IIMS), the pay of Shri J.K. Dhar, in the pay scale of Rs. 18,400-500-22,400/- w.e.f. 01.01.2004 has been fixed as under:-

Pay in the grade of Dy. Director in the pay scale of Rs. 14300-400-18300/-	Rs. 18,300=00
Add. One Notional increment	Rs. 400=00
	<u>Rs. 18,700=00</u>

Pay fixed in the grade of  
Principal in the pay scale of  
Rs. 18400-500-22400/-at the  
next higher stage w.e.f.  
01.01.2004. The next  
increment due on 01.01.2005. Rs. 18,900=00

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9. A question has arisen by the challenge raised by respondents that the decision under Agenda item No. 6 of the Board of Governors of IIMS was followed by the orders of the DG Shipping dt. 01.01.2004 appointing the applicant as Principal on officiating basis with GP of Rs. 10,000/- pending clearance by the DPC as laid down in Government Recruitment Rules which required a



Member of the UPSC and the Additional Secretary dealing with Shipping in the Ministry as Members. However, the subsequent events suggest a different course of action and thought. The initiator of the proposal to appoint a Principal was the DG, Shipping who was also ex-officio Additional Secretary in the Ministry. After the proposal was approved and appointment order issued, not by the Secretary IIMS, but by the DG Shipping himself prior to approval by the Board of IIMS, and also the pay fixation order, no steps were taken by the Office of the DG Shipping to form any DPC of the kind required in the Government Recruitment Rules and then to appoint the applicant formally as Principal. The respondents have argued that the applicant who was Head of the Institute himself should have moved such proposals. The applicant has pointed out in his additional affidavit that he had written letters in reference No. P&A/G.O.(68)/98 dt. 17.12.2005 and reference No. P&A/G.O.(68)/69 dt. 03.03.2006 requesting early action for



conducting the DPC for his promotion but it appears that no action was taken. This inaction could be construed by dubbing it as lethargy and therefore, as an estoppel against the respondents denying the rightful claims of the applicant. On the other hand, the inaction could well be adjudged against the instructions of the Ministry in letter No. ST-13011/1/2004-MT dt. 25.06.2004 which reiterated the autonomous character of the Society and that it had full powers to make appointments. This aspect could be compared with similar powers exercised by Central Government Autonomous Societies such as the Institutes of Management etc., and other institutes around the country. This letter was also issued nearly six months after the appointment was made and orders of appointment and pay fixation were issued to the applicant. In such cases of appointments by Societies exercising their autonomous powers, the question of getting UPSC approval does not arise and whatever approvals are to be obtained within the Ministry were the



concern of the DG Shipping and, it is without doubt and has not been rebutted, that the DG Shipping acted in concert with the Ministry in this regard. Therefore, with the issue of this letter supra dt. 25.06.2004, the appointment order issued by the DG Shipping who was also holding the post of Chairman of the Managing Committee of IIMS was in the nature of a final order and can only be treated in such terms. It could be argued theoretically that even if the applicant is seen to be acting in officiating capacity as Principal under the IIMS, as a result of this advice of the Ministry, his substantive post remained as Deputy Director with GP of Rs. 8700/-. However, the facts of the case are that the entire assets and staff of the college had been transferred to the IIMS and if they had remained with the Government, a selection process from the feeder category would necessarily have to be made with the similar result although it would involve the Member, UPSC for the purpose in the DPC. This is all the more definite since the



applicant was then eligible for the post and was the only eligible person in the feeder category. However, this situation is impacted on two aspects. First, is the aspect of estoppel discussed above. Second, when the IIMS was converted into a University, namely, the Indian Maritime University, the assets and staff were transferred en bloc to the new University. At this stage, there would necessarily have to be a movement of staff back to the Government and then to the University as a case of administrative fiction. Further, at this stage, the respondents had an opportunity when the University was formed in 2007-09, to regularize the appointment of the applicant but they failed to do so and instead, in orders dt. 08.10.2009, they transferred all the employees to IIMS providing the option for absorption or continuing in Government service but working in IMU through the mechanism of deputation. At this stage, the applicant was posted as Director-in-charge, IMU with GP of Rs.



10,000/-. Such a movement can only be possible by withdrawal from IIMS and a simultaneous posting on deputation basis by the respondent Government although this would be only on a notional basis. However, this carries with it an implicit recognition of the status of the employee in terms of his rank, pay and allowances.

10. As we have discussed above, the proposals for appointment of the applicant as Principal which were later treated as on officiating basis pending DPC approval were initiated by the Additional Secretary and DG Shipping of the Ministry. The applicant had sent two reminders in 2005 and 2006 requesting early action for conduct of DPC. In this connection, the vacancy of Principal arose with the retirement of the incumbent on 31.10.2003 and the applicant joined in this post on 01.01.2004. He had originally commenced service in the academic profession with the respondents on 11.09.1989 and had completed more than the required 10 years, by the time he was considered for the post of



Principal and was, therefore, eligible to be considered and in actual fact, he was the only eligible candidate as admitted by the respondents. The Recruitment Rules were entirely satisfied by the applicant at that point in time and if the College had continued under the Government, the position would have remained the same. Having proposed and passed orders appointing the applicant with the promise of conducting a DPC, an obligation was cast on the respondents to conduct such a DPC in a reasonable time and since the applicant had already taken charge of the post, he was entitled to appointment w.e.f. 01.01.2004. The conduct of the DPC by Departments of the Government of India are regulated in terms of a Model Calender for DPC prescribed by the DoPT in OMs issued in 1998. As held by the Hon'ble Delhi High Court in **Dr. Sahadeva Singh Vs. Union of India & Ors. in W.P.(C) No. 5549/2007 decided on 28.02.2012**, the respondents are compelled to adhere to the said OMs dt. 08.09.1998 and 13.10.1998. The

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reason given by the respondents for the delay is that the applicant as Head of Department in his capacity as Principal of the college should have initiated proposals. As we have determined, it is the DG Shipping who initiated the proposal to promote the applicant and all matters lay within his hands but he failed to move despite reminders. There is clearly no justification for delay in conduct of DPC and although no mala fides have been alleged, it is apparent that the respondents woke up to the issue only after the superannuation of the applicant in 2016 after twelve long years. Such gross negligence can also be a component of mala fides in our considered view. This duty of the respondents has also been reiterated by the Hon'ble High Court of Delhi *in V.K. Jain Vs. Union of India & Ors. in W.P. (C) No. 561/2003 decided on 03.05.2012.* Therefore, we are unable to come to any other conclusion than to hold that the applicant was duly promoted and took charge of the promoted post on 01.01.2004.



11. Again, prior to these transfer orders dt. 08.10.2009, the Government had issued the Scheme of MACP on 19.05.2009. The Scheme required Cadre Controlling Authorities to constitute the First Screening Committee for persons whose cases had matured up to 30.06.2009 for grant of benefit under MACP. If the date of promotion of the applicant as Deputy Director on 09.11.1998 is considered, he was eligible for consideration by the First Screening Committee whose meeting was to be held by June 2009. No evidence has been produced by the respondents to show that such a meeting took place and that the applicant was one among the many persons considered for MACP in that Committee meeting. Since a mandate of the Government had to be followed, it is quite apparent that the DG Shipping did obey the orders and conduct such a meeting. The failure to include the applicant in the consideration of this Screening Committee would also suggest that the respondents had taken full cognizance of the fact that the applicant had



already been promoted even in his substantive cadre as Principal with GP of Rs. 10,000/- after giving a go-by to the requirement of the UPSC. Since he had obtained a promotion, he was not eligible for Second MACP and could not have been considered in June 2009.

12. The respondents have now raised the issue that the applicant was not eligible for being appointed as Principal by reading half of the Recruitment Rules which turns out to be a mischievous misreading calculated to deceive this Tribunal. The applicant has rebutted this absurd argument and we do not wish to dwell further upon it except for the aspect of imposing costs on the respondents for making such an argument.

13. The question arises as to why the IMU chose to designate the applicant as Director-in-charge which they have recorded in their orders appointing him as Director based on Selection Committee proceedings held in 2014. Their promotion order No. IMU/HQ/REGR/2014/ dt. 03.03.2014 records the decision of the Executive Council of IMU to



appoint the applicant who was then working as Director-in-charge, Mumbai Campus as Director, IMU, Mumbai Campus in PB-IV with GP of Rs. 10,000/- on deputation basis for three years. This Grade Pay corresponds to the Grade Pay that he was already earning at that point in time and had been earning since being appointed as Principal of LBS College in IIMS. The IMU then considered the case of the applicant for grant of 3<sup>rd</sup> MACP on 25.06.2014 since he had completed 10 years in the grade without promotion. In terms of Para 26 & 27 of the MACP Scheme relating to employees on deputation, the IMU granted 3<sup>rd</sup> MACP to the applicant including all other 196 deemed deputationists as eligible. These MACPs are stated by applicant to have been granted between 08.10.2009 and prior to an order of the Ministry based on clarifications of DoP&T dt. 15.07.2016. In the case of the applicant, the MACP was granted on 01.01.2014 vide IMU letter No. IMU/HQ/Admn/MACP/01/2014 dt. 12.05.2014. Subsequent to this, clarifications were obtained by the Ministry



on the method in which the service conditions of deemed deputationists under Section 49(i) of IMU Act, 2008 were to be regulated. In the context of MACP, it was directed in this letter dt. 15.07.2016 that officers deputed under Section 49(i) such as the applicant could only be given benefit of ACP/MACP by the IMU and for this purpose, they could hold a DPC and after obtaining the option of the deemed deputationists to continue on that basis with the IMU or get absorbed, send the DPC proceedings for continuing deputationists to the DG Shipping (Respondent No. 2) for confirmation. The respondents have argued that this procedure was not undertaken by the University. The applicant has rebutted this argument on the basis that these clarifications on the manner of regulating the service conditions in relation to the MACP were received well after orders granting 3<sup>rd</sup> MACP were issued to him on 12.05.2014 by the IMU based on the MACP Scheme and also, well after his superannuation on 31.01.2016.

**14.** Viewed in terms of our developing



argument as we have found from the analysis of this case, it cannot be denied that the applicant was drawing a GP of Rs. 10,000/- from 01.01.2004 and the conferment of the rank of Principal was effectively in place and recognized by Government. If there was any shortfall such as the lack of the UPSC approval, neither the applicant nor the IIMS, nor the IMU could be made responsible and with the lapse of time, this could only be considered as a useless formality that the Ministry has chosen to overlook. The applicant cannot be penalized by acts of implied approvals or inaction on the part of the respondents. From this basis, the applicant is clearly entitled to the 3<sup>rd</sup> MACP benefit on 01.01.2014 and he was rightly sanctioned such a benefit by the IMU and when he retired, he was obtaining that pay. The respondents argue that the clarification takes effect from the date of grant of MACP Scheme. Their objections may be considered on two aspects. First, is the aspect of confirmation by the DG Shipping of the

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proceedings of the DPC held by the IMU. On these proceedings, the only objection that can be raised on this basis is on the computation of period of 10 years with respondents arguing that the substantive rank of the applicant was only Deputy Director and that he would have been conferred a 2<sup>nd</sup> MACP in 2008 with GP of Rs. 8900/-. The other aspect is that the DG Shipping had not seen these proposals. We have already dealt with the first aspect and found it to be lacking in substance. The second aspect is a formality and it cannot be said nor has it been argued by the respondents that there was any administrative deficiency in the proceedings of the DPC conducted by the IMU. The clarification was never received in 2014 by the IMU for consideration by the DPC and it can only be held that this designated authority, the IMU under the MACP, exercised its powers as specified with due authority. In any case, as we have already analysed above, the applicant was clearly recognised by the respondents as having

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been promoted as Principal by respondent No.2 as early as 2004 and at various subsequent opportunities, including when he was reverted at closure of IIMS and transferred compulsorily to IMU, his designation and pay scale had crystallized. What remains is a procedural infirmity as mentioned above but that could well be treated as a useless formality (**Aligarh Muslim University and Others Vs. Mansoor Ali Khan, reported in 2000 STPL 10131 SC**). Alternatively, by analogical application of the ruling in **P. Mohan Reddy Vs. E.A.A. Charles and Others, reported in 2001 STPL (LE) 29352 SC**. It is the pre-amended rules that would apply to the need for a scrutiny by the DG, Shipping for the case of the applicant as also for many of the other deemed deputationists who had been granted the same benefits and whose cases, the applicant contends, have not been



objected by the respondents. If the respondents wish to fulfill an administrative formality by claiming the retrospective application of withdrawal of powers, there is nothing to stop them from going through the motions although the interpretation of law is clearly suspect. However, it needs to be made clear that the failure of respondents to sanction 2<sup>nd</sup> MACP in 2008 which they now claim, in afterthought, as eligible to applicant suggests that these are merely defenses put forth to justify complying with audit observations and do not suggest any independent and reasonable consideration of the facts of the matter.

15. The respondents have raised the issue that in the year 2007, the IMU had not taken exemption from the Rule of Immediate Absorption contained in Department of Pension & Pensioners' Welfare in OM No. 4/78/2006-P&PW(D) dt. 31.10.2007 for exempting particular post from immediate absorption of officers sent on deputation to Central Autonomous Bodies. These orders required



that such Government servants proceeding on deputation basis without obtaining specific exemption would be deemed to have resigned from Central Government and absorbed in the Central Autonomous Body. These orders are contained in Para 6 directing all administrative Ministries and Departments to get exemption prior to such deputation. The respondents who were required to move such proposals have not stated whether they actually sent such proposals to the Department of Pensions & Pensioners' Welfare. The IMU was also created subsequently in 2008. Further, the IIMS headed by the DG Shipping was also apparently unaware of this requirement. In the face of such ignorance, it is difficult to fasten the applicant with the liability for the incompetence and laxity of the respondents. Even this awareness appears to have crept on the respondents only after the audit observations which resulted in impugned orders No. ST-14011/8/2008-MT dt. 15.09.2016.

16. In any event, as Respondent No. 3



points out, the Department of Pension & Pensioners' Welfare withdrew this rule in its orders OM No. F.No.4/78/2006-P&PW(D) dt. 12.10.2015 subject to the following conditions being obeyed:

**"Subject: Deputation of Central Government servants to posts in Central Autonomous Bodies- Review of Policy.**

xxx

2. xxx. In partial modification of the instructions contained in this Department's OM dated 31.10.2007, it has been decided to allow appointment of Central Government employees to posts in Central Autonomous Bodies on deputation basis without seeking exemption from Rule of Immediate Absorption, if the Recruitment Rules for the posts specifically provide for the appointment of Central Government employee on deputation. This relaxation will be subject to the following conditions:

xxx

ii. Deputation as a method of recruitment may generally be provided in respect of the following categories of posts in the Autonomous Bodies.

xxx.

b) Posts in executive or senior management level i.e. post carrying a Grade pay of not less than Rs.7600/- in Central Autonomous Body having very close inter-action with policies and programmes of the Government.

xxx.

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d) Posts in newly established/temporary organizations ( upto a period of 5 years from the date of establishment).

xxx.

Vii) There should be an entry in recruitment rules to the effect that the exemption from rule of immediate absorption is not required for appointment on deputation."

17. A careful reading of the orders and the covering letter of the DoPT dt. 03.12.2015 would suggest that they were considered and ordered in the context of problems faced in appointment of Central Government employees to posts in Central Autonomous Bodies on deputation basis without seeking exemption from the Rule of Immediate Absorption. The orders do not provide for retrospective effect in specific terms. If these orders were considered to apply to the case of deemed deputationists for the IMU, then the following logic would apply by virtue of the provisions of the IMU Act extracted above.

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18. In the present case, the IMU is an Autonomous Body and the applicant is holding a very senior post, initially as Principal in GP of Rs. 10,000/- and after obtaining 3<sup>rd</sup> MACP, in the HAG Scale. At the time when he was compulsorily transferred to the IMU, that organization was newly established and therefore, a five year period was available in terms of the OM dt. 12.10.2015 at para 2(ii)(d). In any case, Para 2(ii)(b) overrides all the other aspects and becomes applicable to the case of the applicant from date of transfer in 2009 to 2016 when he retired. The Rule 49(i) provides the option to continue on deemed deputation, with all benefits due to a Central Government Servant, to the applicant and similarly placed persons. Therefore, it cannot be said that Rule 2(vii) of OM dt. 12.10.2015 has not been satisfied. Therefore, we hold that this OM squarely applies to the case of the applicant and the objection raised by respondents based on the orders of the DoP&PW of 2007 are not maintainable considering that they have been



raised in ignorance of the orders of the DoP&PW dt. 12.10.2015 which were communicated to all Ministries and Departments by DoP&T in OM No. 2/11/2015-CS.I(U) dt. 03.12.2015.

19. On the other hand, if it is considered that these orders do not have retrospective effect, then we may make reference to the orders No. ST-14011/8/2008-MT dated 08.10.2009 transferring all the employees of the Government Maritime Training Institutes, hitherto working as deemed deputationists in IIMS, to the Indian Maritime University. These orders refer to Section 49(i) extracted above and set the following terms and conditions after consultations and approval with the Department of Pension and Pensioners Welfare, Department of Personnel and Training and Department of Legal Affairs vide their UO No.4/5/2009-P&PW(D) dated 13.1.2009, AB-14017/37/2009-Estt (RR)



dated 6.10.2009, Dy. No.10618/09(A) dated 18.6.2009 respectively. These conditions are as below:

"i) The employees shall stand transferred to IMU along with their posts on existing terms & conditions on Foreign Service without deputation allowances w.e.f. 14/11/2008 i.e. the date of formation of IMU. The deemed deputation shall continue till their final absorption to IMU.

ii) The employees who opt for absorption in the IMU, their pensionary benefits will be regulated as per Rule 37-A of CCS(P) Rules 1972.

iii) Those employees who exercise the option to continue as Government Servant till their retirement and do not join IMU, they will continue on deemed deputation till their retirement.

iv) During the period of deemed deputation, the employees shall continue, subject to all rules and regulations as are applicable to Government servants including CCS(CCA) Rules, 1965. Their pay and allowances will be governed by the existing rules and regulations and orders of the Government.

v) All the employees, till they are on deemed deputation shall continue to avail CGHS facilities and continuous to retain or to be allotted Govt. Residential Accommodation on turn.

vi) The existing Disciplinary Authority/Appellate Authority/Revisional Authority will continue to exercise Disciplinary/Appellate/Revisional power jurisdiction over all such employees till they are on deemed deputation.




vii) The IMU shall have full powers and authority to effect transfer of all the staff of all levels working under it and will exercise control and supervision of its staff working against these posts.

viii) The IMU shall forward the proposals for promotion/confirmation along with the requisite documents in r/o the deemed deputationists to the competent authorities in the Government for approval which will process the proposals in accordance with the existing recruitment rules.

ix) In respect of employees who exercise an option to be absorbed in IMU will be governed by the service rules of IMU and hence the IMU will fill up the posts in accordance with the Recruitment Rules of the University."

20. It is, therefore, apparent that the respondents have obtained special sanction/permission from the concerned authorities under the Rules for Allocation of Business of the Government of India for extending the benefits of deemed deputation without absorption to the applicant and others of his category after considering all the aspects and by anticipating the contents of the orders of the DoPT and DoP&PW in the general case in 2015. Therefore, what we find in the





present case is that the respondents through proper authority, approved and incorporated terms and conditions for deputation in their orders supra dt. 08.10.2009 which refer to the IMU Act and could well be considered to be the genesis of the more general rules that were later issued by the DoP&PW and DoP&T in 2015 for application to deputationists in all Central Autonomous Bodies. It is not the case here, that the terms and conditions in these two orders are inconsistent with each other nor does the general rule specified in OM dt. 12.10.2015 refer to the orders dt. 08.10.2009 in order to concur or set aside. The Hon'ble Apex Court **in Chandra Prakash Tiwari Vs. Shakuntala Shukla**[AIR 2002 SC 2322] has ruled as follows:

*"It is then, an elementary Rule that an earlier Act must give place to a later, if the two cannot be reconciled - lex posterior derogat priori - non est novum ut priores lages ad posteriores trahantur (Emphasis supplied) - and one Act*



may repeal another by express words or by implication; for it is enough if there be words which by necessary implication repeal it. But repeal by implication is never to be favoured, and must not be imputed to the legislature without necessity, or strong reason, to be shown by the party imputing it. It is only effected where the provisions of the later enactment are so inconsistent with, or repugnant to, those of the earlier that the two cannot stand together unless the two Acts are so plainly repugnant to each other that effect cannot be given to both at the same time a repeal cannot be implied; and special Acts are not repealed by general Acts unless there be some express reference to the previous legislation, or a necessary inconsistency in the two Acts standing together, which prevents the maxim *generalia specialibus non derogant* (Emphasis supplied) from being applied. For where there are general words in a later Act capable of reasonable application without being extended to subjects specially dealt with by earlier legislation, then, in the absence of an indication of a particular intention to that effect, the presumption is that the general words were not intended to repeal the earlier and special legislation, to take away a particular privilege of a particular class of persons."

Therefore, the objections raised by respondents from this aspect are not maintainable in any manner.

21. The respondents have also objected to the selection by the Indian Maritime



University in 2012 of the applicant as Director by converting his erstwhile status as Director-in-charge to that of a full fledged Director. They have argued that the applicant did not file his application through proper channel but this has been specifically denied by the applicant. It is evident that the applicant was working at that time under the IMU and it cannot be denied that the proper channel in this case was the IMU itself which had indeed, received the application. If the IMU did not forward this application to the DG, Shipping, the applicant cannot be blamed and be penalized monetarily for lapses of IMU Administration. Considering that this event took place in 2012, even the DG Shipping and the Ministry who were closely involved in the administration of the University did not raise any objections and they scrambled to invent objections only after the Audit objections were raised.

22. In the circumstances discussed above, it is apparent that the respondents have



committed a series of errors of an administrative kind and have, at the late stage after retirement of the applicant, raised a variety of technical objections to the case of the applicant and have not only sought/made recoveries but have also attempted to reduce his eligible pensionary benefits. Several frivolous arguments and arguments based on ignorance have also been put forth in support of their case. All these aspects have been discussed in the above orders and in the circumstances, we allow this OA and grant all the reliefs including those of pensionary benefits claimed due to the applicant based on his actual last pay drawn on 31.01.2016 at the time of retirement. The respondents are directed to release all his pensionary and other benefits, balance of leave encashment and other dues along with interest on all these amounts at a rate not less than the rate applicable to delayed GPF payments, within six weeks of receipt of these orders. Any further delays shall be subject to



additional interest of 12% on the further delayed period. Considering the nature of the matter and the manner in which the respondents have dealt with it, we quantify the costs of the applicant at Rs. 50,000/- to be paid by respondents to the applicant within six weeks.

(Ravinder Kaur)  
Member (J)

(R. Vijaykur, F)  
Member (A)

Ram.

JWJ  
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