

CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

O.A. No. 756/2016

Date Of Decision: 22<sup>nd</sup> January, 2019.

CORAM: R. VIJAYKUMAR, MEMBER (A).  
R.N. SINGH, MEMBER (J).

Sayed Salimuddin S/o Muniruddin,  
Age: 65 years, Occu: Dy. Commissioner,  
Central Excise, R/o Plot No. 06,  
Trimurti Society, in front of Raziya  
Fatima School, Katkat Darwaja,  
Aurangabad(M.S.)- 431 003.

...Applicant.

(By Advocate Shri S B Deshmukh)

Versus

1. The Union of India,  
Through Secretary Ad-II A.,  
Ministry of Finance Department  
& Revenue, North Block,  
New Delhi- 110 001.
2. The Commissioner of Central Excise,  
Mumbai-I, New Central Excise Building,  
115, M.K. Road, Opp. Churchgate Station,  
Mumbai- 400 020.
3. The Commissioner of Central Excise,  
Customs & Service Tax, Aurangabad,  
N-5, Town Center, CIDCO,  
Aurangabad- 431 003.

...Respondents.

(By Advocate Shri R R Shetty)

Reserved on : 10.01.2019

Pronounced on : 22.01.2019



ORDER

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

This application has been filed on 10.11.2016 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"1) That, the Hon'ble Tribunal may be pleased to hold and declare that the applicant is entitled to G.P. of Rs. 6600/- in PB-3 under 3rd MACP due to completion of 30 years of service as per MACP Scheme, circular dated 19.05.2009 on par with his batchmates and juniors who had received the same from respondent No. 2 by virtue of various DPCS.

2) That this Hon'ble Tribunal may be pleased to quash and set aside the impugned letter dated 07.09.2016 issued by respondent No. 2 through respondent No. 3 on 20/09/2016.

3) That, this Hon'ble Tribunal may be pleased to direct respondent No. 2 and 3 to ensure that the financial benefits are made available with G.P. of Rs. 6600/- w.e.f. 01.09.2008 with consequential benefits as per MACP Rules Applicable at material time and not by any other subsequent circular/ O.M. of D.O.P.T. NEW DELHI.

4) To grant any other just and equitable relief in the interest of justice to which is the applicant is found entitled be granted.

5) To award the cost of the original application."



2. The applicant had joined the Central Excise Department as Direct Recruit Inspector of Central Excise on 23.11.1973, was promoted as Superintendent on 26.04.1991, was granted 2<sup>nd</sup> ACP in the Grade of Assistant Commissioner, was promoted as Assistant Commissioner, a Group-A Officer and he took charge accordingly on 12.09.2005. On 19.11.2010, the applicant was promoted as Deputy Commissioner with GP of Rs. 6600/- in PB-III and joined on 21.11.2010. He retired on 30.06.2011 without any further MACP benefits. Meanwhile, his alleged juniors who retired prior to him, received 3<sup>rd</sup> MACP while serving as Assistant Commissioner with GP of Rs. 6600/- in orders dt. 01.04.2010 and w.e.f. 01.09.2008 (Annexure A-2). He has stated that one of them had joined as Inspector on 17.07.1975 which is roughly two years after his joining that service. His grievance is that he was not considered for 3<sup>rd</sup> MACP when he became due after he completed 30 years in 2003 and the Scheme was introduced w.e.f. 01.09.2008.



3. The applicant has impugned the letter of Chief Commissioner of Central Excise in No. (not readable) dt. 07.09.2016 by which it is informed that he had been promoted to Group-A Cadre on 22.08.2005 and as per the OM for MACP dt. 19.05.2009, Officers of Organized Group-A Services are not covered under the Scheme. This has been reiterated in clarification of DoPT OM dt. 09.09.2010 (Annexure R-2) stating that MACP is not applicable to Group-A Officer of Organized Group-A Services as they have already been allowed parity of two years on NFU basis with IAS Officers of the corresponding batch. The applicant has argued that when his batchmates in other Commissionerates as well as juniors has been granted MACP w.e.f. 01.09.2008 whereas he received his Grade Pay only on promotion on 21.11.2010, just before he retired, denial to him of similar treatment amounted to discrimination.

4. The respondents have reiterated the inapplicability of MACP to Group-A Officers



as per MACP Scheme provisions, the clarification issued on 09.09.2010 (Annexure R-2) and have further referred to the consultations they have had with the DoPT and certain instructions issued in No. 35034/10/2011-Estt. (D) dt. 13.06.2012 (Annexure R-3) as below:

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**OFFICE MEMORANDUM**

Subject: Modified Assured Career Progression Scheme for the Central Government Civilian Employees-Clarification regarding grant of benefits of MACPS to officers who have later on inducted into Organized Group A Services-

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.

3. Hindi version will follow.

sd/-  
(Mukta Goel)  
Director (Estt. I)  
Tel.No. 23092479

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5. This was further clarified while creating a Screening Committee in CBEC letter No.F.No.A-26017/79/2012-Ad.IIA dt. 12.10.2012 for dealing with such officers and to make evaluations of their cases only at the time of their retirement. Therefore, when the applicant was evaluated at the time of his retirement, he had already received a further promotion in Group-A Organized Service as Deputy Commissioner and therefore, he was not eligible for the 3<sup>rd</sup> MACP. The respondents have also given details of their further correspondence with the DoPT on this issue and there is no change insofar as the



applicant is concerned. They also state that the benefits granted to his batchmates and juniors who retired prior to him and who had not received such a promotion as Deputy Commissioner prior to their retirement were granted 3<sup>rd</sup> MACP in view of the beneficial provisions contained in the clarifications issued by the DoPT and that these were personal to those beneficiaries and could not be made applicable to the applicant.

6. In his rejoinder, the applicant has now raised the issue that he was not yet part of the Organized Group-A Services and that after promotion as Assistant Commissioner and Deputy Commissioner, he was still an Officer of the Unorganized Group-A Services and therefore, he was entitled to the 3<sup>rd</sup> MACP as due on 01.09.2008 after the MACP Scheme was introduced. The applicant has not produced any evidence in support of this claim which is, however, denied by respondents.

7. We have heard the learned counsel for the applicant and the learned counsel for the respondents and carefully considered the



facts and circumstances, law points and rival contentions in the case.

8. It is apparent that MACP is a beneficial provision intended to relieve stagnation of officers at various levels in Government. The benefits provided under MACP are personal to the officers concerned and cannot be challenged by a senior claiming parity with batchmates or juniors merely on account of the provisions of FR 22 and can only be argued with reference to the provisions in the MACP Scheme. The respondent Government in DoP&T and the Ministry of Finance have extended the Scheme to Officers of Group-B who got promoted as Group-A Officers very late in their careers and therefore, they could neither get the benefit of NFU on par with IAS Officers of their batch nor could they obtain any further promotion because the remainder of their service in the Group-A Cadre did not enable such a promotion. On this basis, it is apparent that the applicant was more fortunately placed. His batchmates and



juniors retired without being promoted as Deputy Commissioner whereas he was able to secure a promotion as Deputy Commissioner prior to his retirement. If he had continued and presuming that his batch was in the year 2005 when he took charge as Assistant Commissioner, he would have received NFU benefits in 2014 but he retired prior to that date. Meanwhile, he obtained promotion as Deputy Commissioner and at the time of retirement, there is no disparity between the Grade Pay he was earning and that of his juniors at their respective retirement dates.

9. The applicant has argued that there was discrimination. Such an argument of discrimination can only be made in terms of the Scheme itself or in terms of FR 22. With the latter not being applicable for beneficiaries of MACP, the former aspect has to be seen strictly in terms of the provisions of the MACP Scheme. From these standpoints, the plea of the applicant fails. Moreover, the extension of the MACP Scheme to Group-B Officers promoted at the fag end of



their career to Group-A Cadre is a beneficial provision made clearly as a dispensation for such categories of officers. Despite the additional provision, even this enabling measure is only under the MACP Scheme and therefore, an argument of discrimination cannot be permitted to be made by categories of Officers such as the applicant. Of course, it is apparent that whereas the alleged batchmates and juniors received the benefit from 01.09.2008, the applicant received it only from 19/21.11.2010 but that is a creation of the relaxation made in the MACP Scheme for such officers and, as argued above, it cannot be the basis for any claim for parity by the applicant nor can this Tribunal extend any relief on the basis of equity considering that it does not have any jurisdiction in equity.

10. In the circumstances, the OA is dismissed as lacking in merits without any order as to costs.

(R.N. Singh)  
Member (J)

Ram.

(R. Vijaykumar)  
Member (A)

*Jud*  
*12*