

**Central Administrative Tribunal
Principal Bench**

OA No.4309/2013

New Delhi, this the 22nd day of May, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

Jabbar Khan
S/o Late N. B. Khan
r/o M-656, Shakurpur,
Bratania Chowk,
Delhi. Applicant.

(By Advocate : Ms. Sonika Gill)

Vs.

1. Union of India
Through its Secretary
Ministry of Defence, Govt. of India,
South Block,
New Delhi.
2. Director General
Directorate General of Aeronautical Quality
Assurance, Ministry of Defence,
H-Block, New Delhi-11.
3. The Officer-in-Charge
Dept. AAIW, Directorate General of Aeronautical
Quality Assurance, Ministry of Defence,
Muradnagar 201 206. Respondents.

(By Advocate : Shri Manjeet Singh Reen)

: O R D E R (ORAL) :

Justice L. Narasimha Reddy, Chairman:

The applicant joined the service as Junior Gestetner Operator (GO) in the establishment of Directorate General of Aeronautical Quality Assurance (DGAQA) on 03.04.1976.

Thereafter he earned several promotions, and retired from the service on 30.06.2013.

2. The DGAQA, i.e. the 2nd respondent adopted the Modified Assured Career Progression (MACP) Scheme for its employees. The benefit was extendable on completion of 10, 20 and 30 years of service by the employees in case they did not earn promotion during those spells. The applicant was extended the benefit of 2nd & 3rd MACPs. The 1st MACP was upset against his promotion to the post of senior GO. This OA is filed challenging the action of the respondents in denying him the benefit of 1st MACP. Another grievance of the applicant is that the 3rd MACP was due to him w.e.f. 03.01.2010 whereas it was extended to him w.e.f. 01.04.2010.

3. The respondents filed as many as three counter affidavits. The gist thereof is that the applicant was extended all the benefits, which he is otherwise entitled to. It is stated that a detailed order relating to the sanction of 2nd and 3rd MACPs was communicated to the applicant vide letter dated 10.07.2013. As regards the date of extension of the benefit of 3rd MACP, it is stated that on account of the punishment imposed against the applicant, the effective date was shifted.

4. We heard Ms. Sonika, learned counsel for the applicant and Shri Manjeet Singh Reen, learned counsel for the respondents.

5. It is not in dispute that the MACP Scheme is adopted by the 2nd respondent. According to that, the employees would be extended the benefit of higher scale of pay in three spells of service, i.e., 10, 20 and 30 years, in case they did not earn promotions in those spells. The applicant was extended the benefit of 2nd & 3rd MACPs but was denied the 1st MACP. It was upset against the promotion of the applicant to the post of senior GO. The applicant contends that it was not a promotion but just an upgradation or re-designation of the post held by him.

6. In the counter affidavit, however, it is clearly mentioned that (a) out of two posts of GO, one was upgraded as senior GO and it is made as a promotional post for the original one; (b) the recruitment rules were modified prescribing the procedure for promotion to the post of senior GO and (c) the applicant was not promoted to the post of senior GO immediately after reconstitution but was only on 06.05.1986, that too after following the prescribed procedure. These aspects are not disputed by the applicant.

7. If the post was just upgraded and the incumbent was put into the upgraded post, one cannot presume any element of promotion. If on the other hand, one of the posts of a particular cadre is upgraded, and is made as a promotional avenue for the un-upgraded post, a totally different picture altogether emerges. The very fact that the post of Senior GO is treated as a promotional avenue for the GO clarifies the situation. Added to that, it was much after in the re-organisation, that the applicant was promoted. Therefore, the first limb of relief cannot be granted to the applicant.

8. Coming to the 2nd aspect, the applicant did admit the fact that he was imposed with the punishment through an order dated 03.01.2008, and the 3rd MACP became due at that time, cannot be extended on account of operation of the punishment. While the respondents insist that the 3rd MACP was granted from the date on which the applicant became entitled for the same as per the order of punishment, the applicant contends that the order of punishment would be in force for a period of two years, and on expiry of that period, the 3rd MACP ought to have been granted to him. We are of the view that in case this aspect was not dealt with in the order addressed to the applicant vide letter dated 10.07.2013, it shall be open to him to

pursue the remedies in accordance with law. The respondents shall make available a copy of the letter dated 10.07.2013 together with the enclosures, if any, to the applicant.

9. We, therefore, dispose of the OA directing that (a) the denial of the benefit of 1st MACP to the applicant cannot be found fault with; (b) the respondents shall make available to the applicant, a copy of the letter dated 10.07.2013 along-with its enclosures and (c) it shall be open to the applicant to pursue the remedies, if the grievance still exists. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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