

**Central Administrative Tribunal
Principal Bench**

OA No.2707/2014

New Delhi, this the 28th day of August, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Surender Kumar Guar,
Working as Assistant (AD),
Aged about 56 years,
S/o Shri O.P. Gaur,
R/o 891, Laxmi Bai Nagar,
New Delhi.

...Applicant

(By Advocate : Shri M.K. Bhardwaj)

Versus

UOI & Ors. Through

1. The Secretary,
Ministry of Health and Family Welfare,
Nirman Bhawan, New Delhi.
2. The Director General,
DGHS (Sawasthya Sewa Mahanideshalya),
Nirman Bhawan, New Delhi.
3. The Joint Secretary (Admn),
Ministry of Health and Family Welfare,
Nirman Bhawan, New Delhi.
4. The Secretary,
Deptt. Northern Block,
New Delhi-110001.

...Respondents

(By Advocate : Shri Rajinder Nischal)

ORDER (ORAL)**Justice L. Narasimha Reddy, Chairman :-**

The applicant was initially appointed as Architect Assistant Grade-II, in the All India Radio (for short, AIR) on 29.12.1983. Thereafter, he applied for the post of Senior Design Assistant Grade-II, in the Ministry of Health and Family Welfare, in response to a notification for direct recruitment. He was selected and appointed in that post on 02.03.1988 in the pay scale of Rs.5500-9000/-. The applicant got the benefit of 1st ACP on 20.11.2002 and was put in the scale of Rs.6500-10500/-.

2. Consequent upon the introduction of Modified Assured Career Progression (MACP) Scheme, the respondents passed an order dated 03.08.2010, extending the benefit of 1st MACP in the Grade Pay of Rs.4600 and 2nd MACP in the Grade Pay of Rs.4800 w.e.f. 01.09.2008.

3. The applicant submitted a representation on 18.06.2013 to the respondents with a request to count his service from 29.12.1983 and to extend him, the

benefit of 3rd MACP. Similar representation with a slight change was submitted on 17.09.2013. The respondents replied to the applicant on 22.08.2013, stating that the request cannot be acceded to. This OA is filed challenging the reply dated 22.08.2013 and with a prayer to direct the respondents to put him in the corresponding pay scales, in particular, with Grade Pay of Rs.6600 w.e.f. 29.12.2013, under the MACP Scheme. Other consequential benefits are also prayed for.

4. The applicant contends that the post of Architect Assistant Grade-II in AIR is not substantially different from the post of Senior Design Assistant Grade-II in the Ministry of Health and the said service ought to have been counted. It is further submitted that with the implementation of the recommendations of the 6th Pay Commission, the posts carrying the pay scales of Rs.5500-9000 and Rs.5000-8000 were merged and the ACP granted to him earlier became virtually redundant. It is stated that since he completed 30 years of service, reckoned from 29.12.1983, and that the respondents are under obligation to extend him the 3rd MACP also.

5. On behalf of the respondents, a detailed counter affidavit is filed. It is stated that the earlier service in the AIR cannot be counted, since it was in the lower post with a different pay scale. It is also stated that in view of the various clauses contained in the MACP scheme, the applicant was extended the benefit of 1st and 2nd MACP and the occasion to extend him the benefit of 3rd MACP would arise, if only, he continued in the same scale of pay for a period of 10 years; and that such a situation does not exist in the instant case.

6. We heard Shri M.K. Bhardwaj, learned counsel for applicant and Shri Rajinder Nischal, learned counsel for respondents.

7. The first plea of the applicant is that the service rendered by him in the AIR be counted for the purpose of ACP/MACP. Two aspects become relevant in this behalf. The first is that the post of Architect Assistant Grade-II in AIR carried the pay scale of Rs.425-700, which was upgraded to Rs.5000-8000, whereas the post of Senior Design Assistant Grade-II in the Ministry of Health carried the pay scale of Rs.5500-9000. Not only the pay scale, but also the duties are also substantially different.

Obviously with a view to acquire employment in a higher post, the applicant gave up appointment in the AIR and got selected in the Ministry of Health. The occasion to count the service in another Organisation arises, if only, he is in the same scale of pay.

8. The second aspect is that the applicant was extended the benefit of ACP on 02.03.2002. If he was of the view that the service ought to have been counted from 1983 onwards, the ACP became due to him in the year 1995. He did not make any claim in that behalf and accepted the ACP extended to him on 02.03.2002, without any demur. He is estopped from claiming it subsequently.

9. It is true that the MACP scheme mandates that the promotions or financial upgradations extended in respect of the posts carrying the merged scales of pay need to be ignored. Obviously for that reason, the respondents extended the benefit of 1st ACP and 2nd MACP through order dated 03.08.2010. The MACP provides for extending three upgradations on completion of 30 years of service. This is subject to the condition that the employee stagnated in the same scale of pay for a period

of 10 years. The very first clause of the Scheme reads as under :-

“1. There shall be three financial upgradations under the MACPs, counted from the direct entry grade on completion of 10, 20 and 30 years service respectively. Financial upgradation under the Scheme will be admissible whenever a person has spent 10 years continuously in the same grade-pay.”

10. The applicant is emphasising on the first sentence, conveniently ignoring the second one. It is not his case that he is stagnated for a period of 10 years in the same scale after being extended the 2nd MACP. He was extended the benefit of 2nd MACP through order dated 03.08.2010. He will become eligible to be extended the benefit of 3rd financial upgradation only on completion of 10 years from that date, provided he did not earn any promotion. That would occur only on 03.08.2020. However, the applicant retired in the year 2018. Therefore, the question of his being extended the 3rd MACP does not arise.

11. We do not find any merit in the OA and the same is, accordingly, dismissed.

There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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