

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA-3691/2014

New Delhi, this the 21st day of August, 2019

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

Sh. Jai Kunwar Singh,
Aged about 61 years,
S/o Sh. Kartar Singh,
R/o RZ-38, Kamla Park,
Dharampura, Nazafgarh, Delhi. ... Applicant

(through Sh. Vijay Siwach with Sh. Naveen Dahiya)

Versus

Delhi Transport Corporation,
Through its Chairman,
DTC HQ, IP Estate, New Delhi. ... Respondent

(through Ms. Ruchira Gupta with Sh. Anurag Sharma)

ORDER(ORAL)

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman

The applicant was appointed as Conductor in the Delhi Transport Corporation in the year 1982. Through an order dated 13.09.2011, he was appointed as Assistant Cashier along with 184 other conductors. He submitted a representation on 09.09.2013 with a request to extend him the benefit of 3rd

MACP stating that he completed thirty years of service. Through letter dated 24.09.2013, he was informed that he was not entitled for the grant of benefit of 3rd MACP. He retired from service on 31.07.2014, on attaining the age of superannuation.

2. This OA is filed with a prayer to set aside the communication dated 24.09.2013 and to direct the respondents to extend the benefit of 3rd MACP w.e.f. 13.10.2012, the date on which he completed thirty years of service and to re-fix his emoluments and to pay arrears. The applicant contends that he was extended the benefit of 1st and 2nd MACP on completion of ten and twenty years of service and he was entitled to be extended the benefit of 3rd MACP on completion of thirty years of service. He submits that though he was appointed as Assistant Cashier, that did not result in any financial upgradation and the respondents were not justified in denying the 3rd MACP on account of the appointment as Assistant Cashier.

3. The respondents filed counter affidavit opposing the OA. It is stated that the appointment to the post of Assistant Cashier brings about a totally different scenario and the past

service cannot be counted in the context of MACP. It is stated that the service of ten years, in the context of extending the benefit of automatic career progression would be reckoned from the date on which the applicant was appointed as Assistant Cashier. It is also stated that no Assistant Cashier appointed by the DTC, was extended the benefit of 3rd MACP by counting their past service rendered, as Conductor.

4. We heard Sh. Vijay Siwach, learned counsel for the applicant and Ms. Ruchira Gupta, learned counsel for the respondents.

5. There is no dispute that the applicant completed thirty years of service on 13.10.2012. It is also not in dispute that the applicant is covered by the MACP Scheme and obviously for that reason, he was extended the benefit of 1st and 2nd MACP. The denial of the 3rd MACP to the applicant was on account that before he completed thirty years of service, after he was appointed to the post of Assistant Cashier, and that the said post has totally different connotation and characteristic altogether. It is also stated that the past service of a Conductor was never counted in the context of extending the benefit of MACP to

Assistant Cashier and this aspect was clarified vide order dated 07.08.2013.

6. It is true that financial upgradation can be denied if only an employee has either been promoted or was extended the benefit of financial upgradation in the spell of ten years of service, each. The appointment of the applicant to the post of Assistant Cashier was not in the form of promotion. However, it is altogether to a different post. For all practical purposes, there was a change of duties and the status. The respondents took the view that the benefit of MACP is extendable when an employee stagnated for ten years in the same post. When the post is totally different, the benefit becomes unavailable.

7. As a continuous and constant practice, the respondents did not extend the benefit of 3rd MACP to any Conductor who was appointed as Assistant Cashier. It is a different matter that some Conductors got the benefit of 3rd MACP by the time they were appointed as Assistant Cashiers. When the respondents have evolved a practice, which is not contrary to any specific provision of law, we do not find any basis to deviate from that. The applicant is one of the 184 Conductors who were appointed as Assistant Cashiers. He is the only one, claiming the benefit

of 3rd MACP after such appointment. Further, the respondents made this aspect clear through letter dated 24.09.2013.

8. We, therefore, dismiss the OA. We, however make it clear that in case any Assistant Cashier has been extended the benefit of 3rd MACP by counting the service rendered by him as Conductor, the applicant shall also be extended the same.

There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/ns/