

(2020) 10 CAT CK 0004
In the Central Administrative Tribunal
Case No : Original Application No. 443 Of 2015

Jai Kanwar

APPELLANT

Vs

Chairman & Others

RESPONDENT

Date of Decision : 06-10-2020

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2020) 10 CAT CK 0004

Hon'ble Judges : L. Narasimha Reddy, J; Pradeep Kumar, Member (A)

Bench : Division Bench

Advocate : Ravinder Kumar Sharma

Final Decision : Dismissed

Judgement

Pradeep Kumar, Member (A)

1. Applicant was appointed as an Assistant Fitter under respondent-Delhi Transport Corporation (DTC) on 03.01.1984. With a view to take care of stagnation, Government of India introduced Assured Career Progression (ACP) Scheme vide OM dated 09.08.1999, which was adopted by the DTC w.e.f. 12.08.2002. The ACP Scheme entitles an employee for grant of next higher pay scale, twice in service career of an employee, as per the pay scale applicable to next higher promotional post in departmental hierarchy, on completion of total 12/24 years of service respectively, in case an employee is not promoted in the meanwhile and he is otherwise eligible based upon his ACR/APAR, service record etc. The applicant was granted 1st ACP w.e.f. 01.04.2006. The 2nd ACP was granted to him w.e.f. 20.11.2009.

2. In the meanwhile, Government of India adopted Modified Assured Career Progression (MACP) Scheme, which came into force w.e.f. 01.09.2008 in replacement to the earlier ACP Scheme. The MACP envisages total three financial upgradations on completion of 10/20/30 years of service respectively in case an employee is not promoted in the meanwhile. There is however an important

distinction between the ACP and MACP Schemes, viz. while under the ACP, benefit was to be granted in the pay scale applicable to the next higher post in the promotional hierarchy, in MACP, pay is to be granted in the immediate next higher grade pay, under 6th Central Pay Commission (CPC), which may be different as compared to the pay scale of next higher post.

3. The applicant is aggrieved that he had completed 30 years of service in the year 2014, however, he was not granted 3rd MACP benefits. He made a representation, seeking 3rd MACP benefits, which was rejected vide orders dated 27.10.2014. Thereafter a legal notice was sent on his behalf to respondent-DTC on 10.11.2014, which was also rejected vide orders dated 03.12.2014.

4. It is the rejection vide orders dated 27.10.2014 as well as 03.12.2014 that is under challenge in the instant OA. The applicant relies upon a judgment by the Hon'ble Supreme Court in the case of Dwarka Prasad & Ors. v. Union of India & Ors., [2004 (1) ATJ (SC) 591, wherein the Hon'ble Court has held that:

"right to be considered for promotion on fair and equal basis without discrimination may be claimed as a legal and fundamental right under Articles 14 and 16 of the Constitution of India."

The applicant pleads that denial of 3rd MACP is illegal and arbitrary.

5. Per contra, the respondents have opposed the OA. It is brought out that even though the 1st ACP was due to the applicant on 12.08.2002 when the ACP Scheme was adopted by the respondent-DTC, however, in the case of applicant he was placed under suspension w.e.f 05.06.2002 to 28.06.2002 for causing irregularities and misbehaving with the checking staff. A penalty of censure was imposed on 17.04.2003 in this case. There was another charge-sheet also issued wherein a punishment of stoppage of next due increment without cumulative effect, was imposed vide orders dated 04.02.2003. Since the punishments had their adverse effect and three consecutive satisfactory ACRs/APARs were needed for ACP, the applicant was granted 1st ACP w.e.f. 01.04.2006. Thus, grant of 1st ACP was deferred by three years.

6. In terms of the policy directives on the subject, the period of such deferment affects grant of subsequent upgradations also. Accordingly, 2nd ACP benefit, which was due on completion of 24 years of service, i.e., in the year 2008 also got deferred and the same was eventually granted w.e.f. 20.11.2009. It appears that this was 2nd MACP benefit, as by this time, MACP Scheme had already come into force w.e.f. 01.09.2008.

7. Thereafter, the applicant became due for 3rd MACP benefit on completion of 30 years of service in the year 2014. However, in terms of the policy directives, this benefit was also required to be deferred by a period of three years and accordingly it became due in the year 2017. It was thus pleaded that the applicant's request for grant of 3rd MACP is not in accordance with the policy guidelines on the subject.

8. The respondents also pleaded that subsequent to issuance of MACP policy directives, certain clarifications were also issued by the Government of India vide OM No.35034/3/2008-Estt.(D), dated 9.9.2010. In this connection, the respondents drew attention to the relevant policy directive issued on the subject of MACP, which reads as under:

S. No.

Point of Doubt

Clarification

7.

In a case where 1st 2nd financial upgradations are postponed on account of the employees not found fit or due to departmental proceedings, etc. whether this would have consequential effect on the 2nd/3rd financial upgradation or not?

Yes. If a financial upgradation has been deferred/ postponed on account of the employee not found fit or due to departmental proceedings, etc. the 2nd/3rd financial upgradations under MACPS would have consequential effect. (Para 18 of Annexure-I of MACPS referred).

9. Matter has been heard at length. Shri Ravinder Kumar Sharma, learned counsel represented the applicant and Ms. Mona Sinha appeared for Ms. Ruchira Gupta, learned counsel for the respondents.

10. It is fairly by now settled that grant of MACP benefits, has to be governed in terms of the relevant policy directives. The policy directions in respect of MACP have also been considered by the Hon'ble Apex Court in Union of India & Ors. v. M.V. Mohanan Nair, [Civil Appeal No.2016 of 2020, decided on 05.03.2020 by a three-Judge Bench] wherein it has been held that MACP directives, as issued, are required to be complied with.

In the instant case, these policy guidelines are in the form ACP Scheme which was adopted by the respondent-DTC w.e.f. 12.08.2002 and MACP Scheme which came into force w.e.f. 01.09.2008.

The MACP guidelines contain a provision wherein the MACP benefits date is required to be deferred for the subsequent benefits, as brought out in para-8 above.

11. The applicant has nowhere controverted that he was not awarded two punishments, as brought out in para-5 above. Once this is the state, it was logical and natural that grant of 1st ACP, which was to be considered on 12.08.2002 was deferred by a period of three years and was eventually granted w.e.f. 01.04.2006.

It therefore follows that grant of further ACP/MACP benefits also get deferred. The 2nd ACP/MACP benefit was granted w.e.f. 20.11.2009 by which time the new MACP Scheme had already come into force in replacement of the ACP Scheme.

12. In view of the foregoing, even though 30 years of service was completed by the applicant in the year 2014, yet the 3rd MACP benefit was required to be deferred by a period of three years, i.e., till 2017.

13. With this in view, applicant's request for grant of 3rd MACP benefit w.e.f. 17.08.2014 is without any merit.

14. Accordingly, the OA is dismissed being devoid of merit. No costs