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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C) 12100/2015**

% *Date of Judgment: 22nd of December, 2015*

DR. H. K. SHARMA

.....Petitioner

Through : Petitioner in person.

Versus

THE COMMISSIONER, MUNICIPAL CORPORATION OF DELHI
(NORTH)

.....Respondent

Through : Ms. Biji Rajesh, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J.

1. The present writ petition filed under Article 226 of the Constitution challenges the correctness of the order dated 27.10.2015 passed by the Central Administrative Tribunal (hereinafter referred to as the 'Tribunal') in O.A. No. 1198/2014, whereby the Tribunal dismissed the said O.A. filed by the petitioner.
2. The brief facts of the present writ petition are that the petitioner was appointed as Food Field Investigator from 21.07.1975 to 16.05.1977 and was posted in the Department of Central Research Institute, Kasauli. Thereafter, he was appointed / promoted as Supervisor in the same department from 17.05.1997 to 04.03.1988. He was appointed/promoted as Assistant Technical Officer in the same department from 05.03.1988 to 20.06.1990. Subsequently,

the petitioner was appointed/promoted as Bacteriologist in the Government of Pondicherry on 26.06.1990. Petitioner retired from service after attaining the age of superannuation on 31.03.2011.

3. Mr. H. K. Sharma petitioner who appeared in person submits that the order dated 27.10.2015 passed by the Tribunal is unjust, illegal, arbitrary and is based upon assumptions and presumptions.
4. The petitioner further submits that he has fulfilled all the criteria required as per the rule applicable to Group "A" and as he has already completed 30 years of regular service in January 2005, he would become eligible for third financial upgradation directly as per Modified Assured Career Progression Scheme (hereinafter referred to as "MACP" Scheme) thereby, resulting in revision of his pension. The petitioner strongly urged that his period of service from 21.01.1975 till 31.03.2011 all the new posts held by the petitioner were not as a result of promotion but as a consequence of redesignation. Therefore, the petitioner would be entitled to benefits under the MACP Scheme instead of being governed under In-Situ Promotion Rules, 1990.
5. To substantiate his arguments further, the petitioner has relied on Para 22 of the MACP Guidelines as per which the petitioner would become entitled to third financial upgradation directly as he had completed 30 years of regular service. Para 22 is reproduced as under:

"22. If Group "A" Government employee, who was not covered under the ACP Scheme has now become entitled to say third financial upgradation directly, having completed 30 year's regular service, his pay shall be fixed successively in next three immediate higher grade pays in the hierarchy of revised pay-

bands and grade pays allowing the benefit of 3% pay fixation at every stage. Pay of persons becoming eligible for second financial upgradation may also be fixed accordingly.”

6. Per Contra, Ms. Biji Rajesh, learned Counsel appearing on behalf of the respondent submits that during the entire period of service from 21.01.1975 till 31.03.2011, the petitioner had secured four promotions and therefore, he is not entitled to get any further upgradation under the MACP Scheme as the benefits under the scheme accrued only to those who do not get any promotion.
7. We have heard learned counsel for the respondent and petitioner appearing in person and considered their rival submissions. We have also carefully perused the impugned order passed by the Tribunal. It is the case of the petitioner that as per para 22 of the MACP Scheme, the petitioner would become entitled to third financial upgradation directly as he had completed 30 years of regular service. The short point which arises for consideration before this Court is as to whether the petitioner is entitled to 3rd financial upgradation in accordance to MACP Scheme. It would be useful to reproduce para 8 and 10 of the judgment of the Tribunal dated 27.10.2015 which read as under:

“8. In view of the above provisions, the applicant herein had been given benefit of promotion under In-Situ Promotion Rules, 1990 duly adopted by MCD vide Decision No. 5055/GW/Corpn. Dated 29.01.1996 to the scale of Rs. 10,000-15,200 w.e.f. 29.09.2011 vide office order No. F18 (6)/CED(M)/98/2003/163/11155 dated 25.06.2003 and to the scale of Rs 12000-16500 (pre- revised) w.e.f. 29.09.2006 on ad-hoc basis vide office order No. UDC (M)-I/CED(M)/2010/1258 dated 16.03.2010. Since the applicant has got benefits under the said promotion Scheme, he will not get

benefit under the MACP scheme as two schemes cannot run concurrently as per the above quoted scheme of para 13 of the MACP Scheme. The 3rd promotion under the In-Situ Promotion Rules, 1990 becomes due after 15 years of regular service. Counting his regular service on the post of Junior Bacteriologist from the date of his employment i.e. 30.09.1996, 15 years of service would have fallen on 29.09.2011, whereas the applicant was retired from the municipal service on his superannuation before that date, i.e. on 31.03.2011. Thus, he is about six months short in completing the requisite period for 3rd financial upgradation and hence not entitled to the 3rd financial upgradation in the pay scale of Rs. 37400-67000 + Grade Pay of Rs.8700/-.

10. It is clear that the applicant was covered by a special In-Situ Promotion Scheme, 1990 and obtained two promotions under that Scheme after 5 and 10 years of regular service as a Junior Bacteriologist. Before completion of required 15 years of regular service for the 3rd financial upgradation, he retired. Therefore, he is not entitled to the 3rd promotion under the In-Situ Promotion Scheme. As regards his claim for upgradation under the MACP Scheme, para 13 of the same makes it clear that in case there is already a time bound promotion scheme applicable in the department, it cannot run concurrently along with the MACP Scheme, and therefore, the MACP Scheme would not apply in the case of the applicant.”

8. Before examining the rival contentions, we may usefully extract the relevant Office Memorandum No. 35034/3/2008-Estt. (D) Dated 19th May, 2009, MACP Scheme and also In-Situ promotion scheme, 1990.
9. By the Office Memorandum No.35034/3/2008-Estt. (D) dated 19th May, 2009 the Sixth Central Pay Commission recommended MACP Scheme. The relevant part of the Office Memorandum is reproduced herein below:

“The Government has considered the recommendations of the Sixth Central Pay Commission for introduction of a MACPS and has accepted the same with further modification to grant three financial upgradations under the MACPS at intervals of 10, 20 and 30 years of continuous regular service.”

10. As per Para 13 of MACP Scheme the existing time-bound promotion scheme shall not run concurrently with the MACP Scheme. Relevant para is reproduced here as under:

“13. Existing time-bound promotion scheme, including in-situ promotion scheme, Staff Car Driver Scheme or any other kind of promotion scheme existing for a particular category of employees in a Ministry/Department or its offices, may continue to be operational for the concerned category of employees if it is decided by the concerned administrative authorities to retain such Schemes, after necessary consultations or they may switch-over to the MACPS. However, these Schemes shall not run concurrently with the MACPS.”

11. The provisions laid down in para 3 (a), (b), (c) of the In-Situ promotion scheme, 1990 are reproduced as under:

“.....(a) Scientist 1 level Officer working in the grade of Rs. 2200-4000 (pre-revised) shall be promoted to the S-2 level in the grade of Rs. 3000-4500 (Non-technical)/ Rs. 3000-5000 (Technical) on completion of 5 years of regular service in the grade of Rs. 2200-4000 (pre-revised) on the basis of assessment.

(b) Scientist 2 level Scientists/officers working in the grade of Rs. 3000-4500/3000-5000 shall be promoted to S-3 level in the scale of Rs. 3700-5000 on completion of 5 years of regular service in the grade of Rs. 3000-4500/3000-5000 on the basis of assessment.

(c) Scientist 3 level Scientist / Officers working in the grade of Rs. 3700-5000 shall be promoted to the Scientist 4 level in the scale of Rs. 4500-5700 on completion of 5 years of regular service in the grade of Rs. 3700-5000 on the basis of assessment.... ”

12. In the above backdrop, we are of the considered view that promotion means advancement to the next post in the hierarchy, which would only mean promotion when it is higher pay scale or a higher post. The petitioner was promoted to Jr. Bacteriologist in the pay scale of Rs. 10,000-15,200/- w.e.f. 29.09.2001 vide office order No. F.18(6)/CED(M)/98/2003/163/11155 dated 25.06.2003 on adhoc basis under In-Situ Promotion Rules, 1990. Thereafter, he was promoted into the next higher grade i.e 12000-16500/-(pre-revised) dated 16.03.2010 w.e.f 29.09.2006 on adhoc basis vide office order No.UDC(M)-I/CED(M)/2010/1258 again under In-Situ Promotion Rules,1990. The third financial upgradation claimed by the petitioner cannot be granted to him as he is already being governed by a special In-Situ Promotion scheme, 1990 and as per paragraph 13 of the MACP Guidelines the existing time bound promotion scheme i.e. In-Situ promotion scheme would continue to be operational and shall not run concurrently with the MACP Scheme. In order to receive the third financial upgradation under the In-Situ Promotion Scheme it was mandatory for the petitioner to complete 15 years of regular service but he retired on superannuation on 31.03.2011 which is prior to the above requirement and therefore, the instant writ petition is devoid of merit.

13. In view of the above, we find no infirmity in the Order dated 27.10.2015 passed by the Tribunal. Resultantly, the writ petition is without any merit and the same is dismissed. No order as to costs.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

DECEMBER 22, 2015

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