

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.13390 of 2016
Date of decision: July 13, 2016**

Anil Kumar

.....Petitioner

Vs.

Union of India and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr. Anil Kumar, Advocate for the petitioner.

Ajay Kumar Mittal,J.

1. The petitioner prays for quashing the impugned order dated 1.3.2016, Annexure P.4 passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh rejecting his claim for financial upgradation w.e.f 10.5.2011 and regular promotion. Further prayer has been made for quashing the orders dated 9.5.2014 and 29.7.2014, Annexures A.19 and A.30 respectively.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. On 15.1.1986, the petitioner joined Central Scientific Instruments Organization (CSIR) as Section Officer (G) at Bhopal. He was

promoted on 13.6.1995 as Administrative Officer and was posted at Lucknow. On

10.5.2001, he was promoted as Controller of Administration and was posted at Lucknow. On 26.5.2011, the petitioner on his transfer joined CSIR-CSIO, Chandigarh in the same capacity. The petitioner retired on 30.9.2014. On 10.5.2011, the petitioner became eligible for third financial upgradation under the Modified Assured Career Progression Scheme (MACPS) on completion of 10 years of service in the same grade pay i.e. ₹ 15600-39100 with grade pay of ₹ 7600/- as per para 1 of MACPS guidelines dated 19.5.2009, Annexure A.3. As per para 17 of the MACPS guidelines dated 19.5.2009, Annexure A.3, the financial upgradation would be on non functional basis subject to fitness in the hierarchy of grade pay within the PB-1. Thereafter, for upgradation under the MACPS, the benchmark of good would be applicable till the grade pay of ₹ 6600/- in PB-3. The benchmark will be very good for financial upgradation to the grade pay of ₹ 7600/- and above. The CSIR vide circular dated 12.6.2012, Annexure A.7 issued the seniority list of Deputy Secretaries/Controllers of Administration and the name of the petitioner stood at Sr.No.5. Vide letter dated 24.12.2012, CSIR called the petitioner for interview for regular promotion to the post of Senior Controller of Administration/Sr.Deputy Secretary in PB-4 i.e. ₹ 37400-67000 with grade pay of ₹ 8700/- for the vacancy for the year 2013-14 as per CSIR Recruitment and Promotion Rules for Administrative Staff 1982, Annexure A.9. Vide letter dated 16.1.2013, Annexure A.10, CSIR declared the panel for promotion to the post of Sr.Deputy Secretary/Sr. Controller of Administration for the vacancy year 2013-14 and the petitioner was not recommended for promotion. The petitioner vide letter dated 6.9.2013, Annexure A.11 obtained copies of available ACRs for the period from 1.4.1996 to 31.3.2010 under the RTI Act wherein the grading was good, very good and outstanding. The CSIR vide letter dated 30.12.2013, Annexure A.12 notified the eligibility of the petitioner for grant of financial upgradation w.e.f 10.5.2011. Vide circular dated 6.2.2014, Annexure A.13, the CSIR issued All India Financial Seniority lists of Common cadre officers as on 1.1.2014. The petitioner's name stood at Sr. No.2 out of 33 in the category of Deputy Secretary/Controller of Administration. The

A.14, A.16 and A.31 respectively. Vide letter dated 9.5.2014, Annexure A.19, the CSIR declared the result of the screening committee which met on 21.4.2014 and the petitioner's name did not appear in the list of officers recommended for grant of financial upgradation w.e.f 10.5.2011. According to the petitioner, the matter was put up before the committee without giving him any opportunity of making representation against the ACRs containing below benchmark grading for the year 2003-04 in terms of letter dated 13.4.2010, Annexure A.5 and for the years 2008-09 and 2009-10 in terms of letter dated 14.5.2009, Annexure A.2. Vide letter dated 2.7.2014, Annexure A.20, the petitioner was informed that his representation had been reconsidered and the competent authority had decided to adopt letter dated 13.4.2010, Annexure A.5 from the reporting period 2014-15 onwards. It was further stated that the decision was applicable in all the cases of similar nature and not in the case of the petitioner only. Vide letter dated 2.7.2014, Annexure A.21, the petitioner was called for interview on 29.7.2014 for regular promotion to the post of Sr. Deputy Secretary. The benchmark gradings were communicated to the petitioner vide letter dated 9.7.2014, Annexure A.22. The petitioner again submitted a representation dated 23.7.2014, Annexure A.23 and appeared for interview for the year 2013-14 for regular promotion. On 23.7.2014, Annexure A.24, the petitioner made representation against the entries and final grading recorded for the year 2010-11. The CSIR vide letter dated 29.7.2014, Annexure A.30 declared the panel for the post of Sr. Deputy Secretary/Sr. Controller of Administration for the vacancy year 2013-14 thereby empanelling the officer junior to the petitioner for promotion. The case of the petitioner was placed before the Departmental Promotion Committee without disposing of the representation dated 23.7.2014, Annexure A.24 of the petitioner against the entries recorded for the year 2010-11. The petitioner filed application before the Tribunal on 14.5.2015. Vide order dated 1.3.2016, Annexure P.4, the Tribunal rejected the claim made by the petitioner. Thereafter, the petitioner filed review application. Vide order dated 12.4.2016, Annexure P.6, the Tribunal rejected the said application. Hence the instant writ petition by the petitioner.

3. We have heard learned counsel for the petitioner.

4. On perusal of the impugned order dated 1.3.2016, Annexure P.4 passed by the Tribunal, we find that claim of the petitioner was considered by the respondent authorities keeping in view his overall service record and the relevant rules and instructions. Since the petitioner did not achieve the required bench mark required for financial upgradation and regular promotion, he was not found to be eligible as per the relevant guidelines. The detailed findings have been recorded by the Tribunal for rejecting the claim made by the petitioner. The relevant part of the order passed by the Tribunal reads thus:-

“15. We are also of the view that the preliminary objections taken by the respondents regarding the O.A. being barred by limitation, non joinder of CSIR as necessary party and multiple relief regarding financial upgradation under MACPs and promotion as Sr. Deputy Secretary being sought through this O.A. appear to be valid as per the material on record and hence the O.A. is not maintainable as per the Administrative Tribunals Act, 1985. Undoubtedly, the CSIR is an autonomous body and the circulars/guidelines issued by the Ministry to the Govt. of India from time to time regarding service of Central Govt. Employees cannot be considered to be applicable mutatis mutandis to an autonomous organization. The Governing body/competent authority is an organization such as CSIR has to take a decision regarding applicability of the instructions/circulars issued by Ministry of Personnel Govt. of India, as well as the date from which these instructions shall be applicable. If these instructions were to be made operational with retrospective effect in such autonomous bodies, this would have the unintended consequence of unsettling many settled issues and would certainly disturb the functioning of these organizations. To us, it is apparent that judgment in the case of HC Sharma (supra) is applicable in the present matter to the case of

CSIR. Since the CSIR adopted the DoPT's OMs regarding conveying of ACR/APARs from particular dates, the decision in this regard cannot be questioned. Admittedly, the applicant could have sought the copies of his ACRs through RTI at any time after the Act came into force but he sought the same in 2013 and these were conveyed to him in September 2013 (Annexure A.11). Even then, he did not submit any representation in respect of ACRs where grading was below bench mark level although the applicant having worked in the CSIR on the administrative side for long years would certainly be well aware of the implication of expressions such as bench mark grading and the MACPS as applicable to officers drawing grade pay at his level. Since the applicant has been graded as good while bench mark for financial upgradation from GP 7600/- to GP 8700, was very good, he could not make the grade. Similar is the position regarding claim of the applicant for promotion where again on the basis of the assessment of the applicant as per the guidelines of CSIR which involved selection on the basis of performance in service as well as interview, the DPC graded him good and thus he was not considered for promotion.

16. In view of the discussion above, we conclude that the applicant's claim for MACP w.e.f 10.5.2011 and promotion to the post of Senior Deputy Secretary/Senior COA is without merit. The O.A. is hence rejected. No costs."

5. With regard to the judgment cited by the learned counsel for the petitioner in ***Dev Dutt vs. Union of India and others***, Civil Appeal No.7631 of 2002 decided on 12.5.2008, it may be noticed that the same being based on individual fact situation involved therein does not come to the rescue of the petitioner. Further, learned counsel for the petitioner has not been able to show any material to substantiate the claim made on behalf of the petitioner. He has also not been able to point out any illegality or

perversity in the findings recorded by the Tribunal. Consequently, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

July 13, 2016

(Ramendra Jain)
Judge

‘gs’

Whether speaking/reasoned	Yes/No
Whether reportable	Yes