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

\+ W.P.(C) 2749/2016

% ***Judgment Dated**: 12th July, 2016*

GOVT. OF NCT OF DELHI & ORS ..... Petitioners
Through : Mr. Mukesh Kumar Singh, Advocate.

versus

N.K. ROHATGI ..... Respondent
Through : Nemo.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE I.S.MEHTA

G.S.SISTANI, J (*ORAL)*

CM Nos. 11577-78/2016 (Exemption)

1. Exemption allowed subject to all just exceptions.
2. Accordingly, these applications stand disposed of.

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3. The challenge in this writ petition is to the order dated 6th October, 2015 passed by the Central Administrative Tribunal (CAT) by which an OA filed by the respondent seeking grant of MACP has been allowed.
4. An additional affidavit has been filed wherein it has been deposed as under:

> *"That as per record, Sh.N.K. Rohtagi completed 30 years of regular service on 10.01.2002 and was accordingly eligible for 3rd financial upgradation with effect from 01.09.2008 i.e. the date of introduction of the MACP Scheme.*
>
> *That as on the due date of eligibility of MACP i.e. 01.09.2008, Sh. Rohtagi was holding the higher post of JAO on ad hoc basis, while holding the post of UDC on regular basis.*
>
> *That as per Para-26 of the annexure to the OM dated 19.05.2009 of GOI, DoPT, cases of persons holding higher posts*

purely on ad hoc basis shall also be considered by the Screening Committee along with others. They may be allowed the benefit of financial up gradation on reversion to the lower post or if it is beneficial vis-à-vis the pay drawn on ad hoc basic.

That accordingly the case of Sh. Rohtagi is to be considered by his cadre controlling authority with reference to the post of UDC, the post he was holding on regular basis.

That as on the due date of his eligibility for 3rd financial upgradation under MACP Scheme i.e. on 01.09.2008, Sh. N.K. Rohtagi was holding the post of Junior Accounts Officer on ad hoc basis. However, on the said date, he was holding the post of UDC on regular basis. So as on 01.09.2008, he would have drawn pay in PB-2: Rs.9300-34800 plus Grade pay Rs.4200/- had he not been holding the post of JAO on ad hoc basis. Accordingly, Sh. Rohtagi was entitled to 3rd financial upgradation on 01.09.2008 in the Grade Pay of Rs.4600/-, being the next hierarchical Grade Pay, in terms of Govt. of India, Dept. of Personnel & Training, OM No.35034/3/2008-Estt.(D), dated 19th May 2009.

That accordingly, Sh. Rohtagi, AAO (Retired) is not entitled for financial upgradation in the Grade Pay of Rs.5400 but only in the Grade Pay of Rs.4600/-.

That however, Sh.N.K. Rohtagi was already drawing higher grade of Rs.4800/- as on 01.09.2008 i.e. the due date for 3rd financial upgradation, consequent upon his promotion on ad hoc basis to the post of Junior Accounts Officer with effect from 28.01.2004."

5. The learned counsel for the petitioner submits that the respondent was holding a higher post of Junior Accounts Officer (JAO) on *ad hoc* basis while holding the post of Upper Division Clerk (UDC) on regular basis. It is further submitted that as per para 26 of the annexure to the OM dated 19.05.2009 of DoPT, GOI cases of persons holding higher post purely on *ad hoc* basis shall also be considered by the Screening Committee along with others.

6. While relying on the additional affidavit, it is stated that a person may be allowed the benefit of financial upgradation on reversion to the lower post or if it is beneficial vis-a-vis the pay drawn on *ad hoc* basis.
7. It is further submitted that accordingly the case of respondent is to be considered by his cadre controlling authority with reference to the post of Upper Division Clerk (UDC), the post he was holding on regular basis as on the due date of his eligibility for 3rd financial upgradation under MACP Scheme, i.e. on 01.09.2008, the respondent was holding the post of Junior Accounts Officer (JAO) on *ad hoc* basis. However, on the said date, he was holding the post of UDC on regular basis. So as on 01.09.2008, he would have drawn pay in PB-2: Rs.9300-34800 plus Grade pay Rs.4200/- had he not been holding the post of Junior Accounts Officer (JAO) on *ad hoc* basis and accordingly, the respondent was entitled to 3rd financial upgradation on 01.09.2008 in the Grade Pay of Rs.4600/-, being the next hierarchical Grade Pay, in terms of OM No.35034/3/2008-Estt.(D) of Govt. of India, Dept. Of Personnel & Training, dated 19th May, 2009. Therefore, the respondent/Sh. Rohtagi, Assistant Accounts Officer (AAO) (Retired) is not entitled for financial upgradation in the Grade Pay of Rs.5400 but only in the Grade Pay of Rs.4600/-.
8. It is further submitted that, however, the respondent was already drawing higher grade of Rs.4800/- as on 01.09.2008, i.e. the due date for 3rd financial upgradation, consequent upon his promotion on *ad hoc* basis to the post of Junior Accounts Officer (JAO) with effect from 28.01.2004.
9. Learned counsel for the petitioner submits that the above facts which are urged before us during the course of hearing today inadvertently could not be brought to the notice of learned Tribunal.
10. Learned counsel for the petitioner seeks leave to withdraw the instant writ petition with liberty to file a review application, bringing out the correct

facts, before the learned Tribunal.

11. Accordingly, the writ petition is disposed of with liberty as prayed for to file a review application before the learned Tribunal and in case, the review application is filed within a period of two weeks from today, the Tribunal would take a lenient view with regard to the issue of limitation.
12. The petitioner will also seek leave of the Tribunal to place additional affidavit on record bringing out the correct facts.
13. This writ petition is disposed of in above terms.

CM No.11579/2016 (stay)

14. In view of the order passed in the writ petition, this application has been rendered infructuous. The same stands disposed of as such.
15. *Dasti* under the signatures of the Court Master.

G.S.SISTANI, J

I.S.MEHTA, J

JULY 12, 2016
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