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

\+ **W.P.(C) 10337/2017**

GOVT OF NCT OF DELHI AND ORS ..... Petitioner

Through: Mrs. Avnish Ahlawat, SC, GNCTD with Mr. N. K. Singh, Advocate.

versus

N K ROHATGI ..... Respondent

Through: Respondent in person.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **10.12.2019**

CM APPL. 42139/2017 (exemption)

1. Allowed, subject to all just exceptions.

W.P.(C) 10337/2017, CM APPL. 42140/2017 and CM APPL. 15053/2018

2. The Petitioner has challenged the order dated 16th May, 2017 passed by Central Administrative Tribunal (CAT), Principal Bench, New Delhi in Review Application No.11/2017 in OA No.1781/2013 whereby CAT had directed the Petitioner to grant third MACP to Respondent allowing grade pay of Rs.5,400/- and payment of arrears from 31st December, 2009 to 31st March, 2011 and to revise the pension of the Respondent accordingly. The case of the Petitioners is that the Respondent had joined the service with Petitioner as Lower Division Clerk (LDC) on 10th January, 1972. He was granted one promotion as Upper Division Clerk (UDC) with effect from 23rd

September, 1985 and he was also granted second financial upgradation under ACP Scheme in the pay scale of Rs.5,000-8,000 in the promotional hierarchy with effect from 9th August, 1999 vide order dated 30th November, 2000. The Respondent was appointed as Junior Accounts Officer (JAO) on ad-hoc basis on 28th January, 2004 and the said higher post cannot be counted for financial upgradation either under the ACP Scheme or the MACP Scheme as it was not a regular promotion. The Respondent completed 30 years of regular service on 10th January, 2002 and as such he was entitled to third financial upgradation with effect from 1st September, 2008. On the said date of eligibility, i.e. 1st September, 2008 Respondent was holding the regular post of UDC and ad-hoc post of JAO. As per the Petitioner, para No.26 of the OM dated 19th May, 2009 dealing with cases of persons on ad-hoc promotion provides as under:

> "26. 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 upgradation on reversion to the lower post or if it is beneficial vis-a-vis the pay drawn on ad hoc basis."

Hence, the Respondent was to be considered for grant of third MACP with respect to the post of UDC, which he was holding on regular basis in pay band-II of Rs.9,300-34,800 + grade pay and the third MACP would have been in the grade pay of Rs.4,600/- and not Rs.5,400/- with respect to the post of JAO, which he was holding on ad-hoc basis.

3. The Respondent challenged the same by filing OA No.1781/2013 before CAT and prayed for grant of third MACP with grade pay of Rs.5,400/- with

effect from 1st September, 2008 along with arrears from the said date. Counter affidavit was filed by the Petitioners before CAT and after hearing both the parties, OA was allowed by CAT.

4. The Petitioner filed Writ Petition (Civil) No.2749/2016 before this Court. An additional affidavit was also filed. However, this Court observed that the grounds mentioned in the additional affidavit and the writ petition were not addressed before CAT. Hence, writ petition was disposed of on 12th July, 2016 with liberty to file a Review application before the Tribunal. The said order of this Court is reproduced here under:

> "**<u>W.P. (C) 2749/2016</u>**
> 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.
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> 4. An additional affidavit has been filed wherein it has been deposed as under:
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> > "*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 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-a-vis the pay drawn on ad hoc basis.

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 hierarchial 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 Fay 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."

5. The Petitioner again approached CAT and filed RA No.11/2017. However, the arguments of Petitioner were not considered and relief was granted only to the extent of modifying certain dates in the earlier order dated 6th October, 2015. The relief so granted was modified as under:

> "9. Therefore, what the respondents should have pointed out before the Hon'ble High Court was that instead of allowing Grade Pay of Rs.5400/- with effect from 1.09.2008 and payment of arrears from 1.09.2008 to 31.03.2011 (date of superannuation), this date should be 31.12.2009. This was neither pointed out at the stage of hearing of the OA nor before the Hon'ble High Court. But in view of the changed factual position, the RA is allowed and para 7 of the order dated 6.10.2015 passed in OA 1781/2013 is corrected as follows:
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> > "7. In view of above discussion, we allow the OA directing the respondents as follows:

> (i) Grant third MACP to the applicant in Grade Pay of Rs.5400/- from 31.12.2009 and payment of arrears from 31.12.2009 to 31.03.2011; and
>
> (ii) Revise the pension of the applicant based on enhanced pay and make payment of revised pensionary benefits viz. leave encashment, gratuity and commutation.
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> The above exercise should be undertaken within a period of two months from the receipt of a copy of this order. No costs."

> 10. Registry shall make necessary corrections in the order dated 6.10.2015 in OA 1781/2013 and issue a certified copy of the corrected order to both the parties."

6. The order dated 16th May, 2017 in RA No.11/2017 has been challenged on the grounds that CAT has wrongly held that the Respondent was entitled to third upgradation in the grade pay of Rs.5,400/-; it was not considered by CAT that Respondent was not entitled to financial upgradation in his ad-hoc Accounts Cadre but in his regular cadre of UDC; the financial upgradation can be granted only on the date of completion of 10 years, 20 years and 30 years of service or on the date of completion of 10 years in the same grade pay. Hence, financial upgradation cannot be granted on any other date than these deadlines.

7. Notice was issued. Counter reply was filed by the Respondent denying that he was granted second financial upgradation in the pay scale of Rs.5,000-8,000 with effect from 9th August, 1999. It has been further stated that the Petitioner has admitted that the Respondent was eligible for grant of

third financial upgradation with effect from 1st September, 2008 but the same has been denied to the Respondent. It is also stated that the Respondent was selected to the post of JAO on the basis of Limited Departmental Competitive Examination (LDCE), so he could not have been reverted to the post of UDC. He is entitled to be granted financial upgradation on the basis of pay drawn by him on ad-hoc basis. Hence, he was to be allowed financial upgradation with Rs.5,400/- grade pay with effect from 1st September, 2008 instead of grade pay of Rs.4,800/- drawn as Assistant Accounts Officer (AAO). Since, he was not drawing the pay of Rs.4,200 on 1st September, 2008 so he cannot be given financial upgradation of Rs.4,800 on 1st September, 2008. As per Respondent, the impugned order dated 16th May, 2017 passed by the CAT is in conformity with the instructions of MACPS. Since, he was holding the post of Assistant Accounts Officer with effect from 31st December, 2009 on regular basis, so the Tribunal was correct in granting him MACP with effect from 31st December, 2009. It is again prayed that he be granted grade pay of Rs.5,400/- with effect from 1st September, 2008 along with revision of pension with effect from 31st March, 2011.

8. Rejoinder has also been filed by the Government of NCT of Delhi. An order dated 9th January, 2018 has been enclosed wherein higher grade pay of Rs.4,800/- was granted to the Respondent in view of the order passed by this Court dated 24th November, 2017.

9. We have heard Mrs. Avnish Ahlawat, learned counsel for the Petitioner and the Respondent in person. The only issue involved in this case is the

interpretation of para 26 of Annexure 1 titled 'Modified Assured Career Progression Scheme' (MACPS) attached with OM No.19/2009 by which MACPS was introduced by Government of India for Central Government Civilian employees. The said para is again reproduced as under:

> "26. 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 upgradation on reversion to the lower post or if it is beneficial vis-a-vis the pay drawn on ad hoc basis."

10. It is not in dispute that the Respondent was working as the UDC in Grade III DASS on the relevant date, i.e. 1^{st} September, 2008. However, by that time, he had already qualified the exam of Junior Accounts Officer but as there was no vacancy released, so he was working on ad-hoc basis with effect from 2^{nd} January, 2004 as JAO/AAO. The said post was later on merged with the post of Assistant Officer with effect from 8^{th} October, 2009. Hence, on 1^{st} September, 2008 the substantive post held by the Respondent was only UDC and ad hoc post held by him was of JAO/AAO. It is not in dispute that on 31^{st} December, 2009 Respondent was regularised in the post of AAO.

11. Now plain reading of para No.26 quoted above makes it clear that financial upgradation was available to the Respondent in his regular post, i.e. reversion as UDC with grade pay of Rs.4,200/- to the grade pay of Rs.4,800/- or the grade pay already drawn by him on ad-hoc basis, which was already Rs.4,800/-.

12. This proposition is to be looked from another angle that if it is presumed that the arguments of the Respondent is correct, that he was promoted as JAO on 2nd January, 2004 then on the effective date of 1st September, 2008 he has not completed 10 years in the said post being stagnated there after promotion to enable him to claim the benefit of MACP. The said benefit would have been available to him only with effect from 2nd January, 2014 but he has already retired on 31st March, 2011.

13. The order of this Court dated 12th July, 2016 in W.P. (C) No.2749/2016 takes note of these submissions of the Petitioners and accordingly the writ petition was disposed of and liberty was granted to the Petitioner to file a Review application before the Tribunal along with additional affidavit to bring on record the correct facts. However, even after bringing the correct facts on record by present Petitioners, the CAT misdirected itself and out of the blue came up with a new date, i.e. 31st December, 2009 as the date from which third MACP was ordered to be granted to present Respondent in the grade pay of Rs.5,400/- along with arrears from the said date till the date of retirement, i.e. 31st March, 2011. This was neither the case of the Applicant before the CAT nor of the present Petitioners before the said Tribunal.

14. The present Respondent, who was Applicant before CAT, in his counter affidavit has reiterated his original prayer to grant him grade pay of Rs.5,400/- with effect from 1st September, 2008 with consequential benefits on arrears as well as revision of the pensionary benefits. It means that the Respondent is also not satisfied with this imaginary date fixed by the CAT for grant of MACP, which is even otherwise in clear violation of the MACP

Scheme issued by the Government vide OM dated 19th May, 2009. There was no occasion to grant third MACP to the Respondent from the date when he was regularised in the promoted post of Assistant Accounts Officer.

15. The sacrosanct date is 1st September, 2008 when the Respondent was holding the regular post of the UDC and he was working on ad-hoc basis as AAO. The third MACP could have been granted to him on that date with enhanced grade pay of Rs.4,800/-. He was already drawing the salary in the said grade pay of Rs.4,800/- as AAO, so there was no occasion to grant him any MACP on the said date.

16. In view of the above, impugned order dated 16th May, 2017 of the CAT in RA No.11/2017 in OA No.1781/2013 is hereby set aside. Accordingly, the order dated 6th October, 2015 passed in OA 1781/2015 is also set aside. It is held that the Respondent was entitled to third MACP in his regular post of UDC with effect from 1st September, 2008 in the enhanced grade pay of Rs.4,800/- and consequently his pay is to be accordingly fixed. The pensionary benefits are to be accordingly revised and granted to him. Needful be done in 12 weeks by Petitioners.

17. The petition and the pending applications are disposed of.

S. MURALIDHAR, J

TALWANT SINGH, J

DECEMBER 10, 2019
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