

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 124 of 2018

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Banamber Sethy, aged about 58 years, S/o Late Bihari Sethy, At-Manjibag, PO-Balang, Dist.- Puri, presently working as Superintendent of Post Offices, Sambalpur Division, Sambalpur.

.....Applicant

VERSUS

1. Union of India represented through its Director General of Posts, Ministry of Communication, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110001.
2. The Chief Post Master General, Odisha Circle, Bhubaneswar – 751001.
3. The Post Master General, Berhampur Region, Berhampur-760001.
4. The Post Master General, Sambalpur Region, Sambalpur.

.....Respondents.

For the applicant : Mr.D.K.Mohanty, counsel

For the respondents: Mr.B.Swain, counsel

Heard & reserved on : 23.01.2020

Order on : 27.2.2020

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed this OA seeking the following reliefs:-

- “i) To quash the order dt. 18.07.2017 under Annexure A/9 only on the part of 2nd MACP.
- ii) To direct the Respondents to grant 2nd financial upgradation under MACP scheme w.e.f. 07.01.2010 as per under Annexure A/2 and accordingly extend the financial benefit with interest.
- iii) To pass any other order9s) as deem fit and proper.”

2. The applicant's claim in this OA is to be allowed the benefit of financial upgradation (2nd), under the Modified Assured Career Progression (in short MACP) Scheme with effect from the date which is in the currency of the punishment imposed on him in a disciplinary proceeding. The applicant was charge-sheeted while he was working as Inspector of Post Offices. The disciplinary authority imposed the punishment of compulsory retirement against which he filed the appeal. The appellate authority modified the punishment to reduction by 5 stages in the time scale of pay for a period of 5 years after his rejoining and it will have the effect of postponing future

increments of pay. Accordingly, the applicant rejoined in service on 12.5.2009. The applicant claims that he is entitled for 2nd MACP benefit w.e.f. 7.10.2010. Instead, the respondents have extended the said benefit w.e.f. 26.5.2014 vide order dated 18.7.2017 (Annexure-A/9). The applicant has submitted a representation dated 10.11.2017 (Annexure-A/11) to the respondent no.2 claiming the 2nd MACP benefit prior to the date allowed and the said representation is yet to be disposed of by the authorities.

3. The grounds urged in the OA are that the decision of the authorities in not allowing the benefit w.e.f. 7.1.1010 was unreasonable and arbitrary since although he joined in service on 24.2.1981 as Postal Assistant, but he was not allowed any upgradation benefit under TBOP/ACP etc. It is averred that similarly placed persons have been extended the benefit of MACP but the applicant has been discriminated. It is also alleged that there is violation of the principle of natural justice as no notice was given to him and there is loss of salary due to the impugned decision of the authorities.

4. Counter filed by the respondents did not dispute the basic facts of the case. It is stated that the modified punishment imposed on the applicant was current against him till 2014 and on completion of the currency of the punishment, the applicant was allowed the benefit of the MACP which is as per the rules and there is no violation of the principles of natural justice.

5. Heard learned counsel for the applicant. He submitted that vide the representation at Annexure-A/11 of the OA, the applicant has claimed the benefit of 2nd MACP after completion of 20 years of service on 5.6.2008 from the date of appointment as Inspector of Post Offices (on 4.6.1988. After deducting the period of compulsory retirement of 1 year 7 months and 2 days, his claim for the 2nd MACP will be from a later date 7.1.2010. he submitted that if the prayer is not allowed, then the applicant would have to undergo double punishment.

6. Per contra, learned counsel for the respondents was heard and he submitted that as per the para 18 of the MACP guidelines at Annexure-A/3 of the OA, it is provided that for disciplinary proceedings, the MACP benefit will be regulated as the promotion as per the CCS (CCA) Rules, 1965 and the guidelines issued thereunder. It was submitted that during currency of the punishment, the MACP benefit is not admissible since promotion is not admissible during that period. He also submitted that the reasons for the decision have been explained in para 11, 12 and 16 of the Counter.

7. We have considered the pleadings as well as the submissions by the parties. The contentions of the applicant at para 4.13 of the OA relating to his claim to antedate the 2nd MACP benefit states as under:-

“That, accordingly the MA is disposed of on 18.10.2017. The applicant aggrieved on the placement of 2nd financial upgradation under MACP scheme ventilated his grievance on 10.11.2017 to the Respondent No.2 for antedate his 2nd financial upgradation under MACP scheme. Though in the meantime the applicant promoted to higher post in the year 2015 since he is eligible for 2nd MACP in the year 2010, but now extending the said benefit on later date he is getting lesser pay in each month. Copies of order dt. 18.10.2017 & representation dt. 10.11.2017 is filed herewith as **Annexure A/10 & A/11 respectively**. Hence this OA.”

8. In reply in Counter, the respondents, have not denied about the representation dated 10.11.2017 submitted by the applicant to the respondent no.2. In the said representation, the applicant, it is submitted by the applicant as under:-

“As per the MACP scheme it postulates the specific condition that one regular employee has to be given financial upgradation for his stagnation. It is surprise enough my case has been considered for MACP by my authority after disposal of your goodself's kind intervention. Now I am depriving to get such benefit though I am eligible to get 2nd MACP counted from the date of direct recruitment in PA cadre i.e. from 24.02.1981 i.e. from 01.09.2008 after currency period is over. As I have not understood that I have been extended the 2nd and 3rd MACP in one date i.e. 26.5.2014 which amounts to colourable exercise of power of my authority.

Sir, as I understood the order of appellate authority that I have received some pensionary benefits when I was on compulsory retirement but fact remains nothing has been paid to me.”

In the representation, the applicant has claimed for the 2nd MACP benefit after 20 years from the date of his initial appointment on 24.2.1981 as Postal Assistant i.e. from 1.9.2008 to be considered after the currency of the punishment is over on 12.5.2014.

9. The para 18 of the MACP guidelines stipulate that the effect of the disciplinary proceedings on MACP will be as per the rules governing normal promotion. The punishment imposed by the appellate authority on the applicant as per his order dated 7.5.2009 (Annexure-A/2) is reduction in pay by 5 stages in the pay scale of the Inspector for a period of 5 years while earning annual increments and the punishment will have the effect of postponing future increments. It is clear that the punishment imposed is a major punishment and it does not have any effect on future promotion of the applicant.

10. From the representation of the applicant as extracted at para 8 above, the applicant was eligible to be considered for grant of 2nd MACP benefit w.e.f. 1.9.2008, considering his initial appointment as Postal Assistant to be on

24.2.1981. After modification of his punishment from compulsory retirement w.e.f. 5.10.2007 to reduction in pay for 5 years w.e.f. 12.5.2009, he was reinstated in service with the stipulation that the service from 5.10.2007 till 11.5.2009 would not be counted as duty and for this period he would get the pensionary benefits already received by him during the period. There is nothing on record to show that the case of the applicant for 2nd MACP benefit with effect from the applicant's eligibility for the same has been considered by the respondents after his reinstatement in service after modification of the applicant's punishment. The guidelines of the MACP do not debar the applicant from being considered for 2nd MACP benefit from 1.9.2008 or the date prior to 12.5.2009 as per his eligibility for 2nd MACP benefit as per the rules.

11. In view of the above discussions, the OA is disposed of with liberty to the applicant to file a detailed representation regarding his claim for antedating the 2nd MACP/ACP benefit as per the rules within 10 days from the date of receipt of a copy of this order and if the said representation is filed, then the respondent No. 2 will consider the same in accordance with the extant rules. If no such representation is filed by the applicant within the time as stated above, then the Respondent No.2 will consider the applicant's representation dated 10.11.2017 (A/11) in accordance with the extant rules. The Respondent No.2, after considering the applicant's representation, will pass a speaking order, copy of which is to be communicated to the applicant within four months from the date of receipt of a copy of this order.

12. The OA stands disposed of as above. No order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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