

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK,**

ORDER SHEET

COURT NO. : 1
10/02/2020
O.A./260/809/2014

SUDHANSU SEKHAR DAS
-V/S-
M/O RAILWAYS

ITEM NO:57

FOR APPLICANTS(S) Adv. : Mr. B. Mohapatra

FOR RESPONDENTS(S) Adv.: Mr. S.K. Nayak

Notes of The Registry	Order of The Tribunal
	<p>Heard learned counsel for the applicant. He submitted that the applicant's case is that he was declared ineligible for the financial upgradation benefit under MACP as per his Annual Performance Appraisal Report (in short APAR,) whereas some his juniors were given such benefit vide order dated 4.7.2013 (Annexure-A/4). It was submitted that the applicant was never communicated any adverse or below bench mark APAR at any point of time. Although the applicant approached authorities through his representations for reconsideration of his case for financial upgradation, but it was not considered. It is submitted that the applicant has obtained the letter dated 10.12.2013 (Annexure-A/6) under the RTI Act, 2005 in which the applicant was informed that the request for the MACP benefit has been rejected. The orders dated 4.7.2013 (A/4) and dated 10.12.2013 (A/6) have been impugned by the applicant in this OA.</p>

Heard learned counsel for the respondents, who submitted that the applicant has challenged the letter dated 10.12.2013 (A/6), obtained under the RTI Act, 2005, which is not an order. He further submitted that the MACP benefit was not allowed to the applicant after assessment of his performance and ACR of the applicant. It is submitted that three year ACR rating of at least 8 is required for being eligible for MACP benefit as per the circular RBE No. 81/2010, but the applicant's ACR rating was 7 out of 15 in the preceding three years as explained in paragraphs 2 (D) and 7 of the Counter. Learned counsel for the respondents also submitted that the applicant in his prayer has claimed the benefit of MACP at par with his junior, which is not permissible as per the MACP guidelines as the MACP benefit is personal to an employee.

With regard to the averment in the OA that the applicant was never communicated any adverse ACRs, learned counsel for the respondents submitted that as per the railway Board circular RBE No. 136/2010, the below bench mark ACRs prior to 2008-09 are to be communicated to the concerned employee. He explained that in this case, the applicant's ACRs considered for the MACP benefit, were subsequent to 2008-09, which are not to be communicated to the applicant as per the RBE No. 136/2010.

It is seen from the para 2(D) of the Counter that the applicant's ACR rating previous

three years were 3, 3 and 1 and as per the Railway Board circular, minimum rating of 8 for three years was required for suitability for MACP benefit. The ACR rating of 1 was clearly the below bench mark ACR of the applicant which was not communicated to the applicant since there is no such averment in the Counter.

It is noticed that as per the Railway Board letter No. 2009/SCC/3/6 dated 18.8.2009, the guidelines of the DOPT's OM dated 14.5.2009 has been adopted for the Railways, in which there is provision for communication of all ACR entries for the year 2008-09 onwards. Such instructions were issued in pursuance of the judgment of Hon'ble Apex Court in the case of Dev Dutt vs. Union of India, 2008 (7) Scale 403 which was reiterated subsequently in the case of Sukhdev Singh vs. Union of India & Ors. in Civil Appeal No. 5892/2006. Hence, the decision of the respondents in this case to decide the case of the applicant on the basis of his ACR for which the rating was below bench mark, i.e. 1, without communicating the same to the applicant is in violation of the Railway Board circular dated 14.5.2009 as well as the judgment of Hon'ble Apex Court in the case of Dev Dutt (Supra). Hence, we are of the considered view that the applicant's case deserves consideration.

In case of a dispute relating to denial of promotion due to below bench mark ACR in the case of Abhijit Ghosh Dastidar vs. Union of India & Ors. in Civil Appeal No.

6227/2004, it was held by Hon'ble Apex Court vide judgment dated 22.10.2008 as under:-

"The entry of 'good' should have been communicated to him as he was having "very good" in the previous year. In those circumstances, in our opinion, non-communication of entries in the ACR of a public servant whether he is in civil, judicial, police or any other service (other than the armed forces), it has civil consequences because it may affect his chances for promotion or get other benefits. Hence, such non-communication would be arbitrary and as such violative of Article 14 of the Constitution. The same view has been reiterated in the above referred decision relied on by the appellant. Therefore, the entries "good" if at all granted to the appellant, the same should not have been taken into consideration for being considered for promotion to the higher grade. The respondent has no case that the appellant had ever been informed of the nature of the grading given to him. "

In this OA, the applicant claims the MACP benefit from the date his junior was allowed such benefit. This prayer is not permissible in view of the rules governing the MACP which state that such benefit will be personal to the employee and it is not linked to the seniority. But when the applicant's case was considered for MACP benefit vide order dated 4.7.2013, the below bench mark ACR entries (with the rating of 1 as stated in

para 2D of the Counter) should not have been taken into consideration, since the same was not communicated to the applicant who has retired in the meantime.

In the circumstances as discussed above and taking note the fact that the applicant has retired from service during pendency of the OA, we direct the respondents to reconsider the case of the applicant for the MACP benefit after ignoring the ACR for the year when the rating was 1 (one) by convening the meeting of the Screening Committee to review the case of the applicant as stated above. It is made clear that if the applicant is found eligible for the MACP benefit after reconsideration as above, then all consequential benefits including arrear salary and differential retirement benefits will be allowed to him by the respondents.

The OA is allowed as above with no order as to costs.

(SWARUP KUMAR MISHRA) MEMBER (J)	(GOKUL CHANDRA PATI) MEMBER (A)
kb	