

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

.....
Original Application No. 290/00099/2017

Reserved on : 20.02.2020
Pronounced on : 06.03.2020

CORAM

**HON'BLE MRS. HINA P.SHAH, MEMBER (J)
HON'BLE MS. ARCHANA NIGAM, MEMBER (A)**

Amar Singh Dangi s/o Shri Nopa Ram Dangi, Aged 55 years, By caste Jat, Resident of Neem Ka Thana, District Sikar (Rajasthan) (Presently working as P.A. in H.P.O., Didwana, under Respondent No.3)

.....Applicant

By Advocate: Mr. M.S.Godara

Versus

1. Union of India through Secretary, Ministry of Telecommunication, Department of Post, Dak Bhawan, New Delhi.
2. Chief Post Master General, Department of Post, Rajasthan Circle, Jaipur (Rajasthan)
3. Post Master General, Western Region, Jodhpur (Rajasthan).
4. Superintendent of Post Office, Nagaur, District Nagaur (Rajasthan).

.....Respondents

By Advocate : Mr. K.S.Yadav

ORDER

Per Mrs. Hina P.Shah

In the present Original Application filed u/s 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for a direction to grant 3rd benefit of MACP with Grade Pay of

Rs. 4800/- to the applicant w.e.f. date of completion of 30 years service on 12.1.2013 or in alternate from July 2014 with all consequential benefits and interest thereon.

2. The brief facts as stated by the applicant are as under:-

The applicant was initially appointed on the post of Postal Assistant vide order dated 10.01.1983. Subsequently he was sent for training of one month which he joined on 13.01.1983. After completion of training, he was issued appointment order dated 04.02.1983 giving appointment w.e.f 13.01.1983. It is his contention that he is entitled for third benefits under MACP Scheme as he has completed 30 years of service on 12.01.2013. He further states that out of 3 benefits under MACP Scheme, he has got 2 benefits of 10 and 20 years and he is getting his salary in the pay scale of Rs. 9300-34800 with Grade Pay of Rs.4200/- and on completion of 30 years of service on 12.01.2013, he became eligible for Grade Pay of Rs.4600/-, but the same is not extended to him. Therefore he made a representation to the respondents on 29.09.2015 but the respondents denied the same vide order dated 02.06.2016 (Annexure A-1). This benefit cannot be denied for the reason of pending criminal

case against him as per letter dated 5.07.2012 (Annexure A-4). It was further added that a criminal case / FIR was registered against him by the respondents on 22.05.1989 at CBI Police Thana, Jaipur due to which criminal trial is pending at Jaipur. Simultaneously, respondents issued a charge sheet to the applicant for the same incident vide Memo dated 01.04.2010 and Disciplinary Authority awarded punishment of recovery of Rs.18,573/-by exercising powers under Rule 12 of CCS (CCA) Rules vide order dated 30.06.2010. Against the said order the applicant preferred appeal, but the Appellate Authority enhanced the punishment by reduction of pay by one stage for a period of one and half year without cumulative effect vide order dated 21.07.2011. Even the Revision Petition was rejected by the Revisional Authority vide order dated 30.05.2016 (Annexure A-5). Therefore, being aggrieved by the order dated 02.06.2016 of the respondents, the applicant has filed the present OA.

3. The respondents have filed their reply dated 6.11.2017 stating that the applicant has challenged the order dated 02.06.2016 in the present OA by which he is denied the benefits of 3rd financial upgradation under MACP Scheme as criminal case in CBI Court, Jaipur in a fraud matter is

pending against him. The respondents further added that the letter dated 5.7.2012 relied upon by the applicant itself clearly declares that an official would be eligible to be considered for grant of financial upgradation under the ACP/MACP scheme, if no prosecution for a criminal charges is pending.

Therefore, the competent authority has rightly kept the applicant's financial upgradation in abeyance till further orders in view of the instructions contained in OM dated 14.09.1992 issued by the DOP&T under para 2 and 7, which provides that:-

"2. At the time of consideration of the cases of Govt. Servants for promotion, details of Govt. Servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:-

- (i) Govt. Servants under suspension
- (ii) Govt. Servants in respect of whom a charge sheet has been issued and disciplinary proceedings are pending; and
- (iii) Govt. servants in respect of whom prosecution for a criminal charge is pending.

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7. A Govt. servant, who is recommended for promotion by departmental promotion committee but in whose case any of the circumstances mention in para 2 above arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charges against him and

the provisions contained in this OM will be applicable in his case also."

In view of the above provisions, the competent authority rightly kept the financial upgradation of the applicant in abeyance till the conclusion of the disciplinary proceedings. The sole basis on which the applicant has been denied grant of third MACP is pendency of criminal case before the CBI Court Jaipur against the applicant. Although giving benefit of promotion in the next grade pay by way of financial upgradation and promotion are required to be treated as equal for the purpose of grant of financial upgradation, but the situation like this has been guided by DOP&T OM dated 14.9.1992 while providing in clear terms that in case prosecution in any criminal trial is pending, the result of promotion is required to be kept in sealed cover and can be given effect after conclusion of such proceedings, therefore, the applicant is not entitled for any relief especially when the provisions contained in the DOP&T OM dated 14.9.1992 remained intact.

4. No rejoinder has been filed by the applicant.

5. Heard Shri. M. S. Godara for the applicant and Shri. K.S.Yadav for the respondents and perused the material record available on record.

6. The applicant stated that the currency of disciplinary proceedings initiated against the applicant is over and, therefore, the applicant is entitled to the benefit of 3rd MACP after completion of 30 years of service. The respondents have denied the said benefit to the applicant contrary to rules. Even in the disciplinary proceedings, the punishment awarded to the applicant by the Appellate Authority on 21.7.2011 was in currency for a period of 1 ½ years, which was also over and hence the applicant became entitled for financial upgradation, but the respondents have not considered his case, therefore, the action of the respondents is not sustainable in the eyes of law.

7. On the contrary, the respondents stated that since criminal proceedings are pending before the CBI Court, Jaipur, therefore, the applicant is not entitled to any benefit till finalisation of the said criminal proceedings.

9. Considered the rival contentions of both the parties.

10. It is not in dispute that the criteria to be followed by the Departmental Screening Committee (DSC) while considering an employee for financial upgradation in terms of the MACP Scheme is the same as followed by the Departmental Promotion Committee (DPC) for regular promotion. The

DOP&T's Office Memorandum dated 14th September. 1992, prescribes procedure and guidelines to be followed on promotion of a Government servant against whom disciplinary/court proceedings are pending or whose conduct is under investigation. In the reply, the stand of the respondents is that since the prosecution for a criminal charge was pending before CBI Court, Jaipur, therefore, the competent authority has rightly ordered to keep the applicant's financial upgradation in abeyance till further orders in view of OM dated 14.9.1992. Though the respondents have referred to OM dated 14.9.1992, but they have not made it clear whether the case of the applicant for 3rd financial upgradation was placed before the DSC mentioning the categories provided in para-2 of the said OM and whether the findings of the DSC have been kept in sealed cover by adopting the procedure and guidelines provided in the OM dated 14.9.1992. The said OM provides certain procedure to be followed while considering the cases of such nature. From the pleadings of the parties, we also do not find any material to support the plea that the procedure prescribed under the above mentioned OM has been adopted and the findings of the DSC has been kept in sealed cover. Para 2.1 of the OM dated 14.9.1992, specifically provides

that the DPC shall assess the suitability of the employee coming within the purview of the circumstances mentioned in para 2 along with other eligible candidates without taking into consideration the disciplinary case/criminal prosecution pending. This OM further provides the procedure for dealing with such cases, but it appears that the respondents have not adopted the said procedure. The respondents simply pleaded that in view of the said OM, the competent authority has kept financial upgradation of the applicant in abeyance till further orders, which, in our view, is not just and proper when the said OM lays down a set procedure while dealing with such type of cases. Therefore, the case of the applicant is required to be considered by a review DSC and the said DSC shall follow the procedure and guidelines as provided in OM dated 14.9.1992.

11. Accordingly, the respondents are directed to constitute a review DSC for assessing the suitability of the applicant for financial upgradation, which in turn should follow the procedure and guidelines provided in the OM dated 14.09.1992. After recommendation of the said DSC, the same shall be dealt with in accordance with the procedure and guidelines prescribed in the said OM or any subsequent

OMs in this regard. This exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

12. The OA stands disposed of in above terms with no order as to costs.

**(ARCHANA NIGAM)
ADMV. MEMBER**

**(HINA P.SHAH)
JUDL. MEMBER**

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