

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/20/994/2014

HYDERABAD, this the 26th day of August, 2020



**Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member**

Y.Venkataiah S/o Late Y.Sunkappa,
Aged about 63 years, Retired Sub-Postmaster,
Georgepet Sub-Post Office, R/o 3/384,
Tapovanam, Ananthapur-515004,
Ananthapur Division, District Ananthapur.

...Applicant

(By Advocate : Mrs. Rachna Kumari)

Vs.

1. The Union of India, rep. by :
The Director General, Posts,
Department of Posts, Dak Bhavan,
Sansad Marg, New Delhi-1.
2. The Chief Postmaster general,
A.P.Circle, Hyderabad.
3. The Director of Postal Services,
Kurnool Region, Kurnool.
4. The Superintendent of Post Offices,
Ananthapur Division, Ananthapur-515 001.Respondents

(By Advocate: Mrs. K. Rajitha, Sr.CGSC)

O R D E R (ORAL)**Hon'ble Mr. B.V. Sudhakar, Admn. Member**Through Video Conferencing:

2. The O.A. has been filed in regard to grant of 3rd financial upgradation.
3. The brief facts of the case are that the applicant was recruited as Postal Assistant on 30.07.1974 in Anantapur Postal Division. On completion of 16 years of service, he was granted 'Time Bound One Promotion' w.e.f. 31.07.1990. He was further granted BCR promotion w.e.f. 01.01.2001. Pursuant to the recommendations of the VI CPC, the MACP Scheme was introduced. The applicant, having availed two upgradations - one under TBOP w.e.f. 31.07.1990 and the other one BCR promotion w.e.f. 01.01.2001 prior to the introduction of MACP Scheme, he is entitled for the 3rd MACP, on completion of 30 years of service as on 01.01.2004. The 3rd financial upgradation, which was due to be granted to the applicant, was not granted. In the meanwhile, the applicant retired from service on 31.07.2011. The applicant represented to the respondents seeking the 3rd financial upgradation, and thereupon he came to know that his case for 3rd financial upgradation could not be considered in view of the remarks in his Annual Confidential Reports. The applicant contends that the adverse entries/ below bench mark grading were not communicated to him. As per law, they have to be communicated. Aggrieved over non-grant of 3rd financial upgradation, the applicant has filed the present O.A.

4. The contentions of the applicant are that the 3rd financial up gradation is due to him but neither the same was granted nor the reasons thereof were communicated to him. After his retirement on 31.7.2011, his Annual Confidential Reports for the years from 2005-2006 to 2009-2010 were communicated in a bunch by the respondents vide order dated 25.1.2012. This, the applicant claims is incorrect. He claims that if there are any adverse entries /below bench mark, they have to be communicated invariably. Had it been done, the applicant would have got an opportunity to represent against the adverse entry/ below bench mark. Such an opportunity was denied to him. The MACP Scheme has been introduced by dispensing the TBOP/ BCR Scheme. The bench mark of 'Good' is to be followed in respect of financial up-gradation to the Grade Pay of Rs.6600/- and the bench mark of 'Very Good' to the Grade Pay of Rs.7600/- and above. The communication was issued on 01.09.2010. Therefore, it will have a prospective impact. The ACRs of the applicant belong to the period 2005-06 to 2009-10. The ACRs have been communicated to the applicant only after his retirement on 25.01.2012. The applicant has relied on the judgements of the Hon'ble Supreme Court of India in ***Abhijit Gosh Dastidar Vs UOI & Ors*** in Civil Appeal No.6227 of 2008 (arising out of SLP (C) No.26556 of 2004) & ***Dev Dutt Vs UOI*** {2008(8) SCC 725} to support his contentions. The applicant has also cited the order of the Ernakulam Bench of this Tribunal in O.A. No.895/2010 to re-affirm that he is eligible for the 3rd financial up-gradation.

5. The respondents stated in their reply statement that a Scrutiny Committee has been formed at the divisional level for scrutinizing the Annual Confidential Reports of the Postal Assistants for the preceding five years in order to examine their eligibility for grant of financial upgradation. The Committee has the power to grade the performance of the employee as 'Average', 'Good' & 'Very Good' as a one time measure. The Committee met on 18.2.2011 and graded the ACRs of the applicant as 'Average' for 2005-06 & 2009-10 and the applicant was informed that his case has not been recommended by the Committee because his grading is below the benchmark. The ACRs of the cited period were forwarded to the applicant on 25.01.2012 for representing to the concerned authorities. The applicant did represent to the Director, Postal Services and on rejection, appealed to the Post Master General, who has also rejected it on 02.04.2014. Therefore, as per MACP Scheme, in fact, the applicant is not fit to be considered for financial upgradation as per the grading recorded in his ACRs.

6. Heard Smt. Rachna Kumari, learned counsel for the applicant and Smt. K. Rajitha, learned Senior Standing Counsel appearing for the respondents, and perused the pleadings on record.

7(I) This is a case where in the 3rd financial up-gradation was denied to the applicant on the ground that his performance was graded as 'Average' in ACRs. We have gone through the MACP Scheme carefully and also other parameters relating to financial upgradation. As per the MACP Scheme, financial up-gradation would be granted only if the applicant were to have the

appropriate grading of 'Good'. As the applicant was having the grading of 'Average', he was not granted. Nevertheless, the applicant was communicated about his ACR grading. Thereupon, he represented to the Director, Postal Services and on rejection, appealed to the Post Master General, who has also rejected it on 02.04.2014. The rejection order is annexed as Annex.A-I at page 14 of the O.A which is extracted hereunder:



“Annexure-II”

In pursuance of the orders contained in R.O., Kurnool letter No. ST-1/APA/Review/ATP dated 01.2014, the competent authority has not agreed to for modification of Bench marks in respect of the following officials.

Sl. No.	Name of the official Sri/ Smt.	Designation
xxx	xxxx	xxx
5	<i>Y. Venkataiah (Retired)</i>	<i>PA, Georgepet LSG SO</i>

The order is conspicuously a non-speaking order, which is thus invalid under law. We take support of the The Hon'ble Supreme Court observations in the following cases to state what has been stated.

i) ***State of Uttar Pradesh vs. Ashok Kumar Nigam*** [(2013) 3 SCC 372], the Supreme Court observed in para 14 as under:

"Total non application of mind and the order being supported by no reason whatsoever would render the order passed as 'arbitrary'. Arbitrariness shall vitiate the administrative order..."

ii) In ***Ram Phal v. State of Haryana***, (2009) 3 SCC 258 : (2009) 2 SCC (Cri) 72 : (2009) 1 SCC (L&S) 645 at page 259, the Apex Court held as under:

*"6. The duty to give reasons for coming to a decision is of decisive importance which cannot be lawfully disregarded. The giving of the satisfactory reasons is required by the ordinary man's sense of justice and also a healthy discipline for all those who exercise power over others. This Court in *Raj Kishore Jha v. State of**

Bihar[(2003) 11 SCC 519 : 2004 SCC (Cri) 212] has stated: (SCC p. 527, para 19)

19. ... Reason is the heartbeat of every conclusion. Without the same, it becomes lifeless."



In view of the above observation of the Hon'ble Supreme Court, the appellate order of the Post Master General is lifeless and hence, invalid. Learned counsel for the applicant has argued that since the below bench mark grading was not communicated to the applicant, the 3rd financial up-gradation cannot be denied to him on the ground of 'Average' grading in his ACRs. This is not a logical presentation since the MACP Scheme prescribes that an employee has to be fit for promotion/ financial upgradation basing on the grading given in his ACR. The applicant is necessarily to have the bench mark grading of 'Good' to be considered for grant of 3rd financial upgradation. It would not be fair for the Tribunal to intervene and order for grant of 3rd financial up-gradation to the applicant. However, since the order issued by the Appellate Authority is invalid, we are of the view that the order in regard to grading the performance of the applicant needs to be quashed. Moreover, the 4th respondent in his letter dated nil.1.2014 has recommended to the competent authority for upgrading the ACRs. Therefore, we are of the view that the competent Appellate Authority has to review the performance of the applicant in terms of the contentions made by him in the O.A. as well as in the context of the recommendations of the 4th respondent vide letter referred to and thereafter decide the grading to be given for the performance of the applicant. Hence, the Appellate Authority is directed to complete the above exercise within 3 months from the date of receipt of this order. Based on the outcome of the review done by the Appellate Authority, the respondents may

examine the eligibility of the applicant for grant of 3rd financial up-gradation and issue orders accordingly.

(III) With the above direction, the O.A. is disposed with no order as to costs.



(B.V. SUDHAKAR)
MEMBER (ADMN.)

(ASHISH KALIA)
MEMBER(JUDL.)

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