

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD
Original Application No. 184/14**

This the 26th day of July, 2017

CORAM :

**HON'BLE SHRI M. NAGARAJAN, MEMBER (J)
HON'BLE SHRI E K BHARAT BHUSHAN, MEMBER(A)**

Shri M M Kadia,
Astt. Director (Training) (Rtd),
Postal Training Centre,
VAdodara – 390 022.
Residing At: 17, Purusharthnagar,
Radhanpur Road,
Mehsana – 384 002. ... Applicant

By Advocate Shri A D Vankar
V/s

The Union of India & Ors,
Notice to be served through

- 1 Secretary to the Govt. of India,
Ministry of Communication & I.T.,
Department of Posts,
Dak Bhavan, Sansad Marg, New Delhi – 110 001.
- 2 Chief Postmaster General,
Gujarat Circle, Khanpur, Ahmedabad – 380 001.
- 3 Director,
Postal Training Centre,
Vadodara – 390 022. ... Respondents

By Advocate Ms Prachi Upadhyay

ORDER

Per Shri M Nagarajan, Member(J)

- 1 The grievance of the applicant in this OA against the respondents is as to not providing him the third financial upgradation under the Modified Assured Career Progression Scheme (herein after called as MACPS). The applicant states that the respondents have wrongfully denied his claim for

third financial upgradation under MACPS.

2 The facts in brief as stated by the applicant in support of his grievance and claims are that he entered into service of the Postal Department on 1.7.1970 as a Postal Assistant. While working as such, by the order dated 1.6.1993 he was promoted to the cadre of Inspector of Posts w.e.f. 1.6.1993. Thereafter, by the order dated 8.6.1997 he was promoted to the cadre of Assistant Superintendent of Post Offices. While holding the post of ASPO, he was promoted in Postal Service Group 'B' on adhoc basis w.e.f. 19.06.2009. Thereafter on 16.12.2009 he was promoted in Postal Service Group 'B' on regular basis. He retired from service on 28.02.2010 on attaining the age of superannuation.

3 Subsequent to the date of his retirement, the Screening Committee met on 20.09.2010 for consideration of officials of Inspector of Posts Offices/Assistant Superintendent of Post Offices cadre working in Gujarat Circle for grant of the II and III financial upgradations under MACPS. The Screening Committee which met on 20.09.2010 did not recommend the case of the applicant for the third financial upgradation under MACPS due to unsatisfactory service records. Therefore, being aggrieved by the non recommendation of the Screening Committee, the applicant submitted his representation dated 2/5.07.2011 and 01.11.2011 to the Director General, Department of Posts, New Delhi with a request to consider his case for grant of third financial upgradation. He did not get any immediate response to the same. Therefore, the applicant submitted yet another representation dated 23.08.2013 vide Annexure A/6 with a request to grant the third financial upgradation w.e.f. 01.09.2008. There was no response to the said

representation dated 23.08.2013 vide Annexure A/6 also. Thus, being aggrieved by the inaction on the part of the respondents in considering his representation dated 23.08.2013 vide Annexure A/6 and the orders dated 11.03.2011 and 15.12.2011 respectively vide Annexures A/1 and A/2 the applicant presented the instant OA seeking a declaration that the said orders dated 11.03.2011 and 15.12.2011 are illegal, unjust, discriminative, bad in law and to quash and set aside the same. He is also seeking a direction to the respondents to convene a review DPC and to consider his case for grant of third financial upgradation under the MACPS w.e.f. 01.09.2008.

4 Pursuant to the notice of the OA, the respondents entered appearance and filed their detailed reply inter alia contending therein that the action on the part of the Screening Committee in not recommending the case of the applicant for third financial upgradation under MACPS cannot be faulted upon. They contend that non recommendation is strictly in terms of the MACPS introduced by the Postal Department dated 18.09.2009 vide Annexure A/3. The respondents resist the claim of the applicant for third financial upgradation w.e.f. 1.09.2008 on the ground that the applicant did not have the required/prescribed bench mark. They have specifically denied the contention of the applicant that the Screening Committee did not recommend his case for third financial upgradation under MACP on account of the fact that he was served with a memorandum of charges. They prayed that the OA be dismissed with costs.

5 The applicant also filed his rejoinder reiterating the averments, grounds and contentions urged in the OA.

6 Heard Shri A D Vankar, learned counsel for the applicant and Ms

Prachi Upadhyay, learned counsel for the respondents. Perused the pleadings and the documents annexed thereto.

7 The facts relating to the service particulars of the applicant are not in dispute.

8 Shri A D Vankar, learned counsel for the applicant argued that the impugned orders at Annexures A/1 and A/2 are not at all tenable in law. He submitted that the MACP Scheme came into operation w.e.f. 01.09.2008 and in view of the fact that the applicant having entered the service as a Postal Assistant on 01.07.1970, had completed 30 years of service as on 01.09.2008. As per the MACP scheme, the applicant is entitled for third financial upgradation on completion of 30 years of service from the date of entry grade. As such, the applicant is entitled to third financial upgradation w.e.f. 01.09.2008, he pointed out.

9 Referring to the fact that as on 01.09.2008 the applicant had completed 30 years of service, and that his gradings in the ACR/APAR for the preceding five years from 01.09.2008 i.e. for the period between 2003-04 and 2007-2008, the applicant is having the bench mark of '**Good**', Shri A D Vankar argued that the Screening Committee which met on 20.09.2010 ought to have recommended the case of the applicant for the third financial upgradation but by taking note of the fact that the applicant was served with a memorandum of charge dated 20.01.2010, the Screening Committee did not recommend the case of the applicant due to unsatisfactory service records. He contended that in view of the fact that the applicant became eligible for the third financial upgradation on 01.09.2008 itself, any event that had happened in his service subsequent to 01.09.2008 ought not to have been taken into account by the

Screening Committee.

10 Shri A D Vankar further contended that even otherwise the impugned orders are liable to be interfered with for the simple reason that the same did not disclose any reason for rejecting the claim of the applicant. He submitted that they are non speaking orders. He further contended that the Screening Committee ought to have recommended the case of the applicant since the respondents did not communicate the ACR/APAR of any particular years so as to enable him to seek upgradation of the gradings in the ACR/APAR. The respondents having failed to communicate the ACR/APAR cannot deprive the benefit under MACPS, he argued.

11 Yet another contention of Shri A D Vankar was that the respondents having granted promotion to the applicant to Group 'B' post based on the very same service records can have no reason to deny him the third financial upgradation for want of required bench mark. He submitted that the Screening Committee cannot adopt a procedure other than the one which are required to be followed in the case of normal promotion. In sum and substance, the argument of Shri A D Vankar was that the respondents having granted promotion to Group 'B' Services, ought not to have denied the benefit of third financial upgradation which is a non functional one. At the end he submitted that had the Screening Committee met immediately within the time prescribed under the MACP Scheme dated 18.09.2009 vide Annexure A/3, then, there would be no occasion for the Screening Committee to take into account the fact that the applicant was served with the charge memorandum dated 20.01.2010. Therefore, he submitted that the case of the applicant requires to be reconsidered and prayed that all the reliefs as sought

in the OA be granted.

12 Per contra, Ms Prachi Upadhyay, learned counsel for the respondents by reiterating the stand of the respondents in the reply submitted that the Screening Committee met on 20.09.2010 to assess the suitability of officers in the cadre of IPOs/ASPOs, has assessed the suitability of each officer with reference to their grading in the ACR for the years from 2003-004, 2004-05, 2005-2006, 2006-2007, 2007-2008. She pointed out that the applicant did not have the required bench mark of '**Good**' for the year 2005-06, the grading in respect of the year 2005-2006 is '**Average**'. She further pointed out that in respect of part of the year 2004-2005 his grading is '**Average**'. Therefore she submitted that until and unless the applicant establish that his bench mark/grading in his ACR/APAR for the period from 2003-04 to 2007-08 is either good or very good, he shall not contend that the action on the part of the Screening Committee in not recommending the case of the applicant for grant of third financial upgradation upon under MACPS is illegal, arbitrary, etc.

13 She drew our attention to paragraphs 17 and 18 of the MACP Scheme dated 18.09.2009 at Annexure A/3 and argued that the non recommendation of the applicant is strictly in terms of the conditions stipulated therein. By referring to the stand of the respondents at para 4 of the reply statement, she pointed out that the Charge Memorandum dated 20.1.2010 sheet was not at all the basis for not recommending the case of the applicant for grant of third financial upgradation. Therefore she prayed that the OA be dismissed with costs.

14 On perusal of the pleadings and the documents annexed thereto and

upon hearing the learned counsel for both the parties, the singular question that arises for our consideration is

“whether the action on the part of the Screening Committee which met on 20.09.2010 in not recommending the case of the applicant for third financial upgradation can be sustained?”

15 Admittedly the grant of third financial upgradation is subject fulfillment of the terms and conditions stipulated in the MACP Scheme dated 18.09.2009 vide Annexure A/3. Condition Nos. 17 is relevant for the purpose of the case on hand. It reads as under:-

“17 The financial upgradation would be on non-functional basis subject to fitness, in the hierarchy of grade pay within the PB-1. Thereafter for upgradation under the MACPS the benchmark of ‘good; would be applicable till the grade pay of Rs.6600/- in PB-3. The benchmark will be “Very Good” for financial upgradation to the grade pay of Rs.7600/- and above.”

The above paragraph 17 came to be modified by the DOPT OM bearing No. 35034/1/97-Estt.(D) dated 4.10.2012 and the relevant portion of the same is as under:-

“2. The ACP Scheme was applicable upto 31.8.2008 and was replaced by the Modified Career Progression Scheme (MACPS) with effect from 1.09.2008. As the revised pay scales are applicable w.e.f. 01.01.2006, those employees who received ACP between 01.01.2006 to 31.08.2008 got financial upgradation under ACP Scheme in the revised pay scales.

3. Instances of senior employees who got benefit under ACP Scheme prior to 1.1.2006 and are drawing less pay than their juniors who got benefits under ACP Scheme after 01.01.2006 (i.e. between 01.01.2006 and 31.08.2008) have been brought to the notice of this Department. The issue has been examined in consultation with the Department of Expenditure and it has been decided to allow stepping up of pay in such

cases where the senior, but for the pay revision on account of 6th CPC, would have continued to draw higher pay, subject to the following conditions:

- i. Both the junior and the senior Government servants should belong to the same cadre and the posts in which they have been promoted/financially upgraded should be identical in the same cadre.*
- ii. The pre-revised scale of pay and the revised grade pay of the lower and higher posts in which they are entitled to draw pay should be identical.*
- iii. The senior Government servant should have been drawing equal or more pay than the junior before receiving ACP/Promotion.*
- iv. The stipulations as contained in DOPT's O.M. No. 4f7/92-Estt.(Pay-I) dated 4.11.1993 along with revision of pay scales may be observed while granting such a stepping up of pay."*

The above modification does not make any change in view of the fact that the next promotional post is on selection basis. Therefore, the condition prescribed at para 17 of MACPS requires to be adhered to by the Screening Committee. Even otherwise, as on the date on which the DPC met, the above referred OM dated 04.10.2012 was not at all in existence. Be that as it may. We may note that it is not the case of the applicant that he had the bench mark of '**Good**' for the said period. Thus, there can be no doubt that the applicant did not have the bench mark of good.

16 The respondents at paragraph 9 of the reply have pointed out the gradings of the applicant for the last five years prior to the date of the meeting of the Screening Committee. It reads as under:-

2003-2004	2004-2005	2005-2006	2006-2007	2007-2008
Very Good	Good/Average	Average	Good	Good

The above particulars/gradings of the applicant demonstrate that he does not

have the required bench mark in respect of the years 2004-2005 and 2005-2006. Though the applicant has filed his rejoinder, there is no specific denial to the above facts stated at paragraph 9 of the reply.

17 In view of the specific contention of Shri A D Vankar that the Screening Committee did not recommend the case of the applicant on account of the fact that he was served with a charge memorandum dated 20.01.2010, it has become necessary for us to ascertain the same and in that direction Ms Prachi Upadhyay drew our attention to para 14 of the reply. The relevant portion of the same reads as under:-

“.....It is submitted that charge sheet was not the basis for rejecting the claim of applicant for grant of third MACP as contended by applicant. The committee has not considered any adverse took place after 01.09.2008. Therefore the argument of the applicant has no relevancy at all.”

There is no specific denial to the above categorical submission of the respondents.

18 At the end Shri A D Vankar argued that had the respondents communicated the ACR/APAR of 2004-2005 and 2005-2006 to the applicant, he would have got a chance to make a representation to the competent authority seeking upgradation of the same but due to the fact that the same was not communicated, the Screening Committee cannot rely upon uncommunicated gradings.. We are not in agreement with this submission. It is needless to mention that prior to the reporting period 2008-2009 only the adverse remarks in the ACR has to be communicated to the concerned officer for representation, if any to be considered by the competent authority. The new system of communicating the entire ACR is made applicable w.e.f. reporting period 2008-2009 pursuant to the judgment of Hon'ble Supreme

Court in the case of ***Dev Dutt versus Union of India & Ors. [2008 (8) SCC 725]***.

In other words, till the reporting period 2007-2008, the system of communicating the entire ACR was not the Rule or law. Therefore the applicant is not entitled to find fault with the non recommendation on the ground that the entire ACR was not made available to him so as to enable him to make representation.

19 To our specific query to Shri A D Vankar, “***whether the applicant has submitted any representation seeking upgradation of his grading for the years 2004-2005 and 2005-2006?***” he replied as “**No.**” The applicant having kept quiet without making any effort to get his gradings for the year 2004-2005 and 2005-2006 upgraded is not at all entitled to claim that he is entitled for third financial upgradation.

20 For the foregoing, we do not find any valid ground to interfere with the impugned orders at Annexures A/1 and A/2 which is based on the Minutes of the Screening Committee dated 20.09.2010 vide Annexure A/4 and consequently the question of giving any direction as prayed does not arise at all.

21 The OA deserves to be dismissed. Accordingly the stands dismissed. There shall be no orders as to costs.

(E K Bharat Bhushan)
Member(A)

(M Nagarajan)
Member(J)

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