

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE**

**ORIGINAL APPLICATION NO.170/450/2019
AND
MISCELLANEOUS APPLICATION NO. 170/207/2019**

ORDER RESERVED ON 16.03.2021

DATE OF ORDER: 12.04.2021

CORAM:

HON'BLE SHRI SURESH KUMAR MONGA, MEMBER (J)

HON'BLE SHRI RAKESH KUMAR GUPTA, MEMBER (A)

Sri V.N.Ramesh
Aged 66 years
S/o. V.Nagaraja Rao
Retired Hostel Manager
Central Silk Board
Silk Warm Seed Technology Laboratory
Now residing at Door No. G-2
'Sunrise Apartment'
7th Cross, Krishnamurthypuram
Mysore-570 004. ...Applicant

(By Advocate Shri Ranganatha S.Jois)

Vs.

1. The Union of India
Rep. by its Secretary
Ministry of Textiles
“Udyog Bhavan”
New Delhi-110001.
2. The Member-Secretary
Central Silk Board
CSB Complex
Madiwala
Bangalore-560 068. ...Respondents

(By Advocate Shri Vishnu Bhat)

ORDER**PER: RAKESH KUMAR GUPTA, MEMBER (A)**

1. The applicant had filed Miscellaneous Application No.207/2019 under Section 21(3) of the Administrative Tribunals Act, 1985 seeking condonation of delay of 8 months in filing the present Original Application.
2. The applicant had earlier filed Contempt Petition No.135/2016 in OA.No.537/2014, which was dismissed on 17.08.2017 with liberty to the applicant to challenge the order dated 07.10.2016 before the appropriate forum. The present Original Application was filed on 09.04.2019 challenging the order dated 07.10.2016 i.e. after more than one year from the date of disposal of the Contempt Petition on 17.08.2017. Along with the OA, the application for condonation of delay of 8 months had also been filed. The application for condonation of delay has not been replied by the respondents. However, there are sufficient grounds for condonation of the delay, hence the Miscellaneous Application No.207/2019 for condonation of delay is allowed, and the Original Application is taken up for disposal on merits.
3. The applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:
 - i. To quash the impugned order bearing No.CSB-63-(69)/2010-ES II (LAW), dated 7.10.2016, passed by the 2nd respondent (Annexure-A5) as it is arbitrary, illegal and violative of Articles 14 & 16 of the Constitution of India.

- ii. Issue consequential direction to the respondents to grant to the applicant the Second Stage ACP by treating him as eligible as per the Official Memorandum and grant him all the monetary benefits flowing there from including the revision of pension and other benefits with 12% interest per annum and;
- iii. Pass such other orders as this Hon'ble Tribunal may deem fit in the circumstances of the case, including the award of the costs of this application, in the interest of justice and equity.

4. The facts of the case, as averred by the learned counsel for the applicant Shri Ranganatha S.Jois, are as follows:

- a) The applicant was initially appointed as Hostel Manager in the pre-revised 4th CPC pay scale of Rs.2200-4000 on 24.11.1992.
- b) He was not granted any promotion throughout his career and retired without any promotion. He was granted the 1st Financial Upgradation under Assured Career Progression (ACP) Scheme after completing 12 years of service w.e.f. 28.11.2004 and was granted Grade Pay of Rs.6600/- in PB-3(Rs.10000-15200) as per 6th CPC.
- c) The applicant claimed that he was entitled for grant of second financial upgradation under Modified Assured Career Progression (MACP) scheme which provided for time-bound promotion on completing 10, 20 & 30 years of service. The applicant completed 20 years of service w.e.f. November, 2012. However, despite submitting representations to consider his claim for 2nd ACP, he was not granted the 2nd upgradation on the ground that for the purpose of consideration of financial upgradation under MACP, grading required was 'Very Good', whereas,

he had been graded as 'Good'. The said aspect has been clarified by the subsequent official memorandum issued by the Government on 19.05.2009 in which after giving a corrigendum, it has been clarified that for promotion and financial upgradation upto Rs.5500-9000, 6500-10500 prior to 01.01.2006 grading required was only 'Good' and the confidential report of the applicant clearly indicated that he has a grading of 'Good' as on 24.11.2012.

d) This Tribunal had partly allowed the OA.No.537/2014 filed by the applicant on 04.08.2016 and directed the respondents to consider the claim of the applicant as per the official memorandum. However, his request has been rejected once again by an order dated 07.10.2016 (Annexure-A5) which is under challenge in the present case. The respondents have rejected the representation of the applicant erroneously without taking into consideration the subsequent official memorandum issued by the department itself, wherein it has been held that promotions to the level of 12000-16500 and above will be on selection by merit. There is only one candidate in the field of selection, as the post of Hostel Manager is a solitary post, and therefore, the fact that he has the bench mark of 'Good' should have been considered for promotion to the second ACP. However, this has been rejected by the impugned order which is contrary to the earlier judgment of the Hon'ble Tribunal wherein it was directed to consider the claim of the

applicant in view of the official memorandum referred to by the applicant dtd.04.10.2012.

5. Learned counsel for the respondents Shri Vishnu Bhat has averred in his reply as follows:

- a) The Central Silk Board (CSB) is functioning under the administrative control of Ministry of Textiles, Govt. of India. The Board follows all the service conditions as applicable to the Central Govt. Employees of the Board. As such all service rules of Govt. of India apply mutatis-mutandis to Central Silk Board Employees.
- b) The ACP Scheme was implemented in CSB as per which, the employees are eligible to be considered for two financial upgradations on completion of 12 and 24 years of regular service subject to the conditions contained in the said scheme. Accordingly, the applicant was granted 1st financial upgradation under ACP Scheme in Pay Band-3(Rs.10000-15200) in the Grade Pay of Rs.6600 as per VI CPC w.e.f. 28.11.2004.
- c) Subsequently, the ACP scheme of 1999 was replaced by MACP Scheme effective from 01.09.2008. The benchmark for grant of financial upgradation under MACP scheme has been mentioned in para 17 of the OM dated 19.05.2009 which is reproduced as below:

“17. The financial upgradation would be on 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."

d) The Departmental Screening Committee(DSC) which met on 21.01.2013 made a detailed assessment of the service records/Annual Performance Assessment Reports(APARs) of the applicant for the preceding 5 years i.e. from 2007-08 to 2011-12 and awarded the following gradings in the said APARs:

APAR for the year	Gradings awarded
2007-08	Good
2008-09	Good
2009-10	Good
2010-11	Very Good
2011-12	Very Good

e) Based upon the service records and gradings awarded to the applicant in the APARs, he was awarded an overall grading of 'Good' by the DSC. Since the benchmark for grant of 2nd MACP in the Grade Pay of Rs. 7600/- was 'Very Good', hence the applicant's case was not recommended by the DSC for granting 2nd financial upgradation under MACP. The DSC had also recorded that the applicant's case will be reviewed after receipt of his APAR for the year 2012-13. Although the applicant was provided with the blank format of APAR for the year 2012-13 for self-appraisal, the applicant, without submitting his APAR, retired on 30.04.2013 on superannuation from service. Thus, his case for 2nd financial upgradation to the Grade Pay of Rs.7600 under MACPs could not be reviewed.

f) Subsequent to the directions issued by the Hon'ble Tribunal in OA.No.537/2014, the case of the applicant was re-examined based on the subsequent clarifications issued by DOPT vide OM dated 01.11.2010 and 04.10.2012. The relevant excerpts from the clarification issued by DOPT in OM No.35034/3/2008-Estt(D) (Vol.II) dated 01.11.2010 are as follows:

“Where the financial upgradation under MACPS also happen to be in the promotional grade and benchmark for promotion is lower than the benchmark for granting the benefits under MACPS as mentioned in Para-17 ibid, the benchmark for promotion shall apply to MACP also”.

g) Further, the clarification subsequently issued by DOPT vide OM No.35034/3/2008-Estt(D) (Vol.II) dated 04.10.2012 is as follows:

“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 MACPS, the benchmark of “Good” would be applicable till the Grade of Rs.6600/- in PB-3. The benchmark will be “Very Good” for financial upgradation to the Grade Pay of Rs.7600/- and above”.

h) The posts having Grade Pay of Rs.7600 are filled by selection method in Central Silk Board. As per the instructions issued by the DOPT the benchmark prescribed for departmental promotion for the posts carrying Grade Pay of Rs. 7600/- is ‘Very Good’. Since the applicant was graded as ‘Good’ by the DSC, it was not possible to grant any relaxation to consider the case of the applicant for grant of 2nd financial upgradation to the Grade Pay of Rs.7600/-.

i) The APARs for the period 2007-08, 2008-09 and 2009-10 which contained the gradings as ‘Good’ had been communicated to the

applicant and he was given an opportunity to make any representation against the entries and the final grading given in the reports, within a period of 15 days from the date of receipt of the communication. However, the applicant did not make any representation on the said APARs, which implies that the applicant had accepted the remarks/gradings endorsed in these APARs.

j) The post of Hostel Manager held by the applicant was an isolated post, however, even then, it is imperative to follow the guidelines of DOPT for grant of financial upgradation under MACP Scheme, and therefore, the contention of the applicant that consideration of his 'Good' grading is sufficient for the purpose of grant of 2nd financial upgradation under MACP Scheme is not sustainable.

6. After going through the pleadings made by both the parties as well as hearing the oral arguments put forth by the learned counsels for the parties, the following points are noted:

a) The Departmental Screening Committee assessed the applicant and awarded an overall grading of 'Good' based upon his Annual Performance Assessment Reports of the preceding 5 years i.e. from 2007-08 to 2011-12.

b) The applicant has pleaded that he should be given 2nd financial upgradation due to him under MACP based upon his overall grading of 'Good' on the grounds that the benchmark for getting 2nd financial

upgradation is 'Good', and the fact that the post of Hostel Manager is a solitary post and there was only one candidate in the field of selection.

7. However, the DOPT instructions contained in both the OMs dated 01.1.2010 & 04.10.2012, make it abundantly clear that for financial upgradation to the Grade Pay of Rs.7600 and above, the benchmark required for both MACP as well as for grant of promotion is 'Very Good'. The applicant has already been granted 1st financial upgradation in Pay Band 3(Rs.10000-15200) with Grade Pay of Rs.6600 and 2nd financial upgradation due to him was in the Grade Pay of Rs.7600. Hence, he was required to have a grading of 'Very Good' by the Departmental Screening Committee for getting the 2nd Financial Upgradation. However, based upon his service records and the APARs, he had been graded as 'Good' by the Departmental Screening Committee which met on 21.01.2013. There is no scope for any review of the case since the APARs were communicated to him and he had been given the full opportunity to represent against his gradings at that time. Therefore, there is no merit in the present OA and it is liable to be dismissed.

8. Accordingly, the OA being devoid of any merit, is dismissed.

9. However, there shall be no orders so as to costs.

(RAKESH KUMAR GUPTA)
MEMBER (ADMN)

(SURESH KUMAR MONGA)
MEMBER(JUDL)