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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

OA No. 406 of 2010

Arvinda Mishra .... Applicant  
Vs

Union of India & Others. .... Respondents  
.....

Order dated -27 -07-2011.

CORAM

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

AND

THE HON'BLE MR.A.K.PATNAIK, MEMBER (JUDL.)

.....

Applicant's prayer is to direct the Respondents to

grant him 3<sup>rd</sup> financial up gradation under MACP and grant him all consequential benefits with effect from the date he was entitled to/w.e.f. 01-09-2008 after quashing the order under Annexure-A/3 dated 08-07-2010 in which the applicant was denied the benefit of 3<sup>rd</sup> financial upgradation as he was not found fit by the Screening Committee.

2. The reason for not granting the 3<sup>rd</sup> financial upgradation under MACP to the Applicant as stated by the Respondents in their counter so also in course of hearing is that as per the Scheme grant of financial upgradation shall be subject to fitness. The principle applicable for assessing the suitability for promotion of an employee is mutatis and mutandis applicable for granting the financial upgradation under the MACP. Previous five

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years ACRs is the basis for assessing the suitability of an officer for promotion and as such is the governing factor for granting the benefit of MACP. The Rule governing the field for promotion provides overall assessment of relevant confidential reports and service records by the Screening Committee/DPC for finding an officer fit for promotion. One must have the grading of 'Good' <sup>in</sup> the ACR for the purpose of grant of the benefit of MACP. The case of the applicant was placed before the Screening Committee convened in July, 2009 to consider his suitability. Since the applicant could not satisfy the minimum benchmark of 'Good' as prescribed for grant of financial benefits due to 'average' CR during 2007-2008 the DPC/Screening Committee formed for the purpose did not find the applicant fit for enjoying the benefit extended under MACP from 1.9.2008. So the name of the applicant was not recommended for MACP from 1.9.2008. His name was again considered by the Committee which met in April, 2010 but his name was not recommended for the reason of below bench mark i.e. average in his ACR for the period 2007-2008. Hence the Respondents have prayed for dismissal of this OA.

3. Applicant has filed rejoinder trying to find fault with the decision of the Respondents in not granting him the benefit under MACP.

4. Having heard the parties, perused the materials placed on record. We find no procedural irregularity or illegality in not granting the benefit of 3<sup>rd</sup> financial up-gradation; especially when the applicant was not found fit by the DPC/Screening Committee due to 'average' grading in his CR for the period 2007-08. To that extent we uphold the decision of the Respondents. But we find substantial force in the contention of the Learned Counsel for the Applicant against denial of the benefit of third financial upgradation on the ground of 'average' grading in the ACR which was not communicated to him the same being de hors the law laid down by the Hon'ble Apex Court in the case of **Abhijit Ghosh Dastidar v Union of India and others**, (2010) 1 SCC (L&S) 959.

The operative paragraph of the said decision is extracted herein below:

"8. Coming to the second aspect, that though the benchmark "very good" is required for being considered for promotion, admittedly, the entry of "good" was not communicated to the appellant. 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 annual confidential report 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 of promotion or getting 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

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above referred decision (Dev Dutt case, SCC p.738 para 41) 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".

5. The stand of the Applicant that such average ACR was not communicated to him has not been controverted by the Respondents either in the counter or in course of hearing. As such we have no doubt in our mind that the principle decided by the Hon'ble Apex Court in the above case has the fullest application to the present case. In view of the above, the order under Annexure-A/3 declaring the applicant unfit for the purpose of grant of 3<sup>rd</sup> financial upgradation is quashed. Resultantly, the Respondents are hereby directed to review the case of the applicant in the light of the decision of the Hon'ble Apex Court and communicate the outcome of such review to the Applicant in a reasoned order within a period of 120 days from the date of receipt of copy of this order. With the aforesaid observation and direction this OA stands disposed of. No costs.

  
(A.K.PATNAIK)  
Member (Judl.)

  
(C.R.MOHAPATRA)  
Member (Admn.)