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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO.353 OF 2011

Cuttack this the 11th October, 2013

Sri Avimanyu Nayak...Applicant

-VERSUS-

Union of India & Ors. ...Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? ☒
2. Whether it be circulated to CAT, P.B., New Delhi or not ? ☒


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO.353 OF 2011

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HON'BLE SHRI A.K.PATNAIK, MEMBER(J)

HON'BLE SHRI R.C.MISRA, MEMBER(A)

Sri Avimanyu Nayak

Aged about 51 years

S/o.late Rasananda Nayak

At present working as Asst.Accounts Officer(BD)

In the office of the Chief Post Master General

Orissa Circle

Bhubaneswar-751 001

...Applicant

By the Advocate(s)-M/s.G.Rath

A.K.Rath

S.Rath

-VERSUS-

Union of India represented through

1. The Secretary
Department of Posts
Dak Bhavan
Sansad Marg
New Delhi-110 001
2. Dy.Director General(PAF)
Dak Bhavan
Sansad Marg
New Delhi-110 001
3. The Director of Accounts (Postal)
Mahanadi Vihar
Cuttack-753 004
4. The Chief Post Master General
Orissa Circle
Bhubaneswar-751 001

...Respondents

By the Advocate(s)-Mr.B.K.Mohapatra



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ORDER
HON'BLE SHRI R.C.MISRA, MEMBER(A)

In this Original Application under Section 19 of the A.T.Act, 1985, the applicant has approached this Tribunal making a prayer that the order of the Director, Postal Accounts (Res.No.3) dated 23.2.2011 regarding withdrawal of financial upgradation granted to him with effect from 1.9.2008 and also the order of Deputy Director General(PAF), New Delhi dated 13.4.2011 rejecting the representation of the applicant should be quashed. The applicant has made a further prayer that no recovery should be made from his pay towards the so called excess payment with effect from 1.9.2008.

2. The facts of the case in a nut shell are that the applicant was appointed as Upper Division Clerk (in short UDC) in the Savings Bank Control Organization (SBCO) under the Department of Posts on 27.5.1983. After the merger of LDC and UDC cadres in the Organization in the cadres of Postal Assistants, the applicant was designated as Postal Assistant (SBCO). He was given the Time Bound One Promotion (in short TBOP) after completion of ^{8 1/2} 15 years of service in the form of financial upgradation with effect from 21.9.1991. The Department of Posts subsequently clarified in their letter dated 9.9.2010 that the financial upgradation^{1/2} granted under TBOP/BCR Scheme of the Department are to be counted for the purpose of financial upgradation under the Modified Assured Career Progression (in short MACP) Scheme introduced in the Department of Posts with effect from 1.9.2008. The applicant was also promoted to the post of Junior



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Accounts Officer with effect from 28.12.2007. On the basis of the recommendations of the 6th Central Pay Commission, the posts of Junior Accounts Officer and Assistant Accounts Officer were merged in a common Pay Band (PB) and the cadre was re-designated as Assistant Accounts Officer. Accordingly, the applicant was also placed in the post of AAO with effect from 28.12.2007 onwards. After the Department of Personnel & Training introduced the MACP Scheme with effect from 1.9.2008, the Department of Posts also adopted the same Scheme with effect from 1.9.2008 and decided to withdraw the earlier Scheme of TBOP and BCR. The MACP Scheme envisaged three financial upgradations at the intervals of 10, 20 and 30 years of regular service. According to Para-28(B) of MACP Scheme if a Government servant (LDC) in PB-1 in the Grade Pay of Rs.1900 is granted 1st financial upgradation under the MACPS on completion of 10 years of service in the PB-1 in the Grade Pay of Rs.2000 and 5 years later he gets 1st regular promotion (UDC) in PB-1 in the Grade Pay of rs.2400, the 2nd financial upgradation under MACPS (in the next Grade Pay w.r.t. Grade Pay held by Government servant) will be granted on completion of 20 years of service in PB-1 in the Grade Pay of rs.2800. However, if two promotions are earned before completion of 20 years, only 3rd financial upgradation would be admissible on completion of 10 years of service in Grade Pay from the date of 2nd promotion or of 30th year of service, whichever is earlier. The applicant was recruited in the year 1983 and got his first financial upgradation under TBOP in the year 1991 and thereafter, got his first regular promotion in the year 2007 to the post of Assistant Accounts Officer. The MACP Scheme was adopted by the Department of Posts with

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effect from 1.9.2008 and the applicant was given his 2nd financial upgradation with effect from that date. The applicant had got one financial upgradation before completion of 20 years of service and he got his first regular promotion in the year 2007 after rendering more than 24 years of service. He was therefore, rightly granted the 2nd financial upgradation with effect from 1.9.2008 after 25 years of regular service in the Department. This was ^{as per} ~~in strict~~ illustration in Para-28(B) given in the MACP Scheme. However, the grievance of the applicant is that Res. No., i.e., the Director of Postal Accounts being influenced by his subordinate officers and without application of mind to the various provisions of MACP Scheme passed orders for withdrawing the 2nd financial upgradation with effect from 1.9.2008, by virtue of an Office Order dated 23.2.2011 in violation of the principles of natural justice. He also advised Respondent No.4, i.e., CPMG for recovering of the excess payment as a result of the grant of 2nd financial upgradation to him. Aggrieved with the above, the applicant had approached this Tribunal in O.A.No.116/2011 and this Tribunal disposed of the said O.A. on 9.3.2011 at the stage of admission giving a direction to the Deputy Director General (Res.No.2) to dispose of the pending representation of the applicant and pass a reasoned and speaking order. In compliance of the direction of this Tribunal, Res.No.2 rejected the representation of the applicant vide O.M. dated 13.4.2013. This order of rejection has been challenged by the applicant in the present O.A. The applicant has alleged that the rejection order issued by Res.No.2 on his representation is on wholly unsustainable grounds and therefore, it should be quashed by the Tribunal.

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3. The Respondent-Department have filed their counter affidavit in this case. It has been submitted that after the MACP Scheme was introduced by the the Department of Personnel & Training, Government of India, on the basis of the recommendations of 6th CPC, ^lThe Department of Posts also adopted the MACP Scheme by withdrawing their earlier Schemes called TBOP & BCR with effect from 1.9.2008. The applicant had already got one financial upgradation under the TBOP scheme and one regular promotion before the operation of the MACP Scheme with effect from 1.9.2008. The Respondents have also taken the position that the applicant is coming under the category of employees as illustrated in Para-28-B ^{cl} of Annexure-1 to O.M. dated 18.9.2009, which provides that if a Government servant has been granted either two regular promotions or 2nd financial upgradation under the ACP Scheme of August, 1999, after completion of 24 years of regular service then only 3rd financial upgradation would be admissible to him under the MACPS on completion of 30 years of service provided that he has not earned 3rd promotion in the hierarchy. It is the further submission of the Respondents that the applicant has already got one financial upgradation under TBOP and ^{one l}on regular promotion to the cadre of Asst. Accounts Officer before 1.9.2008 and hence he is eligible for 3rd MACP only ^{on l}completion ^{of l}on 30 years of service or 10 years continuously in the same Grade Pay whichever is earlier, if he does not earn further regular promotion. Hence, he is not entitled for 2nd MACP. After receipt of a clarificatory order from the Postal Directorate vide letter dated 19.11.2010, that the ^{financial l}final upgradations earned under TBOP/BCR Scheme as well as regular promotion are to be counted for the purpose of financial

upgradation under the MACP Scheme, a review Screening Committee was conducted and as per its recommendations, the benefits irregularly granted vide order dated 8.7.2010 has been withdrawn vide order dated 23.2.2011 by the office of Respondent No.3. The Office of Respondent No.3 has withdrawn the benefit irregularly granted basing upon the clarificatory order issued by the appropriate authority. In compliance of the order dated 9.3.2011 of this Tribunal in O.A.No.116/2011, Respondent No.2, after carefully considering the representation dated 28.2.2011 of the applicant, with reference to relevant rulings and conditions of MACPS contained in Para 28-(C) of the Annexure-1 to the OM dated 18.9.2009 as at Annexure-R/1, rejected his claim for grant of 2nd financial benefit under MACPS vide letter dated 13.4.2011 as he had already got one financial upgradation under TBOP Scheme and one regular promotion to the cadre of AAO(JAO & AAO being merged as one, i.e. AAO) before implementation of the MACPS w.e.f. 1.9.2008. It has been submitted by the Respondents that Respondent No.3 rejected the representation of the applicant as per the instructions of MACPS contained in Para-28© of Annexure-A/1 of O.M.

4. In the rejoinder filed by the applicant it has been submitted that the Respondents rejected the appeal petition of the applicant without application of mind to the facts and circumstances of the case stating that applicant had got two promotions for which his request dated 28.2.2011 for grant of 2nd MACP w.e.f. 1.9.2008 cannot be accepted when the applicant had got only one promotion and financial upgradation for which he is entitled for the 2nd MACP w.e.f. 1.9.2008, as per illustration 2-B of Annexure-1 and illustration in Para-28(B) of MACP order dated 18.9.2009.

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5. Applicant has filed his written note of argument wherein the submissions as made in the O.A. as well as rejoinder have been reiterated.

6. Having heard the learned counsel for both the sides, ^{also} we ^{perused} the records.

7. The applicant was appointed as UDC in Savings Bank Organization (SBCO) of the Department of Posts on 27.5.1983. He got TB^POP in the form of financial upgradation on 21.9.2991 (Annexure-A/1). Subsequently, he was promoted as Junior Accounts Officer w.e.f. 28.12.2007 on the basis of departmental examination. TBOP was the Department of Posts' own Scheme for giving financial upgration to its employees. On the basis of recommendations of 6th CPC, MACP Scheme was introduced by the Department of Personnel & Training, which the Department of Posts decided to adopt w.e.f. 1.9.2008. The O.M. to this effect was issued on 18.9.2009, in which the MACPS was introduced with effect from 1.9.2008, and earlier Schemes of Department of Posts in this regard, i.e., TBOP and BCR were withdrawn with effect from that date. The MACP Scheme envisaged three financial upgradations at intervals of 10, 20 and 30 years of continuous regular service. Para 28(B) of the MACP Scheme mentions by way of illustration that if a Government servant (LDC) in PB-1 in the Grade Pay of Rs.1900/- is granted 1st financial upgradation under the MACPS on completion of 10 years of service in PB-1 in the grade Pay of Rs.2000 and 5 years later he gets 1st regular promotion(UDC) in PB-1 in the Grade Pay of Rs.2400/- the 2nd financial upgradation under the MACP Scheme will be granted on completion of 20 years of service in PB-1 in the grade of Rs.2800/. On completion of 30 years of service, he will get 3rd MACP in the

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Grade Pay of Rs.4200/-. However, if two promotions are earned before completion of 20 years, only 3rd financial upgradation would be admissible on completion of 10 years of service in Grade Pay from the date of 2nd promotion or at 30th year of service whichever is earlier.

8. The illustration at Para 28© provides that if a Government servant has been granted either two regular promotions or 2nd financial upgradation under the ACP Scheme of August, 1999 after completion of 24 years of regular service then only 3rd financial upgradation would be admissible to him under MACPS on completion of 30 years of service provided that he has not earned third promotion in the hierarchy.

9. On the basis of directions issued by the Tribunal in O.A.No.116 of 2011, the Dy.Director General, Department of Posts vide order dated 13.4.2011 (Annexure-A/9) disposed of the pending representation of the applicant. A perusal of this order reveals that the DDG(Posts) noted that the applicant was initially appointed as UDC/PA and then got TBOP and regular promotion as AAO(JAO and AAO being merged in one, i.e., AAO) before the implementation of MACP Scheme, thus has already earned one financial upgradation(TBOP) and one regular promotion(AAO cadre) and will not be eligible for 2nd financial upgradation.

10. The next observation in the order is that the applicant has already earned two promotions, viz., one under TBOP Scheme and one regular promotion and is not eligible for 2nd financial upgradation. The contradiction in these observations is quite apparent. First, the DDG(Posts) says that the applicant got one financial upgradation and one regular promotion. Immediately, thereafter it is observed that the applicant has got



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two promotions. The speaking order therefore, suffers from the defect of lack of clarity. At least, it ^{could &} would have been clarified why the financial upgradation under TBOP is taken as a regular promotion.

11. There is another aspect to this case. The applicant was given the 2nd MACP benefit by order dated 8.7.2010 w.e.f. 1.9.2008 issued by the Respondents on the basis of recommendations of the Screening Committee (Annexure-A/5). Another office order dated 23.2.2011 was subsequently issued mentioning that as per recommendation of the review Screening Committee, the Director of Postal Accounts has been pleased to modify the financial upgradation under the MACP Scheme, and the applicant was declared to be not entitled for 2nd MACP. No reasons have been assigned for calling a review Screening Committee and reversing the earlier order. This is prejudicial to the case of the applicant. Administrative orders should be well grounded on sound reasoning. In case a particular order is reversed, the reasons for the same must be reflected transparently in the order. The authorities had given the benefit of 2nd MACP to the applicant. Then they declare him not entitled for the same. The question is on the basis of what? Has the interpretation of rules undergone a change? Have some new facts emerged? Unless this is clarified, the [&] change of arbitrariness can always be levelled. While dealing with the service matters of employees, not only should justice be done, but it should appear to have been done. The employer – employee relationship is a matter of trust and by transparent transactions, this trust can be maintained and nurtured. It is apparent in the present case that the principle of natural justice has been violated.

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12. The applicant claims that his case is covered under Illustration 28-B. However, the Respondents have challenged the claim of the applicant by stating that he is covered under Illustration 28©. The details of 28-B and 28-C of the MACP Scheme have already been previously ^{cl}disused. The crux of the matter is whether the applicant will be considered to have been given two regular promotions and if that be the case, then he will be given only his 3rd financial upgradation under the MACPS on completion of 30th years of service. It appears that the Deputy Director General (Res.No.2) while deciding this issue has not taken a clear line because, as already discussed in detail in the ~~same~~ ^p speaking order, she has mentioned that the applicant has got one financial upgradation (TRBOP) and one regular promotion(AAO cadre) and again has mentioned that the applicant has got two promotions. This does not clearly bring out whether the Department of Posts is treating the grant of financial upgradation under TBOP as a promotion. Since it is a policy decision of the Department of Posts under the MACP Scheme, we consider it proper that the Department should take a conscious view and have a re-look at this case and then take a consistent stand on the issue after giving an opportunity to the applicant to present his case. Therefore, we would remit the matter back to Respondent No.2 to reconsider the matter in the light of the detailed discussions made in this order, after giving due opportunity to the applicant to present his case, after which the matter be decided strictly in keeping with the policy followed by the



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Department of Posts with regard to MACP Scheme. This exercise shall be completed within a period of sixty days from the date of receipt of this order. Until the matter is finally decided as per the directions as aforesaid by Res.No.2, recovery of excess amount towards the financial benefits already extended to the applicant shall not be made from his salary.

With the aforesaid observation and direction, this O.A. is disposed of, with no order as to costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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