

25

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 405 OF 2011

Cuttack, this the 20th day of December, 2016

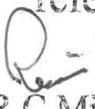
Sri Anirudha Acharya...Applicant

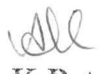
-VERSUS-

Union of India & Ors. ... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?
2. Whether it be referred to CAT, PB, New Delhi for being referred to various Benches of the Tribunal or not ?


(R.C. Misra)
Member (Admn.)


(A.K. Patnaik)
Member (Judl.)

26

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 405 OF 2011

Cuttack, this the 20th day of December, 2016

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

HON'BLE MR. R.C.MISRA, MEMBER (ADMN.)

.....

Sri Anirudha Acharya, aged about 50 years, S/o. Late Bholanath Acharya at present working as Asst. Accounts Officer in the Office of the Director of Accounts (Postal), Cuttack-753004.

...Applicant

(By the Advocate-Mr. A.K.Mohanty)

-VERSUS-

Union of India Represented through

1. The Secretary, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110001.
2. The Dy. Director General (PAF), Dak Bhawan, Sansad Marg, New Delhi-110001.
3. The Director of Accounts (Postal), Mahanadi Vihar, Cuttack-753004.

...Respondents

(By the Advocate- Mr. S. K. Patra)

ORDER

A. K.PATNAIK, MEMBER (J):

This O.A. has been filed by the applicant praying for the following reliefs:

“(A) to quash the orders of the Respondent No.3 dated 23-2-2011 (as per Annexure A/6) and the order dated 1-6-2011 of the Respondent No.2 (as per Annexure-A/9) regarding withdrawal of the financial upgradation granted to the applicant w.e.f. 1-9-2008 onwards for being illegal, irregular and contrary to the provision of the MACP scheme.

AND

(B) to order that the amount of Rs. 6000/- which was irregularly recovered from the salary

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27

of the applicant for the month of February, 2011 towards the so called excess payments be returned to the applicant.

(C) to order that no recovery should be made from the pay of the applicant towards the so called excess payments made to him w.e.f. 1-9-2008 onwards due to grant of such financial upgradation.

(D) to pass such other order.....”

2. The case of the applicant in nutshell is that he had joined as LDC (SBCO), which was subsequently designated as Postal Assistant. After completion of 16 years of service, he was given the benefit under Time Bound One Promotion (TBOP, in short) Scheme on 20.08.1998, which, however, was counted as one upgradation under the MACP Scheme introduced in the Department w.e.f. 01.09.2008. Thereafter, he was promoted as Junior Accounts Officer on 23.04.2008. Consequent upon merger of JAO and AAO cadres as Assistant Accounts Officer, the applicant was designated as Assistant Accounts Officer. After completion of 20 years of service, applicant was given 2nd financial upgradation under the MACP Scheme. On 23.02.2011, Respondent No.3 issued an order withdrawing the benefit of 2nd financial upgradation that was granted to the applicant w.e.f. 01.09.2008. The applicant preferred a representation dated 28.02.2011 to Respondent No.2 and since he did not receive any response, he had approached this Tribunal in O.A. No. 122/2011, which was disposed of on 26.04.2011 with a direction to Respondent No.2 to dispose of applicant's representation. In compliance with the aforesaid direction of the Tribunal, applicant's representation

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was considered, but the same was rejected vide order dated 01.06.2011.

In the above backdrop, the applicant has approached this Tribunal with the prayers as mentioned above.

2. The applicant claims that he had got one financial upgradation on 20.08.1998 and, thereafter, he got only one promotion on 23.04.2008. Therefore, rightly he had been given the 2nd financial upgradation under the MACP Scheme w.e.f. 01.09.2008 after completion of 20 years of service, which was in conformity with the provisions of the MACP Scheme. However, the Respondent No.3 arbitrarily, without application of mind and without issuing any notice or show cause has passed the order withdrawing the financial upgradation granted to him on 01.09.2008 and, consequently reduced his pay and ordered recovery of excess payments made to him.

3. Objecting to the prayer made by the applicant in this O.A., the Respondents have filed their counter. The contention of the Respondents in their counter is that based upon the recommendations of the 6th Central Pay Commission, the Govt. of India in supersession of the previous Assured Career Progression Scheme brought in August, 1999, introduced the MACP Scheme for Central Govt. Civilian Employees vide O.M. dated 19.05.2009. Ministry of Communication and IT, Department of Posts implemented the MACP Scheme vide O.M. dated 18.09.2009 (Annexure-R/2). The claim of the applicant that he should be granted 2nd MACP is contrary to the provisions of the Scheme. To strengthen their submissions, it has been submitted that instead of

28

29

-4-

O.A.No. 405 of 2011
A. Acharya Vs UOI

provision under para 28 (B), 4th column of Illustration 1 and 3rd column of Illustration 2B, applicant's case is actually governed under the category of employees illustrated at para 28(C) of Annexure-I to O.M. dated 18.09.2009, 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 MACP Scheme on completion of 30 years of service provided that he has not earned 3rd promotion in the hierarchy. According to respondents, applicant has already got one financial upgradation of TBOP and one regular promotion to the cadre of Asst. Accounts Officer before 01.09.2008 and hence, he is eligible for 3rd MACP only on completion of 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.

4. In course of hearing of this matter, Mr. A.K.Mohanty, Ld. Counsel for the applicant argued that one similarly situated person, viz. Sri Avimanu Nayak, had filed O.A. No. 353/2011 before this Tribunal, which has already been decided by the Division Bench of this Tribunal on 11.10.2013. By filing his written note of submission, he has enclosed a copy of order dated 11.10.2013 passed in O.A. No. 353/2011 and submitted that similar order may be passed in this O.A. also.

5. We have gone through the order dated 11.10.2013 passed in



30

-5-

O.A.No. 405 of 2011
A. Acharya Vs UOI

O.A.No. 353/2011. The operative portion of the said order is extracted

hereunder:

"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 (C). The details of 28-B and 28-C of the MACP Scheme have already been previously discussed. 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 up gradation 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 speaking order, she has mentioned that the applicant has got one financial up gradation (TBOP) 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 Post is treating the grant of financial up gradation 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 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 the 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."

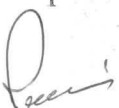
6. After going through the facts of the O.A.No. 353/2011 vis-

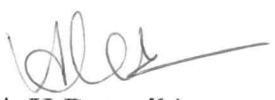


31

à-vis the facts of the present O.A., we find that the facts of this matter are quite akin to the facts in O.A.No.353/2011 and therefore, we do not like to make a departure from the view already taken. Accordingly, we remit the matter back to Respondent No. 2 to reconsider the matter in the light of the detailed discussions made in the O.A.No. 353/2011 dated 11.10.2013, 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 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 the order. Until the matter is finally decided as per the directions as aforesaid by Respondent No. 2, recovery of excess amount towards the financial benefits already extended to the applicant shall not be made from his salary.

7. With the aforesaid observation and direction, this O.A. stands disposed of. No costs.


(R.C.Misra)
Member (Admn.)


(A.K.Patnaik)
Member (Judl.)