

1/9

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 01/Jodhpur/2011.

Date of decision: 03.09.2012

CORAM :

HON'BLE MR. G. GEORGE PARACKEN JUDICIAL MEMBER
HON'BLE Mr. B.K.SINHA, ADMINISTRATIVE MEMBER

Gopi Chand Regar S/o Shri Chatraji aged 54 years, Postal Assistant, Sub Post Office, Nathdwara, District Rajsamand Resident of Village Mohi, Via Kankroli, District Rajsamand.

..... Applicant.

[By Mr. Vijay Mehta, Advocate]

Versus

1. Union of India through the Secretary, Ministry of Communication (Department of Posts), Sanchar Bhawan, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Senior Superintendent of Post Offices, Udaipur.

..... Respondents

[By Mr. Vinit Mathur along with Mr. Ankur Mathur, Advocates]

ORDER (Oral)

[PER HON'BLE MR. G. GEORGE PARACKEN]

The applicant is aggrieved by the Annex.A/1 letter dated 21.04.2010 wherein it has been stated in respect of the applicant that the Screening Committee considered his case for grant of 3rd Financial Up-gradation under the Modified Assured Career Progression Scheme (MACP) but, the same was not admissible to him for the reason, namely, "un-satisfactory service record/ below bench-mark".

2. The brief facts necessary for disposal of this case are delineated as under. The applicant was appointed as a Postal Assistant w.e.f. 20.03.1976. He has already been granted the TBOP

and BCR benefits. Thereafter, he became entitled for grant of the 3rd upgradation under the MACP Scheme. The Screening Committee considered his case along with the other eligible candidates but it did not recommend him for the aforesaid benefit for the reason that his service record was not found satisfactory and he had below Bench-mark grading in his Annual Confidential Reports. The respondent No. 2 has also communicated to him the aforesaid position vide its impugned Annex.A/1 "Abstract" dated 21.04.2010. The applicant submitted Annex.A/3 representation dated 13.05.2010 against the aforesaid "abstract" drawing the attention of the respondent No. 2 that he has never been informed about his alleged unsatisfactory performance and the ACRs containing the below Bench-mark gradings. As no decision was taken on his representation, he has filed this O.A. seeking the following reliefs :

"The applicant prays that impugned order Annex.A/1 and order dated 20.4.2010 mentioned therein may kindly be quashed and the respondents may kindly be directed to grant financial upgradation under the MACPs from 1.9.2008 on completion of 30 years of service in the year 2006. They may kindly be directed to make consequential fixation and make due payment of MACPs to the applicant w.e.f. 1.9.2008. Interest at the rate of 18% on due amount may kindly be also awarded. Any other, as deemed fit may also be passed. Costs may also be awarded to the applicant."

3. The respondents in their reply has submitted that his case was considered for regular promotion to the post of LSG (NB) but he could not be promoted for the reason that his service record was unsatisfactory as his ACR contained below Bench-mark gradings. Again, his case was considered for grant of 3rd financial upgradation under the MACP Scheme but he could not be given the said benefits for the same reason and the decision of the DPC in that regard was

also communicated to him vide the impugned abstract dated 21.04.2010. They have also stated in the reply affidavit in this O.A. that the "below bench-mark" grading in his ACR was communicated to him vide their letter dated 11.06.2010 and he had not given any representation against the same so far.

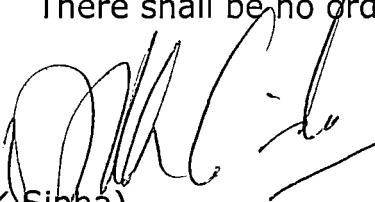
4. We have heard the learned counsel for applicant Mr. Vijay Mehta, and the learned counsel representing the respondents Mr. Vinit Mathur. It is an admitted fact by the respondents that the applicant's case for promotion was considered for regular promotion to the post of LSG (NB) but he was not promoted due to his unsatisfactory service record and the below bench-mark gradings in his ACR. Again his case for granting the 3rd financial upgradation under MACP scheme was considered by the screening committee, but the said Committee also did not recommend his case citing the very same reason. However, it is another admitted fact by the respondents in their reply that they have communicated the below Bench-Mark gradings in his ACR only on 11.06.2010. It is well settled principle that communication of the adverse gradings of an employee is done mainly to enable him to make a representation if any, stating that such remarks /gradings were unwarranted for the reasons to be given by him and on consideration of such representation, it was for the competent authority to expunge those remarks, if it considered appropriate. Thus the communication of adverse remarks / below gradings in the ACRs of an employee has its definite meaning and purpose. However, in this case, it is seen that the respondents had already considered the applicant's cases for promotion for the post of LSG (NB) as well as for grant of 3rd

financial upgradation under the MACP Scheme but they were and his case was rejected only for the reasons that he had unsatisfactory service record and he had below bench-mark gradings. Admittedly, the applicant has never been given any prior opportunity to make a representation against those adverse remarks / below bench-mark gradings before his cases were considered by the DPC/Screening Committee for promotion to the post of LSG (NB) / grant of 3rd financial upgradation under the MACP Scheme. The respondents ought to have realized that such communication is not an empty formality. Further, such post decisional communication of the adverse remarks in the ACRs is absolutely against the principles of natural justice.

5. We, therefore, allow this OA and quash and set aside the impugned Annex.A/1 "Abstract" dated 21.04.2010 in the case of the applicant informing him that he was considered by the Screening Committee for grant of the 3rd financial upgradation under the MACP Scheme, but he could not be granted the said benefits because of his unsatisfactory service record/below bench mark gradings in his ACRs. Consequently, we direct the respondents to furnish the copies of the ACR(s) of the applicant containing the unsatisfactory service record/below bench-mark gradings to him within one month from the date of receipt of copy of this order. The applicant may, thereafter, submit his representation, if any, within one month. On receipt of the representation so made, the respondents shall consider it in accordance with the rules and take a decision as to whether the unsatisfactory service record have to be expunged and

the below bench mark gradings have to be upgraded. If the respondents decides to expunge the unsatisfactory remarks and upgrade the below bench mark gradings in his ACRs, , they shall convene the DPC to review his case for his promotion to the post of LSG (NG) / grant of 3rd financial upgradation under the MACP Scheme based on the upgradaded ACR(s) and if he is found eligible, he shall be promoted to the said post/grant the MACP benefits from the due date, within a period of two months thereafter. However, if the respondents decide not to expunge the unsatisfactory remarks and upgrade his ACRs, he shall be informed about their decision, within the aforesaid period itself.

6. There shall be no order as to costs.


(B.K.Sinha)
Administrative Member


(G.George Paracken)
Judicial Member

Jrm