

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Original Application No. 289/2011

Jodhpur, this the 12th day of December, 2014

CORAM

Hon'ble Mr. Justice Kailash Chandra Joshi, Judicial Member
Hon'ble Ms. Meenakshi Hooja, Administrative Member

K.G. Shakdiweepi s/o Shri Harak Lal, aged 59 years, Postal Assistant, Shashtri Circle Post Office, Udaipur r/o 7, Shabri Colony (Ayad South), Udaipur

.....Applicant

By Advocate: Mr Vijay Mehta

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 Advocate : Ms. K.Parveen

ORDER

Per Justice K.C. Joshi, Member (I)

In the present OA filed u/s 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:-

"The applicant prays that impugned orders ANN.A 1 and ANN A2 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 2002. They may kindly be directed to make consequential fixation and make due payment of MACPS to the applicant wef 1/9/2008. Interest at the rate of 18% on due amount may kindly be also awarded. Any other order, as deemed fit may also be passed. Costs may also be awarded to the applicant."

2. Brief facts of the case, as stated by the applicant, are that he was appointed as Postal Assistant on 7.10.1972. The Modified Assured Career Progression Scheme (MACPS) has been made operational w.e.f. 1.9.2008 providing financial upgradation on completion of 10, 20 and 30 years of service. The applicant has completed 30 years of service in the year 2002 and therefore entitled for upgradation under the said scheme, but the respondent No. 2 vide order dated 20.4.2010, conveyed vide order dated 21.4.2010, refused to grant benefit of MACPS on the ground of currency of punishment (Ann.A/2). The applicant submitted representation dated 1.7.2010 but respondent No.2 did not pass any order. Again vide order dated 19.7.2011, benefit of MACPS have been denied on the ground of unsatisfactory record of service/below bench mark. The applicant has stated that in Ann.A/2 dated 21.4.2010 there is no mention of unsatisfactory service record/bench mark though the same has been mentioned against the names of some other employees. It is thus evident that at the time of consideration of the case of the applicant, his service record was not unsatisfactory and he was not below bench mark. However, vide Ann.A/1, case of the applicant has been rejected on the ground of unsatisfactory service record/below bench mark. The applicant has further stated that clause-18 of the MACPS provides that in the matter of disciplinary/penalty proceedings, grant of benefit under MACPS shall be subject to the rule governing normal promotion. Thus, the benefit cannot be denied on the ground of currency of punishment and alleged unsatisfactory record or below bench mark. Therefore, aggrieved of the action of the respondents, the applicant has filed this OA praying for the reliefs as extracted above.

3. By way of reply to the OA, the respondents have submitted that the applicant was granted benefit of TBOP and BCR w.e.f. 8.6.1993 and 1.1.1999 respectively and he was also considered for LSG(NB) regular promotion but the same could not be recommended due to unsatisfactory service record. In the meantime, MACP was introduced w.e.f. 1.9.2008, thus the case of the applicant was considered by the Committee for grant of 3rd financial upgradation under MACPS, but the benefit could not be allowed due to punishment in currency which was communicated to the applicant vide memo dated 21.4.2010. Thereafter the case of the applicant was again reviewed for grant of benefit under MACPS by the Screening Committee held on 5.7.2011 but this time also, the case of the applicant could not be recommended for grant of benefit due to unsatisfactory service record i.e. below bench mark, which was communicated to the applicant on 20.7.2011 and now as per the latest guidelines dated 1.9.2010, the ACR of the officials of below bench mark has to be reviewed again in pursuance to these guidelines, and if the ACR upgraded by the Screening Committee, the case would be considered for grant of MACP-III again. The respondents have further submitted that below bench mark of ACR was communicated to the applicant from 2004-05 to 2008-09 vide SSPOs Udaipur letter dated 11.6.2010 and no any representation is received in the office so far and it is clear that the applicant's ACR was below bench mark and he himself admitted the facts. The case of the applicant was thus considered by the Screening Committee for grant of MACP-III but the applicant was not found fit for grant of MACP-III as he was not having good benchmark as required in para 17 of the Ministry of Communication and IT letter dated 18.9.2009. Therefore, the respondents pray for dismissal of the OA.

4. The applicant has filed rejoinder to the reply reiterating the averments made in the OA and the respondents have also filed additional affidavit.

5. Heard both the parties. Counsel for applicant contended that the applicant has completed 30 years' service in the year 2002 and thereafter MACP Scheme came into force w.e.f. 01.09.2008, but he was not granted 3rd MACP. The reasons communicated to the applicant by the respondent-department at Annex. A/1 dated 20.07.2011 contain the fact that due to unsatisfactory service record/below bench mark the applicant was not found entitle to get 3rd MACP whereas in Annex. A/2 dated 21.04.2010 it has been mentioned that due to currency of punishment, the applicant has not been selected for grant of 3rd financial upgradation under MACP Scheme, but the counsel for respondents did not produce any document regarding inquiry or the punishment and in addition to it in the additional affidavit, it has been averred that the applicant was granted an opportunity to peruse the confidential record of the last 5 years, therefore, he must be aware of the currency of punishment. Counsel for applicant further contended that the currency of punishment is not a confidential record because no document regarding serving of charge sheet or reply on behalf of applicant or the order of punishment has been produced in the reply as well as in the additional affidavit. Therefore, it can very well be presumed that punishment was not current when the case of the applicant for grant of 3rd financial upgradation under MACP Scheme was under consideration before Screening Committee in April, 2010. So far as unsatisfactory service record and the below bench

mark ACRs are concerned, counsel for applicant contended that from reply it is clear that ACRs from 2004-05 to 2008-09 were communicated on 11.06.2010 and case of the applicant was considered for the first time in April 2010 and in this Abstract (Annex. A/2) it has not been mentioned that the ACRs were below bench mark or unsatisfactory whereas he was informed about the unsatisfactory ACRs vide letter dated 11.06.2010. Counsel for applicant contended that the delayed communication of ACRs cannot be held against the applicant as unsatisfactory because right of opportunity to show cause against the unsatisfactory service record or below bench mark was not properly afforded to the applicant. Counsel for applicant further contended that two contradictory statements i.e. Annex. A/1 and Annex. A/2 itself show that the record of the respondent-department is not proper and they have tried to make out a case of refusal on two different grounds i.e. currency of punishment and unsatisfactory service record against the applicant, however, the respondent-department could not establish awarding of punishment by production of any document or the adverse or unsatisfactory service record below bench mark which could not be communicated by the respondent-department in time.

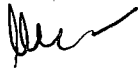
6. Per contra, counsel for respondents contended that the orders Annex. A/1 & A/2 are legal and due to currency of the punishment and unsatisfactory service record of the applicant, he was rightly refused 3rd financial upgradation under MACP Scheme.

7. We have perused the record and pondered over the arguments advanced by both parties. Due to non-production of any document

regarding punishment, charge sheet, reply or order of punishment, it cannot be said that there was any current punishment against the applicant when the matter was considered in April, 2010. The ground taken by the respondent-department for denial i.e. unsatisfactory service record in July, 2011 (Ann.A/1) is quite a new, different and varying from the ground mentioned earlier in Annex. A/2 with no apparent reason why the unsatisfactory record was not factored in while considering the case of the applicant in April, 2010. Therefore, in our considered view, Annex. A/1 cannot be sustained in the eyes of law and accordingly, it is liable to be quashed resulting into quashing of Annex. A/2 also, qua the applicant.

8. Accordingly, Annex. A/1 and A/2 (qua the applicant) are quashed and the respondent-department is directed to reconsider the case of the applicant and finalize the matter within 4 months from the date of receipt of this order.

9. In terms of above direction, the OA is disposed of with no order as to costs.


(MEENAKSHI HOOJA)
Administrative Member

R/


(JUSTICE K.C.JOSHI)
Judicial Member

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