

CENTRAL ADMINISTRATIVE TRIBUNAL

Original Application No. 278/2012
Jodhpur, this the 23rd September, 2013.

CORAM :

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

K.C. Vyas S/o Late Shri Sukhcahnd Vyas aged about 51 years, resident of 18/444, Chopasani Housing Board, Jodhpur (Raj), presently Sr. Storekeeper / Head Clerk of All India Radio, Jodhpur.

..Applicant.

(Through Adv. Mr.P.D.Bohra)

Versus

1. The Union of India through its Secretary, Ministry of Information & Broadcasting Department, Government of India, New Delhi.
2. The Director General (S-II), All India Radio, Akashwani Bhawan, Parliament Street, New Delhi.
3. Drawing & Disbursing Officer of All India Radio, Broadcasting Corporation of India, All India Radio, Jaipur.
4. Assistant Director (Engineering) of Head Of Office, All India Radio, Jodhpur.

...Respondents.

(Through Adv. Smt.K.Parveen)

O R D E R

[Per Justice K.C. Joshi, Member (Judicial)]

The applicant in this application filed under Section 19 of the Administrative Tribunals Act, 1985, has prayed for quashing and setting aside the orders at Annex.A/1 and A/2 dated 10th May and 29th May, 2012 passed by the respondents No. 3 and 4 along with costs.

2. The brief facts are that respondent No. 3 and 4 issued the impugned orders as aforesaid withdrawing the 3rd Modified Assured Career Progression (MACP) benefits granted to the applicant. The applicant was regularized in the respondent department on 21.04.1982 and then promoted as UDC on 31.07.1985 and then as Head Clerk pursuant to the order dated 01.09.2008. Vide order dated 8.10.2010 respondents granted the benefit of 3rd MACP to the applicant as per the recommendations of the Screening Committee and after approval of AIR, Mumbai, vide letter dated 29.09.2010 on completion

of 30 years service calculating the same since 29.08.1979. Later the competent authority passed an order dated 21.02.2011 whereby they have revised the pay scale of the applicant to 6500-10500 after calculating 30 years regular service in view of order Annex.A/3 dated 8.10.2010 and issued a revised pay fixation order dated 02.05.2012. It is contended in the OA that applicant entered in respondent's service on 29.08.1979 and respondents issued an order of 3rd MACP with approval of AIR, Mumbai as well as on recommendation of the screening committee, calculating the service of the applicant from 29.08.1979 viz., the date of entry in service, thus, the applicant obtained the benefit of 3rd MACP w.e.f. 29.08.2009. However, after just a lapse of five days from the date of order dated 02.05.2012, respondents issued order dated 10.05.2012 (Annex.A/1) stating that in terms of letter No. F that as per DOP&T order dated 19.05.2009 para 9 service rendered on ad hoc/contract basis before regular appointment or pre-appointment shall not be taken into reckoning in view of recommendation of the screening committee and approval of AIR, Mumbai vide letter dated 1.5.202012 and considered the applicant's case as review case while considering his service as on ad hoc basis towards 29.8.1979 to 21.4.1982. Thereafter, order dated 29.05.2012 was issued fixing the grade pay of the applicant to the tune of Rs. 4200/- while mentioning the 2nd ACP date as 21.04.2006 as date of increment towards 21.4.1982. Hence, being aggrieved against the orders at Annex.A/1 and A/2 applicant has approached this Tribunal.

3. The respondents have denied the facts pleaded by the applicant in the OA and stated that the orders at Annex.A/1 and A/2 have been issued as per the Government of India's instructions on the matters relating to grant of MACP Scheme for the Central Government Civilian Employees dated 19.05.2009. It has been averred that the Ministry of Personnel, Public

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Grievances and Pension (DOP&T) on 19.05.2009 issued an OM under subject MACP for the Central Government Employees as per the recommendation of the VI Pay Commission with further modifications. Para 6.1.15 of its report mentions that financial upgradation will be available in the next higher grade pay whenever an employee has completed 12 years of continuous service in the same grade. Therefore, not more than two financial upgradations can be given to an employee in the entire career. This scheme is available to all posts in Group 'A' whether isolated or not, excluding organized Group 'A' services.

4. It is further averred in the reply statement that regular service for the purpose of MACP is to commence from the date of joining of a post in direct entry grade on regular basis either on direct recruitment basis or on absorption / reemployment. The applicant was working in the department from 29.08.1979 to 21.04.1982 on ad hoc basis, therefore, his services could be taken into consideration only w.e.f. 21.04.1982, and that is why, the benefits extended to him erroneously were withdrawn. Apparently, even otherwise the pay fixations are subject to review and in case it is found that any over payment or erroneous payment is made to an employee then the same is required to be recovered by making refixations. Thus, the action of the respondents based on the OM of DOP&T dated 19.05.2009 cannot be interfered with and it deserves to be upheld being supported by the provisions on the issue. The respondents, therefore, prayed that the O.A. filed by the applicant be quashed with costs.

5. Heard the learned counsel for both the parties and perused the records of the case.

6. The counsel for the applicant contended that the order Annex.A/1 was passed without giving any opportunity of hearing to the applicant. He has

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contended that although respondent-department withdrew the benefit of the MACP but, that order was passed without giving any notice to the applicant or to put his case before the respondent-department, therefore, the orders Annex.A/1 and Annex.A/2 are liable to be quashed. It has been pleaded by the learned counsel that the orders impugned are against the facts and law as well as against the settled preposition of law. The case of **Suresh Kumar and Anr. Vs. Secretary, Ministry of Shipping & Ors.** passed in OA No. 637/2007 the Bombay Bench of this Tribunal involves the similar issue and hence, the OA should be accepted.

7. Per contra, the learned counsel for the respondents contended that the benefit which has been erroneously granted to a government employee can be withdrawn at any stage without giving a notice to the person concerned.

8. We have considered the rival contentions of both the parties.

9. It is a fact that before withdrawing the benefit of MACP, the applicant was not given any opportunity of hearing, therefore, we propose to dispose of this petition with certain directions.

10.. Accordingly, the Original Application is disposed of with a direction that the applicant may represent to the respondent-department within fifteen days from the date of receipt of a copy of this order and the respondents shall pass a fresh order as per law within four months from the date of the receipt of the representation. Accordingly, the O.A. is disposed of with no order as to costs.


(Meenakshi Hooja)
Member(A)


(Justice K.C.Joshi)
Member(J)