

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**Original Application No.345/2013
With MA No.290/00267/2014**

Jodhpur this the 16th day of July, 2014

CORAM

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

Pancha Ram Bishnoi s/o Shri Amlu Ram, aged about 49 years, b/c Bishnoi,
r/o Dholabala, Tehsil Phalodi, District Jodhpur, (Postal Department).

.....Applicant

By Advocate: Shri S.P. Singh

Versus

1. The Union of India through the Secretary to the Government of India, Ministry of Communication, Department of Post, Dak Tar Bhawan, New Delhi.
2. The Chief Post Master General, Rajasthan Circle, Jaipur
3. The Post Master General, Western Region, Jodhpur
4. Sr. Superintendent of Post Offices, Jodhpur Division, Jodhpur

.....Respondents

By Advocate : Ms. K. Parveen

ORDER (Oral)

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

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

- a. That by writ, order or direction the impugned order Memo No. Staff/WR/6-1/MACP/201-2011 dt 30/31.5.2013 forwarded by Respondent No. 3 may kindly be declared illegal, improper and liable to be quashed and set aside.
- b. That by writ, order or direction the impugned order Memo No. B2-4/14/MACPS/II/PA/2010 dated 17.3.2010 qua the applicant may kindly be declared illegal and deserves to be quashed and set aside.

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- c. That by writ, order or direction the respondents may kindly be directed to grant MACP-II and confer the Grade Pay Rs. 4200/- with all consequential benefits.
- d. That any other direction or orders may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- e. That the cost of this application may be awarded to the applicant.

2. Short facts of the case, as stated by the applicant, are that the applicant was initially appointed as Postal Assistant on 02.01.1987 and after completion of 16 years of service in the year 2003 he was granted TBOP. The financial upgradation scheme was introduced w.e.f. 1.9.2008 whereby on completion of 10, 20 and 30 years of service MACP-I, II and II will be granted. As per DoPT OM dated 19.5.2009, the first Departmental Screening Committee was to recommend names of all the employees who have completed 10, 20 and 30 years of service as on 1.9.2008 or before. The first Screening Committee of the postal employees of Rajasthan Western Region was held on 10.2.2010 but applicant's name was not recommended for the reason shown in remarks "under suspension main offenders in Phalodi fraud case." It has been stated by the applicant that as on 1.9.2008 he was not under suspension and he was suspended on 8.6.2009 and charge sheet was given on 20.11.2009. On 1.9.2008, there was no adverse CR and no departmental proceeding were either pending or contemplated and the Departmental Screening Committee was to peruse the applicant's record upto 1.9.2008. The applicant earlier filed OA No.213/2012 for redressal of his grievance and the same was disposed of with direction to decide representation. Pursuant to the direction, the applicant filed representation but the same was rejected vide impugned order dated 31.5.2013. Therefore, aggrieved of the action of the action of

the respondents, the applicant has filed this OA praying for the reliefs as mentioned above.

3. By way reply to the OA, the respondents have submitted that case of the applicant was put up before the Departmental Screening Committee which firstly held on 10.2.2010 for considering case of the applicant for second financial upgradation on completion of 20 years of service from the entry grade. The respondents have further submitted that the applicant was under suspension and identified as main offender in Phalodi fraud case involving crores of rupees and a case was registered with the CBI, Jodhpur. Since the disciplinary proceeding were pending at the time of first/subsequent DPCs, the grant of benefit under MACP shall be subject to the rules governing normal promotion under the CCS (CCA) Rules, 1965. Hence, the Screening Committee did not recommend the case of the applicant for grant of second financial upgradation. In compliance of the order of this Tribunal dated 8.1.2013, representation of the applicant dated 23.1.2013 was considered and rejected by the competent authority on the ground that the applicant was under suspension and identified as main offender in Phalodi fraud case. The respondents have further submitted that the case of the applicant was rejected in the light of the decision of the Hon'ble Supreme Court in the case of UOI and Ors. vs. K.V.Jankiraman, reported in AIR 1991 SC 2010. Therefore, the applicant is not entitled to any relief.

4. Heard both the parties. Counsel for the applicant contended that the applicant has completed 20 years of service as on 02.01.2007 and new MACP Scheme became effective from 1.9.2008, therefore, the second upgradation under MACP was due as on 1.9.2008 and up to that date no

adverse entry was there in the service record of the applicant. Later on a complaint was filed and after investigation a charge sheet was filed against the applicant. As per DoP circular dated 18.10.2010 (Ann.A/5), if as on due date, there is no inquiry or other adverse record against an employee, the MACP is required to be granted, but in the case of the applicant, later complaints and other material available against him have been considered while considering grant of second MACP which is against the DoP circular Ann.A/5. Counsel for the applicant further contended that even in the speaking order Ann.A/1, the competent authority has admitted this fact that "As per above service particulars the applicant was entitled to get the benefits of 2nd MACP on completion of 20 years of service w.e.f. 01.09.2008 and accordingly his case was put up before the Departmental Screening Committee held for the first time after introduction of the said scheme on 10.02.2010 and subsequently DSC held on 18.01.2012 and 04.07.2012, but the DSC's did not recommend for grant of 2nd MACP benefits to Shri Panch Ram Bishnoi due to unsatisfactory records of service i.e. his being under suspension/main offender in the Phalodi fraud case". It is admitted case that the suspension order was passed much later than the due date of entitlement of the applicant for second MACP and as per Ann.A/5, the applicant is entitled for benefit of second MACP.

5. Per contra, counsel for the respondents contended that the applicant has been suspended due to the fraud in the Phalodi Post Office and his name has been shown as main offender in that case, therefore, the Departmental Screening Committee did not recommend the case of the applicant.

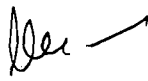
6. We have considered the rival contention of both the parties and also perused the relevant circular Ann.A/5. As per Ann.A/5, the service record is


to be scrutinized up to the due date of entitlement of the MACP and in the case of the applicant record pertaining to later date was considered for grant of second MACP, which is against the provisions of Ann.A/5 and also against the settled law.

7. Accordingly, impugned Ann.A/1 passed by the competent authority is liable to be quashed and the same is quashed. The respondents are directed to reconsider the case of the applicant for grant of second MACP w.e.f. 1.9.2008, the due date of entitlement of second MACP on completion of 20 years of service as per Ann.A/5 within a period of six months from the date of receipt of copy of this order.

8. The OA stands disposed of accordingly with no order as to costs.

9. In view of the order passed in OA, no order is required to be passed in MA No.290/00267/2014, which stands disposed of accordingly.


(MEENAKSHI HOOJA)
Administrative Member


(JUSTICE K.C.JOSHI)
Judicial Member

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