

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 290/00386/2015

Reserved on : 17.05.2016

Jodhpur, this the 24th day of May, 2016

CORAM

**Hon'ble U. Sarathchandran, Judicial Member
Hon'ble Ms Praveen Mahajan, Admn. Member**

K G Shakdiweepi S/o Shri Harak Lal, Aged 63 years, retired 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. Assistant Post Master General (S&V), Office of Chief Post Master General, Rajasthan Circle, Jaipur.
4. Senior Superintendent of Post Offices, Jaipur.
5. Senior Accounts Officer (Pension), Office of Director of Accounts (Postal), Jaipur.

.....Respondents

By Advocate : Mr K.S. Yadav.

ORDER

Per U. Sarathchandran

The applicant is a retired Postal Assistant. He retired from service on 31.10.2012. His grievance in this OA is the denial of the

benefits to him by the respondents. According to him, he had completed 30 years' of service in 2002 and therefore, with introduction of the MACP Scheme w.e.f. 01.09.2008 he is entitled to 3rd financial upgradation under the MACP from the date on which the aforesaid Scheme has become operative.

2. This is second round of litigation resorted to by the applicant in relation to his claim for MACP benefit. He states that when the benefits of the 3rd MACP was denied by the respondents vide Annex. A/2 order dated 20.04.2010 on the ground of currency of punishment and by yet another order dated 19.07.2011 whereby when the MACP benefits was once again denied on the ground of unsatisfactory service record/below benchmark vide Annex. A/3 order, he approached this Tribunal challenging Annex. A/2 and A/3 orders in OA No. 289/2011. This Tribunal quashed both the Annexure A/2 & A/3 orders and directed the respondents to reconsider his case and finalise the same. Annex. A/6 is the final order passed by this Tribunal on 12.12.2014 in OA No. 289/2011. In the purported compliance of Annex. A/6 order of this Tribunal the respondents once again rejected the prayer of the applicant vide Annex. A/1 order impugned in this OA on the ground that the applicant had no prescribed benchmark for the period from 01.09.2008 to

31.03.2010. Being aggrieved by Annex. A/1 order, the applicant has approached this Tribunal once again seeking relief as under:

"The applicant prays that impugned order Annex. A/1 may kindly be quashed and the respondents may kindly be directed to grant financial upgradation under the MACP Scheme in Pay Band-2 of Rs 9300-34800 with grade pay of Rs 4600/- 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 the payment of 3rd MACP to the applicant w.e.f. 1/9/2008. The applicant further prays that the respondents may kindly be directed to amend PPO Annex. A/7 by granting pension in accordance with the fixation made due to grant of benefits of 3rd MACP. Other retiral benefits like leave encashment, gratuity may also be ordered to be granted according to fixation made in accordance with the grant of benefits of 3rd MACP. 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."

3. Respondents resist this OA mainly relying on para 17 of Annex. A/4 copy of the MACP Scheme which reads as follows:

"17. The financial upgradation would be on non-functional basis subject to fitness, in the hierarchy of grade pay within the PB-1. Thereafter for upgradation under the MACPs, the benchmark of 'good' would be applicable till the grade pay of Rs 6,600 in PB-3. The benchmark will be 'Very Good' for financial upgradation in the grade pay of Rs 7,600 and above."

According to respondents the review committee had considered the case of the applicant based on the ACR gradings of the applicant and the benchmark, copies of which are marked as Annex. R/1 & R/2. The case of the applicant was again reconsidered by a review screening committee held on 24.03.2015 and found that the applicant had no prescribed

for the period 01.09.2008 to 31.03.2010 in the light of the administrative instructions contained in Annex. R/5. According to the respondents the decision of the review departmental screening committee was properly communicated to the applicant vide Annex. R/7. It is also stated that vide Annex. R/6 the below benchmark marks of the ACR were communicated vide 11.06.2010 and no representation received so far. The respondents pray for rejecting the OA.

4. A rejoinder was filed by the applicant contending that he had made a representation against Annex. R/6 representation. Vide Annex. A/8 representation he again pointed out that Annex. A/1 order was not passed after considering the ACRs and benchmark from 2004 to 2009 but has been passed on the basis of ACRs and benchmark from 01.09.2008 to 31.03.2010. The applicant further reiterates his contentions in the OA.

5. We have heard the learned counsel appearing on both sides and perused the record carefully. On the earlier occasion, the respondents refused to grant the benefit of 3rd MACP to the applicant firstly on the basis of reasons stated in Annex. A/2, i.e. the applicant is facing punishment currently and secondly for the reason stated in Annex. A/3 that he has 'unsatisfactory service

quashed by this Tribunal by Annex. A/6 order dated 12.12.2014 in OA No. 289/2011. In Annex. A/6 order this Tribunal held:

"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 (Annex. A/1) is quite 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."

6. However, the respondents are now focussing on the ACR benchmark the applicant had for the period for 01.09.2008 to 31.03.2010. As stated earlier, they rely on para 17 of Annex. A/6 Scheme and also the administrative instructions contained in Annex. R/3 & R/4. Annex. R/3 is a communication issued by respondent No. 1 to all Circle Level Officers and other officers dealing with the finance and accounts of the Postal Department clarifying certain points on which there had been frequent querries. Annex. R/4 is circular issued by respondent No. 1 to the aforementioned officials issuing instructions on the benchmark for implementation of MACP Scheme. Para 5 and 6 of Annex. R/4 instructions worth quoting:

"5. In view of clarification given by the Nodal Ministry, the benchmarks prescribed by DoPT need to be scrupulously adhered to

basis of performance of the officials other considering their CRs for five (5) years.

6. The matter regarding proper grading of ACR's for the purpose of conferment of financial upgradations under MACPs has, therefore, been examined and the Competent Authority has ordered to constitute a Scrutiny Committee of Divisional level for scrutinizing the Confidential Reports of Postman, Postal Assistants/Sorting Assistants for the preceding 5 years on the basis of the entries made by the Reporting Officer and to grade the performance as 'Average', 'Good' and 'Very Good', etc."

(emphasis supplied)

It is clear from the afore quoted administrative instruction that when ACRs of the officials are considered for conferment of financial upgradation under the MACP, the screening committee set up for that purpose are obliged to examine the ACRs 'for the preceding five years'. In the instant case, for the purpose of considering the applicant for the benefit under the MACP respondents considered his ACRs for the period from 01.09.2008 to 31.03.2010. This obviously is in contravention of the above quoted administrative instructions in Annex. R/4 that the ACRs for the preceding five years need to be considered. It is worth noticing that when the earlier OA was filed by the applicant, the respondents had raised the ground of unsatisfactory record not factoring such unsatisfactory record in first order (Annex. A/2 herein) has resulting in quashing of both Annex. A/2 & A/3 vide Annex. A/6 order of this Tribunal.

7. Respondents have produced Annex. R/1 Synopsis of the ACRs of the applicant for the year 2003-04 to 2009-10. Annex. R/1 shows that except for the period of 2006-07 and 2009-10, the ACR gradings of the applicant are 'Average'. In Annex. A/1 impugned order that they have relied on the ACRs of the applicant for the period from 01.09.2008 to 31.03.2010 and therefore, production of Annex. R/1 Synopsis of ACRs of previous years is otios. Learned counsel for applicant urged before us in view of para 17 of

▲ Scheme of MACP that respondents are bound to consider the benchmark of 'Good' alone and that as the applicant did not have the required benchmark of 'Good' for all the relevant period he is not eligible for the MACP benefits. Even though such an argument was advanced by the learned counsel for respondents, the reasoning given in Annex. A/1 are silent about such an argument yet.

8. We feel it necessary to examine the legal effect of the ACRs of the applicant for the five years preceding 01.09.2008 relied on by the respondents. While examining this aspect what emerges is that the applicant did not have the requisite ACR grading of 'Good' during the five years preceding to 01.09.2008, as can be seen from Annex. R/1 Synopsis of ACRs. At this juncture the question whether the below benchmark ACRs of the applicant for

Dev Dutt v. Union of India & Ors (2008) 8 SCC 725 it was held by the apex court that all types of entries in the ACR have an impact on employee's career and that even the 'Good' entries are also to be communicated to the employee within a reasonable period to provide him an opportunity of making representation for improvement of his grading. In this case, admittedly, even for the period ie. 01.09.2008 to 31.03.2010 relied upon by the respondents the below benchmark grading were communicated only on 11.06.2010 vide Annex. R/6, long after such entries have been made, depriving the applicant the advantage of making representation for improvement of his grading. Respondents cannot take refuge in contending that they have communicated the below benchmark gradings for the period from 2004-05 because such belated communication will serve no useful purpose. The belated communication of the adverse entries in the ACRs depriving official the opportunity of making representation for improvement of his grading will tantamount to denial of the principles of natural justice. The same is the legal effect, if the respondents authorities are relying on such communicated ACRs for the purpose of deciding the official's eligibility for financial upgradation under the MACP Scheme.

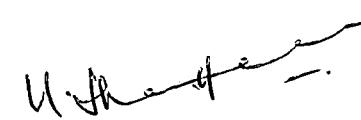
the view that the respondents authorities are not justified using such ACRs for deciding the eligibility of the applicant for MACP benefit. There was no legally valid ACRs in respect of the applicant for assessing his eligibility for MACP benefits. Hence we hold that the ACRs relied on by the respondents for denying the MACP benefit to the applicant have to be treated as *non-est* for the purpose of MACP benefits. It goes without saying that the respondents cannot rely on any non-communicated ACRs much less the belated communication of the adverse entries in the ACRs.

10. In the light of above discussion, we come to the conclusion that the applicant is entitled to be considered for 3rd financial upgradaton from 01.09.2008 treating the ACRs of the relevant period as *non-est* and invalid owing to the highly belated communication of the same, after the same was relied on by the respondents for denying his claim.

11. In the result, Annex. A/1 order is quashed and set aside. Respondents are directed to grant financial upgradation applicable to the applicant under the MACP Scheme w.e.f. 01.09.2008 as he has completed 30 years' service in the year 2002 treating all the ACRs relied on by them as *non-est*. The

pay w.e.f. 01.09.2008 and to issue a revised PPO granting pension after granting such fixation. It is made clear that we are not inclined to pass any orders regarding payment of interest. The parties are directed to suffer their own costs.


[Praveen Mahajan]
Administrative Member


[U. Sarathchandran]
Judicial Member

Ss/-