

/CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION NO.616 of 2012

DATED THIS THE DAY OF 20th AUGUST, 2014

HON'BLE SHRI U. SARATHCHANDRAN MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHANMEMBER (A)

N. Santhammal, Section Supervisor, O/o the Regional Provident Fund
Commissioner, Employees Provident Fund Organization, Pattom,
Thiruvananthapuram – 695 004, R/at TC 42/327, P.N. 44, 3rd Cross,
Vallakkadavu P.O., Thiruvananthapuram – 695 008.

Applicant

(By Advocate Shri Vishnu S Chapazhanthiyil)

Vs.

1. The Regional Provident Fund Commissioner, Employees Provident Fund Organization, Pattom, Thiruvananthapuram – 695 004.
2. The Additional Provident Fund Commissioner (TN/KR), zonal Office, Chennai.
3. The Assistant Provident Fund Commissioner, Sub Regional Office, Ponnammam Chambers – 1, Parameswar Nagar, Opp. Archana-Aradhana Theatre, Kollam – 691 001.

Respondents

(By Advocate Shri N.N. Sugunapalan, Sr (Rep) Mr. S. Sujin)

ORDER

Hon'ble Shri Prasanna Kumar Pradhan, Member (A) :

This OA is filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:

1. To direct the respondents to consider granting the 3rd financial upgradation under Annexure-A/1 MACP Scheme from the eligible date.
2. Set aside Annexure-A5;
3. Any other further relief or order as deemed fit and proper to meet the ends of justice ; and
4. Award the cost of these proceedings.

The facts of the case in brief are as under:

2. The applicant who joined the service under the respondents in 1973 as LDC was promoted as UDC in 1980 and was placed on higher grade on non-functional basis under the TBP Scheme with effect from 01.01.1992. In 2007,



she was promoted to the post of Section Supervisor, a post which carries a liability of one year transfer to Sub-Regional Office in Kerala division on rotation basis. Accordingly, she was transferred to Sub-Regional Office, Kottayam and took charge on 01.08.2007 as Section Supervisor. In the financial year 2007-2008 the applicant had been informed that she has been graded Average in her Annual Confidential Report on the ground that she had been regularly absenting herself from office, not properly scrutinizing claims and advances and not exercising her duties as Section Supervisor regulating in pendency of large number of claims beyond 30 days. She has been rated Average in the areas of knowledge of office procedure, rules, regulations and instructions, etc., capacity for examining cases, quality of noting and drafting, etc., and slow in disposal of work (Annexure-A/4). Against the grading in ACR, the applicant submitted a representation on 16.06.2008 (Annexure-A/5) pointing out that the work assessment made by the Branch Officer for the relevant period was partisan and biased. However the respondent No.1 did not interfere with the gradings and communicated the same vide Memorandum dated 31.07.2008 (Annexure-A/6).

3. The Modified Assured Career Progression (MACP for short) Scheme for Central Government Civilian Employees which was introduced following VI Pay Commission Report by Govt. of India vide OM dated 19.05.2009 (Annexure-A/1) was adopted by the respondent organization. The Scheme provides for 3 financial upgradations on completion of 10, 20 and 30 years service respectively. The financial upgradation under the scheme will be admissible whenever a person has spent 10 years continuously in the same grade pay. According to the applicant, on 10.05.2011, financial upgradation was sanctioned in respect those who have completed 30 years of regular service and were placed in the higher grade pay of Rs.4600/- in Pay Band 2 (Rs.9300-34800). However, persons who entered service after the applicant have been sanctioned the 3rd financial upgradation whereas the applicant was not granted the entitled 3rd financial upgradation (Annexure-A/2).



4. Aggrieved by the denial of 3rd Financial Up-gradation under MACP despite completing 38 years of service, which was based on Average entry in the ACR for the year 2007-2008, the applicant submitted a representation on 01.11.2010 for expunging the adverse entry for the year 2007-2008 (Annexure-A/1). But no action was taken. As such the applicant made a submission on 13.07.2011 vide Annexure-A/2. It is submitted by the applicant that she was informed by the respondents that her claim had been rejected vide Memorandum dated 23.08.2011 (Annexure-A/3).

5. The applicant has contended that there was no basis for adverse entries being made in her ACR for the year 2007-08. It was purely on account of ill-will of the Branch Officer who submitted biased report about her. It was only the ACR for the period she worked at Kottayam, i.e., from 1.8.2007 to 25.8.2008, which resulted in Average entries/adverse remarks in her ACR. There was absolutely nothing average about her performance in the areas of knowledge of office procedures, rules, regulations and instructions, capacity for examining cases, quality of noting and drafting during the periods prior to 2007-08 and for the periods after 2007-08 and in the ACRs for the years subsequent to 2007-08. Though this fact was highlighted in her explanation, unfortunately, the same has not been considered and examined by the competent authority.

6. The applicant in her application has further submitted that she has fulfilled the conditions prescribed in Annexure-A/1 for grant of 3rd financial upgradation. Merely because the Annual Confidential Report for the year 2007-08 has been rated as 'Average', there is no reason to deny the 3rd financial upgradation for which assessment is made for over a period of 5 years. Apart from the 'Average' recorded for the year 2007-08, no other adverse entries is indicated to the applicant. In such circumstances, denying financial upgradation on account of one 'Average' entry is illegal and arbitrary. Though the applicant was imposed with a penalty of 'recorded warning' in respect of the same incident which led to



entries in ACR as 'Average' for the year 2007-08, the said penalty of recorded warning also would not stand in the way of grant of financial upgradation under MACP. Hence, the denial of MACP is illegal and arbitrary.

7. The respondents in their reply have submitted that the applicant joined the EPF Organization as LDC on 23.11.1973 and was promoted as UDC on 30.08.1980. On completion of 17 years clerical service in EPFO, the applicant was placed under higher grade on non-functional basis under the TBP Scheme with effect from 01.01.1992. During the year 2007, the applicant was promoted to the post of Section Supervisor (SS for short). The post of SS carries the liability for one year transfer to Sub-Regional Offices in Kerala Region on rotation basis. The applicant was transferred to Sub-regional Office, Kottayam, on one year rotation basis and she took charge at SRO, Kottayam on 01.08.2007. The Officer-in-charge of SRO, Kottayam, vide letter dated 11.03.2008 intimated the respondent No.1 that the applicant was in the habit of availing leave frequently which has adversely affected the progress of work in her Section and that she was not exercising her duties as SS efficiently (Annexure-R/1). The respondent No.1 issued a Memo dated 22.04.2008 initiating disciplinary proceedings under Rule 10 of EFP Staff (Classification, Control and Appeal) Rules, 1971 for misconduct (Annexure-R/2). The said disciplinary proceedings ended in penalty of 'recorded warning' (Annexure-R/3).

8. The respondents further submitted that in the Annual Confidential Report of the applicant for the year 2007-08, her performance was graded as 'Average' and as per prevailing guidelines, adverse remarks are to be communicated to the Government servant. Hence, the respondent No.1 issued Annexure-A/6 memorandum communicating the adverse remarks in the ACR for 2007-08 in respect of the applicant duly giving an opportunity to offer her submission. The respondent No.1 after examining the applicant's reply in Annexure-A/7, had come to the conclusion that there is no ground for interference and informed the

nd

same to the applicant vide Annexure-A/8 Memorandum. The respondents further submit that Annexure-R/3 order awarding penalty of 'recorded warning' also substantiates that the applicant was not absolved of the charges of willful negligence, indiscipline and failure to discharge her duties.

9. The MACP Scheme provides for three financial upgradations counted from direct entry grade on completion of 10, 20 and 30 years service respectively and it also provides that financial upgradation under the Scheme will be admissible whenever a person has spent 10 years continuously in the same grade pay. Para 17 of the MACP Scheme provides that for upgradation under MACP Scheme, the benchmark of 'Good' would be applicable till the grade pay of Rs.6600/-. The applicant was considered by the Screening Committee which met on 19.10.2010 for 3rd financial upgradation along with others who have become eligible for 1st/2nd/3rd financial upgradations. The said Screening Committee adhering to the guidelines in Annexure-I to the MACP Scheme, did not find her fit for 3rd financial upgradation in view of her ACR grading for the year 2007-08 which was graded as 'Average (not expunged)'. The respondents have followed the prevailing rules /guidelines and the denial of 3rd financial upgradation fully attribute to the applicant's ACR grading for the year 2007-08. The respondents further submit that the applicant was not found fit for financial upgradation by the Screening Committee which met on 19.10.2010 and by the Screening Committee which met on 25.01.2012 as the MACP Scheme provides for benchmark of 'Good' for the preceding 5 years for grant of financial upgradation. The applicant's date of eligibility for financial upgradation is 01.09.2008 and for granting the financial upgradation the ACR gradation for 5 preceding years from 2007-08 was assessed as per rules. As the ACR grading for 2007-08 in respect of the applicant was 'Average', she was not recommended for financial upgradation by the Screening Committee.

10. The learned counsel for the parties. The learned counsel for the applicant submitted that the applicant is entitled for the 3rd financial upgradation on completion of 30 years of regular service, but the same has been denied to her only on the ground that for the year 2007-08, the performance of the applicant was graded as 'Average'. The 'Average' grading in the ACR of the applicant for 2007-08 was not at all justified and her assessment was also 'Very good' all along prior to that. Neither the 'Average' ACR for the year 2007-08 nor the penalty of 'recorded warning' issued to her should stand in her way for grant of financial upgradation under the MACP. Hence, the prayer for grant of MACP should be allowed to her.

11. The learned counsel for the respondents, emphasized that the MACP guidelines provide for meeting the benchmark requirement for being eligible for the financial upgradation. Till the grade pay of Rs.6600/-, the benchmark of 'Good' was to be applicable. The case of the applicant was considered by the Screening Committee which met on 19.10.2010 along with others, but in terms of the MACP Scheme, the said Screening Committee did not find her fit for the 3rd financial upgradation in view of the 'Average' ACR grading for the year 2007-08. For granting the financial upgradation, the ACR grading for the 5 preceding years seems to be assessed as per the guidelines. Hence, there is no wrong in the decision taken by the respondent authorities and the applicant is not entitled to the benefit.

12. We have carefully considered the facts of the case and the submissions made by the parties. The issue relates to grant of 3rd financial upgradation in respect of the applicant under the MAP Scheme. As per the guidelines of the Scheme, a Screening Committee shall be constituted in each Department to consider the case for grant of financial upgradation under the MACP Scheme. The Screening Committee shall consist of a Chairperson and two members. The members of the Committee shall comprise officers holding posts which are at



least one level above the grade in which the MACP is to be considered and not below the rank of Under Secretary equivalent in the Government. The Chairperson should generally be a grade above the members of the Committee. The recommendations of the Screening Committee shall be placed before the Secretary in cases where the Committee is constituted to the Ministry/ Department or before the Head of the organization/competent authority in other cases for approval. It also stipulated that 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 to the grade pay of Rs.7600 and above. In the matter of disciplinary/penalty proceedings, grant of benefit under the MACPS shall be subject to rules governing normal promotion. Such cases shall, therefore, be regulated under the provisions of the CCS (CCA) Rules, 1965 and instructions issued thereunder.

13. Taking the yardstick of the Departmental Promotion Committee for promotion suitability of employees for promotion, the CRs for the preceding 5 years are taken into consideration for the purpose of determining the eligibility for the financial upgradation under the MAPCS. As contended by the respondents, in this case also, in terms of the provisions under the Scheme of MACP, the Screening Committee had taken into consideration the ACRs for the previous 5 years ending with 2007-08 for the purpose of assessing the eligibility of the applicant for the 3rd financial upgradation. The Screening Committee which met on 19.10.2010 for considering grant of financial upgradation under the MACPS in respect of officers in Kerala region, considered the case of 309 officers and in respect of the applicant, had observed that the CR grading in respect of the applicant for the year 2007-08 is 'Average' and hence, she cannot be considered now along with few other officials who have got similar below benchmark grading. This seems to be in order. The case of the applicant was not



recommended by the Screening Committee as she did not meet the required benchmark grading.

14. No doubt, the applicant was not considered for the 3rd financial upgradation with effect from 01.09.2008 in view of the below benchmark rading in the preceding years. The Sceening Committee met in October, 2010 to consider the case for financial upgradation. It is not clear whether the applicant was considered from a subsequent year taking into consideration her CR for the year 2008-09. No doubt the CRs for the previous years are to be taken into consideration for considering the suitability of a person, but it does not mean that if a person got a below benchmark grading towards the later part of the 5 year period, he/she will continue to be denied promotion for all subsequent years till he/she get 5 benchmark gradings at a stretch. As per the consolidated instructions on DPC 6.1.2 of the guidelines says as under:

“6.1.2: At present, DPC enjoy full discretion to devise their own methods and procedures for objective assessment of the suitability of candidates who are to be considered by them. In order to ensure greater selectivity in matters of promotions and for having uniform procedures for assessment by DPCs, fresh guidelines are being prescribed. The matter has been examined and the following broad guidelines are laid down to regulate the assessment of suitability of candidates by DPCs.

6.2.1 (b): The DPC should assess the suitability of the employees for promotion on the basis of their Service Records and with particular reference to the CRs for **five preceding years** irrespective of the qualifying service prescribed in the Service/ Recruitment Rules. The 'preceding five years' for the aforesaid purpose shall be decided as per the guidelines contained in the DoP & T O.M. No.22011/9/98-Estt.(D), dated 8-9-1998, which prescribe the Model Calendar for DPC read with OM of even number, dated 16-6-2000. (If more than one CR have been written for a particular year, all the CRs for the relevant years shall be considered together as the CR for one year).

Therefore, in the normal parlance, if someone gets the below benchmark grading for a particular year but in the subsequent years, he/she gets the benchmark grading, then while considering the CR for the preceding 5 years, the CR for the below benchmark grading should be taken out and substituted by the

ed

benchmark grading ^{if} and the person concerned gets the 5 CRs with benchmark grading ^{and} he/she should be considered for getting financial upgradation.

15. Therefore, in the case of the applicant, if in all the previous 4 years prior to 2007-08 the required benchmark grading has been achieved and the ACR grading for 2008-09 also meets the required benchmark grading, then it is logical that she is considered towards her eligibility for financial upgradation from the subsequent year, i.e., from 01.09.2009. Therefore, it would be appropriate, if a further Screening Committee is held to consider the case of the applicant for the next year, i.e., from 01.09.2009 taking into consideration the CR for the year 2008-09 ^{and} the previous four years, i.e., 2003-04 to 2006-07. In case the CR grading for 2008-09 is 'Good' then it should substitute the grading for the year 2007-08. If the applicant secures five benchmark gradings, then she should be considered as meeting the required criteria for 3rd financial upgradation under the MACPS.

16. Therefore, after careful consideration of the entire matter, we direct the respondents to constitute a fresh Screening Committee to consider the case of the applicant for financial upgradation with effect from 01.09.2009 after taking into account the ACRs for the years 2003-04 to 2006-07 and the year 2008-09 in terms of the observations made above. If she meets the benchmark grading for all these five years, then she should be considered for 3rd financial upgradation. This should be done within a period of 3 months from the date of receipt of a copy of this order.

17. The OA is disposed of in terms of the above direction. No order as to costs.


(P.K. PRADHAN)
MEMBER (A)


(U. SARATHCHANDRAN)
MEMBER (J)