

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 135 of 2012

Thursday, this the 11th day of October, 2012

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

Sreedharan E., aged 63,
S/o. Anandan P.K.,
Postal Assistant (TBOP) Retired,
Vatakara Head Post office,
Residing at Sreevalsam,
Weaver's Street, Nut
Street PO, Vatakara – 673 104.

..... **Applicant**

(By Advocate – Mrs. R. Jagada Bai)

V e r s u s

1. Union of India,
represented by the Secretary,
to Department of Posts,
New Delhi 110 001.

2. The Post Master General,
Northern Region,
Kerala Circle, Kozhikode 673 011.

3. Superintendent of Post Offices,
Vatakara Division,
Vatakara 673 101.

..... **Respondents**

(By Advocate – Mr. Pradeep Krishna, ACGSC)

This application having been heard on 28.09.2012, the Tribunal on
11-10-12 delivered the following:

O R D E R

By Hon'ble Mr. K. George Joseph, Administrative Member-

The applicant entered service in the Department as Postman on

19.8.1978. He retired from service as Postal Assistant on superannuation on 30.4.2009. He was eligible and was considered for the 2nd financial up-gradation under the MACP scheme on 19.11.2010. As he did not have the bench mark of 'good' he was not found fit for the 2nd financial up-gradation. The representation of the applicant dated 21.7.2011 against the adverse remarks in his ACRs was considered on 4.10.2011. His representation was rejected vide letter dated 7.12.2011 at Annexure A10. Aggrieved he has filed this OA for the following reliefs:-

- “(1) Order the grant of second financial up gradation to the scale of pay of Rs. 5200-20200 with Grade Pay of Rs. 4200/- with effect from 1.9.2008 with all consequential benefits quashing Annexure A10.
- (2) Any such remedy deemed fit and proper as this Hon'ble Tribunal may be pleased to order.
- (3) Grant costs to the applicant.”

2. The applicant contended that he did not get opportunity to improve his performance as the adverse remarks of 'average' were not communicated to him at the relevant time. Prior to 19.5.2009 the grading of 'average' was not a bar for financial up-gradation to higher grade. In fact he was given financial up-gradation with effect from 27.9.2000 on completing 16 years of satisfactory qualifying service. His case is fully covered by the decision of this Tribunal in OA No. 799 of 2009. His appeal was not decided by the appellate authority but by respondent No. 3 vide Annexure A10. The denial of the 2nd financial up-gradation under the MACP scheme on the basis of un-communicated adverse remarks is illegal.

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3. The respondents in their reply affidavit submitted that the gradings 'average' was not treated as adverse remarks during the period prior to the introduction of MACP scheme. Therefore, no action was taken by the authorities concerned for communication of such remarks to the officials concerned as per the provisions prescribed giving opportunities to represent against the same at that time. The bench mark prescribed for financial up-gradation under the MACP scheme is 'good' and not 'average'. The applicant was given an opportunity to represent against the adverse remarks in his ACR. As he could not put forth any evidence in support of the arguments made therein, his representation claiming financial up-gradation under MACP scheme was rejected and he was not granted financial up-gradation. The applicant has not exhausted all official channels for redressal of grievances. He can submit further representation to the next higher authority namely Chief Postmaster General, Kerala Circle, Trivandrum.

4. We have heard the learned counsel for the parties and perused the records.

5. We find that this OA is fully covered by the decision of this Tribunal in OA No. 799 of 2009 as well as the common order in OAs Nos. 864/2006, 1/2007 and 3/2007. The relevant part of the common order is extracted as under:-

"9. Arguments were heard and documents, including the ACRs and DPC Proceedings perused. The DPC took into account the ACRs for the years 2000 – 2001, 2001-2002, 2002-2003, 2003-2004 and 2004-2005. The grading awarded in each of the above year to each of the applicants is as under:-



Applicant	2000-01	2001-02	2002-03	2003-04	2004-05
S. Preetha	Very Good	Good	Average	Good	Average
Shini James	Very Good	Average	Average	Good	Good
S. Jaya	Good	Good	Average	Good	Average
P.C.Benna	Very Good	Average	Average	Good	Good

10. The above would show that the graph of assessment has been fluctuating and in zig-zag motion. The sting of below benchmark grading would continue for five years. As for example, all the applicants have the grading of Average for the year 2002 – 2003 the adverse effect of which would prevail till 2006-2007. Again, Applicant in OA No. 1 of 2007 and 3 of 2007 have the below Benchmark grading for the year 2004-2005, the adverse effect of which would extend till 2009-2010.

11. Admittedly, the applicants have not been communicated with the average grading, which is below the prescribed Benchmark. The question is what is the impact of the same.

12. In *State of Haryana v. P.C. Wadhwa, (1987) 2 SCC 602*, the Apex Court has held as under:-

14. The whole object of the making and communication of adverse remarks is to give to the officer concerned an opportunity to improve his performances, conduct or character, as the case may be. The adverse remarks should not be understood in terms of punishment, but really it should be taken as an advice to the officer concerned, so that he can act in accordance with the advice and improve his service career.

13. Again, in *Swatanter Singh v. State of Haryana, (1997) 4 SCC 14*, it has been held –

"It is true that in view of the settled legal position, the object of writing the confidential reports or character roll of a government servant and communication of the adverse remarks is to afford an opportunity to the officer concerned to make amends to his remissness; to reform himself; to mend his conduct and to be disciplined, to do hard work, to bring home the lapse in his integrity and character so that he corrects himself and improves the efficiency in public service. The entries, therefore, require an objective assessment of the work and conduct of a government servant reflecting as accurately as possible his sagging inefficiency and incompetency. The defects and deficiencies brought home to the officer, are means to the end of correcting himself and to show improvement towards excellence."



6. From the decisions of the Apex Court cited above it is quite evident that the purpose of communication of adverse remarks is to enable the employee to reform himself and to improve in order to ensure that his career prospects are not hampered. In the instant case it is quite clear that the applicant was not communicated the adverse remark of 'average' at the relevant point of time so as to enable him to improve his performance. It was also not required on the part of the respondents to have communicated the grading of 'average' as it was not considered a adverse remark at the material time. But the fact remains that he could not improve, for want of communication of the assessment of his performance at the relevant time. This aspect should have been considered by the respondents.

7. In the light of the settled position of law, we are of the view that it is not necessary to prolong the case of the applicant who is retired by directing him to make a representation to the Chief Postmaster General, Kerala Circle at this stage. As per settled law any remark which has the effect of impairing the promotional prospects of an employee should be communicated and if not communicated the un-communicated remarks should not be taken into account by the DPC.

8. Following the earlier decision of this Tribunal, this Original Application is allowed as under:-

The impugned order at Annexure A10 dated 7.12.2011 is set aside. The respondents are directed to reconsider the case of the applicant for 2nd financial up-gradation under the MACP scheme without taking into

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account the un-communicated gradings below the bench mark and if found fit for the financial up-gradation the same may be granted to him on a notional basis and his pension and pensionary benefits may be re-fixed and paid to him, and, arrears and other dues also should be paid to him as early as possible at any rate within a period of three months from the date of receipt of a copy of this order. No costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

“SA”

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Contempt Petition No. 106 of 2013 in
Original Application No. 135 of 2012

Tuesday, this the 15th day of October, 2013

CORAM:

Hon'ble Mr. George Paracken, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

Sreedharan E., aged 63, S/o. Anandan P.K.,
 Postal Assistant (TBOP) Retired, Vatakara
 Head Post Office, Residing at Sreevalsam,
 Weaver's Street, Nut Street PO, Vatakara-673 104.

Petitioner

(By Advocate – Mrs. R. Jagada Bai)

V e r s u s

1. Smt. Manjula Parashar, (Age and father's name not available),
 Secretary to Department of Posts, Dak Bhavan, New Delhi-110 001.
2. Sri H.K. Sharma (Age and father's name not available),
 Post Master General, Northern Region, Kerala Circle,
 Kozhikode-673 011.
3. Sri A. Mohamed Kutty, aged 56 years,
 S/o. Koya (late) Superintendent of Post Offices,
 Vatakara Division, Vatakara – 673 101.

Respondents

(By Advocate – Mr. Pradeep Krishna, ACGSC)

This Contempt Petition having been heard on 15.10.2013, the Tribunal
 on the same day delivered the following:

ORDER

By Hon'ble Mr. George Paracken, Judicial Member-

This Contempt Petition has been filed for alleged non-compliance of
 the order of the Tribunal in OA No. 135 of 2012 dated 11.10.2012. The
 operative part of the said order reads as under:-



"7. In the light of the settled position of law, we are of the view that it is not necessary to prolong the case of the applicant who is retired by directing him to make a representation to the Chief Postmaster General, Kerala Circle at this stage. As per settled law any remark which has the effect of impairing the promotional prospects of an employee should be communicated and if not communicated the un-communicated remarks should not be taken into account by the DPC.

8. Following the earlier decision of this Tribunal, this Original Application is allowed as under:-

The impugned order at Annexure A10 dated 7.12.2011 is set aside. The respondents are directed to reconsider the case of the applicant for 2nd financial up-gradation under the MACP scheme without taking into account the un-communicated gradings below the bench mark and if found fit for the financial up-gradation the same may be granted to him on a notional basis and his pension and pensionary benefits may be re-fixed and paid to him, and, arrears and other dues also should be paid to him as early as possible at any rate within a period of three months from the date of receipt of a copy of this order. No costs."

2. Today when the matter was taken up for consideration learned counsel appearing for the alleged contemners submitted that the aforesaid order will be positively implemented within next three weeks.

3. In view of the above on the assurance given by the counsel for the contemners this Contempt Petition is closed and the notices issued to the alleged contemners are discharged. There shall be no order as to costs.

4. However, we make it clear that if the respondents fail to comply the aforesaid order of the Tribunal in spite of the assurance of their counsel today, the petitioner will have the liberty to revive this Contempt Petition.

(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER
"SA"

(GEORGE PARACKEN)
JUDICIAL MEMBER