

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW**

ORIGINAL APPLICATION No. 229 of 2010

Reserved on 7.10.2014

Pronounced on 27-10-2014

**HON'BLE SHRI NAVNEET KUMAR, MEMBER (J)
HON'BLE MS. JAYATI CHANDRA MEMBER (A)**

Jeevan Swaroop Mishra son of Sri Ram Dutt Mishra, aged about 50 years r/o Mohalla Anandnagar near Piparia Bypass, Lakhimpur Kheri.

Applicant

By Advocate: Sri Alok Trivedi

Versus

1. Union of India through Secretary, Ministry of Communication and I.T., Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. The Chief Post Master General, U.P. Circle, Lucknow.
3. The Superintendent of Post Offices, Kheri Division, Kheri.

Respondents

By Advocate: Sri Rajendra Singh

ORDER

By Hon'ble Sri Navneet Kumar, Member (J)

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:-

- I) This Hon'ble Tribunal may kindly be pleased to quash the impugned order dated 11.5.2010 passed by the respondent No.3 (Annexed as Annexure No.1 to his O.A.).
- II) To quash the O.M. dated 18.09.2009 to the effect so far as it relates to the dated of withdrawal of earlier scheme with retrospective effect i.e. 01.09.2008 (Annexed as Annexure No.A-2 to this O.A.).

III) To direct the respondents not to disturb the regular promotion of the applicant made w.e.f. 01.07.2009 vide order dated 15.06.2009.

IV) To pass such order orders which are found just fit and proper under the circumstances of the case.

V) To allow the original Application with cost.

2. The brief facts of the case are that the applicant was initially appointed on the post of Postal Assistant in the pay scale of Rs. 260-480 and was granted 1st Financial upgradation under TBOP Scheme w.e.f. 1999 and subsequently in 2009, on the basis of the meeting held, the applicant as well as three others have been recommended the second financial upgradation under the BCR Scheme. Accordingly, an order of promotion to the second financial upgradation was issued w.e.f. 1.7.2009. Subsequently, an office memorandum was issued in regard to the implementation of the MACP Scheme w.e.f. 1.9.2008. But the respondents illegally again considered the case of the applicant for promotion despite this fact that applicant having been promoted vide order dated 15.6.2009 w.e.f. 1.7.2009 under BCR Scheme. The Learned counsel for the applicant prays for quashing of the order dated 11.3.2010 which is in regard to granting of the second financial upgradation under MACP Scheme who have completed 20 years of regular service in the pay scale of Rs. 4200 and the name of the applicant could not be recommended due to unsatisfactory service record. Apart from this, the applicant has also prayed for quashing of an order dated 18.9.2009 through which, the office memorandum is issued in regard to the MACP for the Central Government Civilian employees.

3. On behalf of the respondents, reply is filed and through reply, it is indicated that the applicant was initially appointed on the post of Postal Assistant and after rendering, 16 years of

service, he was granted 1st financial upgradation under the TBOP scheme w.e.f. May 1999 and subsequently on completion of 26 years of service, he was granted second financial upgradation under BCR Scheme w.e.f. 1.7.2009. After that, the MACP Scheme was introduced w.e.f. 1.9.2008 in lieu of withdrawing the benefits under TBOP and BCR Schemes, the financial upgradation of the applicant along with others were considered by the screening committee. The applicant was due for financial upgradation from Grade Pay of PB-1, PB-II for which bench mark of last 5 years of ACR dossiers i.e. from 2005-2006 to 2009-2010 were taken into consideration and it was found that the applicant was punished with three punishments during 2006-2007 on different dates and one punishment during 2009-2010 and overall bench mark as good, therefore, he was not recommend for second financial upgradation after completion of 20 years of regular service under MACP Scheme. The recommendations so given by the screening committee was duly approved by the Post Master General Bareli Region Bareli and was sent to the Superintendent Post Offices Kheri. Not only this, it is also argued by the learned counsel for the applicant that the applicant has never submitted any representation against the order dated 1.5.2010 and the present O.A. is therefore liable to be dismissed.

4. On behalf of the applicant, rejoinder is filed and through rejoinder mostly the averments made in the O.A. are reiterated and the contents of the counter reply are denied.

5. Apart from this, it is also indicated by the applicant that the ACR dossiers for the period of 5 years were considered at the time of granting benefit under BCR Scheme. It is admitted by the applicant that the applicant was issued a minor penalty

charge sheet under Rule 16 of CCS (CCA) Rules 1965 vide office memorandum dated 18.3.2009.

6. Heard the learned counsel for the parties and perused the record.

7. The applicant was initially appointed in the respondents organization and was granted first financial upgradation under TBOP Scheme w.e.f. 29.5.99 and was after rendering 16 years of service, the same was done on the basis of recommendation by the departmental promotion committee held on 12.12.1999. Subsequently, on completion of 26 years of service in the postal cadre, the second financial upgradation under ACP Scheme was granted to him w.e.f. 01.07.99 this was also done on the basis of recommendation of the departmental promotion committee held on 19.4.2009. The MACP scheme was implemented w.e.f. 1.9.2008 by the Department of Post in lieu of withdrawing TBOP and BCR Schemes vide order dated 18.9.2009 and in pursuance of the same, the financial upgradation of the eligible officials including the applicant was considered by the screening committee duly constituted by the Post Master General through his letter dated 12.2.2010 which met on 18.4.2010. The applicant was due for financial upgradation from grade pay PB-I to PB- II and accordingly in terms of Para 17 of the MACP Scheme , last 5 years ACRs were to be taken into consideration For ready reference, Para 17 of the MACP Scheme reads as under:-

“The financial upgradation would be on non functional basis subject to fitness, in the hierarchy of grade pay with the PB-I. Thereafter for upgradation under the MACPS the benchmark of ‘good’ would be applicable till the grade pay of Rs. 6600/- in PB-3. The bench mark will be ‘Very Good’ for financial upgradatiion to the grade pay of Rs. 7600 and above.”

8. It is also to be indicated that the last five years ACRs is required to be considered while considering the case of an employee in regard to the financial upgradation under the MACP

Scheme. For this purpose, the ACRs dossiers from 2005-2006 to 2009-2010 were to be taken into consideration by the screening committee for considering the second financial upgradation of the applicant. The respondents annexed the ACR dossiers and as per the said ACRs dossiers, it is found that the applicant was punished with three punishments during 2006-2007 on different dates and one punishment during 2009-2010 and overall bench mark is 'good' could also not be found suitable in respect of the applicant by the Screening Committee. As such, the applicant was not recommended for second financial upgradation after completion of 20 years of regular service under the MACP Scheme by the Screening committee which met on 18.4.2010. Subsequently, the said recommendations of the screening committee were duly approved by the Post Master General In pursuance of Para 10 of the office memorandum dated 18th September, 2009. For ready refernce, Para 10 of the Office Memorandum is read as under:

“10. The recommendations of the Screening Committee shall be placed before the Director Postal Service/Director Accounts Postal/Head of the Region/Circle or organization/competent authority as the case may be for approval.”

9. After the approval of the Post Master General, the reference was made to the Superintendent Post Offices and accordingly, the order dated 11.5.2010 was issued by the respondents. It is also indicated that the preceding 5 years ACRs is required to be considered by the departmental promotion committee and since the applicant was not fulfilling the required conditions, as such, his name was not considered. Not only this, it is also indicated that no specific order for reduction of pay of the applicant was given by the Superintendent Post Offices , Kheri and also not reduced the pay of the applicant.

The second financial upgradation under BCR Scheme was granted to the applicant after completion of 20 years of regular service. While considering the same the screening committee which met on 19.4.2009 considered the five years of ACRs dossier i.e. from 2005-2006 to 2008-2009 and according to which, the adverse remarks 2006 2007 were noted and the other ACR of 4 years were found with the satisfactory remarks. Therefore, ignoring the adverse remarks of 2006-2007, the Screening committee recommended for the financial upgradation to the applicant on 1.7.2009 in accordance with the provisions of the BCR Scheme and thereafter the said scheme such as TBOP and BCR scheme were withdrawn w.e.f. 1.9.2008, the applicant was considered for second financial upgradation under MACP Scheme after completion of 20 years of regular service and after due consideration of bench mark, he was not found satisfactory, accordingly, he was not recommended for second financial upgradation under the MACP Scheme. It is also indicated that both the schemes are governed by the separate rules and regulations as such, it cannot be clubbed together. Not only this, it is also categorically indicted that the respondents not reduced the pay of the applicant as was granted to him under BCR Scheme.

10. As observed by the Hon'ble Apex Court in the case of **Union of India Vs. S. K. Goel reported in AIR 2007 SC 1199**, it is observed by the Hon'ble Apex Court that "**the DPC enjoyed full discretion to devise its method and procedure for objective assessment of suitability and merit of the candidate being considered by it**".

11. Considering the observations made by the Hon'ble Apex Court as well as on the basis of the material available on record and after due perusal of records, we do not find any reason to

interfere in the present O.A. Accordingly, the O.A. is fit to be dismissed.

12. Accordingly, the O.A. is dismissed. No order as to costs.

J. Chandra
(Jayati Chandra)
Member (A)

Navneet Kumar
(Navneet Kumar)
Member (J)

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