

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 13.10.2014

OA No.309/2011

Mr. C.B.Sharma, Counsel for the applicant.

Mr. Mukesh Agarwal, Counsel for the respondents.

Heard the learned counsel for parties.

Order reserved.

✓
(DR. MURTAZA ALI)
JUDICIAL MEMBER

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Adm/

19/11/14
order
announced
today in the
open court
by the C.O.

19/11/14.

C.O.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION No. 309/2011

ORDER RESERVED ON 13.10.2014

DATE OF ORDER : 19.11.2014

CORAM :

**HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER
HON'BLE DR. MURTAZA ALI, JUDICIAL MEMBER**

Om Prakash Saini son of Shri Sundar Lal Saini, aged about 52 years, resident of House No. 38, in front of Pani Ki Tanki, Krishi Colony Extension, Malviya Nagar and presently working as Mail Overseer (South), under ASPO's (South), Alwar.

... Applicant
(By Advocate: Mr. C.B. Sharma)

Versus

1. Union of India through Secretary to the Government of India, Department of Posts, Ministry of Communication and Information Technology, Dak Bhawan, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Senior Superintendent of Post Offices, Alwar Postal Division, Alwar.
4. Assistant Superintendent of Post Offics, South Sub Division, Alwar.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

ORDER

PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

The applicant has filed the present OA praying for the following reliefs:-

"(i) That the respondents may be directed to grant benefits of third financial upgradation w.e.f. 03.05.2010 to the applicant by ignoring ACR's those not communicated and also to apply Bench mark by quashing letter dated 07.04.2011 (Annexure A/1) with all consequential benefits including arrears of pay & allowances.

Anil Kumar

- (ii) That the respondents be further directed to consider the matter as per provisions of the MACP Scheme and DOPT guidelines.
- (iii) Any other order, direction or relief may be passed in favour of the applicant, which may be deemed fit, just and proper under the facts and circumstances of the case.
- (iv) That the cost of this application may be awarded."

2. The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant was initially appointed as Postman on 03.05.1980 in Sports Quota. He was allowed next grade after completion of 16 years and thereafter further next grade after completion of 26 years under BCR Scheme w.e.f. 01.01.2008.

3. That Government of India promulgated Modified Assured Career Progression Scheme (MACPS) for the Central Government Civilian Employees for placement in higher scale after completion of 10, 20 and 30 years of service vide OM dated 19.05.2009 (Annexure A/3) and respondent department also adopted the same and scheme is applicable w.e.f. 01.09.2008.

4. That Department of Personnel and Training vide OM dated 01.11.2010 (Annexure A/4) clarified as regard to Bench mark applicable for allowing financial upgradation. The OM provides that in case of financial upgradation under MACPS in the promotional grade and Bench mark for promotion is lower than the Bench mark for granting the benefits under MACPs as mentioned in Para 17 of the OM dated 19.05.2009, the Bench

Anil Kumar

mark for promotion shall apply to MACP Scheme also and in the case of applicant promotional grade is of Postal Assistant by way of Departmental examination and no Bench mark has been prescribed for that purpose. Para 17 of the Scheme is quoted below:-

"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 to the grade pay of Rs.7,600/- and above."

5. The learned counsel for the applicant submitted that the applicant became entitled for third financial upgradation w.e.f. 03.05.2010. Thus at present the applicant is in the pay band 1, Rs.5200-20200/- with grade pay of Rs.2800/- and entitled for the grade pay of Rs.4200/- in the pay band of Rs.9300-34800/- The learned counsel for the applicant emphasized that there is no bench mark prescribed in the hierarchy of grade pay within the pay band 1. Therefore, in the case of the applicant bench mark of 'Good' will not be applicable.

6. That since the applicant made a complaint on 28.07.2010 (Annexure A/5) before the respondents regarding the working of Shri P.C. Meena, respondent no. 4, Shri P.C. Meena time to time put adverse remark in the ACRs of the applicant being annoyed with the applicant.

7. That the respondents conducted review of the officials who have completed 30 years of service or age of 55 years on

Anil Kumar

the basis of service record and Review Committee found fit the applicant for retention in the service vide Memo dated 25.08.2010 (Annexure A/6).

8. It is further submitted that after allowing next higher scale in the year 2008 and thereafter retention in service shows that service record of the applicant remain satisfactory throughout service, but respondent no. 4 vide letter dated 07.09.2010 (Annexure A/7) made available ACRs from 01.04.2005 to 31.03.2010 which never communicated to the applicant against which applicant represented on 13.09.2010 (Annexure A/8) before the respondent no. 3 who is reviewing authority. Besides this, respondent no. 4 nowhere made available ACRs sheet of Reviewing Officer.

9. That financial upgradation by way of non selection method and for non-selection methods guidelines for departmental promotion committee provides in Para 6.1.4, which reads as follows:-

"6.1.4 Government also desires to clear the misconception about "Average" performance. While "Average" may not be taken as adverse remark in respect of an officer, at the same time, it cannot be regarded as complimentary to the officer, as "Average" performance should be regarded as routine and undistinguished. It is only performance that is above average and performance that is really noteworthy which should entitle an officer to recognition and suitable rewards in the matter of promotion."

In view of this position when no Bench mark has been prescribed and on the basis of Average grading which has been never communicated to the applicant prior to 2010, applicant

Anil Kumar

cannot be denied benefits of financial upgradation and applicant is entitled for third financial upgradation under MACP Scheme w.e.f. 03.05.2010.

10. That the respondents on the basis of ACRs of Reporting Officer which were never communicated to the applicant year to year not found fit for third financial upgradation under MACP Scheme on completion of 30 years of service due to below Bench mark grading vide Memo dated 07.04.2011 (Annexure A/1) inspite of fact that on the basis of same service record applicant next higher scale on completion of 26 years of service in the year 2008 and thereafter in 2010 also found fit for retention in service and further vide Annexure A/4 clarification also issued as regards to Bench mark which provide if lower Bench mark is in promotion, the same is applicable. Therefore, he prayed that the applicant be granted third financial upgradation w.e.f. 03.05.2010.

11. On the other hand, the respondents have filed their reply. In their reply, the respondents have admitted that the applicant was appointed in the Department of Posts on 03.05.1980 as Postman and he is presently working as Mail Overseer. The respondents have also admitted that the Department has introduced MACPS vide letter dated 18.09.2009 (Annexure R/1) w.e.f. 01.09.2008. That on introduction of the aforesaid MACP Scheme, the applicant, who was completing 30 years service on 27.05.2010, became eligible for consideration for third financial upgradation to next

Anil Kumar.

higher grade pay of Rs.4200/- in PB-2 of Rs.9300-34800/- w.e.f. 28.05.2010, as the financial upgradations granted to him under TBOP & BCR Schemes with effect from 11.05.1996 and 11.01.2008 to grade pay Rs.2400/- and Rs.2800/- in PB-1 of Rs.5200-20800/- respectively were equal to first and second financial upgradations under MACP Scheme.

12. In the Scheme, it has been provided 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 MACPs, the bench mark 'Good' would be applicable till the grade pay of Rs.6600/- in PB-3. In the instant case, the third financial upgradation of the applicant to grade pay of Rs.4200/- in PB-2 of Rs.9300-34800/- was due w.e.f. 28.05.2010. As such the condition of minimum bench mark of 'Good' was applicable in his case. Accordingly, the case of the applicant alongwith all other officials eligible for consideration of their financial upgradations under MACP Scheme for the period 01.04.2010 to 31.03.2011 was placed before the Screening Committee on 16.03.2011 with relevant record. The profile of Past five years ACRs of the applicant is as under:-

| 2005-06 | 2006-07 | 2007-08 | 2008-09 | 2009-10 | Details of pending Disc. Case/currency of punishment |
|---------|---------|--------------|---------------|---------------|---|
| Average | Average | Slow Average | Below Average | Below Average | The official is subsidiary offender in Harsoli fraud case. Charge sheet yet not issued. |

13. The Screening Committee, on overall assessment of past five years service record of the applicant did not find him fit for

Anil Kumar

third financial upgradation due to below bench mark grading of his ACRs and on approval of the recommendation of the Screening Committee by the competent authority, the applicant was informed accordingly vide Sr. Superintendent of Post Offices Alwar Dn. Alwar Memo No. B2/124/Postman/MACP-III dated 07.04.2011 (Annexure A/1 of the OA).

14. The learned counsel for the respondents argued that so far the prescription of 'Bench mark' for financial upgradation under MACPS is concerned, it will not be out of place to state that the Government of India vide OM No. 21011/1/2010-Estt.A dated 13.04.2010 (Annexure R/2) issued orders and directed all the Departments that if an employee is to be considered for promotion in a future DPC and his ACRs prior to the period 2008-09 which would be reckonable for assessment of his fitness in such future DPCs contain final grading which are below the bench mark for his next promotion, before such ACRs are placed before the DPC, the concerned employee will be given a copy of the relevant ACR for his representation, if any, within 15 days of such communication. As such in compliance of these orders of the Government of India, the copies of the ACRs of the relevant years were supplied to the applicant vide Assistant Superintendent of Post Offices Alwar (s) Sub Dn. Alwar letter No. ASP/APAR/10 dated 07.09.2010 (Annexure A/7 of the OA) and the applicant submitted his representation (Annexure A/8 of the OA) against below bench mark grading of his ACRs for the period from 01.04.2005 to

Anil Kumar

31.03.2010 to the SSPOs Alwar (Respondent no. 3). Meanwhile, the Government of India, Ministry of Communication & IT vide OM NO. 4-7/(MACPs) 2009-PCC dated 01.09.2010 (Annexure R/3), further ordered to constitute a Scrutiny Committee at Divisional level for scrutinizing the confidential reports of Postman, Postal Assistants/ Sorting Assistants for the preceding five years. Accordingly in the light of the instructions issued vide Government of India aforesaid OM dated 01.09.2010 (Annexure R/3) it was decided to place the case of the applicant before the Scrutiny Committee and in respect of the representation (Annexure A/8) of the applicant, he was also informed of accordingly vide SSPOs Alwar letter No. SSP/APAR/10 dated 28.09.2010 (Annexure R/4) and the ACRs of the applicant for the period from 01.04.2005 to 01.03.2010 were scrutinized by the Scrutiny Committee but consequent upon scrutinizing, no change in the grading of the ACRs of the applicant was arrived at, as stated in the SSPOs Alwar Memo No. b2/124/Misc dated 23.03.2011 (Annexure R/5). Further the result of the scrutiny had also been communicated to the applicant vide SSPOs Alwar letter No. SSP/APAR/10 dated 06.07.2011 (Annexure R/6). It was also submitted that the process of scrutinizing the ACRs of the applicant was completed before the holding of the screening committee on 16.03.2011 for considering the third financial upgradation case of the applicant under MACP Scheme.

Thus in view of the above mentioned facts, the action of the respondents in connection with "Bench Mark" and not

Amil Kumar

allowing third financial upgradation under MACP to the applicant is just, fair and as per the rules/guidelines issued by the Government of India. Therefore, the OA has no merit and it should be dismissed with costs.

15. Heard the learned counsel for the parties and perused the documents on record. The learned counsel for the applicant mainly emphasized for grant of third financial upgradation to the applicant on the ground that the bench mark of "Good" was not required as the applicant was working in pay band-1. He referred to the Para 17 of the MACP, which has been quoted in Para 4 of this order. On the other hand, the learned counsel for the respondents drew our attention to the same Para No. 17 of the Scheme in which it has been stated that 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 case of the applicant was to be considered for third financial upgradation in pay band-2 of Rs.9300-34800/- with grade pay of Rs.4200/- w.e.f. 28.05.2010. Therefore the condition of minimum bench mark 'Good' was applicable in his case. We have carefully perused the Para No. 17 of the Scheme, which has been annexed by the applicant alongwith the OA at Annexure A/3 and we are inclined to agree with the arguments of the learned counsel for the respondents that in the case of the applicant bench mark of 'Good' would be applicable though the applicant is working in the pay band-1.

Anil Kumar

His case for financial upgradation is to be considered for pay band-2 in the scale of Rs.9300-34800/- with grade pay of Rs.4200/-. Since the case of the applicant is to be considered in the pay band-2 with Grade pay of Rs.4200/-, therefore, we are of the opinion that the bench mark 'Good' would be applicable in the case of the applicant.

16. We are not inclined to agree with the averments made by the learned counsel for the applicant that respondent no. 4 being annoyed made 'average' or 'adverse' remarks in the ACR/APARs of the applicant. The applicant has not made respondent no. 4 party by name, therefore, the allegation of malafide cannot be leveled against respondent no. 4. Moreover, the applicant in his pleading has stated that he made a complaint against respondent no.4 in connection with his working on 28.07.2010. Thus, being annoyed, the respondent no. 4 made 'Average' or 'Below Average' entries in his ACRs/APARs. However, on this account, malafide is not proved against respondent no. 4 because the applicant made complaint on 28.07.2010, therefore, the respondent no. 4, Shri P.C. Meena, could have been annoyed with the applicant after 28.07.2010 whereas the ACRs/APARs of the applicant were considered by the respondents for the period 2005-06, 2006-07, 2007-08, 2008-09 and 2009-2010. That the entries of the ACRs are prior to the applicant's filing complaint against respondent no. 4. Therefore, we are of the view that allegation of malafide is not proved against respondent no.4. Moreover, according to respondent no. 4, the APARs of the applicant of

Anil Kumar.

the past five years were communicated to the applicant before the meeting of the Screening Committee for the grant of third MACP and the applicant was given an opportunity to represent against those ACRs/APARs. The applicant did submit his representation, which was duly considered by the Scrutiny Committee constituted for the purpose by the respondents and the process of scrutinizing the ACRs of the applicant was completed before the holding of the Screening Committee on 16.03.2011 for considering the third financial upgradation of the applicant under MACP Scheme. The Scrutiny Committee did not find it a fit case for upgrading of the ACR of the applicant. The applicant was communicated the decision of the Scrutiny Committee also. Thus the principles of natural justice were also followed in the case of the applicant.

17. The respondents have placed the profile of the past five years ACRs of the applicant in Para No. 4 of their written reply, which is quoted below:-

| 2005-06 | 2006-07 | 2007-08 | 2008-09 | 2009-10 | Details of pending Case/currency of punishment |
|---------|---------|--------------|---------------|---------------|---|
| Average | Average | Slow Average | Below Average | Below Average | The official is subsidiary offender in Harsoli fraud case. Charge sheet yet not issued. |

The Screening Committee on the overall assessment of the five years service record of the applicant did not find him fit for the third financial upgradation due to below average mark grading of his ACRs. We do not find any illegality/irregularity in the action of the respondents in not granting the third financial upgradation to the applicant under MACP because of his below bench mark service record. Thus

Anil Kumar

we are of the opinion that the applicant has failed to make out any case for the relief in the present OA.

18. Consequently the OA being devoid of merit is dismissed with no order as to costs.



(DR. MURTAZA ALI)
MEMBER (J)



(ANIL KUMAR)
MEMBER (A)

Abdul