

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION No. 334/2011

Jaipur, the ^{5th} December, 2013

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER
HON'BLE MR. A.J. ROHEE, JUDICIAL MEMBER

R.S. Meena son of Shri Giriraj Singh by cast Meena aged about 56 years, resident of 12, Prem Nagar, Alwar. Presently working as Sub-Post Master Sikri (Nagar), District Bharatpur.

... Applicant

(By Advocate: Mr. P.N. Jatti)

Versus

1. Union of India through the Secretary to the Government of India, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Superintendent Post Officer, Bharatpur Division, Bharatpur.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

ORDER

PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

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

- "(i) That by a suitable writ/order the direction the impugned order dated 21.07.2011 received on 27.07.2011 be quashed and set aside.
- (ii) That by a suitable writ/order of the direction, the respondents be directed not to reduce the pay of the applicant which has been fixed by the order dated 11.02.2009. It is further prayed that any money is recovered by the respondents be refunded as early as possible.
- (iii) Any other relief which the Hon'ble Bench deems fit."

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2. The learned counsel for the applicant submitted that the applicant was appointed on 10.10.1982 and, therefore, he has completed 26 years of service on 09.10.2008. He was allowed higher pay scale of BCR as per the existing rules vide order dated 11.02.2009 (Annexure A/2). This order was effective from 01.01.2009. Since then he has been working in this pay scale.

3. That now without issuing any show-cause notice for withdrawing the promotion of the BCR and without issuing any show cause notice and without giving any opportunity of hearing, the respondents have issued an order dated 21.07.2011 (Annexure A/1) for the recovery of Rs.71,766/-. The Postmaster Deeg has been directed to recover Rs.5000/- or 1/3 from the pay of the applicant against the illegal recovery of Rs.71,766/-. To Support his averments, the learned counsel for the applicant referred to the order of the Central Administrative Tribunal, Principal Bench, New Delhi passed in OA No. 829/1991 [**Kanta Rathor (Mrs.) and Others vs. Union of India & Another**] decided on 02.07.1996. Therefore, he prayed that the impugned order dated 21.07.2011 (Annexure A/1) be quashed and set aside.

4. On the other hand, the learned counsel for the respondents admitted that the applicant was granted second financial upgradation under the BCR Scheme w.e.f. 01.01.2009.

5. That subsequently on the basis of the recommendations of the 6th Pay Commission, the Government of India introduced the scheme of Modified Assured Career Progression Scheme (MACPS)

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for Central Government employees. The Scheme is operational with effect from 01.09.2008.

6. That the Department of Posts, Ministry of Communication and IT, vide OM No. 4-7(MACPS)/2009-PCC dated 18.09.2009 (Annexure R/1) made applicable the MACPS in the department with effect from 01.09.2008. As per Para 4 of the OM dated 18.09.2009 (Annexure R/1), the scheme of Time Bound One Promotion (TBOP) and Biennial Cadre Review (BCR) were withdrawn with effect from 01.09.2008 i.e. date from which MACPS was made applicable. Thus, after issuing OM dated 18.09.2009, the benefit of financial benefit granted under BCR on 01.09.2008 or after, including applicant was to be withdrawn, as their cases were required to be considered as per MACPS.

7. That as per MACPS, the applicant was/is also eligible for 2nd financial upgradation w.e.f. 01.09.2008 on completion of 20 years regular service as on 08.10.2002. The case of applicant was put up before the screening committee held on 15.03.2010 for grant of 2nd financial upgradation in PB-2 of Rs.9300-34800) with grade pay of Rs.4200/- but due to unsatisfactory record of service/below bench marks in the ACRs, the case of the applicant was not found fit by the screening committee to grant 2nd financial upgradation as per provisions of MACPS. It is pertinent to mention here that earlier in BCR there was no bench mark whereas, as per provision of MACPS, there is bench mark 'Good' for grant of 2nd financial upgradation.

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8. That the case of applicant was again put up before the screening committee held on 16.03.2011 for grant of 2nd financial upgradation but due to unsatisfactory record of service/below bench mark, the case of applicant was not considered fit by the screening committee to grant 2nd MACP and in this regard the applicant was informed accordingly vide Memo No. b2/108/1VIACP-H/2010-11 dated 18.03.2011 (Annexure R/3).

9. That in the meantime an inspection of Deeg HO, who maintain the service book of the applicant, was carried out by the Audit Party on 23.02.2011 to 01.03.2011 and as per Para 7 of Audit Inspection Report received vide Director of Accounts (Postal) Jaipur letter No. CIS/111/Deeg 110/2-11/196 dated 28.04.2011 (Annexure R/4) directed to withdraw the 2nd financial upgradation granted to the applicant with effect from 01.01.2009 under BCR and to recover the amount of Rs.71,766/- paid to the applicant with effect from 01.01.2009 to 28.02.2011. Hence in compliance of orders DAP Jaipur, the Postmaster Deeg HO deducted Rs.10,000/- from the pay of the applicant for the month of June, 2011.

10. Learned counsel for the respondents submitted that thus the action of the respondents is according to the provisions of law and the present OA has no merit and it should be dismissed with costs.

11. Heard the rival submissions of the parties, perused the documents on record and the case law referred to by the learned counsel for the applicant.

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12. It is admitted between that the parties that the applicant was appointed in the respondent department on 10.10.1982 and he has completed 26 years of service on 09.10.2008. At that time, the scheme of BCR was applicable and accordingly, the applicant was allowed higher pay scale of BCR with effect from 01.01.2009. However, with the introduction of MACPS with effect from 01.09.2008, the earlier provision of sanctioning the higher pay scale under BCR was withdrawn. The applicant was considered being eligible under the MACP Scheme but since he was below the bench mark, he could not be given second financial upgradation under MACP Scheme. Therefore, a recovery order of Rs.71,766/- has issued against the applicant.


13. The main contention of the learned counsel for the applicant is that before issuing the recovery order against the applicant, no show cause notice was given nor a chance of personal hearing was given to the applicant. To support his averments, he referred the order dated 02.07.1996 of the Central Administrative Tribunal, Principal Bench, New Delhi passed in OA No. 829/1991 [**Kanta Rathor (Mrs.) and Others vs. Union of India & Another**] (supra). We have carefully perused the order of the Central Administrative Tribunal, Principal Bench, New Delhi in this OA. The Principal Bench, relying the case of **Bhagwan Shukla vs. Union of India & Others**, 1994 28 ATC 258, held that any recovery of over payment cannot be effected after a long time especially without a show cause notice.

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14. The Hon'ble Supreme Court in the recent case in the case of **Chandi Prasad Uniyal & Others vs. State of Uttarakhand & Others**, JT 2012 (7) SC 460, has held that if over payment has been made to a employee even without his misrepresentation or fault even then the said amount can be recovered from the employee. Therefore, respondents could have recovered any access payment made to the applicant. However, the respondents before issuing the recovery order should have given a show cause notice to the applicant to comply with the principles of natural justice. Admittedly no show cause notice was issued to the applicant with regard to the recovery or withdrawing the higher pay scale under the BCR Scheme already granted to the applicant with effect from 01.01.2009. Hence, we are of the opinion that the letter of recovery dated 21.07.2011 (Annexure A/1) has been issued without following the principles of natural justice and, therefore, it is quashed & set aside. However, the respondents are at liberty to issue a show cause notice to the applicant for recovery and proceed further in accordance with the provisions of law.

15. With these observations, the OA is disposed of with no order as to costs.


(A.J. Rohee)
Member (J)


(Anil Kumar)
Member (A)

AHQ