

**THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET**

APPLICATION NO.: _____

Applicant(s)

Respondent (s)

Advocate for Applicant (s)

Advocate for Respondent (s)

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

06/03/2014

O.A. No 39/2012

Mr. C B. Sharma. Counsel for applicant.
Mr. Mukesh Agarwal, counsel for respondents.

Heard. the learned counsel for the
Parties.


Order reserved.

^{for. C.O.}
(M. Nagarajan)
Member (J)


Anil Kumar,
(Anil Kumar)
Member (A)

12.03.2014

Order pronounced today for the open
Court. by the aforesaid Bench.


12/3/14

For. C.O

Shival Kumar Secy

13/3/14

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

Draft/ pre-delivery order in O.A. No. 39/2012 (Ram Khilari Meena
Vs UOI) is respectfully submitted for approval.

M. Nagarajan
(M. Nagarajan)
Judicial Member

Hon'ble Shri Anil Kumar,
Administrative Member

I agree -
Anil Kumar

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 39/2012

Order reserved on : 06/03/2014

Order pronounced on 12/03/2014

Hon'ble Shri Anil Kumar, Administrative Member
Hon'ble Shri M. Nagarajan, Judicial Member

RAM KHILARI MEENA Son of Sh. Shri Lal Meena, aged about 55 years, resident of C-4, Saini Colony-III, Kartarpura, Jaipur and presently working as Sub Post master, Sector-11, Post Office Pratap Nagar, Jaipur.

.....Applicant

(By Advocate : Shri C.B. Sharma)

V E R S U S

1. Union of India, through its Secretary to the Government of India, Department of Posts, Ministry of Communication & Information Technology, Dak Bhawan, New Delhi-110001.
2. Chief Post Master General, Rajasthan Circle, Jaipur-302007.
3. Senior Superintendent of Post offices, Jaipur City Postal Division, Jaipur-302006.

.....Respondents

(By Advocate : Shri Mukesh Agarwal)

ORDER

Per : Shri M. Nagarajan, Judicial Member

The grievance of the applicant in this O.A is as to non extension of the benefit of MACP scheme. His claim is that

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since he has completed 30 years of service in the year 2010, the respondent No. 2, while considering and granting the benefit under the Modified Assured Career Progression Scheme to all other similarly situated eligible officials should have granted to him also, but, illegally denied the said benefit to him.

2. In support of his claim for grant of the benefit under MACP scheme, the brief facts stated by the applicant in this O.A. are that he was initially appointed as Postal Assistant on 13/07/1980 and he was granted financial upgradation under the TBOP scheme w.e.f. 13/07/1996 under the B.C.R. scheme w.e.f. 01/07/2008 and that he completed 30 years of regular service in the year 2010 from the entry grade.

3. A charge memo dated 09/03/2010 (Annexure-A/4) was served on him under Rule 16 of CCS (CCA) Rules 1965 by which punishment of censure was imposed on him. Against the said order dated 09/03/2010, he preferred an appeal before the Appellate Authority. The Appellate Authority while setting aside the said order dated 09/03/2010 enhanced the punishment by an order dated 15/09/2010 (Annexure-A/5), and reduced one stage of pay for one year w.e.f. 01/10/2010 without cumulative effect and no adverse effect on pension in exercise of the power under rule 29 (v) of CCS (CCA) Rules, 1965. The applicant has challenged the said order 15/09/2010 before this tribunal in O.A. No. 450/2010 and

Dr. U. S. —

this Tribunal, by the order dated 03/05/2011, quashed the same.

4. According to the applicant, throughout his 30 years of service, he has maintained an unblemished record of service except for the period from 01/04/2008 to 04/07/2008 and from 03/11/2008 to 31/03/2009 and as such, the respondent ought to have granted the benefit of MACP scheme, but, the same was denied to him by the impugned order dated 26/12/2011 (Annexure-A/1). Hence, he presented the O.A. with a prayer to set aside the said order dated 26/12/2011 (Annexure-A/1) and for a direction to the respondents to allow him the 3rd financial upgradation in the Pay Band Rs. 9300-34800 with grade pay Rs. 4600/- w.e.f. 13/07/2010.

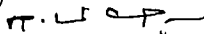
5. The respondents have filed their reply contending that the applicant is not entitled for the benefit of the said MACP scheme. According to the respondents after introduction of MACP scheme w.e.f. 01/09/2008 for the purpose of considering the cases of Postal Assistants who have completed 30 years or more regular service from the entry grade, the Screening Committee met on 08/11/2011 for recommending the names of the eligible Postal Assistants for granting 3rd financial upgradation. In the process of screening the service records of the applicant, the said Screening Committee found that the records of the applicant are not satisfactory and further found that as on date on which the

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Screening Committee met, punishment of censure imposed upon him was in currency. Consequently, a decision was taken by the authority not to grant 3rd financial upgradation under the MACP scheme and the same was communicated to him under the impugned order dated 26/12/2011 (Annexure A/1).

6. Heard the learned counsel for the applicant Shri C.B. Sharma and the learned Senior Central Govt. Standing counsel, Shri Mukesh Agarwal. Perused the pleadings and the documents annexed to the pleadings of both the parties.

7. Shri C.B. Sharma, learned counsel for the applicant argued that the reason assigned by the respondents for not granting 3rd financial upgradation under the MACP scheme to the applicant has no basis much less a legal basis. He submitted that in view of the fact that the order dated 15/09/2010 (Annexure-A/5) passed by the appellate authority was quashed by this Tribunal by the order dated 03/05/2011 in O.A. No. 450/2010, the reason assigned by the respondents in the impugned order i.e. "Currency of punishment" is an imaginary one and as such the impugned order is liable to be quashed. He further submitted that the applicant has maintained an unblemished record of service except for the period from 01/04/2008 to 04/07/2008 and 03/11/2008 to 31/09/2009.



8. By inviting our attention to Para 17 of the MACP scheme, the learned counsel for the applicant argued that for grant of the benefit of 3rd financial upgradation under MACP scheme, the benchmark that would be applicable till the grade pay of Rs. 6600/- in PB-3 is "Good" and in view of the of the fact that the applicant is in grade pay of Rs. 4600/- and further in view of the fact that the applicant has the benchmark i.e. "Good", the respondents can not deny the benefit of 3rd MACP to him and consequently, the applicant is entitled for the directions as sought by him in the O.A.

9. Per contra, the Senior Central Govt. Standing Counsel, Shri Mukesh Agarwal, contended that the impugned order dated 26/12/2011 (Annexure-A/1) can not be interfered with for the reasons that the service record of the applicant is an unsatisfactory one. By inviting our attention to the Para 18 of the MACP scheme, the learned counsel for the respondents argued that the grant of benefit under the MACP scheme shall be subject to rules governing normal promotions. The normal rule of promotion is that whenever a government servant is facing disciplinary proceedings or a penalty imposed upon a government servant is in currency, such government servant can not be granted promotion, till such time, the disciplinary proceedings is concluded or till such a time, the duration of the penalty imposed upon government servant expires, as the case may be. No government servant can be granted promotion whilst the penalty imposed upon him is in currency. By referring to this normal rules of promotion and

referring to the fact that though the order dated 15/09/2010 (Annexure-A/5) passed by the Appellate Authority imposing reduction of one stage of pay w.e.f. 01/01/2010 was quashed by this Tribunal by the order dated 03/05/2011 in O.A. No. 450/2010 (Annexure-A/6), he contended that in view of the fact that the respondents have preferred a writ petition against the said order of the Tribunal dated 03/05/2011 in O.A. No. 450/2010 in D.B. Civil Writ Petition No. 10705/2011 on the file of the Hon'ble High Court of Rajasthan, Jaipur Bench and the same is pending, it is required to be construed that the punishment imposed under the said order dated 15/09/2010 is in force. He further submitted that assuming that the said order dated 15/09/2010 passed by Appellate Authority (Annex-A/5) is not in existence at all, even then, the applicant is not entitled for the benefit of 3rd financial upgradation under the MACP scheme, since, the penalty of "Censure" imposed by the disciplinary authority is still in force, and as the such reasons assigned by the respondents in the impugned order is required to be sustained.

10. In order to ascertain the fact, whether the applicant is having satisfactory service record or unsatisfactory service record, the Tribunal by the order dated 09/12/2013 in this O.A. directed the learned counsel for the respondents to produce the ACR records of the applicant and minutes of the DPC. In obedience of the said direction, the learned counsel for the respondents, Shri Mukesh Agarwal, produced before us the entire ACR record of the applicant and minutes of the

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Departmental Screening Committee. We have perused the entire ACR records of the applicant and on perusal of the same we found that except for the period from 01/04/2008 to 04/07/2008 and 03/11/2008 to 31/03/2009, the applicant has been graded as "Good" and also as "Very Good" for some years. Therefore, we are not inclined to accept the arguments of Shri Mukesh Agarwal that the service record of the applicant is unsatisfactory. On the other hand, on perusal of the said record, we are of the opinion that the service record of the applicant is satisfactory for the purpose of the grant of 3rd financial upgradation under MACP scheme, since he has the required 'Benchmark'.

11. Now coming to the other reason assigned by the respondents i.e. "Currency of punishment", it is an admitted fact that the order of the Appellate Authority dated 15/09/2010 was quashed by this Tribunal by the order dated 03/05/2011 (Annexure-A/6). Though, the said order in the O.A. No. 450/2010 is a subject matter before Hon'ble High Court of Rajasthan in the said C.W.P. No. 10705/2011, the orders of this Tribunal has not been stayed. In view of this position, it is required to be held that the order imposing penalty of reduction of one stage of pay w.e.f. 01/10/2010 ceases to be in operation. Mere pendency of the said D.B. CWP No. 10705/2011 against the order of the Tribunal in the said O.A. No. 450/2010 can not be urged as ground for denying the 3rd financial upgradation under MACP scheme.

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12. The learned Sr. Central Govt. standing counsel, Mukesh Agarwal further contended that if, for any reason this Tribunal comes to the conclusion that the order dated 15/09/2010 (Annexure A/5) passed by the Appellate Authority ceases to be in force, even then, the impugned order can not be interfered for the reason that penalty of "Censure" imposed by the disciplinary authority is in force. We are not persuaded by this submission of the learned Sr.C.G.S. counsel for the reason that the respondents themselves by a letter dated 18/10/2010 (Annexure-A/8) clarified certain aspects of the matter relating to extension of 3rd financial upgradation under MACP as provided in the OM dated 18/09/2009. The clarification issued by the Assistant Director General (GDS/PCC) by referring to Para 18 of the OM dated 18/09/2009 reads as under:

"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." Attention of the Circle is drawn to Department of Personnel and Training OM No. 22011/2/7-Estt.(A) dated 16-02-1979 communicated in DGP&T letter No. 35-1/79-SPB-II dated 07-05-2009. According to these orders, the penalty of censure or recovery of pecuniary loss are not a bar for penalty for promotion if the findings of the DPC are in favour of the employee."

A perusal of the above position of the said letter dated 18/10/2010 makes it clear that the respondents themselves have taken a policy decision that "censure" is not a bar for grant of promotion. Thus, there is no substance in the argument of the learned counsel for the respondents that the

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applicant is not entitled for grant of benefit of 3rd financial upgradation under MACP scheme on the ground that the penalty of censure imposed by the disciplinary authority is in force.

13. For the forgoing reasons, we are of the view that the reason assigned by the respondents in the impugned order for not granting of 3rd financial upgradation under MACP Scheme has no legal basis and hence, we quash the impugned order dated 26/12/2011 and direct the respondents to extend the benefit of 3rd financial upgradation as provided under II MACP scheme, if he is found fit in all other respects.

14. O.A. is allowed. The respondents are directed to extend the benefit of 3rd financial upgradation under the MACP scheme to the applicant within a period of three months from the date of receipt of a copy of this order if he is found fit in all other respects. In the circumstances, no order as to costs.

However, we make it clear that the benefit of 3rd financial upgradation that would be extended by the respondents in compliance of this order is subject to outcome of D.B. CWP No. 10705/2011 pending in Hon'ble High Court of Rajasthan, Jaipur.

M. Nagarajan
(M. Nagarajan)
Judicial Member

Anil Kumar
(Anil Kumar)
Administrative Member

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