

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 13.10.2014

OA No.584/2013 with MA No.270/2013

Ms. Mumal Rajvi, Counsel for the applicant.

Mr.Gaurav Jain , Counsel for the respondents.

Heard the learned counsel for parties.

Order Reserved.

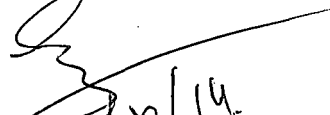

(DR. MURTAZA ALI)
JUDICIAL MEMBER


(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Adm/

17/10/14

order pronounced
today in the open court
by the aforesaid Bench.


17/10/14
C.O.

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

Draft / pre-delivery order in OA No. 584/2013 with MA No. 270/2013 (Ramesh Chandra Sharma vs. UOI & Ors.) is submitted herewith for kind consideration and approval.

Anil Kumar
(Anil Kumar)
Member (A)

Hon'ble Dr. Murtaza Ali,
Member (J)

I agree
M

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

**ORIGINAL APPLICATION NO. 584/2013
WITH
MISC. APPLICATION NO. 270/2013**

Order Reserved on 13.10.2014

Date of Order: 17.10.2014

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

Ramesh Chandra Sharma S/o late Shri Ramgopal Sharma, aged about 63 years, R/o 5/425, SFS, Agarwal Farm, Mansarovar, Jaipur (Raj.).

...Applicant

Ms. Mumal Rajvi, counsel for applicant.

Versus

1. Union of India through Controller and Auditor General of India, 9, Deen Dayal Upadhyay Marg, New Delhi (India).
2. Principal Accountant General (A&E), Rajasthan Janpath, Jaipur (Rj.).
3. Dy. Accountant General (Administration), Office of the Principal Accountant General (A&E), Rajasthan Janpath, Jaipur (Raj.).

...Respondents.

Mr. Gaurav Jain, counsel for respondents.

ORDER

The applicant has filed the present Original Application with the prayer that the respondents be directed to consider the candidature of the applicant for grant of the benefit of III MACP

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along with all consequential benefits due from the date from which the applicant is entitled i.e. 01.09.2008.

2. The brief facts of the case, as stated by the applicant, are that the applicant was appointed on the post of Clerk on 30.05.1970 with the respondent-department. He was promoted on the post of Auditor on 05.05.1978. On 01.04.1984, he was designated as Accountant. The applicant was further promoted on the post of Senior Accountant on 01.04.1987.

3. However, due to an incident in the year 1994, the applicant became visually handicapped. Subsequently, due to his disability, the applicant was posted to Type Pool Section vide order dated 29.10.1999 (Annexure A/10). The respondent no. 2 did not give permission to the applicant for further study vide order dated 16.03.2007 (Annexure A/15). The applicant also refused to provide a writer to the applicant to appear for the examination to consider the applicant for promotion to the post of Section Officer.

4. The applicant vide application dated 18.11.2009 requested the respondent no. 3 to give III MACP but the benefit of III MACP was not given to the applicant without assigning any reason. Vide letter dated 12.09.2011 (Annexure A/18), he was communicated with the ACR for the period from 01.04.2004 to 04.08.2004, 2005-2006, 01.04.2006 to 12.07.2006, 12.10.2006 to 31.03.2007 and 2007-2008 with the direction that the

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applicant may submit his representation, if he so desires within 10 days. It was also stated in this letter that the ACR for 2008-2009 has already been made available to the applicant. The applicant submitted a representation on 21.09.2011 stating that he has already superannuated on 30.04.2010 after serving for 40 years. Before he became visually handicapped i.e. between 30.05.1970 to 23rd May, 1994, his services has always been outstanding and, therefore, he was given two promotions. Even after becoming visually handicapped, the applicant has been attending office regularly and there has been no complaint against him. Whatever work was assigned to him, he has always performed with full devotion. Even during the period under report, he has been assessed as an intelligent, honest, discipline, punctual and having cordial relation with all employees. Since he was visually handicapped, therefore, it has been recorded that he could not do noting and drafting on files, therefore, his work could not be assessed and hence he has been categorised as average in the grading column. According to the Section 47 (2) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, no disable personal shall be denied promotion. The applicant completed 30 years of service on 01.06.2000, therefore, according to the provisions of MACP, he is entitled for the grant of III MACP with effect from 01.09.2008. Therefore, on humanitarian ground also, he should be provided III MACP.

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5. The respondents have filed their reply. In their reply, the respondents have stated that as per Para 17 of MACP Scheme 2009 envisages inter alia that in the financial up-gradation under the MACP Scheme the benchmark of "Good" would be applicable till the grade pay of Rs. 6600/- in PB-3. The benchmark will be "Very Good" for financial up-gradation to the grade payoff Rs. 7600/- and above". Whereas para 20 of the Scheme runs as "Financial up-gradation under the MACP Scheme, 2009 shall be personal to the employee and shall have no relevance to his seniority position.

6. The ACRs of the applicant from 2003-04, 2004-05 (part period), 2005-06, 2006-07, 2007-08 and 2008-09 were graded as average except for part period of 2004-05, which was good. As such applicant was not allowed the benefit of MACP Scheme 2009 by screening committee's meeting held on 05.10.2009 (Annexure R/2).

7. As per record, applicant was provided with photocopies of ACRs w.e.f. 01.04.2004 to 2007-08 on 10.08.2010 in terms of Government of India, Department of Personnel and Training, OM dated 13.04.2010. Copy of ACR for the year 2008-09 was given to the applicant earlier (Annexure R/3). The applicant did not submit any representation against inferior entries given in his ACRs. As such there was no change in final grading of the applicant's ACRs for the above periods. Based on the performance of the applicant as reflected in his ACRs/APARs and

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service records, the committee in its meeting dated 23.06.2011 (Annexure R/4) found him not fit for further financial up-gradation under MACP Scheme w.e.f. 01.09.2008.

8. The applicant was supplied copies of above ACRs/APARs again vide letter dated 12.09.2011. The applicant submitted a representation on 21.09.2011, which was considered by the competent authority in terms of headquarters letter dated 25.08.2010 (Annexure R/5) and not suitable for amending his ACRs as mentioned in office letter dated 09.11.2011 against which appeal lies.

9. Thus, the respondents have stated that the Departmental Screening Committee considered the case of the applicant on 05.10.2009 and 23.06.2011 but due to his ACR being below benchmark could not be sanctioned III MACP to the applicant.

10. The respondents have also stated that the applicant also filed a complaint before the Court of Chief Commissioner for Persons with Disabilities, New Delhi for grant of the same relief on 21.01.2013, which is still pending. The applicant without waiting the outcome of the said complaint has filed this O.A., which is premature.

11. Learned counsel for the respondents submitted that the O.A. has no merit and it should be dismissed with costs.

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12. The applicant has also filed a rejoinder.

13. Heard learned counsel for parties and perused the documents on record.

14. The main contention of the learned counsel for the applicant is that the applicant is a visually handicapped person. He became visually impaired during the service in 1994 and thereafter he was not given any work. Prior to 1994, he got his two promotions and his work was always outstanding. Learned counsel for the applicant drew my attention to the ACRs for the period from 01.04.2004 to 04.08.2004, 2005-2006, 01.04.2006 to 12.07.2006, 12.10.2006 to 31.03.2007 and 2007-2008. She pointed out that the Reporting Officer has stated that since the applicant is visually handicapped so no formal work was allotted to him. The same Reporting Officer has stated that the applicant is intelligent and keen to learn. He possesses good knowledge of office procedure. He is a disciplined employee and he is punctual. He maintains friendly relations with fellow employees. His integrity is beyond doubt. However, he has graded him as average because no work was allotted to him. The Reviewing Officer has also agreed with the assessment of the Reporting Officer and more or less same entry has been recorded in all subsequent years. She further pointed out that according to the provisions of the Section 47 (2) of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, no promotion shall be denied to a person merely on

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the ground of his disability. She argued that denying the III MACP to the applicant would amount to the violations of this provision because the applicant has been graded average since he is visually handicapped and no work was assigned to him for that reason.

15. On the other hand, learned counsel for the respondents argued that the case of the applicant for grant of III MACP has been considered twice by the respondents but due to the below benchmark in ACRs/APARs of the applicant, he was not sanctioned III MACP. Thus, there is no merit in the O.A.

16. We have carefully considered the submissions made by the learned counsel for the parties and perused the documents on record.

17. With regard to the submissions of the learned counsel for the respondents that the applicant has filed a complaint before the Court of Chief Commissioner for Persons with Disabilities, New Delhi on 21.01.2013, learned counsel for the applicant submitted that the applicant has withdrawn that complaint. In view of the submissions made by the learned counsel for the applicant, we are of the opinion that the present O.A. can be decided by this Tribunal.

18. We have perused the ACRs of the applicant w.e.f. 01.04.2004 to 2008-09. He has generally been graded as

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average because he was not assigned any work due to his being visually handicapped. Otherwise, in all other columns like General Intelligence & Keenness to learn, Knowledge of Office Procedure, Amenability to discipline, Punctuality in attendance, relations with fellow employees and Integrity, there is nothing adverse against him. He has been said to be an intelligent officer. He is keen to learn. His knowledge of office procedure has been graded as 'Good'. His Amenability to discipline has been graded as 'Good'. It is recorded that he is punctual and his relations with the fellow employees are 'good' and his integrity has been certified as beyond doubt. But he has been graded as 'average'.

19. Obviously since he is visually handicapped person, he was not assigned any office work relating to accounts.

20. We have carefully perused the Section 47 (2) of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, which provide that no promotion shall be denied to a person merely on the ground of his disability.

21. We are of the view that in the present case, the applicant is being denied the benefit of III MACP merely on the ground of his visually disability because for that reason alone he has not been assigned any work and since he is not performing any work, therefore, he has been graded as average. As stated earlier, in

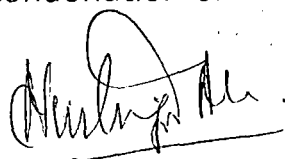
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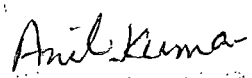
other columns of the ACRs/APARs, there is nothing adverse against the applicant. On the contrary, the remarks in other columns are quite positive except overall grading. Therefore, we are of the view that the respondents should re-consider the case of the applicant for grant of III MACP sympathetically and according to the provisions of law.

22. Accordingly, the respondents are directed to re-consider the prayer of the applicant for grant of III MACP sympathetically and according to the provisions of law and pass a reasoned and speaking order expeditiously but in any case not later than a period of four months from the date of receipt of a copy of this order.

23. With these observations and directions, the present Original Application is disposed of with no order as to costs.

24. In view of the order passed in the Original Application, Misc. Application No. 270/2013 filed by the applicant praying for condonation of delay is disposed of.


(DR. MURTAZA ALI)
JUDICIAL MEMBER


(ANIL KUMAR)
ADMINISTRATIVE MEMBER