

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 94/2013

DATE OF ORDER: (17th December, 2013)

CORAM

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

K.L. Verlani S/o Shri G.M. Verlani, aged 51 years, Ex. Postal Assistant (PA) Ajmer Head Office C/o S.K. Jain, Advocate, Nanaji Ka Bagh, Fateh Tiba Marg, Moti Doongari Road, Jaipur.

...Applicant
Mr. S.K. Jain, counsel for applicant.

VERSUS

1. Union of India through Secretary to the Government of India, Department of Posts, New Delhi.
2. Director of Post Offices, Southern Region, Ajmer.
3. Post Master General, Southern Region, Ajmer.

...Respondents
Mr. Mukesh Agarwal, counsel for respondents.

ORDER

(PER MR. ANIL KUMAR, ADMINISTRATIVE MEMBER)

Brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant was appointed in the service of the respondents on 20.02.1987 as Postal Assistant in Beawar Division. He completed 12 years of satisfactory service on 20.02.1999.

2. Learned counsel for the applicant further submitted that under the Assured Career Progression Scheme, 1999 (ACP Scheme, for short), which was made applicable with effect from 09.08.1999, the applicant became entitled to the first ACP on

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20.02.1999. He was not granted this benefit. Similarly, the benefit of second ACP was due on 20.02.2007. This benefit has also not been granted to the applicant despite the fact that the applicant was entitled to the same and was eligible for the same.

3. Learned counsel for the applicant submitted that Government of India introduced MACP Scheme with effect from 01.09.2008. The employees were given the benefit of this scheme on the completion of 10, 20 and 30 years of service from the date of appointment. Under the scheme, the applicant became entitled to the second MACP on 20.02.2007 on having completed 20 years of service from the date of appointment. But since the scheme had been made applicable with effect from 01.09.2008, the said benefit became due to the applicant on 01.09.2008.

4. Learned counsel for the applicant further submitted that since the applicant had been the Union Office Bearer, the respondents had grudge against the applicant. In order to harass the applicant, they deliberately and willfully did not give the benefit of upgradation on the ground of pendency of disciplinary proceedings under Rule 14 of the CCS (CCA) Rules, 1965. He submitted that as on 01.09.2008, there was no disciplinary case against the applicant either under Rule 14 or under Rule 16 of the CCS (CCA) Rules, 1965, therefore, he is entitled to the second MACP. The eligibility of the applicant should be seen as on 01.09.2008 and not thereafter. His case was considered for the first time on 09.06.2010 (Annexure A/1)

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and subsequently on 24.03.2011 (Annexure A/2), on 09.05.2012 (Annexure A/3) and on 07.09.2012 (Annexure A/4).

5. Learned counsel for the applicant drew our attention to the provisions of the Modified Assured Career Progression Scheme (MACP Scheme) dated 19th May, 2009 (Annexure A/7). Para 7 of the MACP Scheme dated 19th May, 2009 (Annexure A/7) is relevant and quoted below: -

"7. However, to make the MACP Scheme operational, the Cadre Controlling Authorities shall constitute the first Screening Committee within a month from the date of issue of these instructions to consider the cases maturing upto 30th June, 2009 for grant of benefits under the MACPS."

These instructions were issued on 19th May, 2009 and, therefore, the first Screening Committee should have met before 30th June, 2009. If the respondents did not convene the meeting as per the schedule, the applicant cannot be blamed for it and, therefore, the respondents be directed to grant the benefit of second MACP to the applicant as there was no disciplinary proceeding pending against him as on 01.09.2008, the date on which he became eligible for the second MACP.

6. On the other hand, learned counsel for the respondents submitted that the applicant was appointed as Postal Assistant in Beawar Division on 20.02.1987. He further submitted that prior to 01.09.2008, two Time Bound Scheme were in existence vide which two financial up-gradation viz. TBOP on completion of 16 years of service and BCR on completion of 26 years of satisfactory service were being allowed to Postal employees.

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Accordingly, the applicant was accorded financial upgradation under TBOP Scheme after completion of 16 years satisfactory service w.e.f. 10.03.2003.

7. He further submitted that the applicant was served with a charge-sheet dated 12.04.2010 under Rule 14 of CCS (CCA) Rules, 1965. Subsequently, after the proper enquiry was conducted, the penalty of removal from service was imposed on the applicant vide Memo dated 08.08.2012.

8. Learned counsel for the respondents further submitted that another charge-sheet dated 16.11.2010 under Rule 16 of CCS (CCA) Rules, 1965 was also served on the applicant and a penalty of stoppage of next one increment for six months was imposed on him vide Memo dated 29.03.2011 with effect from 01.07.2011 without cumulative effect.

9. He also submitted that the applicant was again charge-sheeted under Rule 16 of CCS (CCA) Rules, 1965 vide Memo dated 23.04.2012. The applicant was awarded the penalty of stoppage of next one increment for six months without cumulative effect with effect from 01.07.2012 vide memo dated 23.04.2012.

10. Learned counsel for the respondents argued that with effect from 01.09.2008, the TBOP and BCR scheme were dispensed with and a new scheme namely MACP was introduced with effect from 01.09.2008. This scheme was introduced vide

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letter dated 18.09.2009. Under this scheme, the candidature of the applicant for grant of financial upgradation under MACP-II was considered by the Screening Committee on the following dates: -

<u>Date of DSC</u>		
01.09.2008 to 31.03.2010	-	04.06.2010
01.04.2010 to 31.03.2011	-	21.03.2011
01.04.2011 to 31.03.2012	-	04.05.2012

The screening committee did not find him fit for allowing financial up-gradation under MACP-II due to pendency of disciplinary case against the official under Rule-14 and Rule-16 of CCS (CCA) Rules, 1965.

11. Learned counsel for the respondents submitted that the case of the applicant was also considered by the screening committee met on 28.08.2012 for the year 01.04.2012 to 31.03.2013 to consider the cases for MACP-II, but due to below bench mark grading in APAR for last 3 years, he was not found fit for financial upgradation and subsequently, punishment of removal from service was awarded to the applicant on 08.08.2012 as a result of Rule 14 case against him under CCS (CCA) Rules, 1965.

12. He further submitted that the applicant preferred an appeal to the DPS (SR) Ajmer on 03.10.2011 for his financial upgradation under MACPS but the same was rejected vide R.O. Ajmer Memo No. STA/SR/43-4/6/5/11 dated 03.02.2012.

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13. Learned counsel for the respondents argued that in the matter of grant of benefit under MACP, the Rule governing normal promotion is applicable. Therefore, the screening committee's proceedings are to be regulated under the provisions of CCS (CCA), Rules, 1965 and instructions issued therein. The allegation of mala fide alleged by the applicant that due to the Union Office Bearer, he was not granted financial upgradation under MACP Scheme is baseless and wrong.

14. Learned counsel for the respondents submitted that as per the instructions contained in Government of India, Department of Personnel and Training, O.M. No. 22011/4/91-Estt. (A), dated 14th September, 1992, the following guidelines have been provided for the 'procedure to be followed by DPC in respect of Government servants under cloud': -

"Procedure to be followed by DPC in respect of Government Servants under cloud

[11.1 At the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:-

- (i) Government servants under suspension;
- (ii) Government servants in respect of whom a charge-sheet has been issued and the disciplinary proceedings are pending; and
- (iii) Government servants in respect of whom prosecution for a criminal charge is pending.

11.2 *Sealed Cover Procedure* – The DPC shall assess the suitability of the Government servant coming within the purview of the circumstances mentioned above along with other eligible candidate without taking into consideration the disciplinary case/criminal prosecution pending. The assessment of the DPC, including "Unfit for Promotion", and the grading awarded by it will be kept in a sealed

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cover. The cover will be superscribed "Findings regarding suitability for promotion to the grade / post of.....in respect of Shri.....(name of the Government servant). Not to be opened till the termination of the disciplinary case/criminal prosecution against Shri.....". The proceedings of the DPC need only contain the note "The findings are contained in the attached sealed cover". The authority competent to fill the vacancy should be separately advised to fill the vacancy in the higher grade only in an officiating capacity when the findings of the DPC in respect of the suitability of a Government servant for his promotion are kept in a sealed cover."

15. Learned counsel for the respondents argued that the bare perusal of these instructions makes it clear that the assessment of the employees to be made on the date of the departmental promotion committee met after considering the conditions laid down in para 11.1. Since on the date on which screening committee met for the grant of second financial upgradation to the applicant, he was served with a major penalty charge sheet under Rule 14 of the CCS (CCA), Rules, 1965, therefore, he was not considered fit for promotion. Rules do not provide that the applicant should have been considered from the date when he became eligible. The respondents have duly considered the case of the applicant on 04.06.2010, 21.03.2011, 04.05.2012 and 28.08.2012 but on all occasions he was not found fit for financial upgradation. Moreover, subsequently, the punishment of removal from service was also awarded to the applicant on 08.08.2012. Therefore, the applicant is not entitled for any relief in the present Original Application and it should be dismissed being devoid of merit.

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

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17. The brief controversy in the present Original Application is whether the applicant is entitled to be considered for promotion with effect from 01.09.2008, the date on which he became eligible for upgradation under MACP Scheme or from the date on which the Screening Committee met.

18. Learned counsel for the respondents has produced before us the instructions regarding the procedure to be followed by DPC in respect of Government servants under cloud, which has been quoted in para 14 of this order.

19. On the other hand, learned counsel for the applicant referred to a Circular No. 4-7/(MACPS)/2009-PCC dated 18th October, 2010 issued by the Government of India, Ministry of Communication & IT, Department of Posts (Pay Commission Cell) regarding clarifications with regard to delay and irregularities in implementation of modified assured career progression scheme. He quoted last three lines of the clarification at Sl. No. 5, which reads as under: -

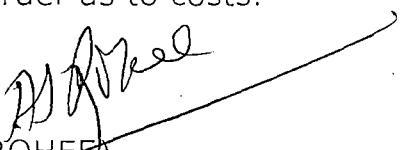
“Similarly, the officials, who were facing disciplinary action as on the date of actual due date of their upgradation can only be not considered.”

Therefore, he submitted that as per this clarification, the applicant is entitled for MACP from 01.09.2008, the date on which he became eligible because on that date, there was no disciplinary case pending against him or no charge sheet was issued to him as on that date.

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20. It is not disputed that the applicant became eligible as per the qualifying service for the grant of second MACP on 01.09.2008. It is also not disputed that the applicant was served with a charge sheet on 12.04.2010. Thus, it is clear that the charge-sheet was issued to the applicant much after he became eligible for grant of second MACP. Therefore, the respondents are directed to re-consider the case of the applicant for grant of second MACP as per the clarifications issued by the Government of India, Ministry of Communication & IT, Department of Posts (Pay Commission Cell) vide Circular No. 4-7/(MACPS)/2009-PCC dated 18th October, 2010 and pass a reasoned and speaking order expeditiously but in any case not later than a period of three months from the date of receipt of a copy of this order.

21. With these directions, the Original Application is disposed of with no order as to costs.


(A. J. ROHEE)
JUDICIAL MEMBER


(ANIL KUMAR)
ADMINISTRATIVE MEMBER

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