

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 1485/2014

Reserved on 29.03.2017
Pronounced on 03.04.2017

Hon'ble Mr.P.K.Basu, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)

Usha Ajwani (Retired Stenographer Grade-1),
Aged about 62 years,
W/o Shri Ashok Ajwani,
R/o 170, Vidya Vihar, West Enclave,
Pitampura, Delhi-110034.

... Applicant

(By Advocate: Mr. Sachin Chauhan)

VERSUS

Union of India,
Through its Secretary,
Ministry of Urban Development,
Nirman Bhawan, New Delhi.

... Respondent

(By Advocate: Dr. Ch. Shamsuddin Khan)

ORDER

Hon'ble Mr. P.K.Basu, Member (A) :

The applicant joined Central Public Works Department (CPWD) as Lower Division Clerk (LDC) in the year 1971. In March 1976, on passing Limited Departmental Competitive Examination (LDCE), she was appointed as Stenographer Grade-III. She was granted first financial upgradation under the Assured Career Progression (ACP) Scheme in the pay scale of Rs.5000-8000. Thereafter, she was granted promotion to the post of Stenographer Grade-II in January 2000. Since the pay scale of Stenographer Grade-II was Rs.5000-8000, no order regarding pay fixation was issued. She was granted 2nd financial upgradation in the scale of Rs.5500-9000.

2. The Government implemented the recommendations of 6th CPC w.e.f. 1.01.2006. As per the recommendations 6th CPC, pay scales of Rs.5000-8000, 5500-9000 and 6500-10500 were merged and all the posts in the said scale were granted PB-2 i.e. Rs.9300-34800 with grade pay of Rs.4200. The applicant was also granted the aforesaid pay scale.

3. The applicant was promoted as Stenographer Grade-1 vide order dated 19.01.2010. She was granted the scale of PB-2 with grade pay of Rs.4600.

4. The applicant was also declared unfit for 3rd financial upgradation under MACP Scheme issued vide order dated 19.05.2009. As per the Scheme, the Government servants are entitled to three financial upgradation on completion of 10, 20 & 30 years of regular service. The applicant completed 30 years of regular service in 2006 and, therefore, she claims that she was entitled for the 3rd upgradation. On her 3rd financial upgradation being rejected, the applicant tried to know the reasons for such a decision and she learnt that this was rejected on the basis of ACRs for the period 01.04.2004 to 31.08.2004.

5. She filed a representation on 19.05.2010 for grant of 3rd financial upgradation by ignoring the aforesaid ACRs, as according to applicant, these ACRs were not communicated.

6. After receipt of her representation, the respondents communicated to the applicant her ACRs for the period 1.04.2004 to 31.08.2004 as well as 2007 and 2008 vide their letter dated 14.02.2011. The applicant challenged the same but the respondents rejected it vide order dated 13.09.2011.

7. Thereafter the applicant filed OA no.698/2012 praying that her ACRs for the period 1.08.2007 to 31.03.2008 (eight months) and 1.04.2004 to 31.08.2004 (five months) be declared non-est and for issuance of further direction to the respondents to hold a review DPC after ignoring these two ACRs for the grant of third financial upgradation under MACP Scheme w.e.f 1.09.2008. The OA was disposed of vide order dated 15.04.2013. We quote below the relevant paragraphs of the order:

"12. Insofar as the impugned action relates to ACR of 2007-08 is concerned, we do not find any infirmity in this regard. Nonetheless the fact remains that the ACP Scheme in its original as well as modified form provides for fulfillment of normal promotion norms such as benchmark etc. should be ensured for grant of benefits under the ACP/MACP Scheme. The import of this would be that the grant of benefit of financial upgradation would be judged on the touchstone of the applicant's entitlement to promotion. In other words, this would mean that a person who is otherwise entitled for promotion would get the benefit of financial upgradation if he/she is stagnating in terms of the Scheme upon completion of prescribed period. This benefit could be denied to him/her in case he/she is found otherwise ineligible for promotion to the next higher grade. Here is a case where the applicant has indeed been granted promotion by the time her case was considered for grant of benefit of third financial upgradation from the earlier date. There is inherent contradiction, especially when two ACRs in question were in the consideration zone for the grant of promotion as well as financial upgradation benefits under the MACP Scheme. If the applicant has been given the benefit of promotion on the basis of these very ACRs, how could she be denied the benefit of financial upgradation on the basis of the same very ACRs. The respondents have sought to justify this apparent anomaly on the ground that DPC or the Screening Committee concerned can make its own decision and the same could not be objected to with reference to the recommendations of another DPC. This may be true but the mandates of DPC should reflect conscious consideration on such an important matter and due application of mind thereto. If the applicant has been granted promotion on the basis of two ACRs in question, there ought to be, and must be, cogent reasons for the succeeding DPC/Screening Committee to hold a different view and deny the benefit of financial upgradation despite the applicant having been given promotion.

13. In view of the aforesaid, the impugned order dated 13.9.2011, as at Annexure A1 is quashed and set aside insofar as it relates to the applicant's representation against ACR for the period from 1.4.2004 to 31.8.2004 is concerned. Consequently,

the said ACR shall be treated as non-est for the purpose of considering the Applicant's claim for the benefit of 3rd financial upgradation under the MACP Scheme.

14. In these premises, we consider it expedient and in the interest of justice to remand the matter back to the respondents to consider the applicant's case afresh at a review DPC having due regard to the fact that the applicant had indeed been granted promotion earlier on 20.1.2010 despite the said two ACRs. One of which, viz. of 2004 shall not be treated as non-est and in case they are inclined to hold a different view than that of the one which recommend applicant's promotion, they shall records the reasons therefor, otherwise they shall consider extending the benefit of third MACP from the date it was due and admissible. This entire exercise shall be completed within a period of three months from the date of receipt of a certified copy of this order."

8. Learned counsel for the applicant states that the Tribunal had treated the 2004 ACR as non-est and remanded the matter back to the respondents to consider the applicant's case afresh in a review DPC having due regard to the fact that the applicant had indeed been granted promotion earlier on 20.01.2010 despite the said ACRs. It was further directed that in case the respondents hold a different view, they shall records the reasons thereof, otherwise they shall consider extending the benefit of third MACP from the date it was due and admissible. The respondents passed the order dated 10.09.2013 in compliance of Tribunal's order dated 15.04.2013 (Annexure A-1). The said order is a cryptic order which just states that Review Screening Committee (RSC) on reconsideration found that the applicant was not fit for benefit of 3rd upgradation under MACP. The minutes of the Review Screening Committee (RSC) dated 1.07.2013 was also enclosed. The recorded minutes are quoted below:

"1. Regarding matter of Mrs. Usha Ajwani being promoted w.e.f. 20.01.2010 with the consideration of ACRs of the period of 2007-08, the promotion of employee is dealt by Departmental Promotion Committee and the mandate of the committee is such that it decides its own bench mark for consideration of the employee for promotion, whereas, Screening Committee has to

proceed under the guidelines issued by DOPT in this regard (of MACP), according to which minimum bench mark of ACRs/APARs is 'good'.

2. All APARs / ACRs of Mrs. Usha Ahwani under consideration are meeting the bench mark, except for the available major period for the year 2007-08. It has been clearly stated by the Reporting Officer in the Column of proficiency and accuracy in stenography work in respect of two most important items of speed and quality as "inadequate". In the reply of representation made by employee, the Reporting Officer has held that there is no change in the performance grade of the employee for this period. Hence, the Review Screening Committee is of the opinion that performance report for the period 2007-08 is below the bench mark of 'good' for the up-gradation under MACP as per directions of DOPT's Office Memorandum No.35034/3/2008-Estt (D) dated 19.05.2009.
3. As clearly mentioned above, the performance of employee for the period 2007-08 is below the bench mark and therefore Review Screening Committee is of the view that Mrs. Usha Ajwani is not fit for grant of up-gradation under MACP on completion of 30 years of service applicable with effect from 01.09.2008."

It would be seen both from the minutes of the meeting as well as the communication dated 10.09.2013 that there has been no consideration by the respondents, let alone assigning reasons, as to why they took a different view than the view that since the applicant was granted promotion on 20.1.2010, i.e. the date after the 3rd MACP due date based on the same two ACRs, the grant of 3rd MACP cannot be denied.

9. The learned counsel for applicant summarised his case as follows:-

- (i) The ACR for 2004 has been declared as non-est.
- (ii) The applicant was promoted on 20.01.2010 based on the same ACRs of 2007-08 and, therefore, cannot be denied the benefit of 3rd upgradation under MACP due on a date before 20.01.2010 on the ground of being found unfit due to the same very ACRs of 2007-08.

10. Learned counsel also relied on the following orders/judgment of the Tribunal/High Court.

(i) **OA No. 2349/2011 order dated 15.04.2015.**

In this case the issue was that the applicant had been denied financial upgradation under ACP due to below benchmark ACRs which was never communicated and relying on the judgment of Hon'ble High Court, Delhi in **Union of India and Ors. Vs. V.S.Arora and Ors** (W.P (C) No. 5042/2012) and the Judgments of Hon'ble Supreme Court in **Dev Dutt Vs. Union of India** (2008) 8 SCC 725) and **Abhijit Ghosh Dastidar Vs. Union of India and Ors** (2009) 16 SCC 146), the OA was allowed and directed Departmental Screening Committee (DSC) to hold review DPC ignoring the un-communicated below bench mark ACRs.

(ii) **OA No. 447/2014 order dated 03.11.2015.**

Again the issue was denial of upgradation under MACP on the ground of below benchmark ACR which was not communicated to him. Relying on V.S.Arora, Dev Dutt and Abhjit Ghosh Dastidar (supra), the Tribunal disposed of the OA by remanding the matter back to the respondents with a direction to ignore the below benchmark ACRs.

(iii) **High Court of Delhi (WP (C) No. 5042/2002 with connected Writ petitions) order dated 31.05.2012.**

Again the issue was un-communicated below benchmark ACRs considered by the DPC and after discussing the various judgments on this aspect, the Hon'ble High Court

gave the finding that below benchmark ACRs, which has not been communicated cannot be considered by the DPC.

Learned counsel for the respondents states that ACRs for 2007-08 was communicated to him only in 2011 i.e. much beyond the date of promotion in 2010 as well as 3rd MACP in 2008.

11. The respondents counsel drew our attention to the stand taken by the respondents in the earlier OA, namely, 698/2012. Para 5 reads thus follows:-

"5. Opposing the Application, the respondents in their counter reply have, inter alia, stated that adverse remarks should not be expunged on the basis of the comments on the representation of the applicant received from Shri D.C. Goel the then Superintending Engineer i.e. reporting officer. Due to this reason, third MACP could not be granted to the applicant. It has further been submitted by the respondents in their reply that the applicant was promoted from the post of Steno Grade-II to Steno Grade-I on 20.1.2010. The third financial upgradation under MACP Scheme which was due on 01.09.2008 could not be granted in DPC on 10.03.2010 and review DPC on 10.10.2011 due to the adverse remarks in his ACRs. The promotion has been granted from Steno Grade II to Steno Grade I by EC-IV Section based on the then constituted DPC. For the grant of MACP, the DPC in PLP Zone did not find suitable for the grant of third MACP on the basis of adverse remarks in the CRs. Previous DPC could not be the guiding factor for another DPC for deciding any case. Thus DPC of PLP Zone decided independently the case on merits and record. It has further been submitted that information given by Shri D.C. Goel the then the reporting officer that she had typed only three letters during the period under report seems to be correct as he has submitted the documentary evidence. The claim of the applicant at this stage that the reporting officer had asked her to discontinue the transcription of not to bear her name is not convening in absence of any evidence. The respondents have thus prayed for dismissal of the OA with heavy costs. "

Needless to say, the Tribunal considered all these arguments and passed it final order, which we have already noted above. Therefore, even in their reply, the only ground taken is that there was a below benchmark ACRs during that period and further that the DPCs are to decide their own criteria for promotion.

12. The respondents have also today placed before us an additional counter affidavit dated 28.03.2017 which we have taken on record.

The basic argument in this is as follows:-

- (i) That the contents of corresponding para of Rejoinder is wrong, incorrect and denied. It is submitted that Annual Confidential report of Smt. Usha Ajwani, the applicant for the period of 01.08.2007 to 31.03.2008 (8 months) and 01.04.2004 to 31.08.2004 (5 months) were below the bench mark and were communicated to the applicant on 14.02.2011. Both the ACR's were required in connection with grant of 3rd up gradation under MACP which was to be granted w.e.f 01.09.2008.
- (ii). The representation of the applicant has been rejected by the competent authority after all codal formalities and due consideration, the adverse remarks could not be expunged on the basis of comments on representation of applicant received from Sh. D.C. Goel, the then Superintending Engineer (i.e. Reporting Officer) due to this reason 3rd MACP could not be granted.
- (iii). Neither the order of DOPT OM dated 19.05.2009 nor the order of Hon'ble Tribunal has been violated. The applicant was informed the decision of Review Screening Committee by way of speaking order vide No. 55(1) /SE(E) /PEWC/ 2013/1317 dated 10.09.2013. It is submitted that contents of the reply of the counter affidavit to OA are reiterated as correct."

We find that there is no additional argument beyond what has been mentioned by the respondents in their counter affidavit.

13. Heard the learned counsels and perused the pleadings as well as judgments cited.

14. Admittedly the ACRs of 2004 has become non-est. The ACRs of 2007-08 was also part of the ACR which was considered for promotion of the applicant w.e.f. 20.01.2010. The same ACRs of 2007-08 was considered for 3rd upgradation under MACP w.e.f. 1.09.2008. Admittedly, the ACR of 2007-08 was communicated to the applicant only in the year 2011 and her representation rejected. Therefore,

affectively for her reconsideration for 3rd financial upgradation, ACR of 2007-08 has to be treated as un-communicated. Three judgments cited by the applicant in V.S. Arora, Dev Dutt and Abhjit Ghosh Dastidar (supra) clearly stipulate that un-communicated ACRs cannot be considered by the DPC. Therefore, the respondents have indeed committed an illegality which needs to be rectified. Moreover, the respondents have shown utter disregard for order of this Tribunal dated 15.04.2013 while passing the so called speaking order dated 10.09.2013, which is a cryptic order revealing nothing and citing no reason as required of them by the OA order dated 15.04.2013. The Review Screening Committee has also shown utter disregard for the Tribunal's order and no application of mind while finding the applicant unfit.

15. In this background, we are of the opinion that there is no sense in remanding the matter again to the respondents for a review Screening Committee. We, therefore, allow the OA and direct the respondents to grant the applicant 3rd upgradation under MACP from the due date within 90 days of receipt of certified copy of this order. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K.Basu)
Member (A)

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