

Central Administrative Tribunal
Principal Bench, New Delhi

OA No.958/2018
MA No. 1041/2018

New Delhi this the 5th day of March, 2018

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)

Smt. Vidula, aged 40 years,
W/o late Sh. Bhag Singh Arya,
R/o 619/23/1 Chhatarpur,
New Delhi-110074
Group IIIrd

- Applicant

(By Advocate: Mr. Sumeer Kumar Shrivastava)

Versus

1. Government of NCT of Delhi
Through the Chief Secretary,
New Sectt. Players Building,
Near ITO, New Delhi-110002
2. The Director of Education,
Department of Education,
Govt. of NCT of Delhi,
Old Sectt. Delhi-110002
3. The Deputy Director of Education,
Govt. of NCT of Delhi,
Distt/South Defence Colony,
New Delhi-110024
4. The Principal/HOS,
Government of Boys Sr. Sec. School,
Begampur, New Delhi-110024

- Respondents

O R D E R (Oral)

Justice Permod Kohli:

MA No. 1041/2018 for condonation of delay in re-filing the OA is allowed.

2. This is the second round of litigation commenced by the widow of the late Government servant, namely Bhag Singh Arya. The deceased husband of the applicant was serving as TGT (Sanskrit). He

retired from service on 31.12.2009. He was not granted 2nd financial upgradation from Grade Pay Rs.4800 to Rs.5400, which he claimed w.e.f. 01.09.2008. The late husband of the applicant earlier filed OA No. 3219/2012 challenging the grading of his ACRs for the period 01.04.2006 to 31.03.2007 and 01.04.2007 to 31.03.2008, which was 'average' grading awarded. He also sought the 2nd financial upgradation under MACP Scheme. The said OA came to be disposed of by this Tribunal vide its order dated 24.11.2014 with following directions:-

"7. In the circumstances when interference in the impugned ACR/order is declined, the OA is disposed of with direction to respondents to consider the applicant for financial upgradation in terms of the MACP Scheme w.e.f. the date he completed 30 years of service on the basis of the available record, if not already considered. No costs."

3. The husband of the applicant died on 06.03.2015. Due to some error in the order i.e. reference was made to 3rd financial upgradation, whereas the deceased husband of the applicant had claimed 2nd financial upgradation, a Review Application being RA No. 18/2016 was filed. This RA was allowed vide order dated 07.09.2016 with the clarification that the claim of the deceased husband of the applicant is not for 3rd financial upgradation but for 2nd financial upgradation. The widow of the Government servant, applicant herein, filed a Writ Petition being WP(C) No. 6604/2017 before the Hon'ble High Court. This Writ Petition came to be dismissed vide judgment dated 02.08.2017 with the following:-

"7.For the aforesaid reasons, we are not persuaded by the contention of the learned counsel for the petitioner to let the case of the petitioner be placed before the Review DPC, by treating the said adverse ACRs for the years 1998-1999 and 2002-2003 as if they were never written, because of their non-communication to the petitioner.

8. In the meantime, the respondent has rejected the claim of late husband of the petitioner for grant of second MACP benefit on 16.05.2017. This order has not been assailed by the

petitioner before the Tribunal and we are not concerned with the same. It is left to the petitioner to take appropriate steps in relation to this order independently. In view of the above position, we do not find any infirmity in the impugned order. The present petition is accordingly dismissed while reserving the right of the petitioner to independently seek remedy in respect of the order dated 16.05.2017 whereby the claim in respect of grant of second MACP Scheme benefit qua the petitioner's husband has been rejected."

4. In view of the above observations, the present OA has been filed challenging the order dated 16.05.2017 whereby representation of the applicant against 'average' grading of ACR for the years 2005-06, 2006-07 and 2007-08 has been rejected on the ground that the deceased husband of the applicant was having 'average' grading of ACRs for the aforesaid period. It is this order which is under challenge in the present OA.

5. Learned counsel for the applicant has vehemently argued that since the 'average' ACRs were communicated to the deceased husband after his retirement, the same were not required to be acted upon. As noticed hereinabove, the deceased husband of the applicant had challenged his ACRs gradings in the earlier OA No. 3219/2012 and while deciding the said OA, this Tribunal specifically held that interference in the impugned ACR/order is declined. Even in the Writ Petition filed by the widow of the deceased Government servant, the Hon'ble High Court declined to accept the contention of the applicant for ignoring the adverse ACRs and direct for review DPC. The only observation was that since the representation of the applicant against adverse ACRs has been rejected during the pendency of this Writ Petition, the applicant was granted liberty to challenge the same.

6. We have heard the learned counsel for the applicant at length.

7. The ‘average’ grading awarded to the late husband of the applicant in the ACRs for the period referred to above has already been affirmed by this Tribunal in OA No. 3219/2012 and even Hon’ble High Court refused to interfere in the same in the Writ Petition vide its judgment dated 02.08.2017. From the perusal of the earlier judgment, we find that as a matter of fact, the respondents had rejected the representation against the ‘average’ grading on 28.05.2012 and in the earlier OA, this Tribunal refused to interfere in the grading. The order of ACR gradings having been upheld by the Hon’ble High Court, no relief can be granted to the applicant in the present OA in respect to the grading awarded to her deceased husband.

8. It is a settled law that under MACP Scheme, for grant of financial upgradations, the same parameters are required as are essential for regular promotion. The financial upgradation is allowed since the Government servant stagnates for want of appropriate promotional avenues, but the eligibility for promotions continued to be the norm for grant of financial upgradation. The respondents rejected the claim of the applicant for 2nd financial upgradation on the ground that the deceased Government servant had ‘average’ grading in his ACRs for the relevant period. We do not find any infirmity in the impugned order.

9. For the above reasons, this OA is dismissed.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

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