

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.3647/2013
M.A. No.13/2015

Order reserved on 24th October 2016

Order pronounced on 19th November 2016

**Hon'ble Mr. Raj Vir Sharma, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Mrs. Vimal Sharma
r/o 112 end Floor, DDA Flats
Pal Parhalpur, Suraj Kund Extn. Delhi-44
(Mr. Yogesh Sharma, Advocate)

..Applicant

Versus

1. Govt. of NCT of Delhi through
The Chief Secretary
New Sectt. Players Building
Near ITO, New Delhi
2. The Director of Education
Govt. of NCT of Delhi
Old Sectt. Delhi
3. The Deputy Director of Education
Govt. of NCT of Delhi
Distt. North, Lucknow Road, Delhi
4. The Education Officer-Zone-VII
Govt. of NCT of Delhi
Distt. North, Lucknow Road, Delhi
5. The Principal/HOS
Govt. Girls Sr. Sec. School No.2
Shakti Nagar, Delhi

..Respondents

(Mrs. P.K. Gupta, Advocate)

O R D E R

Mr. K.N. Shrivastava:

This instant O.A. has been filed by the applicants under Section 19 of the Administrative Tribunals Act, 1985 praying for the following main reliefs:-

“(i) That the Hon’ble Tribunal may graciously be pleased to pass an order of quashing the impugned ACR of the year 2007-08 declaring to the effect that the same are illegal, unjust and arbitrary.

(ii) That the Hon’ble Tribunal may graciously be pleased to pass an order directing the respondents to consider the case of the applicant for granting the benefit of financial up-gradation under MACP Schemes w.e.f. 01.09.2008 or from due date with all consequential benefits including the arrears of difference of pay and allowances with interest.”

2. Brief facts of the case are as under:-

2.1 The applicant joined as Primary Teacher under the Directorate of Education, Govt. of NCT of Delhi on 08.09.1981. She was subsequently promoted to the post of Trained Graduate Teacher (Math) w.e.f. 09.09.1992. In terms of the Modified Assured Career Progression (MACP) Scheme of Govt. of India, which is also applicable to the employees of the Govt. of NCT of Delhi, the applicant was due to get her second and third financial upgradations w.e.f. 01.09.2008 and 08.09.2011 respectively.

2.2 For getting the financial upgradation benefits under the MACP Scheme, the benchmark prescribed is ‘good’ in respect of the ACR grading of preceding five years. The applicant has secured the following gradings in the relevant five years:

Period	Grading given by Reporting Officer	Grading given by the Reviewing Officer
2003-04	Good	No Grading
2004-05	V. Good	V. Good
2005-06	Good	Good
2006-07	Good	Good
2007-08 (3.7.2007- 1.3.2008)	Poor	Average

2.3 On account of her ACR gradings as 'average' for the period 2007-08, she has not been considered for second financial upgradation under MACP Scheme. Apparently, the Education Officer, Zone-VII had communicated the grading for the year 2007-08 to the applicant vide his Annexure A-4 letter dated 116.04.2010, which reads as under:-

"Madam,

You are hereby informed that the case of ACP was sent to this office by the school authority, but there was "Adverse remarks in the ACR-2007-08 are as following:-

- (1) Habitual late comer.
- (2) No prompt initiative displayed.
- (3) Not responsible
- (4) In disciplined, in subordinate, careless and ill tempered. She taught class-IX-A and result of 2007-08 of the class was 31.2%
- (5) She has hidden the facts regarding IX-A.

Therefore, you are direct by the undersigned to submit your representation if any on the matter."

2.4 The applicant denies having received the Annexure A-4 letter in time but acknowledges that the said letter was received by her much belatedly on 30.09.2011. She has replied to the Annexure A-4 letter vide her Annexure A-5 letter dated 07.10.2011. She had also represented to the respondents vide Annexure A-7 letter dated 06.06.2011, Annexure A-8 letter dated 08.08.2011 and Annexure A-6 letter dated 29.01.2013 for grant of MACP benefits to her.

As there has been no action at the end of the respondents on her representations, the applicant filed the instant O.A. praying for the aforementioned reliefs.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply, in which it is stated that the applicant has not been considered for MACP benefits, as she has not crossed the ACP grading benchmark. The adverse remarks were communicated to her vide Annexure A-4 letter dated 16.04.2010 by respondent No.4 and that her Annexure A-5 reply as well as Annexure A-6 detailed representation dated 29.01.2013 have been considered, and her request for expunging the adverse remarks had been turned down.

4. The respondents have further stated in their reply that the applicant has been issued Annexure –I charge memo dated 01.10.2011 in which the following articles of charges have been leveled against her:-

“Statement of articles of charges framed against of Smt. Vimal Sharma, TGT (Math) of GGSSS No.2, Shakti Nagar, Delhi

Article I

Whereas, Smt. Vimal Sharma, TGT (Math) who was teacher in charge for teaching mathematics to Class IXth in GGSSS No.2, Shakti Nagar, Delhi and result of the class declined during the year 2007-2008 to 31.2% whereas the result of the class IX A during the year 2006-2007 was 63.6%. A number of students also submitted a complaint dated 07.04.2008 regarding the poor teaching quality of the said Smt. Vimal Sharma, TGT (Math). This amounts to misconduct and dereliction in duty on the part of said Smt. Vimal Sharma, TGT (Math.)

Article II

Whereas, Smt. Vimal Sharma, TGT (Math) of GGSSS No.2, Shakti Nagar, Delhi remained unauthorisedly absent from duty w.e.f. 26.03.08 to 15.4.08. The medical & fitness certificate submitted by Smt. Vimal Sharma, TGT (Math) were also not in conformity with the

provisions of CCS (Leave) Rules 1972. This amounts to misconduct & violation of CCS (CCA) Rules 1965.

Article III

Whereas, Smt. Vimal Sharma, TGT (Math) of GGSSS No.2, Shakti Nagar, Delhi abruptly absented herself from duty w.e.f. 26.03.08 to 15.4.08 when the work regarding preparation of Annual Examination result of the school was in full swing due to which it was delayed and inconvenience was deliberately caused by her to the school administration in preparation of the result. This amounts to misconduct unbecoming on the part of a Govt. servant / teacher of her stature which is in violation of CCS (CCA) Rules 1965.

Article IV

Whereas, Smt. Vimal Sharma, TGT (Math) of GGSSS No.2, Shakti Nagar, Delhi was habitual late comer and reported for duty late as per report submitted by HOS GGSSS No.2, Shakti Nagar, Delhi. She was frequently late in reaching the school during the period 2007-08 due to which the discipline of the school was broken and the teaching of students affected. In her reply dated 15.01.09 to Show Cause Notice No.DDE (N)/Vig./2009/30 dated 05.01.2009 the said Smt. Vimal Sharma, TGT (Math) has admitted to have come late to the school. The above mentioned misconduct on the part of the said Smt. Vimal Sharma, TGT (Math) amounts to gross violation of CCS (Conduct) Rule 1964.”

5. The applicant has filed her rejoinder to the reply filed by the respondents. She has rebutted the allegations made by the respondents against her in the reply.
6. The arguments of learned counsel for the parties were heard on 24.10.2016.
7. Mr. Yogesh Sharma, learned counsel for applicant submitted that the average ACR grading for the year 2007-08, in fact, pertains to the period from 03.07.2007 to 31.03.2008. The ACR for the said period was written on 01.07.2008 by the reporting officer, as is evident from page 18 of the paper book. Mr. Sharma further submitted that all the memos issued to the applicant, purported to have been issued against her conduct, are

subsequent to the writing of the ACR on 01.07.2008. In this connection, the learned counsel drew our attention to memo dated 22.04.2008 (page 93 of the paper book), memo dated 17.09.2008 (pages 96 - 97 of the paper book) and memo dated 16.04.2010 (Annexure A-4). He thus tried to suggest that these memos had no bearing over the reporting officer when he wrote the ACR for the year 2007-08 on 01.07.2008. He vehemently argued that the respondents were duty bound to communicate below benchmark grading of the applicant relating to the year 2007-08 immediately after the ACR for the said year was accepted by the accepting authority; which has not been done. Thus the applicant has been denied of the opportunity to represent against the said ACR in time.

8. In support of his arguments, the learned counsel placed reliance on the judgment of this Tribunal in **P. Kathuria v. Kendriya Vidyalaya Sangathan & others** (O.A. No.3887/2010) decided on 08.02.2012, in which the ratio of law laid down by the Hon'ble Apex Court in **Dev Dutt v. Union of India & others** [2008 (7) SCALE 403] has been discussed.

9. Concluding his arguments, the learned counsel submitted that the respondents may be directed to expunge the adverse remarks of the applicant for the period 2007-08 considering her consistently good track record in the years previous to that; and direction may also be issued to them for grant of MACP benefits to the applicant.

10. *Per contra*, Mrs. P.K. Gupta, learned counsel for respondents submitted that the applicant has been denied MACP benefits on account of her below benchmark ACR grading and that vide Annexure A-4 letter dated 16.04.2010, she has been provided an opportunity to represent against the

grading. She further submitted that the competent authority has considered the representations of the applicant containing therein her prayer for expunging the average remarks in her ACR for the period 2007-08, but after giving due consideration to the representations, the competent authority had declined her request. It is also submitted that the applicant is facing a disciplinary inquiry, for which a charge sheet has already been issued to her. Under these circumstances, the prayer of the applicant cannot be considered, Mrs. Gupta contended.

11. We have considered the arguments of learned counsel for the parties and have also perused the pleadings and documents annexed therein.

12. Admittedly, the sole reason as to why the second MACP financial upgradation has not been given to the applicant is that her ACR grading for the period 2007-08 was 'average'. There is considerable force in the argument of learned counsel for applicant that the reporting officer has recorded his comments in the said ACR on 01.07.2008 and that subsequent memos issued to the applicant, as mentioned in paragraph 7 above, are not germane to the said ACR. We also see from the records that the applicant has been graded 'good' or 'very good' during the preceding four years. Further, the 'average' grading in the ACR for the period 2007-08 has not been communicated to the applicant well in time as stipulated in the extant guidelines. Even if the argument of the respondents is to be considered, the said ACR grading has been communicated to the applicant only on 16.04.2010 (Annexure A-4).

Taking all these into consideration, we are of the view that the ends of justice would meet only by ordering upgradation of the ACR of the

applicant for the period 2007-08 from 'average' to 'good' at this point of time.

13. We would like to further observe that the applicant has been served several memos and finally a charge sheet with regard to her conduct. As on date, the applicant is facing disciplinary proceedings, which were initiated on 01.10.2011 by way of issuing the charge memo. Therefore, her request for grant of third MACP benefits cannot be considered till she gets exonerated in the disciplinary proceedings.

14. In the conspectus of discussions in the foregoing paragraphs, we dispose of the O.A. with the following directions:

The respondents shall upgrade the ACR of the applicant for the period 2007-08 from 'average' to 'good', and grant her the second MACP benefits from the due date. This shall be done by the respondents within a period of two months from the date of receipt of a copy of this order.

15. In view of the aforementioned order, no order is required to be passed in M.A. No.13/2015. M.A. stands disposed of.

No order as to costs

(K.N. Shrivastava)
Member (A)

/sunil/

(Raj Vir Sharma)
Member (J)