

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No-3183/2014

Order Reserved on: 25.04.2016

Order Pronounced on: 02.08.2016

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. Sudhir Kumar, Member (A)

Dhruv Kumar,
S/o Late Shri J.S. Aditya
7, Temur Nagar, Opp- Gurudwara,
New Delhi-110065.

-Applicant

(Applicant present in person)

Versus

Union of India
Secretary,
Ministry of Social Justice and Empowerment
Shastri Bhawan, New Delhi-110001.

-Respondent

(By Advocate: Shri Rajeev Kumar)

ORDER

Per Sudhir Kumar, Member (A):

The applicant of this OA is before this Tribunal aggrieved that in the Screening Committee Meeting held on 21.05.2012, he was not granted Modified Assured Career Progression (MACP, in short) benefits. He has, however, filed this OA on 08.09.2014, much after he had retired from the Government service on 31.12.2011, after which the said Screening Committee Meeting had been held.

2. This is the third round of litigation. The applicant's first OA No. 4530/2011 had been decided on 11.05.2012 by a Coordinate Bench, directing the respondents to conclude the disciplinary case then pending

against the applicant, after serving a copy of the advice of the UPSC upon the applicant, and to thereafter take a decision regarding the grant of benefit of MACP Scheme to him, after conclusion of the enquiry and as per the result of the enquiry, if it was found that he is entitled for the benefit of MACP Scheme, and he is so found eligible, it would be granted to him w.e.f. 01.09.2008, with all consequential benefits.

3. The Bench had noted that the applicant had retired by the time that order was passed, and had noticed that the disciplinary case has to be decided as per CCS (Pension) Rules, 1972, and that in the interregnum pensionary benefits shall be granted to the applicant as per law, as admissible to him.

4. In the present OA, the applicant has nowhere disclosed as to on which post and on what date he had actually joined the Government service, in order to be able to calculate the length of his actual service. However, from the order passed in his first OA No.4530/2011 on 11.05.2012 (supra), it can be seen that the applicant was holding the post of Joint Director first, and he had submitted that he had got only one promotion, but his MACP became due on 01.09.2008, though he had been working as Director at the time of filing of the said OA No.4530/2011. The respondents had submitted that the applicant had been promoted for the second time as Director, in the joint cadre of the Ministry, w.e.f. 07.10.1993.

5. In the meanwhile, the applicant had been charge-sheeted under Rule 14 of CCS (CCA) Rules, 1965 on 10.05.2001. He denied the charges and the Disciplinary Authority decided to conduct an enquiry against him. The report of the enquiry conducted thereafter was submitted on 09.03.2004, and a supplementary report was also submitted on 02.11.2006. The matter had then been referred to UPSC for its advice on 27.02.2007, and after the UPSC's advice was conveyed on 30.09.2009, the Disciplinary Authority held three Articles of Charges to have been proved against the applicant. The UPSC had advised that ends of justice would be met if a penalty of reduction to a lower stage in the time scale of pay by one stage for a period of one year without cumulative effect, and not adversely affecting his pension, is imposed upon him. However, before a final decision could be taken on the advice of the UPSC, the applicant retired on 31.12.2011.

6. The MACP Scheme was implemented w.e.f. 01.09.2008 in the meanwhile, and when the Screening Committee considered the case of the applicant, the disciplinary enquiry was pending against him, and the matter for grant of financial upgradation benefit of MACP to the applicant could not be considered. As noted by the Coordinate Bench in its order, the applicant did not even make any protest representation at that time for his case to be considered for grant of MACP benefits. Thereafter the Coordinate Bench had proceeded to pass the order as already noted above.

7. The enquiry proceedings against the applicant appear to have been concluded soon thereafter, as the applicant then filed CP No. 164/2013 in that OA No.4530/2011. In reply to the C.P., the respondents informed that they had constituted a Screening Committee to decide regarding grant of MACP financial upgradation benefit to the applicant, which held its meeting on 21.05.2012, and found the applicant unsuitable for grant of MACP benefit. However, the applicant has pleaded that first his Annual Performance Appraisal Reports (APAR, in short) were required to be upgraded, as per the DoP&T order dated 13.04.2010, before constitution of the Screening Committee for considering the grant of MACP. Therefore, as per the applicant's submission, this Tribunal passed an order in CP on 19.07.2013 directing the respondents to review the case for grant of MACP financial upgradation to the applicant, and that if he was still aggrieved, he may file a fresh OA.

8. The respondents, however, did not amend their order, and the applicant filed a second OA No. 2829/2013, which came to be decided on 10.03.2014 in the following terms:-

“5.3 Thus, there is no doubt that before considering cases for promotion the authorities are required to communicate the below bench-mark APARs of the employees. Thereafter, they have to be given an opportunity to represent against the same. If such a representation is made then it has to be decided by an authority higher than one who gave the entry. If the employee succeeds then he is also entitled for reconsideration for promotion.

5.4 In our opinion, there is hardly any difference between cases for grant of MACP and cases for promotion in this regard. Denial of both will have civil consequences and lead of deprivation of an employee from financial benefits. Thus principles of natural justice need to be observed in both the cases. Therefore, what holds good for DPCs for promotion should also hold good for

Screening Committees considering the cases of employees for grant of MACP benefits.

5.5 However, we do not agree with the applicant when he says that he has been left without remedy as all the concerned officers have since retired. In our opinion if he makes a representation it should be decided by an authority higher than one who gave the entry as laid down by the Apex Court in the case of Dev Dutt (supra).

6. In view of the above analysis, we allow this O.A. and direct that the below bench-mark ACRs of the applicant will be communicated to him within a period of four weeks from the date of receipt of a certified copy of this order. Thereafter, the applicant may make a representation against this within a period of 15 days. The respondents will decide the representation of the applicant within a period of six weeks thereafter. In case there is upgradation of his ACRs a review meeting of the Screening Committee will be convened to reconsider the case of the applicant for grant of MACP benefit within four weeks. In case the applicant is found fit, he will be extended this benefit with consequential benefit of pay & pension fixation and payment of arrears. No costs.”

9. However, the applicant has submitted that the above cited decision given by this Tribunal was contrary to the Supreme Court’s judgment in the case of **Sukhdev Singh vs. Union of India & Others (2013) 9 SCC 566**, which had been noticed by the Coordinate Bench, though it had chosen to follow the judgment in the case of **Dev Dutt vs. Union of India & Ors. (2008) 8 SCC 725**. He has submitted that the department was asked to send copies of the below bench-mark ACRs to the applicant for enabling him to make his representations for their upgradation. It was submitted that MACP review could have been done only after upgradation of the ACRs. But the Respondent Department once again rejected upgradation of his ACRs, because of which the present OA has now been filed.

10. The applicant has submitted that his ACRs were written as 'Good', but they had been kept aside in the Screening Committee meeting held on 21.05.2012, since, as per the Hon'ble Apex Court's judgment in **Abhijit Ghosh Dastidar vs. Union of India & Ors.** in Civil Appeal No. 6227/2008 arising out of S.L.P. (C) No. 26556 of 2004, decided on 22.10.2008, the Hon'ble Apex Court had held that adverse ACRs do not have to be considered by the DPCs. The applicant has further submitted that since both the Reporting and the Reviewing Officers had already retired, and their comments were not available on the below benchmark ACRs for the period 2005-2008, therefore, those ACRs were kept aside by the Screening Committee. In order to overcome this hurdle, the applicant has cited the case of **Rohit Kumar Parmar vs. Union of India** decided on 30.03.2011 in OA No. 3410/2010, which had relied upon the case of **V.K. Singhal vs. Commissioner of Income Tax** in OA No. 3524/2009, and has pleaded that the grant of MACP to him has now to be considered without taking into consideration the three below bench mark ACRs, and by going back to the preceding period of 5 years, and the period now to be seen by the Screening Committee, therefore, comes to be from 2000 to 2005. But, in this period also, the applicant was under suspension, though he was later exonerated. The applicant has submitted that the Coordinate Bench which decided his OA No.2829/2013 on 10.03.2014 ought to have taken into account the law as laid down in **Dev Dutt vs. Union of India & Ors.** (supra) read with **Abhijit Ghosh Dastidar** (supra), which was not done, because of which he has now filed the present OA, relying upon the Paragraphs 17,18,22,37,39,40,45 of the Hon'ble Supreme Court's judgment in **Dev Dutt's** case (supra).

11. The applicant has further submitted that the Reporting Officer had written his ACRs after a span of two years, and did not send any of those reports for review, nor were the ACRs communicated to him, as per instructions, and instead of commenting on the work to be appraised, the Reporting Officer had used all omnibus words, without keeping in mind the prescribed time period for writing of ACRs, and for sending it for review in the time frame prescribed. He had, therefore, assailed the rejection of his prayer for upgradation of his ACRs in respect of all the three years concerned. He has submitted that since the judgment in **Dev Dutt's** case (supra) had been pronounced on 12.05.2008, and the Screening Committee Meeting met on 14.05.2012, to consider his case, the Committee should not have considered the below Benchmark ACRs for the three years' period from 2005 to 2008, and, therefore, the order of the respondents rejecting his appeal for upgradation of below benchmark ACRs deserves to be quashed, in accordance with the Hon'ble Apex Court's judgment in **Abhijit Ghosh Dastidar vs. Union of India & Ors.** (supra).

12. The applicant has taken the ground that the DPC/Screening Committee meeting which was held on 10.03.2014, should have considered his case in the light of the above two judgments of the Hon'ble Supreme Court, and there should have been no need for the applicant to file his second OA No. 2829/2013, and the present third OA for seeking grant of MACP. He has further taken the ground that because the observations of the Hon'ble Supreme Court in Para 47 & 48 of the

judgment in **Dev Dutt's** case (supra) had not been taken into account, and since the case regarding grant of MACP to him comes well within the ambit of the judgment in the case of **Abhijit Ghosh Dastidar vs. Union of India & Ors.** (supra), it is well within the jurisdiction of this Tribunal to straightaway issue directions to the respondents to grant MACP to him from the due date of 01.09.2008. He has further taken the ground that the impugned orders of the Competent Authority, rejecting his case for upgradation of his ACRs, should be expunged, and in terms of **Rohit Kumar Parmar vs. Union of India** (supra) and **V.K. Singhal vs. Commissioner of Income Tax** (supra) decided by this Tribunal, the below Benchmark ACRs should not have been considered even by the Review DPC/Screening Committee, and, therefore, MACP should have been granted to him. He has also sought shelter behind the Hon'ble Apex Court judgment in **Union of India and Anr. vs. Ranjana Kale** in Special Leave to Appeal (Civil) No.(s) 29929/2010.

13. It has been further submitted by the applicant that his case is not a case of promotion, but only for grant of MACP from due date, and, therefore, directions can be issued by this Tribunal straightaway for grant of MACP by directing the respondents to consider his representation for upgradation of ACRs in a positive manner. In the result, the applicant had prayed for the following reliefs:-

- “i) The order of Screening Committee meeting dated 21.5.2012 be kept a side.
- ii) The order of Competent Authority dated rejecting the upgradation of three ACR's w.e.f. 2005 to 2008 be kept 25.06.2014 may be kept aside.

- iii) Screening Committee meeting be ordered to be convened by respondent. The direction may be given to Deptt. to keep the three below bench mark ACR's for the year 2005-06, 2006-07 and 2007-08 be kept aside i.e. these three below bench mark ACR's may not be considered by MACP Screening Committee.
- iv) Five years starting from year 2000 to 2005 may be considered irrespective of the fact that ACR's of this period are written/completed or not.
- v) Prayed to grant financial benefits under MACP be granted to applicant which is due to him w.e.f. 01.09.2008 the date of implementing the order of MACP as per sixth pay commission. Humbly prayed to grant MACP to the applicant from his present scale/grade from PB-3 to PB-4 enhancing grade pay from Rs. 7600/- to grade pay of Rs.3700/-.
- vi) Hon'ble CAT be pleased to give any other order/relief to grant MACP benefit".

14. In their counter reply dated 24.09.2015, the respondents submitted that the DoP&T OM dated 14.09.1992 in this regard states that the result of the DPC proceedings in respect of an official who is under suspension/criminal/disciplinary proceedings have to be kept in a sealed cover, and that sealed cover has to be opened only after conclusion of the disciplinary case/criminal prosecution. In case the Government servant is completely exonerated, his case will have to be considered from the due date of his promotion with reference to the position assigned to him by the DPC in its findings kept in the sealed cover (s), and with reference to the date of promotion of his next junior on the basis of such position. However, if any penalty is imposed on the Government servant as a result of the disciplinary proceedings, or if he is found guilty of any charge, this procedure shall not be acted upon, and his case for promotion can be considered only by the next DPC, in the normal course, after taking into consideration the penalty imposed on him. They had pointed out that

disciplinary proceedings under Rule-14 of the CCS (CCA) Rules, 1965 had been initiated against the present applicant vide Memorandum dated 10.05.2001 for his alleged misconduct and misbehaviour as mentioned in the 10 Articles of charge in respect of which the enquiry was proposed, and prior to that, he had been placed under suspension on 29.11.2000, which suspension came to be revoked only on 25.07.2005. Since the applicant had denied all the 10 charges contained in the Articles of Charges, the Disciplinary Authority appointed an Enquiry Officer to enquire into charges framed against him, who finally submitted his enquiry report dated 24.08.2006, and his findings were that two Articles of Charges out of 10 had been proved during the enquiry.

15. The applicant was provided with a copy of the enquiry report through letter dated 23.04.2007, under Rule-15 (2) of the said Rules, and his representation thereupon dated 18.05.2007 was taken into consideration by the Disciplinary Authority. Thereafter, the case was referred to UPSC for advice, and in their reply, the UPSC had through their letter dated 30.09.2009 recommended that:-

“the ends of justice would be met if penalty of reduction to a lower stage in the time scale of pay by one stage for a period of one year, without cumulative effect and not adversely affecting his pension is imposed upon the CO”.

16. After receipt of the UPSC advice, the applicant's case was submitted to the Disciplinary Authority, Hon'ble Minister for Social Justice and Empowerment for a decision, but there was delay in taking a decision, and the applicant retired from service on 31.12.2011 on attaining the age of superannuation. They had thereafter given the details of the earlier OA

No. 4530/2011 filed by the applicant, as already discussed above. It was further submitted that since the disciplinary proceedings initiated under Rule-14 of the CCS (CCA) Rules, 1965 were yet to be finalized as on the date of the applicant's superannuation, as the decision of the Disciplinary Authority was awaited, the proceedings were thereafter deemed to be proceedings under Rule-9 of the CCS (Pension) Rules, 1972, after his retirement, as had been ordered by this Tribunal also.

17. It was further submitted that in compliance of the orders of this Tribunal on the applicant's OA No. 4530/2011, a copy of the advice given by the UPSC was forwarded to the applicant through letter dated 28.05.2012, to which he replied through his representation dated 28.05.2012. It was submitted that thereafter, after examining the response submitted by the applicant, the file concerning the disciplinary proceedings against him had been again submitted on 15.06.2012 to the Disciplinary Authority, Hon'ble Minister for Social Justice and Empowerment for a decision. However, six months later, on 14.12.2012, the Disciplinary Authority decided not to impose any penalty under Rule-9(1) of the CCS (Pension) Rules, 1972. This decision and formal order of the Disciplinary Authority was communicated to the applicant on 31.01.2013, but even before that instructions were issued on 19.12.2012 to the Secretary, National Commission for Scheduled Castes (SCs, in short) and Scheduled Tribes (STs, in short), New Delhi, to initiate steps to release the pension and other related benefits to the applicant, as per the extant Rules.

18. It was further submitted that the Ministry had also, simultaneously initiated the process to consider the grant of benefit of financial upgradation under the MACP Scheme in the case of three officers, including the applicant, even prior to the receipt of the orders of this Tribunal as passed in the applicant's earlier OA. The Screening Committee under the Chairmanship of the Joint Secretary was set up in the Ministry on 22.03.2012, which considered on 21.05.2012 the cases of the three officers including the applicant, but since, as on that date, no decision had been taken in the disciplinary proceedings case against the applicant, the findings of the Screening Committee in respect of applicant were kept in a sealed cover. It was submitted that once the disciplinary proceedings got concluded, with the Disciplinary Authority recording its decision on 14.12.2012, for non-imposition of any penalty upon the applicant, the sealed cover containing the recommendation of the Screening Committee was opened, which disclosed the following findings in the case of the applicant:-

"Available CR Dossiers for the year 2005-06, 2006-07 and 2007-08 were gone through. The overall grading of the officer was assessed only as GOOD, which was below the benchmark. The officer is, therefore, not eligible for benefits under MACPS".

19. It was submitted that these findings of the Screening Committee were thereafter placed before the Competent Authority, who accepted the same, and, therefore, the benefit of MACP Scheme was not extended to the applicant. Thereafter, the respondents had described the findings recorded by this Tribunal in the applicant's Contempt Petition No. 164/2013 in OA No. 4530/2011 in the order dated 19.07.2013, as already discussed above.

20. When acting on the directions of the Tribunal as passed in the Contempt Petition, the Minutes of the Screening Committee held on 21.05.2012 were communicated to the applicant on 23.07.2013, he had filed his second OA No.2829/2013 for the same cause before this Tribunal, which was disposed of on 10.03.2014, as already discussed above. It was submitted that in pursuance of the orders of this Tribunal, the below Benchmark ACRs of the applicant for the relevant years 2005-06, 2006-07 and 2007-08 were then communicated to the applicant on 02.05.2014, to which he had submitted his response on 14.05.2014, which was considered and rejected, through a speaking order dated 25.06.2014 which stated as follows:-

“(i) The Competent Authority after scrutiny of available ACRs for the relevant period is of the opinion that the grading and remarks given in the ACRs are justified and the Competent Authority finds no reason or justification to upgrade the grading from Good to Very Good as requested by the officer”.

21. The same facts were repeated by the respondents in their para-wise replies to the OA also, and need not be repeated here once again.

22. The respondents had sought shelter behind the Supreme Court's judgment in the case of **Union of India and Others vs. S.K. Goel and Others** in Civil Appeal No. 689/2007 arising out of SLP (C) No. 2410/2007, in which it has been held by the Hon'ble Apex Court that “DPC enjoy full discretion to devise its methods and procedure for objective assessment of suitability and merit of the candidate being

considered by it. Hence the interference by the High Court is not called for”.

23. In reply to grounds also, it was submitted that though the DOP&T Guidelines as per OM dated 06.10.2000 prescribed that the DPC should assess the suitability of employees for promotion on the basis of their service records, and with particular reference to the CRs for the five preceding years, irrespective of the qualifying service prescribed, and the determination of qualifying five preceding years has been laid down in the DOP&T OM dated 08.09.1998, through a combined reading of these two OMs, the Screening Committee had correctly considered the ACRs for the period from 2003-04 to 2007-08 for considering the proposal for grant of MACP to him w.e.f. 01.09.2008. It was submitted that the applicant could not be granted MACP, as he does not possess the minimum Benchmark in his overall assessment in the ACRs of the above period. It was, therefore, submitted that all actions of the respondents have been in accordance with DOP&T Guidelines, and the Competent Authority has considered the issue in detail, and since there were no grounds for upgradation of the ACRs for the relevant period, therefore, the present OA also does not lie, and deserves to be dismissed.

24. The applicant filed his rejoinder on 01.01.2016 which merely contained the copies of the order dated 30.03.2011 passed by a Coordinate Bench of this Tribunal in **Rohit Kumar Parmar vs. Union of India** (supra), and the Hon'ble Apex Court judgment in the case of **Abhijit Ghosh Dastidar vs. Union of India & Ors.** (supra). In addition,

the applicant had given the details of the overall gradings awarded to him in his APARs with effect from the year 2005 onwards as follows:-

Grading	
“1999-2000	Very Good
2000-01	Outstanding
2001-02	Very Good
01.04.2003-04.07.2002	Very Good
07.2003-03.2004	Good
2004-05	Not recorded
2005-06	Good
2006-07	Very Good
2008-09	Very Good”

25. The applicant had once again assailed the inaction of the respondents for non-upgradation of his APARs for the years 2005-2008, and the one line order passed by the respondents that his ACRs cannot be upgraded to the Benchmark level of “Very Good”. He had, therefore, prayed that his OA may be allowed, and MACP financial upgradation should be ordered to be granted to him from the date due.

26. Heard. The case was argued by the applicant in person, and he produced the judgments as already mentioned above in the discussion of the case. He also submitted his written arguments, which were more or less repetition of his pleadings in the case, as already made out in his OA, as well as in the rejoinder. On their part, later on the respondents on 10.05.2016 submitted the original copies of the ACRs of the applicant for the years 2005-2006, 2006-2007 and 2007-2008, as had been directed at the time of reserving the order, after arguments had been heard on 25.04.2016.

27. We have perused all the records. It is seen from these ACRs that the applicant himself had submitted his ACR format for the year December 2005 to March 2006 nearly one and a half year later, on 20.09.2007. The Reporting Officer Shri K.N. Singh, Joint Secretary, National Commission for Scheduled Tribes had then recorded on 08.01.2008 that this CR format was given to him in the month of October, 2007, and Shri Manoj Kumar, who was the Secretary of the Commission and the Reviewing Officer for the relevant period had already retired in June, 2006, soon after the reporting period was over, and, therefore, the CR, as written by him, cannot be reviewed by anybody. He had further noted that in view of this, his assessment as the Reporting Officer may be taken as final. Thereafter, Shri R.P. Vasishtha, Deputy Secretary of the Commission had certified that Part-V of the ACR form could not be filled up, as the concerned Reviewing Officer had since retired from Govt. service.

28. It is further seen that the 2006-2007 ACR format was actually submitted by the applicant on 21.07.2007, two months earlier than the date when he had submitted the ACR format for 2005-06, which was also reported upon by the same Joint Secretary Shri K.N. Singh on 12.02.2008, who had rated him to be 'Below Good & Average', and once again there was a similar certificate from Shri R.P. Vasishtha, Deputy Secretary, National Commission for Scheduled Tribes, who had certified that Part-V of the ACR form could not be filled up, as the Reviewing Officer for the concerned period had also since retired from Govt. service.

29. It is seen that the ACR format for the year 2007-2008 (upto 30.11.2007) was submitted by the applicant promptly on 18.12.2007, and the Reporting Officer Shri K.N. Singh, Joint Secretary, had also recorded his findings very promptly on 27.12.2007, which were actually prior to his findings recorded in the case of ACRs in respect of previous two years, and he rated him to be 'Good+'. This ACR was then reviewed by the Reviewing Officer Shri Wilfred Lakra, IAS, Secretary, National Commission for Scheduled Tribes on 28.01.2008, who was in saddle as on that date.

30. We have given our anxious consideration to the facts of this case. Though the applicant had earlier approached this Tribunal twice in respect of the same prayers, but since both the times, on 11.05.2012 in OA No.4530/2011, and on 10.03.2014 in OA No.2829/2013, those OAs had been disposed off after issuing directions upon the respondents, and allowing the applicant to make representations against the decisions of the respondents, and then allowing the respondents to take action accordingly, the prayers of the applicant, as made out in the present OA, cannot be said to have been hit by the principle of *res-judicata*, as no judicial determination of the *lis* in his case has ever been done earlier, even though his OAs had been disposed off.

31. Whatever may be the merits of his performance in his assigned work, the applicant has been both guilty of delay in submission of this APAR Self Assessments, while also being a victim of the circumstances. He was under suspension for more than 4-½ years from 29.11.2000 to 25.07.2005. However, after he had re-joined his duties, he is guilty that

even his ACR format for the period from December 2005 to March 2006 was submitted by him 1-½ years later, on 20.09.2007, as mentioned above also. Once again, his ACR format for the subsequent year 2006-2007 also, though it was submitted by him on 21.07.2007, two months prior to the submission of the format of his earlier year's ACR, it was reported upon by the Reporting Officer nearly 6-½ months later, on 12.02.2008. However, his even further subsequent ACR, for the year 2007-2008, for the period upto 30.11.2007, had been reported upon promptly by the Reporting Officer on 27.12.2007, and had been reviewed by the Reviewing Officer equally promptly on 28.01.2008. Though nothing has been brought on record by the respondents as to why that broken period ACR for 2007-08 was submitted and considered, it appears possible that this may have been due to the departure/superannuation of the Reporting Officer, who could have written his comments only for the period upto one month from his demitting the office, which seems plausible, since below his signatures dated 27.12.2007, he has not affixed any seal, thereby indicating that he was not in the saddle in any official position when he reported upon the applicant's broken period ACR for 2007-08 on 27.12.2007.

32. But from the table in respect of his ACRs, as submitted by the applicant in his rejoinder, as reproduced by us above, it is quite clear that both his ACRs for the periods from December 2005 to March 2006, and in respect of the full year from 2006 to 2007, were not written and completed in time, as per the DoP&T prescribed schedule for submission of Self-Assessment Report, and the schedule for remarks of the Reporting

and Reviewing Officers being recorded. In fact, his ACRs for the period December-2005 to March 2006, and for the year 2006-2007, could not be reviewed at all, as the Reviewing Officer had retired on 30th June, 2006, after having observed the applicant's work for more than 90 days in the year 2006-07 also.

33. Only the third broken period ACR of the applicant for the period from 01.04.2007 upto 30.11.2007 appears to have been written properly, within the prescribed period, with no mention being made by the respondents as to what happened to the applicant's broken period ACR for the remaining four months of the year 2007-2008, from 01.12.2007 to 31.03.2008.

34. From the above discussion, one thing which emerges is that the joint cadre of the Ministry of Social Justice and Empowerment, the National Commission for Scheduled Castes and National Commission for Scheduled Tribes, to which the applicant belongs, has not been following the proper procedure in regard to timely completion of ACRs/APARs, and, therefore, they cannot be allowed to seek shelter in the case of any discrepancies or lacunae in the applicant's APAR. The applicant also is at fault for his having submitted his ACR format for 2005-06 more than one and a half year later. Therefore, neither the applicant, and nor the respondents can be allowed to take shelter behind the delayed ACRs/APARs, in writing of which the proper procedure had not been followed by themselves.

35. Secondly, from the counter reply as submitted by the respondents, it is clear that the Enquiry Officer who conducted the disciplinary enquiry against the applicant had submitted his report on 24.08.2006. The respondents took 8 months' time to furnish a copy of that enquiry report to the applicant on 23.04.2007, to which he then replied and represented against on 18.05.2007. However, as per Para-4 of the counter reply, even before having obtained the comments of the applicant dated 18.05.2007 to the enquiry report sent to him on 23.04.2007, the respondents had jumped the gun, and had sought the statutory advice of the UPSC on the findings of the Enquiry Officer, through Ministry's letter dated 27.02.2007, which is illegal and improper. In fact the advice of the UPSC has to be sought by the Disciplinary Authority only with regard to the quantum of punishment, after the Disciplinary Authority has come to a firm conclusion that a punishment needs to be imposed upon the delinquent official, which had not happened in this case, since the Disciplinary Authority, when it decided the applicant's case, actually decided not to impose any penalty upon him. Therefore, the consultation with UPSC was totally un-necessary.

36. Thirdly, under Article 320 (3) (c) of the Constitution of India, the recommendations of the UPSC regarding the quantum of punishment that may be imposed upon the delinquent official, though being statutory recommendations, are only just that, inasmuch as they are only recommendatory in nature as to the quantum of punishment which can be awarded to the delinquent Government servant, and the UPSC cannot take

upon itself any of the tasks of the Disciplinary Authorities, and travel beyond the findings of the Enquiry Officer arrived at after his having completed the disciplinary enquiry. The right and the powers to differ and disagree with the report of the Enquiry Officer are available to the Disciplinary Authority, the Appellate Authority, and the Reviewing Authority, if any prescribed, but not at all to the UPSC. When the respondents had reported that only two Articles of Charges out of ten had been held to have been proved by the Enquiry Officer, the UPSC could not at all have sat in judgment over the disciplinary enquiry report of the Enquiry Officer, and it could not have come to the conclusion that not two but three Articles of Charges, namely, Article of Charge-IV, Article of Charge-VI and Article of Charge-VII, stood proved against the applicant. Therefore, the so called advice given by the UPSC in the applicant's case was much beyond the Constitutional mandate, role and powers of the UPSC.

37. As mentioned above, the right to differ from the report of the Enquiry Officer is available only to the Disciplinary Authority, the Appellate Authority, and the Reviewing Authority, if any prescribed, and nobody else. The Enquiry Officer is, in fact, a delegatee of the Disciplinary Authority, since the Rules already provide that the Disciplinary Authority can either conduct the disciplinary enquiry himself, or delegate the disciplinary enquiry to be conducted by the Enquiry Officer, nominated by him. That is why the Law provides that the Disciplinary Authority is the first Authority which can re-assess and re-weigh the evidence as adduced during the course of the conduct of a

disciplinary enquiry, and arrive at his own findings, which may be different than that of the Enquiry Officer. However, even for doing this, and for the purpose of differing from the report of his delegatee, the Enquiry Officer, the Rules provide for the Disciplinary Authority to first furnish a copy of the Enquiry Officer's report to the delinquent Government official, along with his dissent note, invite his comments on both, and then weigh the reply, before arriving at a conclusion different than those arrived at by the Enquiry Officer, after a re-assessment and re-weighing of the evidence adduced during the course of enquiry.

38. This conclusion of the Disciplinary Authority, either agreeing with his delegatee, the Enquiry Officer, or disagreeing with the findings of the Enquiry Officer, can thereafter be reviewed and changed by a re-appreciation of the entire evidence on record by the prescribed Appellate Authority, but once again only after giving an opportunity to the delinquent Government official to represent once again, if the findings of the Disciplinary Authority are different than that of the Enquiry Officer's findings, on which he had already given his representation earlier. But as was held in the case of **Prem Prakash vs. Union of India** in OA No.89/2009 at Jodhpur Bench of this Tribunal by a Coordinate Bench including one of us [Sudhir Kumar, Member (A)], no mind other than that of the Enquiry Officer, who is the delegatee of the Disciplinary Authority, or the Disciplinary Authority himself, or the Appellate Authority (or the Reviewing Authority, in case such a review is prescribed under the relevant Rules, like in the case of Railway Servants under Indian Railway Establishment Manual, Part-1), can re-assess and re-appreciate the

evidence adduced during the disciplinary enquiry, and the mind of no other authority can be allowed to re-assess, re-appreciate and re-weigh the evidence as adduced during the disciplinary enquiry. In the case of **Prem Prakash** (supra), the Jodhpur Bench had set aside such re-appreciation and re-weighing of evidence by the Central Vigilance Commission.

39. In the instant case, therefore, we hold the re-appreciation and the re-weighing of the evidence adduced during the disciplinary enquiry by the UPSC to be unconstitutional, against its Constitutional role and mandate, and, therefore, illegal, and liable to be set aside.

40. Moreover, in this case, the UPSC is further guilty of sitting over the matter for more than 2-½ years over the Ministry's letter dated 27.02.2007, and thereafter having issued an advice through their letter dated 30.09.2009, which delay was obnoxious. Further, it has been admitted by the respondents in Para-5 of their counter reply that only after the receipt of the UPSC advice dated 30.09.2009, the matter was submitted to the Disciplinary Authority, i.e., Hon'ble Minister for Social Justice and Empowerment for a decision, which amounted to putting the cart before the Horse. It is clear that the Disciplinary Authority also had not taken a decision for two years thereafter, forcing the applicant to file his first OA No.4530/2011, during the pendency of which he had superannuated on 31.12.2011.

41. Once again, a copy of the advice given by the UPSC vide letter dated 30.09.2009 was forwarded by the respondents to the applicant only on 28.05.2012 on which he submitted his representation dated

28.05.2012. This matter was then examined in the Ministry only thereafter, and submitted to the Disciplinary Authority, i.e., Hon'ble Minister for Social Justice and Empowerment on 15.06.2012 for a decision, who ultimately decided not to impose any penalty under Rule-9 of the CCS (Pension) Rules, 1972. It is, therefore, clear that the matter was put up to the Disciplinary Authority, i.e., Hon'ble Minister for Social Justice and Empowerment, only after the receipt of UPSC's so-called advice dated 30.09.2009, and even thereafter, however, no decision had been taken by the Disciplinary Authority for nearly two years, till the filing of his first OA No.4530/2011.

42. Therefore, it is apparent from the above proceedings that at every stage the respondents have resorted to incorrect procedure, and undue delay on their part in considering the case of the applicant, and have literally forced the applicant to approach this Tribunal three times in OAs, and once in a Contempt Petition, and yet he has been denied any relief whatsoever. It is further clear from the above discussion that the only ACR of the applicant which was written as per proper procedure, and within time, was the broken period ACR for the year 2007-2008, for the period from 01.04.2007 to 30.11.2007, in which his Reporting Officer had rated him "Good+", which is not a prescribed rating, but can be understood to mean being better than a mere "Good", even though the grading had still been marked only "Good", without cutting out the "Outstanding" and "Very Good" gradings.

43. Under the Scheme of MACP, the Screening Committee performs functions akin to DPC, but not exactly equal to DPC. In that sense, the

Screening Committee which is convened to accord sanctions for financial upgradations only has a greater leeway and scope for accommodating the cases of the Government servants concerned, in a more lenient manner than the DPC itself, which is convened only to accord substantive promotion, and has to necessarily stick to strict parameters. Since MACP is not substantive promotion, and is merely a financial upgradation, the Screening Committee can certainly afford to be more accommodative, and less stringent. It is also surprising in the instant case that the Screening Committee had failed to notice that the ACRs of the applicant for the year 2005-2006 (from December 2005 to March 2006), and for the year 2006-2007, were *non est* in the eyes of law, since they were not written during the prescribed time frame, and had the belated comments of only the Reporting Officer, with no comments of the Reviewing Officer.

44. In these circumstances, the prayers of the applicant at Para-8 (i) and 8 (ii) are accepted, and the orders of the Screening Committee held on 21.05.2012, and the order of the Competent Authority passed on 25.06.2014, are quashed and set aside. The ACRs of the applicant for the year 2005-2006 and 2006-2007 are declared as *non est*, as not having been written within the time frame prescribed for writing the said ACRs, though this was due to the fault of the applicant himself also.

45. It is, therefore, directed that the Screening Committee shall be re-convened in order to re-consider the case of the applicant for grant of MACP, strictly in accordance with the DoP&T instructions in this regard, and the observations made in this order. If the applicant is found to be eligible for grant of MACP, he shall be granted MACP benefit from

01.09.2008, or from the date his immediate junior(s) had been granted such MACP benefits, and the consequential financial benefits shall be provided to the applicant.

46. The OA is, therefore, partially allowed in the above terms, but there shall be no order as to costs.

47. The Original ACRs of the applicant for the years 2005-06, 2006-07 and 2007-08, filed by the official respondents on 10.05.2016, are ordered to be returned to the learned counsel for the respondents.

(Sudhir Kumar)
Member (A)

(Permod Kohli)
Chairman

cc.