

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.4248/2011

Order reserved on 28th November 2016

Order pronounced on 8th December 2016

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

Mrs. Sunita Mehra
w/o Mr. Subodh Mehra
r/o I-750, Palam Vihar, Gurgaon – 122017
at present working as PGT, Home Science
Sarvodaya Kanya Vidyalaya
Smalkha, New Delhi

..Applicant

(Mr. Sachin Chauhan, Advocate)

Versus

1. Secretary of Education
Govt. of NCT of Delhi
Ministry of Education
Secretariat Building
IP Estate, New Delhi
2. Director of Education
Government of NCT of Delhi
Directorate of Education
Old Secretariat Building, New Delhi
3. Mr. Jang Bahadur
Dy. Director of Education (South West District)
Najafgarh, New Delhi
4. Mrs. Usha Sharma
Vice Principal
Sarvodaya Kanya Vidyalaya
Rajnagar II, Palam Colony
New Delhi – 45
Also at House No.346, Sect 22
Gurgaon – 122001
Haryana
5. Mr. Vikas Kalia
PS/LA to Director of Education
Office of the Director of Education
Old Secretariat, New Delhi

..Respondents

(Mr. Amit Anand, Advocate)

O R D E R

Mr. K.N. Shrivastava:

The applicant, through the medium of this instant O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, has prayed for the main reliefs:-

- “a. Set aside the forged and fictitious entries in the ACRs of 2008-09 and 2009-10.
- b. Declare that the applicant ought to have been graded as “Very Good” on the basis of right entries.
- c. Set aside the order dated 12.07.2011 by which benefit of the Modified Assured Career Progression Scheme (MACPS) has been denied to the applicant and grant the benefit of the MACPS from the date it is due to the applicant.”

2. The brief facts of the case are as under:-

2.1 The applicant joined the Directorate of Education, Government of NCT of Delhi (GNCTD) as a TGT (Home Science) on 21.04.1993. She was promoted as PGT (Home Science) on 05.08.2000. She worked at Sarvodaya Kanya Vidyalaya (SKV), Raj Nagar II, Delhi for a longer period. She was transferred to SKV, Deoli, New Delhi on 16.09.2010 and later from SKV, Deoli to SKV, Samalka on 24.6.2011 where she is working at present.

2.2 She was due for financial upgradation under the Modified Assured Career Progression (MACP) Scheme in the year 2010-11 but her case was not considered due to her below benchmark ACR grading. The benchmark for the ACR grading for the grant of MACP financial upgradations was ‘good’ whereas the applicant was graded as ‘average’ for two years out of five years for which the ACRs were under consideration. The details of her grading during the relevant five years period are as under:-

Year	ACR grading
2005-06	Good
2006-07	Very Good
2007-08	Very Good
2008-09	Average
2009-10	Average

2.3 The Principal, SKV, Samalka, New Delhi vide impugned O.M. dated 12.07.2011 (Annexure A-1) informed the applicant that her case for grant of MACP benefits has been received back with observation of District Scrutiny Committee (DSC) that ACRs for the years 2008-09 and 2009-10 are found 'average'.

Aggrieved by the impugned Annexure A-1 O.M., depriving her of MACP benefits, the applicant has filed the instant O.A. praying for the reliefs as mentioned in paragraph 1 above.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply. The applicant has thereafter filed her rejoinder. She also filed an additional affidavit, to which a reply was filed by the respondents. With the completion of pleadings, the case was taken up for hearing the arguments of learned counsel for the parties on 28.11.2016. Mr. Sachin Chauhan, learned counsel for applicant and Mr. Amit Anand, learned counsel for respondents were heard.

4. Learned counsel for applicant submitted that there has not been any decline in the performance of the applicant, who had been graded as 'very good' in the past but surprisingly graded as 'average' for the years 2008-09 and 2009-10. To buttress this argument, the learned counsel drew our attention to the ACRs for the years 2008-09 and 2009-10, which are available on the record. He further stated that for the year 2009-10, the

ACR of the applicant was rewritten even after it was dispatched to the Incharge of CAL Lab. In this connection, the learned counsel drew our attention to the additional affidavit of the respondents (page 251 of the paper book). He also drew our attention to the letter dated 04.08.2010 (page 262) and 19.02.2011 (page 263) written by the Head of School, SKV, Raj Nagar-II, Delhi to the Incharge of CAL Lab. He alleged that the ACR of the applicant has been mischievously tempered with by respondent No.4 and that the letters of Head of School, SKV, Raj Nagar-II at pages 262-263 of the paper book are forged documents. It was also submitted that on the day when the case of the applicant was considered for the grant of MACP financial upgradation, the 'average' ACR grading for the years 2008-09 and 2009-10 had not been communicated to the applicant.

5. Placing reliance on the decision of Hon'ble Supreme Court in **Dev Dutt v. Union of India & others**, [2008 (7) SCALE 403] and decision of Hon'ble High Court of Delhi in **Union of India & another v. V.S. Arora & others** [W.P. (C) No.5042/2002 – decided on 31.05.2012], the learned counsel for applicant stated that non-communication of the ACR well within time is against the law laid down by the Hon'ble Supreme Court.

6. Mr. Chauhan further submitted that the applicant has been a victim of mala fide and bias of respondent No. 4. He further submitted that both original and revised ACRs of the applicant for the year 2009-10 have been communicated to the applicant and both bear the dispatch date as 11.06.2010. He stated that the letters of respondent No.4 at pages 262-263 of the paper book are dated 04.08.2010 and 19.02.2011 respectively wherein she had requested the Incharge of CAL Lab to carry out certain

corrections in the ACR of the applicant for the year 2009-10. Hence the revised ACR could not have been dispatched on 11.6.2010. He also stated that some show cause notices were issued to the applicant much later, which pertained to the years 2010-11 onwards and have no bearing on the ACR for the said period (2009-10)

Concluding his arguments, Mr. Chauhan submitted that the applicant has an excellent performance record in the school but her ACRs for the periods 2008-09 and 2009-10 have been unfairly graded as 'average', and they have come in the way of her getting the benefits of MACP financial upgradations and that the prayers made in the O.A. may be allowed.

7. *Per contra*, Mr. Amit Anand, learned counsel for respondents submitted that respondent No.4 has been absolutely fair in recording her comments in the ACRs of the applicant. The 'average' grading given to her for the years 2008-09 and 2009-10 are based on the average performance of the applicant. He stated that even after she was transferred to SKV, Deoli, the Head of School of that School, who wrote part ACR of the applicant pertaining to the year 2010-11, i.e., 01.04.2010 to 17.09.2010, has also given her 'average' grading.

8. The learned counsel vehemently contested the argument of the learned counsel for applicant that the letters of respondent No.4 written to the Incharge of CAL Lab (pages 262-263 of the paper book) are forged ones. He stated that the applicant had filed a Criminal Complaint No.226/1 of 2013 against respondent No.4 in the Court of CMM, Dwarka Courts, New Delhi, who did not find any merit in the complaint and dismissed the same vide order dated 03.11.2014. He also made available a copy of the said order during the course of the hearing.

9. Mr. Amit Anand further argued that inadvertently respondent No.4 had failed to record the reasons for giving 'average' grading to the applicant for the period 2009-10 and that is why she wrote letters to Incharge of CAL Lab (pages 262-263 of the paper book) to make necessary corrections in the said ACR. As such no irregularity has been committed. The learned counsel also drew our attention to Annexure A-2 rejection order issued by the Head of School SKV, Samalka to the applicant whereby her request for reviewing her ACRs for the periods 2008-09 and 2009-10 has been rejected. He said that respondent No.4 has committed no irregularity in making appropriate corrections to the ACR for the period 2009-10 and in requesting the Incharge of CAL Lab to carry out the said changes.

Concluding his arguments, Mr. Anand said that the ACRs of the applicant have been written after adjudging her overall performance and that the denial of MACP benefits to her is an offshoot of her overall performance.

10. We have considered the arguments of learned counsel for the parties and perused the material placed on record.

11. The applicant was due for grant of MACP financial upgradation in the year 2010-11. For the said purpose, her ACRs for the years 2005-06, 2006-07, 2007-08, 2008-09 and 2009-10 were to be considered. She could have been given the MACP benefits if her ACRs were to be above the benchmark. The benchmark prescribed was 'good'. Her ACRs pertaining to the periods 2005-06, 2006-07 and 2007-08 are 'good', 'very good' and 'very good' respectively but those pertaining to the years 2008-09 and 2009-10 are 'average'. It is also an admitted fact that the 'average' ACR for the periods

2008-09 and 2009-10 were communicated to the applicant, vide Annexure A-1 O.M. dated 12.07.2011. Her representation to the competent authority for review of her ACRs for the periods 2008-09 and 2009-10 was rejected by the respondents vide Annexure A-2 rejection order. It is also an admitted fact that respondent No.4 had written the ACR of the applicant for the period 2009-10 but initially had not recorded the reasons therein for giving 'average' grading to her. Later on, she recorded the reasons in the ACR and intimated to the Incharge of CAL Lab, where the ACRs of the teachers are maintained in electronic format, to carry out the necessary corrections. We do not find any irregularity in the said action of respondent No.4.

12. The criminal complaint made by the applicant against respondent No.4 for alleged forgery of tempering/altering her ACR for the year 2009-10 has been dismissed by the criminal court. In this regard, we consider it appropriate to reproduce the relevant extract from the order of the CMM, Dwarka Courts, New Delhi dated 03.11.2014, which reads thus:-

“5. After perusal of the entire factual matrix of this case, this Court is of considered view that the subsequent ACR may be a reviewed or corrected ACR sent by the principal of the school. The subsequent ACR has been sent by the school Principal while she was acting in performance of her official duties and the said act is directly concerned with her official duties. The offence sought to be prima facie proved by way of complaint are not subsequent ACR in performance of her official duties and as such the said does not constitute any cheating, forgery, falsification of the records. Further no evidence is on record which suggests that the subsequent ACR was false, fabricated and prepared be in conspiracy with other persons named in the complaint. Accordingly, the present complaint is dismissed for devoid of any merits.”

13. The law laid down by the Hon'ble Supreme Court in the cases of **Dev Dutt** (supra) and **Abhijit Ghos Dastidar v. Union of India & others**

(Civil Appeal No.6227/2008) decided on 22.10.2008 make it mandatory for communicating the adverse ACRs to the concerned government employee. The ratio of law laid down in **V.S. Arora's** case (supra) by the Hon'ble High Court of Delhi requires that the adverse ACRs should be communicated within a reasonable period of time. The ACRs for the years 2008-09 and 2009-10 had been, admittedly, communicated to the applicant (Annexure A-1). The 'average' grading given in the ACRs have remained unaltered, as the representation of the applicant against the ACRs of 2008-09 and 2009-10 has been rejected by the competent authority vide Annexure A-2 rejection order. As such, the applicant could not have been granted the MACP benefits.

14. In the conspectus of the discussion in the foregoing paragraphs, we do not find any illegality in the action of the respondents in denying the MACP financial upgradation to the applicant in view of her ACRs for the years 2008-09 and 2009-10 being below the benchmark. Hence, we dismiss the O.A. as it is bereft of any merit.

No order as to costs.

(K.N. Shrivastava)
Member (A)

(Raj Vir Sharma)
Member (J)

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