

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

OA-3870/2014

Reserved on : 02.05.2016.

Pronounced on : 06.05.2016.

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. Shekhar Agarwal, Member (A)

Sh. G.C. Aggarwal, aged 60 years,
S/o Late Sh. C.B. Aggarwal,
Retired Account Assistant, Northern Railway,
Baroda House, New Delhi.
R/o 75, Raj Nagar, Pitam Pura,
Delhi-34.

..... Applicant

(through Sh. Yogesh Sharma, Advocate)

Versus

1. Union of India through the
General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The FA & CAO (Admn.)
Northern Railway, Baroda House,
New Delhi.
3. The Deputy Chief Account Officer (G),
Northern Railway Headquarters,
Baroda House, New Delhi.

.....Respondents

(through Sh. Shailendra Tiwary, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

The applicant initially joined as a Junior Accountant on 17.01.1976 in the Ministry of Supply. Subsequently, he got promoted to the post of Senior Accountant in the Railways and got absorbed there. He took voluntary retirement from Railways w.e.f. 06.04.2009. His grievance is that despite having

put in almost 33 years of service, the respondents have denied to him the benefit of MACP Scheme, which became operational in the Government w.e.f. 01.09.2008 and was also adopted by the Railways w.e.f. the said date. He made a representation on 20.11.2013 but the same has been rejected by the respondents vide impugned order dated 03.01.2014 in which it has been stated that his case was considered by the Screening Committee but he was found to be unfit on the basis of gradings awarded to him. Hence, he is seeking the following relief:-

- “(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned orders declaring to the effect that the same are illegal, unjust and arbitrary and consequently, pass an order directing the respondents to consider the case of the applicant for granting the benefit of financial up-gradation under MACP Scheme w.e.f. 01.09.2008 or from due date with all consequential benefits including the arrears of difference of pay and allowances and revision of retirement benefits with interest, after ignoring the ACR of the year 2006-07, 2007-08 and any other un-communicated below bench mark grading.
- (ii) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the un-communicated ACRs of the year 2006-07 and 2007-08 and all the consequential benefits.
- (iii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant.”

2. Learned counsel for the applicant submitted that none of the below benchmark ACRs have been communicated to him and he has been denied an opportunity to make any representation against the same. The respondents have considered these ACRs while assessing his case for grant of MACP Scheme benefits and rejected the same. Learned counsel further submitted that the un-communicated ACRs should not have been taken into account by the respondents in view of the law laid down by Hon'ble Supreme Court in the case of **Abhijit Ghosh Dastidar Vs. UOI & n Ors.** [SLP (C) No. 26556/2004] on 22.10.2008. This judgment has been followed by this Tribunal on 03.06.2009 in deciding OA-

1493/2009 [**Dr. (Smt.) Bhanu Saran Vs. KVS**]. He has also relied on the judgment of this Tribunal in the case of **Dr. R.K. Garg Vs. UOI & Ors.**, 2010(1) AI SLJ (CAT) 226 to say that his ACRs have not been recorded correctly. On the same issue he has placed reliance on the judgment of this Tribunal in the case of **Rajeev Bhargava Vs. UOI & Ors.**, 2010(3) AI SLJ (CAT) 282.

3. In their reply, the respondents have submitted that the Screening Committee awarded only 06 marks to the applicant on the basis of his service record whereas the required benchmark for grant of MACP Scheme benefit to the grade pay of Rs.5400/- was 08 marks out of 15. With their reply, the respondents have also enclosed applicant's ACRs for the years 2005-06, 2006-07 and 2007-08, in all three of which he has been awarded 'average' grading.

4. We have heard both sides and have perused the material on record. It is clear from the above that at least three of the ACRs of the applicant, which were in the consideration zone for assessing for grant of MACP Scheme benefit, had only 'average' gradings, which were below benchmark. The applicant claimed that none of these ACRs had been communicated to him and this was against the law laid down by Hon'ble Supreme Court in the case of **Dev Dutt Vs. UOI & Ors.**, 2008 (8) SCC 725. The respondents did not deny that ACRs had never been communicated to the applicant. They, however, drew our attention to DoP&T O.M. dated 13.04.2010 by which it was laid down that below benchmark ACRs be communicated to the concerned employee and he be given a chance to make a representation against the same before such a ACR is placed before the DPC. The contention of the respondents was that directions to communicate below benchmark ACR was only issued on 13.04.2010 i.e. much after 06.04.2009, the date on which the applicant had

taken voluntary retirement. As such, there was no obligation to follow this O.M. in the case of the applicant.

5. After considering the rival submissions of both sides, we are of the opinion that judgments in the case of **Dr. R.K. Garg** (supra) and **Rajeev Bhargava** (supra) relied upon by the applicant have no relevance in this case as there is no averment made by the applicant that his ACRs have not been written according to rules. Further, we hold that the contention of the applicant that he be given benefit of judgment of Hon'ble Supreme Court in the case of **Abhijit Ghosh Dastidar** (supra) cannot be accepted as that judgment has been held to be flowing out of the power of Hon'ble Supreme Court under Article-142 of the Constitution of India and was delivered considering the special facts and circumstances of that case. In this regard, we place reliance on the judgment of Hon'ble High Court of Delhi in the case of **UOI Vs. Krishna Mohan Dixit** [WP(C)-6013/2010] dated 08.10.2010 with other connected cases.

5.1 However, in **Krishna Mohan** Dixit's case judgment it has also been laid down that all the below benchmark ACRs, which fall within the consideration zone i.e. in the relevant 05 years before holding the DPC/Screening Committee if not communicated earlier, shall be communicated to the concerned employee and he would be given a chance to submit a representation against the same. It has been finally laid down that if on the basis of the representation there is material change in the record of the concerned employee, then a review DPC/Screening Committee would be held to reappraise his ACR for deciding his promotion.

6. In our opinion, this case is squarely covered by the aforesaid judgment since in this case also there are un-communicated below benchmark ACRs

falling in the relevant zone. Accordingly, we allow this O.A. and quash the impugned order dated 03.01.2014. We further direct that the respondents shall communicate to the applicant his below benchmark ACRs, which have hitherto not been communicated to him and which fall within the relevant zone of consideration for assessing him for grant of MACP Scheme benefits. This communication shall be done within a period of 04 weeks from the date of receipt of a certified copy of this order. Thereafter, the applicant would be permitted to make a representation against the below benchmark ACRs within a period of 15 days. If such a representation is made, the same shall be decided by the competent authority. In case any of his ACRs/APARs are upgraded as a result of decision on representation, a review Screening Committee shall be held to reappraise the case of the applicant for grant of MACP Scheme benefit. If the applicant is found fit for grant of MACP Scheme benefit, he shall be granted the same and in such eventuality he shall also be entitled to benefits of pay and pension fixation and arrears arising out of the same. This exercise shall be completed within 03 months of receipt of the applicant's representation. No costs.

(Shekhar Agarwal)
Member (A)

(Justice Permod Kohli)
Chairman

/Vinita/