

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

OA-3777/2012

Reserved on : 21.01.2016.

Pronounced on : 27.01.2016.

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. Shekhar Agarwal, Member (A)

Sh. Om Prakash Dahiya,
Age 63 years,
S/o Sh. Tek Chand,
R/o 154-L, Model Town,
Rohtak.

.... Applicant

(through Sh. S.K. Gupta, Advocate)

Versus

Govt. of NCT of Delhi through

1. Chief Secretary,
Delhi Secretariate,
I.P. Estate, New Delhi.
2. Director,
Directorate of Education,
Old Secretariat,
Delhi.
3. Dy. Director of Education,
Distt. South West (B),
Najafgarh, New Delhi-43.
4. Sh. Jang Bahadur Singh,
Holding the post of Dy. Director of Education,
Distt. South West (B),
Najafgarh, New Delhi-43.

.... Respondents

(through Sh. Vijay Pandita, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

The applicant was appointed as a Trained Graduate Teacher (TGT) under Government of National Capital Territory of Delhi (GNCTD) on 10.09.1974.

Gradually, he got promoted to the post of Vice-Principal on 08.01.2003. According to him, he became eligible for grant of 3rd financial upgradation under MACP Scheme on 01.09.2008 before he took voluntary retirement on 30.11.2008. His case for grant of this benefit was recommended by the Principal of the School on 28.03.2011. However, no response was forthcoming from the respondents. Consequently, the applicant sent a legal notice on 19.09.2011 and thereafter filed OA-4440/2011 before this Tribunal 12.12.2011. This was disposed of by the Tribunal on 13.08.2012 with the direction to the respondents to consider his case for 3rd financial upgradation . In compliance thereof, the respondents vide their impugned order dated 19.10.2012 have rejected his case. Hence, he has filed this O.A. before us seeking the following relief:-

- “(i) quash and set aside the impugned order dated 19.10.2012 (Annexure-A-1);
- (ii) direct the respondents to consider the case of the applicant for grant of 3rd financial upgradation effective from 01.09.2008 and if the applicant is found fit in terms of Rules and Instructions rightly interpreted by the office of respondents, the same benefit be awarded w.e.f. 01.09.2008 upto 30.11.2008 and thereupon, pension/pensionary benefit be revised and the arrears be released along with the interest @12% p.a.;
- (iii) award the exemplary cost to be recovered from the respondent No.4 for his wilful illegal acts in denying the legitimate dues of the applicant;
- (iv) May also pass any further order(s), direction(s) as be deemed just and proper to meet the ends of justice.”

2. The respondents have filed their reply in which their main contention is that many of the ACRs of the applicant, such as, those for the years 2002-03, 2003-04, 2006-07 and 2007-08, which would be relevant for considering his case for grant of 3rd financial upgradation under MACP Scheme were not available in his dossier. Also that his ACR for the year 2004-05 was below bench-mark. According to the respondents, this has happened because the applicant himself had not initiated his ACRs by timely submission of his self appraisal.

Further, it has been found by the IT Branch of the Directorate of Education that 2 ½ years after his retirement the applicant had made an effort on 10.06.2011 to submit his self appraisal for the years 2006-07 and 2007-08 online to mislead the authorities for his personal interest. Thus, the applicant himself was responsible for this lapse as he had not initiated his own ACRs and, therefore, now he cannot be allowed to take benefit of the same.

3. We have heard both sides and have perused the material on record. It is evident that the respondents have not considered the case of the applicant for grant of 3rd financial upgradation under MACP Scheme on account of non availability of some ACRs for the relevant year as well as finding one of the ACRs for the year 2004-05 to be below bench-mark. They have further submitted that ACRs of the applicant were missing because he had himself not submitted his self appraisal to the reporting officer. We find this argument of the respondents to be unacceptable. As per DoP&T Instructions as given in Para-2 of their O.M. No. 35014/4/83-Estt.(A) dated 23.09.1985 as reproduced in Swamy's Compilation on Seniority and Promotion in Central Government Service, 2010 Edition on page-55, it was the responsibility of the reporting officer not to wait indefinitely for receipt of self appraisal of the officer to be reported upon. Para-2 of the aforesaid O.M. reads as follows:-

"In regard to Item 2 in the time-schedule, it is clarified that a reporting officer should not wait till the expiry of the time-limit for self-appraisal of the officer to be reported upon. After the expiry of the first week, if self-appraisal is not received by that time, the reporting officer should take it upon himself to remind the officer to be reported upon in writing, asking him to submit the self-appraisal by the stipulated date. It should also be made clear in the reminder that if the officer to be reported upon fails to submit the self-appraisal by the stipulated date, the report will be written without self-appraisal. If no self-appraisal is received by the stipulated date, the reporting officer can obtain another blank CR form and proceed to write the report on the basis of his experience of the work and conduct of the officer reported upon. While doing so, he can also point out the failure of the officer reported upon to submit his self-appraisal within the stipulated time."

Thus, this O.M. casts a duty upon the reporting officer to remind the officer to be reported upon to submit his self appraisal and if the same is not received even after that to write the report of the officer on the basis of his experience of the work and conduct of the officer to be reported upon. Applying this O.M. to the instant case it follows that even if the contention of the respondents that the applicant had not submitted his self appraisal is accepted, the reporting officer should have himself written the ACRs of the applicant. Since this was not done, it was a lapse on the part of the reporting officer and not the applicant as made out by the respondents.

3.1 Next the contention of the respondents that one of the ACRs of the applicant, namely, for the year 2004-05 was below bench-mark, is also not acceptable. This is because the grading of the ACR has to be assessed by the Screening Committee and not by any other authority as has been done in the instant case since it is obvious that the case of the applicant was never submitted to the Screening Committee.

3.2 In view of the above, we allow this O.A. and direct the respondents to reconsider the case of the applicant in the light of observations made above. If certain ACRs of the applicant are missing, then available ACRs for immediately preceding years may be seen to assess his suitability. This shall be done within a period of eight weeks from the date of receipt of a certified copy of this order. In case, the applicant is found fit for grant of such benefit, he shall also be entitled to consequential benefits of pay and pension revision along with arrears. However, in view of the facts and circumstances of this case, we are not inclined to allow any interest on arrears. No costs

(Shekhar Agarwal)
Member (A)

(V. Ajay Kumar)
Member (J)

/Vinita/

