

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

OA-4064/2018

Reserved on : 29.11.2018.

Pronounced on : 07.12.2018.

Hon'ble Ms. Praveen Mahajan, Member (A)

Sh. Chauhan Singh,
S/o late Amar Singh,
Aged about 61 years,
Group 'C', Retd. Asst. Post Master,
R/o House No. 104, Freedom Fighter
Colony, Maidan Garhi, New Delhi.

.... Applicant

(through Sh. Shoeb Shakeel, Advocate)

Versus

1. Union of India through
Its Secretary,
Department of Posts,
Ministry of Communication,
Dak Bhavan, New Delhi.
2. Director Post Accounts,
U.P. Circle Lucknow,
Sector-D, Aliganj, Lucknow,
U.P.
3. Senior Supdt. Of Post,
Mathura Division,
Mathura-281001.
4. Senior Post Master,
Head Post Office, Mathura,
U.P. 281001.

..... Respondents

(through Sh. Ms. Kiran Ahlawat for Sh. Duli Chand, Advocate)

ORDER

Briefly stated, the facts of the current O.A. are that the applicant was appointed as Postal Assistant in the respondent department in July, 1979. Due to departmental proceedings against the applicant, financial upgradation under the MACP Scheme was not allowed and the same was deferred. The punishment awarded to the applicant was over on 30.04.2012. Thereafter, the grant of MACP to the applicant was examined by the Screening Committee and he was granted financial upgradation under the MACP Scheme w.e.f. 01.05.2012 and duly approved by CPMG on 06.03.2013. Formal order for grant of financial upgradation was issued on completion of 30 years of regular service.

2. It is averred that on 14.08.2017, the respondent No.2 illegally and arbitrarily declared the grant of MACP to the applicant as invalid in terms of Para-15 of MACP Scheme that if a financial upgradation is deferred and not allowed after 10 years in a grade pay, due to reason of the employees being unfit or due to departmental proceedings etc. this would give consequential effect on the subsequent financial upgradation, which would also get deferred to the extent of delay in grant of first financial upgradation. Hence the 2nd MACP granted to the applicant on 01.05.2012 was held inadmissible. Vide letter dated 23.10.2017, respondent No.4

illegally issued notice for recovery of alleged excess paid amount of pay and allowances of Rs.2,93,174/- paid to the applicant from 01.07.2010 to 31.07.2017.

3. On 08.11.2017, the applicant submitted a representation to respondent No.2 against recovery of alleged excess paid amount of pay and allowances from 01.07.2010 to 01.07.2017. He also sought information under the RTI Act, 2005 vide letter dated 16.02.2018 from the respondent No.2. Vide reply dated 19.03.2018, the applicant was informed that in his case the AE was issued by the office after correcting the pay as per Rules laid down in Annexure-I of MACP Scheme, with a remark to recover overpaid amount. The applicant was asked to deposit an amount of Rs.2,93,174/-. On 18.04.2018, the applicant again preferred a representation seeking withdrawal of impugned order of recovery, but to no avail.

4. Due to the aforesaid reasons, the applicant has filed the current O.A. seeking the following relief:-

- “(i) That the Hon'ble Tribunal may graciously be pleased to allow this O.A. and quash the impugned orders i.e. **Annexure A-1**.
- (ii) That the respondents may kindly be directed to withdraw the order for recovery.
- (iii) That the respondents may kindly be directed to grant the benefits of MACP III to the applicant.
- (iv) That any other benefit or relief which in the circumstances of the case deemed fit and proper be allowed to the applicant.”

5. The applicant submits that order of recovery cannot be made without following the principles of natural justice and by misinterpreting the rules. He has placed reliance on the judgment of Hon'ble Supreme Court in the case of **Shyam Babu Verma Vs. Union of India**, 1994 SCR (1) 700 in which it has been held that excess amount paid to the appellant therein cannot be recovered after a long passage of time. In the case of **Subash Chandra Vs. State of Haryana**, 2006(3)SCT 195, Hon'ble Punjab and Haryana High Court has held that the benefits extended to its employees without any misrepresentation by him and the employer by any other rule cannot recover the excess amount paid to him. In the case of **Chintaman Namdeoro Umare Vs. State of India**, 2005(3) ATJ 511, Bombay Bench of CAT has held that the average emoluments for 25 months can only be checked and hence recovery checking beyond 24 months is impermissible.

5.1 It is further mentioned that in the applicant's case the recovery order has been made after around 7 years. Further, in the case of **Col. B.J. Akkara (Retd.) Vs. Govt. of India & Ors.**, 2007(1)SCC (L&S) 529, Hon'ble Supreme Court has held that recovery of excess amount paid through an employee serving/retired can be done only if the same was made due to misrepresentation/fraud on part of the employee, but should not be on account of erroneous interpretation of rules after a long passage of time.

5.2 In their counter affidavit, the respondents submit that the applicant was appointed as P.A. and joined the respondent department on 16.07.1979. He could not be promoted either in TBOP or in BCR cadre due to his unsatisfactory service record. He was promoted in LSG (NB) cadre with grade pay of Rs.2800/- vide Memo dated 01.06.2011. He was granted financial upgradation under MACP-III with Grade Pay of Rs.4200/- w.e.f. 01.05.2012 and his pay was fixed accordingly. The applicant retired on 31.07.2017 on superannuation when the case of the applicant was sent for processing of his pension papers. D.A.P. Lucknow, on 23.08.2017 pointed out that as per Para-15 of Annexure-I of MACP Scheme, if a financial upgradation under the MACP Scheme is deferred and not allowed after 10 years in a grade pay, due to reason of the employee being unfit or due to departmental proceedings etc. then the second MACP is not admissible. This would give consequential effect on the subsequent financial upgradation, hence the second MACP awarded to the applicant on 01.05.2012 is not admissible as per rules. Thus, overpayment of Rs. 2,93,174/- is sought to be recovered and his pay has been refixed accordingly.

6. I have gone through the facts of the case carefully and considered the rival submissions of both sides.

6.1 It is essential to examine the provisions of the MACP Scheme while considering the request of the applicant for directing the respondents to extend the benefit of MACP Scheme to him. As per O.M. dated 19.05.2009 issued by Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) in Para-15, it is stipulated that:-

"If a financial upgradation under the MACPs is deferred and not allowed after 10 years in a grade pay, due to the reason of the employees being unfit or due to departmental proceedings, etc., this would have consequential effect on the subsequent financial upgradation which would also get deferred to the extent of delay in grant of first financial upgradation."

6.2 The case of the applicant squarely falls under the aforementioned stipulation. Departmental proceedings had been initiated against the applicant and financial upgradation under MACP Scheme had not been deferred in his case. Though the applicant had joined the department on 16.07.1979, he could not be promoted in the TBOP or BCR Cadre due to his unsatisfactory record. He got his promotion in LSG (NS) Cadre with requisite grade pay of Rs.2800/- on 01.06.2011. This was to have consequential effect on subsequent financial upgradation delaying the grant of financial upgradation. In view of these facts, second MACP granted to him on 01.05.2012 was not admissible to him. The respondents' action in this regard is as per law and cannot be faulted.

6.3 As far as the over payment of Rs. 2,93,174/- is concerned, the same, in my view, is covered by the decision of the Hon'ble Supreme Court in the case of **State of Punjab and Ors. Vs. Rafiq Masih (White Washer)**, 2015 (4) SCC 334 wherein it has been held that recoveries from employees would be impermissible in case of employees belonging to Class-III and Class-IV. The applicant herein belongs to Class-III. It has also been stated therein that recoveries from employees to whom excess payment has been made for a period in excess of five years, before order of recovery is issued would fall under the same category. In the instant case, the order of recovery was issued after a period of five years. Thus, the case of the applicant comes under the umbrella of the aforementioned two categories.

7. Hence, the order dated 03.04.2018 (Annexure A-1) is set aside. The O.A. is partially allowed. No costs.

(Praveen Mahajan)
Member (A)

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