

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

OA-4340/2015

Reserved on : 12.07.2018.

Pronounced on : 25.07.2018.

Hon'ble Mr. Justice Dinesh Gupta, Member (J)
Hon'ble Ms. Praveen Mahajan, Member (A)

Feroz Ahmed (since deceased)
Through his LRs:

1. Mrs. Razia Khan (aged about 64 years)
W/o (late) Sh. Feroz Ahmed,
R/o House No. 46, Street No.1,
Zakir Nagar, P.O. Jamia Nagar,
New Delhi-110025.
2. Mr. Faizan Shah (aged about 35 ½ years)
S/o (late) Sh. Feroz Ahmed,
R/o House No. 46, Street No.1,
Zakir Nagar, P.O. Jamia Nagar,
New Delhi-110025.

.... Applicant

(through Sh. R.A. Sharma, Advocate)
Versus

1. Delhi Development Authority
Through its Vice-Chairman,
Vikas Sadan (B-Block), 1st Floor,
Near INA, New Delhi-110023.
2. Commissioner (Personnel),
Delhi Development Authority,
Vikas Sadan (B-Block),
Near INA, New Delhi-110023.
3. The Secretary,
Deptt. of Personnel & Training,
(DoP&T), Govt. of India,
North Block, New Delhi-110001.

.... Respondents

(Through Sh. M.S. Reen, Advocate)

O R D E R

Ms. Praveen Mahajan, Member (A)

The current O.A. has been filed by the applicant against the impugned order dated 16.10.2015 vide which the respondents have found him ineligible for grant of 3rd Modified Assured Career Progression (MACP) Scheme as per Department of Personnel & Training Guidelines due to his non-achieving the prescribed benchmark of 'Very Good', which is mandatory for grant of MACP in the Grade Pay of Rs. 7600/-.

2. The applicant in the OA has prayed for the following reliefs:-

“(a) Quash and set aside order dated 16.10.2015 (Annexure A-1) and declare the recommendations of Sr. Level Screening Committee/Review DPC held after Order dt. 03.7.2015 of this Hon'ble Tribunal passed in O.A. No. 2408/2014 and assessing the applicant 'unfit' for the grant of 3rd MACP benefit in the Pay Scale (PB-3) of Rs.15600-39100 with Grade Pay of Rs.7600, as ultra-vires the guidelines and instructions issued as well as the established law on the subject.

(b) A direction that the requirement of 'Very Good' bench mark for the grant of 3rd MACP benefit in the pay scale (PB-3) Rs.15600-39100/- with Grade Pay of Rs.7600/- (6th CPC) shall have prospective effect and shall not be applicable to the ACRs of the preceding years, i.e., prior to 01.9.2008 in case such ACRs were graded below the above bench mark of 'Very Good' & had not been communicated to the Govt. servant concerned.

(c) A direction to the respondents to produce or cause production of the relevant record of the Review DPC/Sr. Level Screening Committee proceedings referred to in this application for perusal of this Hon'ble Tribunal.

(d) A further direction to the respondents to hold a review DPC to consider the case of the applicant for the grant of 3rd MACP benefit w.e.f. 1.9.2008 in the Pay Scale (PB-3) of Rs.15600-39100 with Grade Pay of Rs.7600 by treating the applicant's ACRs as fulfilling the bench mark prescribed for the grant of above MACP benefit. It is important

to bear in mind that the applicant's ACRs were meeting the bench mark prescribed for promotion to the post of AE and EE.

(e) A further direction to the respondents to grant 3rd MACP benefit to the applicant w.e.f. 1.9.2008 in the pay scale of Rs.15600-39100 (PB-3) with Grade Pay of Rs. 7600 and pay arrears of pay and allowances thereof.

(f) Pass any other order or orders as deemed fit and proper in the facts and circumstances of the case in favour of the applicant.

(g) Allow cost in favour of the applicant."

3. Brief facts of the applicants case are as follows:-

The LRs of the deceased applicant (Feroz Ahmed) have been taken on record and now are applicants in the current O.A. The (deceased) applicant joined as a Junior Engineer (Electrical) in Delhi Development Authority (DDA) on 12.08.1976. He was promoted to the post of Assistant Engineer (Electrical) in the pay scale of Rs.6500-10500/- w.e.f. 20.01.2000. He was granted 2nd financial upgradation under the ACP Scheme in the pay scale of Rs.10000-15200/- w.e.f. 29.03.2001. The MACP Scheme, which was introduced by the Government of India w.e.f. 01.09.2008 was adopted by the DDA for its employees w.e.f. 01.09.2008. The DDA issued Estt. Order No. 836 dated 13.06.2012 granting 3rd financial upgradation under the MACP Scheme to Electrical Engineers, but the applicant's name did not figure therein. The applicant vide letter dated 01.02.2013 sought information under the RTI Act, as to why the benefit under the MACP Scheme was not granted to him. The Public Information Officer vide letter dated 25.03.2013 informed the applicant that the DPC which

met on 24.02.2012 considered his case for the grant of 3rd financial upgradation under the MACP Scheme but found him 'unfit' due to non-achieving of the prescribed benchmark of 'Very Good'. The applicant had never been communicated any ACR, whether adverse or otherwise. Therefore, he made application dated 08.04.2013 to the concerned authority for supplying him photocopies of his ACRs for the periods 2001-01 to 2010-11. The concerned authority vide letter dated 14.06.2013 supplied him the photocopies of the said ACRs.

4. The applicant being aggrieved by the non grant of 3rd financial upgradation under the MACP Scheme filed OA-2828/2013 in which the Tribunal, vide order dated 28.02.2014, directed the applicant to file a representation to the competent authority, which was to be decided by the respondents in accordance with the existing rules and instructions etc. The applicant accordingly filed a representation dated 12.03.2014 to the Vice-Chairman, DDA seeking the following reliefs:-

“(i) This representation may be accepted.

(ii) The ACRs of the applicant for the years 2002-03 to 2006-07 which were downgraded below the bench mark of 'Very Good' may be upgraded to the level of 'Very Good'.

OR in the alternative, the said ACRs need to be ignored for the purpose of grant of 3rd MACP benefit w.e.f. 1.9.2008 to the applicant and ACRs of previous years preceding the year 2002-03 be considered.

(iii) A review DPC be held to consider the case of the applicant for the grant of 3rd MACP benefit w.e.f. 1.9.2008 and consider applicants ACRs of the previous years preceding the year 2002-03. It may be kept in view that the applicants ACRs of the previous years fulfilled the bench mark prescribed for the post of AE/EE, i.e., upto Grade Pay of Rs.6600/- and he was promoted to the post of AE (Elect.) and also granted the 2nd ACP benefit in the pay scale of Rs.10000-15200 (revised to Rs.15600-39100 (PB-3) plus grade pay of Rs.6600/-). Applicant was granted 2nd ACP benefit vide EO No.370 dt.29.3.2001. Therefore, applicant cannot be declared unfit for the grant of 3rd MACP benefit in the pay scale of Rs.15600-29100 with grade pay of Rs.7600/- w.e.f. 1.9.2008 even on the basis of his ACRs of the previous years preceding the year 2002-03.

(iv) Applicant be granted 3rd MACP benefit in the Pay Band of Rs.15600-39100 with Grade Pay of Rs.7600 w.e.f. 1.9.2008 and be paid arrears of pay and allowances."

5. The DDA vide their order dated 10.06.2014 rejected the prayer of the applicant on the following grounds:-

"DELHI DEVELOPMENT AUTHORITY
(CONFIDENTIAL BRANCH)
F.No.CAT/PCV/4414/13/LEGAL/DDA-1896Dated 10.6.14

To
Sh.Firoz Ahmed, A.E.(Elect.)
Electrical Division No.11, DDA,
Vikas Sadan,
New Delhi 23

Subject: Grant of ACP/MACP.

Please refer to your representation dated 12.03.2013 (grounds of representations) in compliance of Honble CAT order dated 20.02.2014 of OA No.2828/13 on the subject cited above. In this context I am directed to inform you that your case was placed before senior Level DPC on 24.02.2012 & 21.02.2014 for grant of 3rd MACP in Next Grade Pay of Rs.7600/- in pay Band of Rs.15600-39100/-. The said DPC, assessed you 'Unfit' on both the occasions owing to reason that you could not attain the prescribed Bench Mark Very Good. The status of ACRs for the relevant period are as under:

2002-03 --
2003-04 --

2004-05 Average
 2005-06 Good
 2006-07 Average
 2007-08 Average
Preceding
 2001-02 Good
 2000-01 Good
 1999-20 Good
 1998-99 Good

S.No	Point Raised	Reply
1	The applicant was never ever communicated any adverse entry or adverse ACRs nor supplied with the copy of the ACRs so as to enable him to represent against the same even after the judgment of the supreme Court in Dev Dutt's case (supra). Thus the applicant had no occasion to know about his ACRs until obtained copies thereof under the RTI Act.	The system of communicating the entries in the APAR was made applicable prospectively only w.e.f. the reporting period 2008-09 which is initiated after 01.04.09 as per DOPT OM Dated 14.05.09 in accordance with the supreme Court judgment dated 12.05.08 in case of Dev Dutt VS. Union of India. The relevant ACR pertains to the years prior to issue of above OM.
2	The applicant came to know about the bench mark of 'Very Good' for grant of 3rd MACP benefit only after the MACP scheme was adopted by the DDA vide EO No.2157 dated 29.10.09.	The prescribed bench mark 'Very Good' is required for grant of grade pay of Rs.7600/- which is available on DoPT website. Every officer is expected to himself acquaintance with his service rule/condition regarding upgradation/promotion.
3	The applicant was never communicated any adverse entry/adverse ACR he had	As per instruction prior to issue of DOPT OM Dated 14.05.09 only adverse entries

	bonafidely believed that his ACRs were not adverse and were meeting the prescribed bench mark of "Very Good" required for grant of 3 rd MACP benefit.	were to be conveyed. Since Average ACR are not considered as adverse remarks in respect of officers. Hence ACRs were not conveyed.
4	As per the law well established even prior to the case of Dev Dutt, the ACRs which were graded below the prescribed Bench Mark would be adverse and if not communicated to the concerned employee, the same have to be ignored by the DPC	No further comments in view of above.

6. Aggrieved, the applicant filed another OA-2408/2014 seeking the same reliefs. In this OA, the Tribunal considered the pleadings advanced by both sides and passed the following orders:-

"10. In the instant case, admittedly, the DPC, while considering the applicant's case, has taken into account his below benchmark ACRs which had not been communicated to him. In view of the law laid down by the Hon'ble Apex Court in Abhijit Ghosh Dastidars case (supra), the said below benchmark ACRs of the applicant should not have been taken into account. As the Reporting/Reviewing Officers are not in service, those below benchmark ACRs cannot be reviewed at this distant point in time. Therefore, as has been held by the Honble High Court of Delhi in V.S.Aroras case (supra), all the available ACRs of the applicant should be taken into account by the respondents/DPC while considering his case for the grant of 3rd MACP financial upgradation in PB 3 with Grade Pay Rs.7600/-.

11. In the result, the O.A. is partly allowed. The impugned order dated 10.6.2014 (Annexure A/1) is quashed. The respondents are directed to hold a Review D.P.C. to consider the applicant's case for the grant of 3rd MACP financial upgradation in PB-3 and GP Rs.7600/- with effect from 1.9.2008 by taking into account all the available ACRs of the applicant. The respondents are also directed to take appropriate decision on the recommendation of the DPC soon after its receipt, and to communicate the same to the applicant. The entire exercise shall be completed by the respondents within two months from today."

7. Now, the respondents vide their order dated 16.10.2015 have again rejected the claim of the applicant for grant of 3rd MACP Scheme for the reasons stated in the impugned order stating that:-

“Sub:-Review-Grant of 3rd financial upgradation under MACP Scheme.

Sir,

Please refer to the above mentioned subject. In this connection, I am directed to inform you that in compliance of the orders of Hon'ble CAT vide its judgment dated 03.07.15 in OA No.2408/2014, the Sr. Level Screening Committee reconsidered your name for grant of 3rd financial upgradation under MACP Scheme in next Grade Pay of Rs.7600/- in Pay Band of Rs.15600-39100/- on completion of 30 year of service. After taking into consideration your entire service record with particular reference to ACR since your joining in DDA upto 2006-07 as per Court orders and rules governing MACP Scheme could not find you eligible for 3rd MACP as per DoPT guidelines due to non achieving the prescribed bench mark as “V.Good” which is mandatory for grant of MACP in the Grade Pay of Rs.7600/- and above.”

8. The issue involved has been agitated and re-agitated again by the applicant before various (Competent) fora and has come before the Tribunal in the third round of litigation. We have carefully gone through the facts, perused the available record.

9. It is seen that in the order of the Tribunal dated 03.07.2015, the respondents were directed to hold a review DPC by taking into account all the available ACRs of the applicant. The respondents had also been advised that since the reporting and reviewing officers were not in service and a review of below benchmark of ACRs was not possible, hence as held by the Hon'ble High Court of Delhi in the case of **UOI & Anr. Vs. V.S. Arora & Ors.**, [WP(C) No.

5042/2002 decided on 31.05.2012, the available ACRs of the applicant should be taken into account by the DPC while considering his case for the grant or otherwise of 3rd financial upgradation under the MACP Scheme in PB-3 and Grade Pay of Rs.7600/-.

10. A bare perusal of the impugned order dated 16.10.2015, however shows that these directions have not been adhered to by the respondents. Though there is a mention of the Screening Committee (in the impugned order), which went into facts of the case, but a review DPC, as directed by the Tribunal in the order dated 03.07.2015, does not seem to have been convened. The respondents have mechanically reiterated their earlier stand (in the impugned order dt. 16.10.2015) without following the guidelines laid down by the Hon'ble High Court of Delhi in the case of **V.S. Arora** (supra) to deal with these type of cases where the ACRs are not communicated, not completed, and/or are below benchmark.

11. At the cost of repetition, we reproduce the directions of the Hon'ble High Court in the case of **V.S. Arora** (supra) wherein specific clarifications exist as to how cases, such as the current one, are to be dealt with. In para-c of the aforementioned judgment, it is stipulated that:-

“(c) Where one or more CRs have not been written for any reason during the relevant period, the DPC should consider the CRs of the

years preceding the period in question and if in any case even these are not available, the DPC should take the CRs of the lower grade into account to complete the number of CRs required to be considered as per (b) above. If this is also not possible, all the available CRs should be taken into account.

Xxxxx

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It has also been laid down that wherever below benchmark ACRs, which have not been communicated, cannot be considered then the DPC must follow the same procedure as prescribed in paragraph 6.2.1(c) above.

12. In view of the aforesaid facts and discussions, we are left with no option but to allow the OA partially and quash the impugned order dated 16.10.2015 and direct the respondents to follow the clear cut directions of the Tribunal in their order dated 03.07.2015, and pass a reasoned and speaking order within three months of the receipt of a certified copy of this order. We hope that these orders will be carried out in true letter and spirit, following the instructions on the subject meticulously so that the applicant is saved the stress and harassment of resorting to (avoidable) repeated litigation. The O.A. is thus partly allowed. No costs.

(Praveen Mahajan)
Member (A)

(Justice Dinesh Gupta)
Member (J)

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