

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

Pronounced on : 20.11.2018

Reserved on : 30.10.2018

OA No. 060/01438/2017

**CORAM: HON'BLE MR.SANJEEV KAUSHIK, MEMBER(J)
HON'BLE MRS. P. GOPINATH, MEMBER(A)**

P.K. Sarin, S/o Shri S.N. Sarin, 234, Sector 4, Mansa Devi Complex,
Panchkula, Haryana, Pincode : 134114

.....Applicant

BY ADVOCATE: **Applicant in person**

Versus

1. Union of India through its Secretary, Ministry of Urban Development, Nirman Bhawan, New Delhi – 110 011.
2. Directorate General of Works, C.P.W.D. Nirman Bhawan, New Delhi – 110 011.

.....Respondents

BY ADVOCATE: **Sh. Sanjay Goyal**

ORDER

MRS. P. GOPINATH, MEMBER(A):-

1. The applicant joined the respondent department as a junior Engineer and was promoted as Assistant Engineer. Applicant was implicated in a criminal case and suspended in the year 1991. In 2002, applicant was acquitted in the criminal case and reinstated in service. The period of suspension from 29.04.1991 to 27.01.2003 was treated as duty for all intents and purposes.

2. The applicant was allowed second ACP in the scale of Rs. 10,000-15,200 w.e.f. 01.07.2006. Applicant submits that the third mACP which was due to him w.e.f. 01.09.2008 has been denied on the ground of Below Bench Mark ACRs.

3. The applicant was before this Tribunal in OA No. 060/00144/2015 challenging the recommendation of the 3RD MACP Review Committee. The OA considered the applicants' case in detail and disposed of the same with the following order:-

"13. We have given our careful consideration to the matter. Since the applicant had completed 30 years of service on 2.8.2006 and the MACPS was circulated in May, 2009 to be implemented w.e.f. 1.9.2008, the claim of the applicant for grant of 3rd MACP, in normal course was to be considered in the year 2009 and ACRs for the period 2002-03 to 2006-07 were to be taken into consideration. During 2002-03, the applicant was under suspension and no ACR appears to have been recorded for the year 2004-05. Hence, the Screening Committee was required to consider earlier ACRs and since the applicant was under suspension from the year 1991 to 2003, in order to consider five ACRs, it is the ACRs for the years 1989-90 & 1990-91 that could be considered. Although the applicant has claimed that only the last ten years ACRs should have been considered while considering his case for grant of 3rd MACP, but in the absence of requisite number of ACRs during the previous ten year period, there can be no objection to the ACRs for the period 1989-90 and 1990-91 being considered. The DOPT issued OM dated 13.4.2010 regarding communication of ACRs below the benchmark level while the earlier practice was only to convey adverse remarks in ACRs. While it is true that the applicant did not have the opportunity to represent against the ACRs in which the grading was below the benchmark level, but prior to 13.4.2010, there were no such instructions while, as already mentioned, in the normal course, the case of the applicant for the 3rd MACP w.e.f. 1.9.2008 should have been considered in the course of the year 2009. If the gradings in the ACRs for the years 1989-90, 1990-91, 2003-04, 2005-06 and 2006-07 are taken into account, as reiterated by the respondents, the applicant would not be graded as Very Good which is the benchmark for the Grade Pay of Rs. 7600. Hence, the claim of the applicant for grant of 3rd MACP in the Grade Pay of Rs. 7600 w.e.f. 1.9.2008 is without merit and the same is rejected. However, since the applicant has continued in service till 31.8.2014 when he superannuated, his claim for 3rd MACP is required to be considered by the respondents on yearly basis in 2010 and thereafter. The OA stands disposed of accordingly. No costs."

Applicant then filed OA No. 835/2016 which was disposed of with the following order:-

“7. Accordingly, we allow this O.A. to this extent and direct the respondents to convene a review meeting of the Screening Committee to reconsider the case of the applicant for grant of 3rd MACP benefit w.e.f. 1.4.2014. In case he is found fit, he shall be given the benefit of arrears arising out of the same. He shall also be entitled to interest at GPF deposit rate for the period commencing from 1.4.2014 till the actual date of grant of arrears. The aforesaid benefits may be extended to him within a period of 8 weeks from the date of receipt of certified copy of this order. No costs.”

The claim of the applicant for third MACP w.e.f. 01.09.2008 was rejected by the Tribunal with the direction that since the applicant had been in service till 31.08.2014, his claim for third MACP was required to be considered by the respondents on an yearly basis from 2010 onwards.

Based on the Tribunal's directions in OA No. 835/2016, a Screening Committee was appointed by the respondents who considered the case of the applicant and found him unfit in 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14.

4. Applicant then filed OA No. 060/00331/2017 with the prayer to quash the minutes of the Screening Committee dated 27.04.2016 declaring the applicant unfit for the year 2009, 2010, 2011 and 2012. The OA was disposed of on 28.03.2017 with the following directions:-

“At the very outset, the applicant intends to withdraw the instant Original Application (OA), to enable him to approach the appropriate authorities, for redressal of his grievance, at the first instance.

Therefore, the instant OA is hereby dismissed as withdrawn with the aforesaid liberty, as prayed for.

Needless to mention, in case the applicant still remains aggrieved with the order to be passed on his representation, in any manner, then he would be at liberty to avail his appropriate legal remedy to challenge its validity in appropriate forum and in accordance with law.”

5. The applicant has already been before this Tribunal on three occasions and all the reliefs afforded to him have been complied with. But in order to give the applicant another chance which will be the last chance,

it is necessary to examine the matter from the angle of APAR OF THE APPLICANT. In order to adjudicate on the relief sought by the applicant, the respondents have produced a gist of the APARs of the applicant. The applicant was under suspension from 29.04.1991 to 27.01.2003. In the year 2003-04, he had the grading "Good". In 2004-05, his grading was not available. From 01.04.2005 to 12.01.2006 and from 01.04.2006 to 31.03.2007, he had the grading "Very Good". For the period 01.04.2007 to 29.07.2007, he had the grading "Outstanding". For the period 30.07.2007-31.03.2008, he had "Good" grading. Again for the period 01.04.2008 to 31.03.2010 (two years), his ACRs were not available and for the period 01.04.2010 to 31.03.2011, he got the grading "Good". The "Good" Gradings for the period 30.07.2007-31.03.2008 and 01.04.2010-31.03.2011 were communicated to the applicant on 28.04.2016 and 16.05.2016 respectively, but no reply to these communications had been received from the applicant. The "Good" grading for the period 01.04.2012-30.11.2012 was communicated to the applicant on 16.05.2016, to which he furnished a reply, but the grading was not upgraded and the speaking order was issued. Hence, the opportunity of communicating the below bench mark APAR's the applicant was allowed to which applicant had represented and the same was considered and the outcome of consideration communicated to the applicant.

6. The prayer of the applicant in the OA is for grant of third MACP w.e.f. 01.04.2009. For being considered from 01.04.2009, the ACRs of previous five years have to be considered. The ACRs of 2008-09 are not available. The previous ACRs are two "Very Good", two "Good" and one

“NA”. Twelve years from 29.04.1991 to 27.01.2003, the applicant was under suspension. Before that, ACRs for 1990-91 were “Good”. Going by the ACR grading, the prayer of the applicant for being given MACP w.e.f. 01.04.2009 is not justified as the applicant does not have a Bench Mark grading. Those three below bench mark gradings were communicated to the applicant. ACRs from 2009 to 2014 were considered on the basis of order in OA No. 835/2016 by the respondent and applicant as noted in pre-para, was considered unfit for grant of MACP.

7. The applicant's case is one wherein MACP has been denied to him in view of not possessing the prescribed bench mark. As per directions of the Tribunal in OA No. 060/0835/2016, the Screening Committee again reviewed the applicant's case on 06.07.2017 and recorded the following:-

“As per directions of Hon'ble CAT, Chandigarh Bench's order dated 23rd May, 2017 a Review meeting of the Screening Committee was held on 16.06.2017 at 11.00 AM, to consider the suitability for grant of 3rd financial upgradation to Shri P.K. Sarin, Retired Executive Engineer in the grade pay of Rs. 7600/- under MACP, by the following members:-

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|------|-----------------------------------|------------------|
| i) | Director General, CPWD | Chairman |
| ii) | Additional Director General (S&P) | Member |
| iii) | Chief Engineer (HQ) | Member Secretary |

2. The case for grant of 3rd MACP to Shri P.K. Sarin (from due date i.e. 01.09.2008 up to 01.04.2014) was considered by the Screening Committee meeting held on 27.04.2016 on the basis of available ACRs for the period from 2002-03 to 2012-13 (as per Annexure -I) but he was found 'Unfit' for grant of 3rd MACP as he did not meet the requisite benchmark of “Very Good” ACRs. As per directions of Hon'ble CAT, Chandigarh Bench dated 24.05.2016 and also order sheet dated 27.02.2017 the case for grant of 3rd MACP to Shri Sarin was also considered by the Screening Committee under the chairmanship of DG, CPWD with ADG (S&P) and CE (HQ) as Members by circulation of file on 31st March, 2017 (Annexure-II). The Committee considered the same ACRs for the period as considered by the Screening Committee on 27.04.2016, but Shri Sarin was not found eligible for grant of 3rd MACP as he did not meet the requisite benchmark of “Very Good”.

3. The case of Shri P.K. Sarin came up for hearing before Hon'ble CAT, Chandigarh on 18.04.2017 and as per direction of CAT an affidavit signed by DG, CPWD was filed before Hon'ble CAT, Chandigarh Bench before the next date of hearing i.e. 26.04.2017. The Hon'ble CAT in their order dated 23rd May, 2017 directed respondents as follows:-

“However, we find that for the period commencing from 1.4.2014 that the applicant has ‘Very Good’ grading in the year 1.4.2005 to 12.1.2006, 2006-07, 3.10.2011 to 31.2.2012 and ‘Out Standing’ grading for the period from 1.4.2007 to 29.7.2007. These gradings are evident from the chart given by the respondents themselves. It, therefore, appears that for the period commencing from 1.4.2014, the applicant does possess the required 2.5 APARs with grading as ‘Very Good’ or above. The respondents, therefore, appear to have erred in declaring him unfit for this period. His case for this period, therefore, deserves to be reconsidered.

Accordingly, we allow this O.A. to this extent and direct the respondents to convene a review meeting of the Screening Committee to reconsider the case of the applicant for grant of 3rd MACP benefit w.e.f. 1.4.2014. In case he is found fit, he shall be given the benefit of arrears arising out of the same.”

4. It is observed that while considering for grant of 3rd MACP from 01.04.2014, the ACRs for the period 2008-09 and 2009-10 were not available and in their place ACR for the previous period from 01.04.2005 to 12.01.2006 and 2006-07 respectively were considered which are having ‘Very Good’ ACRs. In addition to two missing ACR, the ACRs for the period 01.04.2011 to 02.10.2011 (i.e. 6 months and 2 days) was also missing, therefore, ACR for the period 2007-08 is running two parts (i) 01.04.2007 to 29.07.2007 which is ‘Outstanding’ and (ii) 30.07.2007 to 31.03.2008 is having ‘Good’ ACR. Part of ACR of 2011-12 (i.e. 3.10.11 to 31.3.12) cannot be clubbed with part ACR of different year (i.e. 1.4.07 to 29.7.2007) whereas as per para 6 of Hon’ble CAT order the gradings for two different years 03.10.2011 to 31.03.2012 and 01.04.2007 to 29.07.2007 has been clubbed. Therefore, Shri Sarin did not have requisite bench mark and was found ‘UNFIT’.

5. Therefore, Shri Sarin does not possess ‘2.5’ ‘Very Good’ APAR/ACR grading.

6. The Committee considered the case of Shri Sarin for grant of 3rd MACP as per Assessment Sheet and found ‘UNFIT’ upto 01.04.2014.”

8. We find that the Screening Committee had passed a very detailed order on why the applicant cannot be given the MACP and we find no reason to interfere with the order. The applicant had also been given adequate opportunity to make representations against the Below Bench Mark entry. Hence, this is not a case where the applicant was not allowed to represent. The APAR recorded has attained finality.

9. The applicant’s case for grant of MACP has been considered with effect from launch of MACP Scheme in 2009 considering five ACRs prior to launch of scheme and also for every year post of MACP Scheme upto 2014, the year of retirement and declared unfit for MACP.

10. The applicant's case for grant of MACP has been considered with effect from launch of MACP Scheme in 2009 by considering five APARs prior to launch of scheme and also for every year post launch of MACP Scheme upto 2014, the year of retirement, and applicant has been declared unfit for MACP. Hence, the applicant's case having considered and applicant not having attained the required MACP Bench Mark has missed the bus and therefore, no other relief can be given to the applicant at this stage. No substantial arguments have been extended in the OA to expunge the Below Bench Mark ACRs. An effort has already been made to substitute the non-availability of ACRs of required year by considering APAR of previous year and hence on this ground also, applicant cannot be offered any succour.

9. For the reasons stated above, this OA, being devoid of merit, is dismissed. There shall be no order as to costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated:
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