

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
Order reserved on: 23.10.2018

ORIGINAL APPLICATION NO. 060/00653/2017

Chandigarh, this the 17th day of November, 2018

...
**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MRS. AJANTA DAYALAN, MEMBER (A)**

...
Hawa Singh, Accounts Officer, Pay and Accounts Office, UAIDI, Regional Office, Ministry of Electronics and Information Technology, age 59 years, resident of House No. 1731, Sector 7, Karnal (Group-B).

....APPLICANT
(By Advocate: Shri Sushil Jain)

VERSUS

1. Union of India, Ministry of Finance, 3rd Floor Jeevan Deep Building, Sansad Marg, New Delhi 110001 through its Secretary.
2. Controller General of Accounts, Ministry of Finance, office of CGA, Mahalekha Niyantark Bhawan, E-Block, GPOA Complex, INA, New Delhi-110023 through its Controller General.
3. Principal Controller of Accounts, CBDT, 9th Floor, Lok Nayak Bhawan, Khan Market, New Delhi.

....RESPONDENTS

(By Advocate: Shri K.K. Thakur)

ORDER

AJANTA DAYALAN, MEMBER (A)

The present Original Application (O.A.) has been filed by the applicant Hawa Singh seeking quashing of order dated 1.5.2017 (Annexure A-14), rejecting his prayer for setting aside penalty imposed upon him and for grant of benefit of MACPS w.e.f.

1.9.2008. He has also prayed for quashing of impugned order dated 13.6.2016 (Annexure A-11) communicating the penalty of reduction in the time scale of pay by one stage for a period of 3 months without cumulative effect and not affecting his pension. He has also prayed for issuance of direction to the respondents to grant him benefit of MACPS w.e.f. 1.9.2008 and promotion as Accounts Officer from 2010.

2. The brief facts, relevant for deciding the issue involved in the O.A., are that the applicant was appointed as Junior Accountant on 14.9.1983 and was promoted as Senior Accountant on 1.4.1987 and further as Assistant Accounts Officer on 1.5.1997. The MACP Scheme was introduced by Government of India vide order dated 19.5.2009 and was made operational w.e.f. 1.9.2008. As per this Scheme, three financial upgradations were to be granted to the Government employees on completion of 10, 20 and 30 years of service.

3. A charge sheet was issued to the applicant on 26.10.2009 (Annexure A-4) for the misconduct during service. The inquiry was completed on 25.6.2012 and the applicant was held liable. After repeated representations, the Disciplinary Authority decided on 13.6.2016 (Annexure A-11) to impose the penalty of reduction in the time scale of pay by one stage for a period of 3 months without cumulative effect and without affecting his pension. The order of appellate authority on his appeal was passed on 1.5.2017. This order is under challenge in the present O.A.

4. The case of the applicant is that MACP which was due to him on 1.9.2008 has been denied to him even though 5 DPCs meetings were held from 1.9.2008 till 24.10.2009 i.e. just before issue of charge sheet to him, and in all 426 candidates were considered and all were granted MACP with the sole exception of his case, which was kept in a sealed cover due to initiation of disciplinary proceedings for major penalty. The counsel for applicant pleaded that there is no ground for non-consideration of his case for grant of MACP/promotion during the period 1.9.2008 to 24.10.2009 when no charge sheet was issued to him and no disciplinary proceedings were pending against him. He has also pleaded that there was no loss to the Government and he was not responsible for alleged over writing in the tender for which he was charge sheeted and which was in fact done by the contractor. He has pleaded that even though the penalty was for a period of 3 months only without cumulative effect, he has been denied promotion from 1.9.2008 onwards and is suffering loss in his pay.

5. The respondents contested the claim of applicant by filing the written statement. They have stated that the charges were established against the applicant on evidence. They have averred that penalty imposed is in the domain of the Competent Authority and in judicial review, it is not for the Courts to interfere unless the penalty imposed is shocking to the conscience or totally unreasonable or out of malafide. In support of their contention, they have placed reliance on the judgment of the Hon'ble Supreme Court rendered in the case of **Regional Manager, UPSRT, Etawah**

vs. Hoti Lal 2003 (2) AISLJ 56 wherein it is held that an employee holding position of trust where honesty and integrity are inbuilt requirement of functioning, misconduct has to be dealt with iron hands; in the case of **Union of India vs Param Nanda**- AIR 1989 SC 1215 where the Apex Court has held that quantum of punishment in a disciplinary case is within the domain of the competent authorities; in the case of **Union of India vs. K.V. Jankiraman**, 1991 AIR 2010 wherein it has been held that an employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently and in case of **Union of India vs Krishnan** wherein it is held that the policy of withholding promotion to higher cadre during the currency of a penalty is a logical one.

6. The respondents have further stated that the Central Vigilance Commission tendered its first stage advice on 25.8.2009 to initiate disciplinary proceedings for major penalty and again on 13.8.2014 reiterated this advice. The CVC in its second stage advice on 1.4.2015 again recommended imposition of major penalty. Still, the Disciplinary Authority took a lenient view and imposed only a penalty for a period of 3 months without cumulative effect. This was after following due procedure and was after consideration of his case sympathetically.

7. The respondents have stated that the representation of the applicant for setting aside the penalty order and for grant of promotion and MACP have been decided after taking all facts into consideration and have been disposed of vide speaking order dated

1.5.2017. It is further stated that during the pendency of disciplinary proceedings, the benefit of MACPS could not be granted as per DOPT guidelines dated 19.5.2009. He was promoted as Accounts Officer and granted 3rd financial upgradation under MACP on completion of penalty vide order dated 14.10.2016 and 15.12.2006 (Annexures A-6 & A-7). It is also stated that as per DOPT O.M. dated 15.12.2004, in case a Government servant is imposed minor penalty, his case for promotion should be considered by DPC which meets after imposition of said penalty and the promotion is to take effect only from a date subsequent to the expiry of the currency of penalty.

8. We have heard the learned counsels for opposing parties, gone through the pleadings and have given our thoughtful consideration to the matter.

9. We find that there are basically three prayers of the applicant in the O.A. – first for setting aside the penalty order, second grant of promotion from 2010, and third for grant of 3rd financial upgradation under MACPS. As regards the first one, we note that it is settled law that the quantum of penalty is to be decided by the Competent Authority and there is only limited scope in judicial review. That the penalty has been awarded after following due procedure is not disputed in the present case. We also find that that penalty is without cumulative effect and for a period of 3 months only. This is despite the fact that the CVC repeatedly recommended a major penalty proceedings and the charges involved integrity and honesty of the applicant who was in a

position of trust. Therefore, we do not find any infirmity in the penalty imposed by the competent authorities.

10. As regards promotion, no plea has been made by the applicant that his case for promotion came up for consideration prior to the issue of charge sheet to him on 26.10.2009. Further, he has been promoted after award of penalty and completion of currency of the penalty period on 14.10.2016. Hence, we do not see any need for interference in this order either.

11. As regards the financial upgradation under MACPS, the applicant has argued that he was due for financial upgradation on 1.9.2008 and was clear even from disciplinary proceedings angle upto 25.10.2009 i.e. prior to issue of charge sheet to him on 26.10.2009. During this period, 5 DPCs meetings were held in which 462 employees were considered and granted financial upgradations with the sole exception of the applicant's own case. As such, he should have been granted financial upgradation during this period itself. The respondents have not been able to effectively oppose this contention of the applicant. They are not denying the information given under RTI as incorrect. During arguments at Bar, the respondents were specifically asked whether the applicant was really entitled to MACP prior to issue of charge sheet to him. In response, they relied on DOPT O.M. dated 19.5.2009. The relevant portion of this O.M. reads as under:

‘in the matter of disciplinary/penalty proceedings, grant of benefit under the MACPS, shall be subject to rules governing normal promotion. Such cases shall, therefore, be regulated under the provisions of CCS (CCA) Rules, 1965 and instructions issued there under.’

12. We find that this O.M. only states that rules governing normal promotion are to be followed for grant of financial upgradation under MACPS. It is settled law as laid down by the Hon'ble Supreme Court that unless charge sheet is issued to a Government employee, he cannot be denied benefits otherwise due to him on mere contemplation of initiation of disciplinary proceedings. In view of this settled legal position, we are of the view that if MACPS benefit was due to the applicant before issue of charge sheet to him, he should not have been denied this benefit.

13. In view of above observations, the O.A. is partly allowed to the extent that the respondents are directed to consider the claim of the applicant for grant of benefit of 3rd financial upgradation under MACPS before issue of charge sheet to him on 26.10.2009, if he is otherwise found entitled for the same, and grant him the same alongwith consequential benefits. If he is not found entitled for the same, a speaking and reasoned order be passed by the Competent Authority and communicated to him. The above exercise be carried out within a period of two months from the date of receipt of a certified copy of this order by them. No costs.

(AJANTA DAYALAN)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 17.11.2018
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