

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00837/2014

Jabalpur, this Thursday, the 3rd day of May, 2018

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

R.N.Rathore, S/o Late Shri Babu Lal Rathore,
D.O.B. 15.09.1962, R/o 206, Vinay Nagar, Sector-2A,
Near Urvai Gate, Gwalior-474012 (M.P.) **–Applicant**

(By Advocate –Shri Vijay Tripathi)

V e r s u s

1. Union of India, through its Secretary,
Ministry of Communication & IT, Department of Posts,
Dak Bhawan, Sansad Marg, New Delhi-110001

2. Chief Post Master General, Madhya Pradesh Circle,
Hoshangabad Road, Bhopal-462012 (M.P.)

3. Post Master General, Indore Region,
Indore-452009 (M.P.)

4. Superintendent of Post Offices,
Gwalior Division, Gwalior-474006 (M.P.) **- Respondents**

(By Advocate –Shri S.K.Mishra)

(Date of reserving the order:-13.11.2017)

O R D E R

By Navin Tandon, AM

The applicant is aggrieved by non-grant of benefit under Biennial Cadre Review (for brevity 'BCR') Scheme on completion of 26 years of service.

2. The brief facts of the case are that the applicant was initially appointed as Postal Assistant on 30.03.1982. He has been given first financial upgradation under the One Time Bound Promotion Scheme (hereinafter referred to as 'the OTBP Scheme') with effect from 02.04.1998 on completion of 16 years of service. On completion of 26 years of service he was due for grant of second financial upgradation under the BCR Scheme with effect from 16.04.2008. However, his name was not recommended by the screening committee as the applicant was under the currency of punishment imposed vide memo dated 08.09.2006, by which recovery of Rs.55,380/- was imposed upon him. The applicant being aggrieved with the punishment order had initially approached this Tribunal by filing Original Application No.520/20008. Since he could not get any relief from the Tribunal he approached the Hon'ble High Court of Madhya Pradesh Bench at Gwalior by filing Writ Petition (S) No.5688/2009. The said Writ Petition was allowed by the Hon'ble High Court vide order dated 09.01.2012 by setting aside the order of this Tribunal as well as the order of punishment passed by the authority. Thereafter the applicant preferred a representation on 22.10.2012 (Annexure A-3) to grant him BCR benefits. The said representation of the applicant was not decided. Then he approached the next higher authority by

way of appeal on 08.05.2013 (Annexure A-4). On non-receipt of any response, the applicant sent a legal notice through the Advocate on 09.06.2014 (Annexure A-5). In response to the legal notice the respondents stated that on the due date of grant of benefit under the BCR Scheme, the applicant was facing punishment, therefore, his name was not considered by the screening committee. Hence, this Original Application.

3. The applicant has prayed for the following relief in this Original Application:-

“8(8.1) Summon the entire relevant record from the respondents, for its kind perusal.

(8.2) Set aside the order dated 27.8.2014 Annexure A/1, with a further direction to consider the applicant for grant of benefit under BCR Scheme from the date he has completed 26 years of the service, with all consequential benefit, including arrears of salary with 18% interest.

(8.3) Direct the respondents to given effect to the order 13.11.2013 Annexure A/6 with all consequential benefit, including arrears of salary with 18% interest.

(8.4) Any other order/orders, direction/directions may also be passed.

(8.5) Award cost of the litigation to the applicant.”

4. Heard the learned counsel of both sides and carefully perused the pleadings of the respective parties and the documents annexed therewith.

5. At the outset we may observe that as regards the relief sought for by the applicant in relief clause 8.3 to the effect to direct the respondents to give effect to the order 13.11.2013 (Annexure A/6) with all consequential benefit, we find that vide order dated 13.11.2013 the applicant has been granted the 3rd financial upgradation under the MACP Scheme with effect from 15.4.2012. The applicant in his pleadings in para 4.11 has submitted that the order dated 13.11.2013 has not been given effect to. However, the respondents in their reply, filed on 11.05.2015, in reply to para 4.11 of the OA, have submitted that due MACP II and MACP III have also been provided to the applicant, which have been accepted by the applicant. The applicant has not filed any reply to the rejoinder. Thus, there remains nothing to be considered in this regard.

6. During the course of arguments, the learned counsel for the respondents argued that during the pendency of this Original Application the applicant has been granted the second MACP benefits with effect from 01.09.2008 and they have prayed for

dismissal of this Original Application as having become infructuous.

7. While, the learned counsel for the applicant submitted that this case is fully covered by a decision of this Tribunal in the matters of **Sarnam Singh Sikarwar Vs. Union of India and others**, Original Application No.200/00835/2014 decided on 08.09.2017 wherein the Tribunal has allowed the Original Application of a similarly placed person with a direction to the respondents to consider the case of the said applicant for grant of BCR promotion from the date of completion of 26 years of service.

8. While deciding OA No.200/00835/2014, the Tribunal had placed reliance upon the judgment of Hon'ble Supreme Court in the case of **Union of India Vs. K.V.Jankiraman**, (1991) 4 SCC 109, which held in para 23 that "there is no doubt that when an employee is completely exonerated and is not visited with the penalty even of censure indicating thereby that he was not blameworthy in the least, he should not be deprived of any benefits including the salary of the promotional post".

9. Having considered the arguments of both sides we find that though the respondents have considered and granted the applicant benefit of 2nd financial upgradation under the MACP Scheme with

effect from 01.09.2008, but they have not reviewed the case of the applicant for grant of benefit of second financial upgradation under the BCR scheme on completion of 26 years of service with effect from 16.04.2008, after the decision of the Hon'ble High Court passed in favour of the applicant, as has been directed in the similar case of **Sarnam Singh Sikarwar** (supra).

10. Having considered all aspects of the matter, this Original Application is allowed with a direction to the respondents to convene a review screening committee for considering the case of the applicant for grant of financial upgradation under the BCR Scheme from the date of completion of 26 years of service i.e. from 16.04.2008 and if the applicant is found fit for promotion, he should be granted all consequential benefits including arrears of pay & allowances, after withdrawing and adjusting the benefit of 2nd MACP granted to him with effect from 01.09.2008.

11. The aforesaid exercise shall be completed by the respondents within a period of three months from the date of communication of this order. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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