

Reserved
CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00534/2012

Jabalpur, this Thursday, the 26th day of July, 2018

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

Naresh Kumar Verma,
S/o Shri Ram Gareeb Verma,
Aged about 61 years,
R/o In front of Geetanjali
Marriage Hall,
Dhougar, Rewa-486001 (MP)

-Applicant

(By Advocate –**Shri Vijay Tripathi**)

V e r s u s

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

2. Chief Postmaster General,
Madhya Pradesh Circle,
Hoshangabad Road, Bhopal-462012 (MP)

3. Director Postal Services,
O/o Chief Postmaster General,
Madhya Pradesh Circle, Hoshangabad Road,
Bhopal-462012 (MP)

4. Superintendent of Post Offices,
Rewa Division, Rewa-486001 (MP) -Respondents

(By Advocate –**Shri A.P.Khare**)
(Date of reserving the order:-24.04.2018)

O R D E R
By Ramesh Singh Thakur, JM:-

The applicant is challenging the order dated 23.04.2012 (Annexure A-1), whereby the representation preferred by the applicant to provide third promotion under Modified Assured Career Progress Scheme (for short 'MACP') with effect from 01.09.2008 has been rejected.

2. The applicant has prayed for the following reliefs in this Original Application:-

"8. Relief Sought:

(i) Summon the entire record from the possession of the respondents for its kind perusal.

(ii) Set aside the impugned order dated 23.04.2012 Annexure A/1.

(iii) Upon holding the minor penalty is no an impediment to get promotion, direct the respondents to consider the claim of the applicant for upgradation/promotion under the MACP scheme in the grade pay of Rs. 4600/- with effect from 1.9.2008 alongwith all consequential benefits.

(iv) Any other order/orders, which this Hon'ble Curt deems fit and proper may also be passed.

(v) Award cost of the litigation in favour of the applicant."

3. The case of the applicant in brief is that the applicant was initially appointed in the respondent department as Clerk on 06.05.1977. After the appointment, the applicant was posted in the office of Postmaster, Satna and taken charge on 11.05.1977.

4. The applicant submitted that he was given two promotions under Time Bound Upgradation/Promotion Scheme (for short

‘TBOP’) and Biennial Cadre Review Scheme (for short ‘BCR’) after completion of 16 and 26 years of service respectively. It is significant to mention here that after implementation of Sixth Pay Commission, MACP came into force and the said scheme was introduced vide office memorandum dated 19.05.2009 which was made applicable to central civilian employees w.e.f. 01.09.2008. The MACP scheme has been accepted by the Postal Department by issuing office memorandum dated 18.09.2009 (Annexure A-2). By inclusion of the said scheme, the employees are entitled to get three financial upgradations after completion of 10, 20 and 30 years of service.

5. Learned counsel for the applicant further submits that the applicant has already been granted two upgradations/promotions during his service career. The applicant has completed his 30 years of service on 06.05.2007 and therefore he was entitled to get third promotion under MACP with effect from 01.09.2008.

6. The applicant submitted that he has been given upgradation/promotion under MACP Scheme vide order dated 31.01.2011 with effect from 01.07.2011 (Annexure A-3). The applicant got superannuated on 30.09.2011. A charge-sheet dated 25.08.2009 (Annexure A-4) was served upon the applicant with a punishment of ‘Censure’ under Rule 16 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965. This

punishment was converted into imposition of punishment of withholding of one increment without cumulative effect by the reviewing authority.

7. The applicant further averred that it is a settled legal position that minor penalty is not an impediment to promote the incumbent. The DoPT has issued a letter No. 25/9/84/SPBII, dated 19.05.1984, operative portion reads as under:-

“Promotion of an official can be given effect to during the currency of the punishment of monetary recovery. In this connection a reference is invited to the instructions issued by M.H.A. in O.M. No. 22011/1/68-Estt. (A-dated 16.2.1979)stating inter alia that the punishments of censure, recovery pecuniary loss and stopping of increment do not constitute a bar to promotion of an official provided, on the basis of overall assessment of his record of service, the Departmental Promotion Committee recommends his promotion to the next higher post.”

8. It was submitted by the learned counsel for the applicant that the applicant was not given the benefit of third upgradation/promotion under MACP from his due date, he preferred a representation dated 09.01.2012 (Annexure A-5). However, the respondent authorities have rejected the applicant's representation vide impugned order dated 23.04.2012 (Annexure A-1), stating therein that as he was undergoing a punishment of stoppage of one increment for one year from 01.07.2010 to 30.06.2011 therefore he have been promoted to IIIrd MACP from 01.07.2011.

9. The main ground for challenge by the applicant in this O.A. is that the respondents have not taken into consideration the DoPT's instructions vide O.M. dated 19.05.1984 which reveal that the punishments of censure, recovery pecuniary loss and stopping of increment do not constitute a bar to promotion of an official. Therefore, the action of the respondents in not granting upgradation/promotion to the applicant from his due date is bad in law.

10. The respondents have filed their reply. In their preliminary submission they submitted that as per the recommendation of Sixth Central Pay Commission, MACP scheme was introduced with effect from 01.09.2008. As per the above scheme the applicant was due for promotion on 01.09.2008, after completion of 30 years of service.

11. The learned counsel for the respondents further submits that the applicant was served with a charge-sheet dated 25.08.2008 which was decided on 29.09.2008 by respondent No.4 and awarded punishment of Censure. The reviewing authority reviewed the punishment of withholding of one increment for one year without cumulative effect. As the disciplinary proceeding was pending against the applicant has been given 3rd MACP with effect from 01.07.2011.

12. In para-wise reply the respondents submitted that as per Govt. of India, Ministry of Communication & IT Dept. of Posts dated 18.10.2010 (Annexure R-1) only the penalty of Censure or recovery of pecuniary loss are not bar for penalty for promotion, if the findings of the DPC are in favour of the employee. In this case, the applicant was awarded punishment of withholding of one increment for one year hence his case for 3rd MACP was not considered. The MACP financial upgradation can not be given to the official which is undergoing the punishment of withholding of increment.

13. The applicant has filed his rejoinder. In rejoinder it is submitted by the learned counsel for the applicant that the punishment of Censure revised by the revising authority will relate back from the date of order passed by the disciplinary authority. Therefore, the punishment of withholding of one increment should be given effect to from 29.09.2008 and after 29.09.2009 there will be no stigma against the applicant. The applicant submits that the punishment of Censure was awarded vide order dated 29.09.2008. However, the instructions issued by the DGP&T dated 29.05.1984, the punishment of minor penalty is not an impediment for promotion/upgradation of the applicant.

14. We have heard the learned counsel for the parties and perused the documents available on record.

15. It is admitted that by the both the parties that the applicant was appointed as Clerk on 06.05.1977 and he has completed 30 years of service on 06.05.2007. It is also admitted fact the applicant was given Time Bound Upgradation/Promotion on completion of 26 years of service. On recommendation of 6th Pay Commission, MACP was introduced which was accepted by the Postal department by issuing Office Memorandum dated 18.09.2009 (Annexure A-2). By inclusion of the said scheme, the employees are entitled to get three financial upgradations after completion of 10, 20, 30 years of service.

16. In the instant case, the applicant was given TBOP and BCR on completion of 16 and 26 years of service and now as per new MACP scheme in the 6th Pay Commission the employee is entitled for 3rd financial upgradation. The only grievance of the applicant is that on completion of 30 years i.e. on 06.05.2007. The applicant is entitled for 3rd financial upgradation under MACP scheme w.e.f.01.09.2008. The submission of the counsel for the applicant is that the charge sheet dated 25.07.2009 was served upon the applicant and punishment of 'Censure' under Rule 16 of the CCS (CCA) Rules, 1965 was awarded. But the reviewing authority has imposed the punishment of withholding of one increment without cumulative effect. The main submission of the learned counsel for the applicant is that the DoPT has issued

instruction dated 19.05.1984, whereby it was indicated that the punishment of censure, recovery pecuniary loss and stopping of increment do not constitute a bar to promotion of an official provided, on the basis of overall assessment of his record of service, the Departmental Promotion Committee recommends his promotion to the next higher post. The operative portion reads as under:-

“Promotion of an official can be given effect to during the currency of the punishment of monetary recovery. In this connection a reference is invited to the instructions issued by M.H.A. in O.M. No. 22011/1/68-Estt. (A-dated 16.2.1979)stating inter alia that the punishments of censure, recovery pecuniary loss and stopping of increment do not constitute a bar to promotion of an official provided, on the basis of overall assessment of his record of service, the Departmental Promotion Committee recommends his promotion to the next higher post.”

17. It is admitted fact that withholding of increment is a minor penalty and as per DoPT's O.M. dated 19.05.1984 (supra) it is clear that for the purpose of promotion the punishment has awarded to the applicant should not be considered while awarding the MACP also.

18. The main submission of the counsel for the respondents is that the applicant was served with a charge sheet on 25.08.2008 which was decided on 29.09.2008 by respondent No.4 and awarded punishment of 'Censure'. On revision of said punishment, the reviewing authority converted the punishment to withholding on one increment for one year without cumulative effect.

19. It is clear from the pleadings that the only reason for not giving MACP to the applicant is that there is punishment of withholding of one increment for one year without cumulative effect. But the reasons given by the replying respondents is totally contrary to the instruction issued by the DoPT's O.A. dated 19.05.1984. So, the reason given by the replying respondents is not sustainable in the eye of law.

20. In view of the above, this Original Application is allowed and the impugned order dated 23.04.2012 (Annexure A-1) is quashed and set aside. Respondents are directed to consider the claim of the applicant for financial upgradation/promotion under MACP Scheme in the grade pay of Rs.4600/- w.e.f. 01.09.2008 along with all consequential benefits. The said exercise shall be completed within 60 days from the date of receipt of certified copy of this order. No costs.

(Ramesh Singh Thakur)
Judicial Member
rn/kc

(Navin Tandon)
Administrative Member