

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00236/2015**

Reserved on : 26.04.2019
Pronounced on:

C O R A M

**HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER**

Arun Kumar Shukla, son of Late R.K. Shukla, Ex HAS, RMS 'U' Division, Muzaffarpur, resident of Kishoralaya Bhawan, Anandpuri Bibiganj, Muzaffarpur- Vaishali (Bihar).

.... **Applicant**

- By Advocate: - Mr. M.P. Dixit

-Versus-

1. The Union of India, through the Director General of Post, Dak Bhawan, New Delhi.
2. The Chief Post Master General, Bihar Circle, Patna.
3. The Post Master General, Northern Region, Muzaffarpur.
4. The Director, Postal Services, Northern Region, Muzaffarpur.
5. The Superintendent, Railway Mail Service 'U' Division, Muzaffarpur.
6. The Director Accounts of Post, Bihar, Patna- 800001.

.... **Respondents.**

By Advocate: - Mr. A.K. Singh

O R D E R

Per Dinesh Sharma, A.M:- The main facts in this case are, briefly, as follows:

2. The applicant was granted benefit of 3rd MACP w.e.f. from **1.9.2008**, by an order dated 30.3.2010, following recommendation of Department Screening Committee meetings held between 1-2-2010 and 5-2-2010. It was later revised by another order dated 24.9.2013, issued following another meeting of the Department Screening Committee (DSC)

held on 24.9.2013, making this MACP effective from **12.5.2009**. The amount of benefit paid in the period from 1.9.2008 to 11.5.2009, Rs. 47000/- was recovered from the applicant, partly, out of his last salary and the rest by recovering it from retirement benefits paid on his superannuation of 30.9.2013. The applicant questioned this recovery, which was done without any show cause notice or any other opportunity to hear him, by OA 536/2014 before this Tribunal. The Tribunal disposed of the OA with a direction to the respondents to consider the applicant's representation on this matter and to dispose of the same by passing a reasoned and speaking order. The respondent department has passed an order in compliance of this CAT order, on 04.03.2015, where the department has stated that the later DSC found two department proceedings pending under Rule 14 against the applicant on the date of consideration by the first DPC, which barred the consideration of grant of MACP under the rules, on that day. Both these proceedings finally culminated with "censure" against the applicant, with the second of these proceedings ending on 11.5.2009. Since there was no clear exoneration of the applicant in these departmental proceedings, it was decided to grant MACP w.e.f. from a day after the last of these department proceedings ended.

3. The issue to be decided here is whether the benefit of an MACP granted can be recovered on the ground of pending department inquiries on the date of such grant, for the period for which such inquiries remained pending, because the inquiries culminated in "censure" which does not amount to full exoneration. The case of the Department is that it can be

done since “the grant of benefit under the MACP is subject to rules governing normal provision in the matter of disciplinary/penalty proceedings as stipulated in para 18 of the OM No. 4-7/(MACP)/2009-PCC dated 18.9.2009.”(page 23 of the OA, from the order issued in compliance of this Tribunal’s decision). The same order mentions (earlier, on the same page 23 of the OA) that “if any penalty is imposed on a government servant as a result of the Disc. Proceeding, the case for promotion may be considered by the next DPC in the normal course and having regard to penalty imposed upon him. On the issue of promotion after cessation of Disc. Proceedings, the intervening period during which the official could not be promoted due to pendency of Disc. Proceedings can only be counted in the case the official is fully exonerated”. In the current case, there was no disciplinary action pending even at the time the first DSC decided about grant of MACP. That DSC and the later DSC which was held on 24.9.2013, found the applicant fit for grant of MACP. A DPC/DSC can follow a sealed cover procedure, if a disciplinary action is pending, and the decision of the DPC can be implemented after the conclusion of the inquiry, while keeping the effect of that decision prospective or retrospective on whether there was full exoneration or not. However, applying this rule mechanically over a past promotion actually done, where the punishment is only “censure” (which may be described as not full exoneration, but is certainly less serious than any penalty with real consequences), will be wrong and will amount to penalising more than what was intended by the penal action. Our attention was also drawn by the learned counsel for the applicant to decisions of this

Tribunal (OA/050/00235/15) in a similar matter (and also that of Ernakulam Bench in OA No 203 of 2002), which also support not withholding promotion on account of a pending disciplinary action which ended in mere "censure". We, therefore find recovery of benefit of MACP for the period 1.9.2008 to 11.5.2009 wrong and hereby order its refund immediately. If it is not done within 3 months of the receipt of a copy of this order, interest will be payable at the rate of 8%, till the date of full refund of this amount. OA is disposed of accordingly. No costs.

**[Dinesh Sharma]
Administrative Member
Srk.**

**[Jayesh V. Bhairavia]
Judicial Member**