



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A /351/78/2015

Coram : Hon'ble Mrs.Bidisha Banerjee, Judicial Member
Hon'ble Dr.(Ms) Nandita Chatterjee, Administrative Member

Smti T.G. Geeta,
W/o Shri Khem Singh,
Retired Radio Operator,
A&N Police, R/o Prothrapur,
Port Blair, A&N Islands.

.....Applicant

- Versus -

1. Union of India, Through the Secretary
to the Ministry of Home Affairs,
New Delhi;
2. The Lieutenant Governor,
(Administrator),
A&N Islands, Port Blair;
3. The Director General of Police,
Andaman and Nicobar Islands,
Port Blair;
4. The Superintendent of Police(HQ),
Andaman and Nicobar Islands,
Port Blair;
5. The Police Radio Officer,
Andaman and Nicobar Islands,
Teylarabad, Port Blair.

.....Respondents

For the applicant : Ms. A. Nag, counsel

For the respondents : Mr. S.K. Mandal, counsel
Mr. S.C. Misra, counsel

Heard on : 19.12.2018

Order on : 21.12.18

ORDER**Bidisha Banerjee, Judicial Member**

This application has been filed in order to seek following reliefs:-

- "a) An order for fixing the pay scale of the applicant which is admissible under the 2nd financial upgradation under MACP scheme and to release all the consequential benefits to the applicant while taking into consideration that regular service for the purpose of the MACP scheme shall commence from the date of joining in the post;
- b) A mandatory order be passed directing the respondent authorities to consider the date of joining in the post, i.e. 17.09.1987, for the purpose of 2nd financial upgradation under MACP Scheme and to release all the consequents of benefits;
- c) An order be passed to set aside/quash/rescind/recall or cancel the memo dated 22.05.2015 issued by the Police Radio Officer, A& N Islands;
- d) An order directing the respondent authorities to grant your applicant the consequential benefit of MACPS and all arrears of pay and allowances and other pensionary benefits earned by under MACPS with retrospective effect;
- e) An order directing the respondent authorities to grant your applicant the 2nd financial upgradation under MACPS with retrospective effect;
- f) An order directing the Respondent authorities to certify and transmit the records relating to the instant proceeding so that the conscionable justice be rendered to the applicant;
- g) Any other appropriate relief or reliefs, as Your Lordship may deem fit and proper."

2. Ld. counsel were heard and materials on record were perused.

3. The issue that cropped up for determination was whether pendency of departmental proceedings would stand in the way of grant of MACP.

4. The respondents have filed a detailed reply categorically stating as follows:-

"On implementation of the MACPS w.e.f. 01/09/2008, a Departmental Screening Committee was met on 12/08/2010 and extended the 1st, 2nd & 3rd financial benefits to the eligible Police Radio Personnel. But the case of the applicant was not considered as her vigilance clearance was withheld due to pendency of Departmental Enquiry against her. The

findings of the Departmental Screening Committee in respect of the applicant were kept in sealed cover. Thereafter, the Departmental Screening Committee again met on 16/02/2012 but her name was not recommended for want of vigilance clearance and due to pendency of Departmental Enquiry. After completion of the Departmental Enquiry, the applicant was inflicted with a penalty of withholding of her two future increments with cumulative effect and her suspension period from 16/06/2009 to 18/01/2010 was treated as not spent on duty for all purposes vide Order Book No.3413 dated 06/03/2012."

5. A bare perusal of the proceedings of Departmental Screening Committee, that met on 12.08.2010, would exemplify suggest and demonstrate that the Departmental Screening Committee formulated the following criteria for considering grant of MACP for A&N Police Radio Personnel. The documents that were placed before the Departmental Screening Committee was as under:-

"a) The eligible officers would be assessed on the basis of their records of service, with particular reference to their Annual Confidential Reports (ACRs) in last five years. In case any of the ACRs for this period is not available, equal number of ACRs proceeding this period will be taken into consideration.

b) The following categories of officers will be assessed 'unfit'.

a. Officers who have been given any major penalty during the last five years or there is any running major punishment;

b. Officers whose ACRs for five year assessment period contain any adverse remark which have been communicated but not expunged.

c. Officers who have been awarded 'Censure' within last 06 months.

c) i) A bench mark of 'Good' will be required to qualify for promotion for which at least 3 ACRs out of five should be 'Good' or higher, with no 'Below Average' ACR or adverse remark.

ii) Grading of 'Average' will not be taken as adverse remark."

The following documents were placed before the DSC.

1. GOI, Department of Personnel & Training copy of OM No.35034/3/2008-Estt.(D) dated 19th May, 2009.
2. A list containing service particulars of 02 PR Personnel.
3. Back ground note.
4. GOI, Department of Expenditure Implementation Cell OM No.F.No.1/1/2008-IC dated 13th November, 2009;
5. GOI, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) O.M. No.35034/3/2008-Estt(D) dated 16th November, 2009."

After due deliberations, the persons who were found fit in all respect were recommended for grant of MACPs. Similar is the consideration by the Departmental Screening Committee that met on 16.02.2012.

It also appears that on 06.03.2012 the applicant in relation to charge sheet issued on 23.11.2009, was penalised by withholding two future increments with cumulative effect and suspension period w.e.f. 16.06.2009 to 18.01.2000 would not be treated as spent on duty for all purposes. No order is forthcoming to show that the penalty order was modified on appeal. Therefore, as on date of the first meeting of the DSC i.e. on 12.08.2010, the applicant was under suspension and on 16.02.2012, the conduct already came under cloud due to which she was penalised by order dated 06.03.2012 in view of a charge sheet issued on 13.11.2009. Therefore, the categorical asservation of the respondents in regard to denial of MACP could not be termed as illegal or against the MACP Scheme.

6. It would be profitable to quote the relevant portion of the MACP Scheme which says as under:-

"18. 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 the CCS (CCA) Rules, 1965 and instructions issued thereunder."

Therefore, inarguably and indubitably the placement under MACP is not automatic but subject to clearance as in regular promotion.

7. At hearing, Id. counsel for the applicant would submit that pendency of proceeding could not be a valid reason for denying MACP benefits. She would seek liberty to place appropriate judgments in support of her contention, within 2 days, but failed to ^{B.} do cite any.

8. In the aforesaid backdrop, we find no infirmity in the action of the respondents in denying the MACP benefits to the applicant.

9. Accordingly the O.A. is dismissed. No costs.

(Dr.Nandita Chatterjee)
Administrative Member

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(Bidisha Banerjee)
Judicial Member