

.1.

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.181/00048/2016

Monday, this the 17th day of June, 2019

CORAM:

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ...ADMINISTRATIVE MEMBER
HON'BLE MR.ASHISH KALIA, ...JUDICIAL MEMBER**

Dr.N.P.Cheriyakoya,
Aged 63 years,
S/o Shaik Koya,
Neerattupura Thathada House,
Androth Island,
U.T. of Lakshadweep. ...Applicant

(By Advocate Mr. Anand S.A.)

V e r s u s

1. Administration of the Union Territory of Lakshadweep,
represented by the Administrator,
Union Territory of Lakshadweep,
Kavaratti – 682 555.

2. The Director,
Medical and Health Service,
Administration of the Union Territory of
Lakshadweep, Kavaratti-682 555.Respondents

(By Advocate Mr. S.Manu for Respondents)

This application having been heard on 13th June, 2019, the Tribunal on 17th June, 2019 delivered the following :

.2.

ORDER

HON'BLE Mr.E.K.BHARAT BHUSHAN, ...ADMINISTRATIVE MEMBER

OA No.48/2016 is filed by Dr.N.P.Cheriyakoya against the denial of financial upgradation which he claims is his due. The reliefs sought in the OA are as follows:

- (a) direct the respondents to sanction the applicant 2 financial upgradation based on Annexure A2 and A3 and disburse the monetary benefits consequent on it within a time limit to be fixed by this Hon'ble Tribunal.
- (b) grant such other reliefs as this Hon'ble Tribunal deems fit and proper in the circumstances of the case including the costs of this Original Application.

2. The applicant had joined the service of Union Territory of Lakshdweep as Group B Homeopathic Physician on 11.04.1986 in the pay scale of Rs.680-1200. His services were regularised as Group A Homeopathic Physician in the scale of pay of R.2200-4000 with effect from 11.04.1986 as per order, copy of which is at Annexure A1. He retired from service on superannuation on 31.07.2014 after putting in 29 years of service. He did not receive any promotion in his tenure.

3. The Government had introduced the Assured Career Progression Scheme (ACP) with effect from 09.08.1999 (Annexure A2) which envisaged two financial upgradations in a span of 24 years in the absence of promotion. As per recommendation of VI Pay Commissions recommendations a modified scheme, MACP, came to be introduced with effect from 01.01.2006. But till

.3.

the MACP Scheme was announced on 01.09.2008, the erstwhile ACP was continuing in operation. The MACP Scheme envisaged three financial upgradations on completion of 10/20/30 years of service. The applicant submits that he was entitled for first financial upgradation under ACP and second financial upgradation under MACP from the respective date of the introduction. Seeking the same he represented his case several times through petitions, copies of which are at Annexures A4, A5 and A6. These were not responded to.

4. As grounds, the applicant points out that as per Annexure A2 and A3 he is entitled to two financial upgradations taking into account his service from 11.04.1986 to 31.07.2014, during the period when he continued in entry grade itself without any promotion. Denial of these benefits amount to violation of Articles 14, 16, 21 and 300A of the Constitution of India.

5. The respondents-1&2 have submitted a reply statement. It is stated that the department's proposal for granting the applicant first ACP with effect from 11.10.1999 and second MACP with effect from 01.09.2008 had been submitted to the Departmental Promotion Committee (DPC) and accordingly the first ACP was granted to the applicant with effect from 11.10.1999. But the Committee had not recommended the proposal of the department to award second MACP to the applicant, since his ACRs were incomplete and the grading was not up to the benchmark. A copy of the minutes of the DPC

.4.

held on 16.11.2016 is marked as Annexure R1(a).

6. The order awarding the first ACP to the applicant has been issued on 29.06.2017, a copy of which has been marked as Annexure R1(b). The sole reason for declining the claim of the applicant for second MACP benefit is on account of his ACRs being incomplete and the grading being below benchmark.

7. The applicant has filed a rejoinder in which he has stated that the proceedings of the DPC declining his case for second MACP reveals very little. The ACRs of the applicant being incomplete is not due to any fault of his and it is the duty of the applicant's superior officers to maintain them up to date. Also the true copies of the ACRs which he had obtained from RTI for the period from 1994-95 till 2013-14 (Annexure A7) show that the gradings cannot be interpreted as below benchmark. In the event that the Committee or any one for that matter, may deem them to be below benchmark, the remarks ought to have been communicated to the applicant so that he could have represented against the same. Therefore, the denial of the second MACP to the applicant is unjustified.

8. We have heard Shri Anand S.A on behalf of the applicant and the Standing Counsel for the Lakshadweep Administration. The pivotal document involved in the case which lead to the denial of second MACP to

.5.

the applicant is the one at Annexure R1(a), which is the minutes of DPC meeting and it deserves to be quoted in full:

“The proposal of the Health Services department for awarding 1st ACP and 2nd MACP with effect from 11.10.1999 and 01.09.2008 has taken for scrutinizing. The ACRs and relevant documents such as self contained note, Vigilance Clearance Certificate etc are submitted before the DPC/Committee by the department. The Chairman and members verified the submitted documents and having satisfied recommends to award 1st ACP to Dr.N.P.Cheriyakoya, Homeopathic Physician (retired) with effect from 11.10.1999 in the scale of pay Rs.10000-325-15200 (Pre-revised) Committee found the ACR are incomplete and grading not reached up to Bench mark for granting PB-3 Rs.15600-39100 with Grade Pay of Rs.7600 (Pre-revised) with effect from 01.09.2008. Hence the committee does not recommend the proposal of the department to award 2nd MACP to Dr.N.P.Cheriyakoya, Homeopathic Physician (Retired).”

9. We are inclined to accept the contention of the applicant that the task of keeping the ACRs complete is primarily the task of his controlling officers and the applicant cannot be penalised on that account. In so far as the view that his gradings were below benchmark, it is difficult to arrive at a conclusion by merely glancing at the copies of the ACRs which are produced as annexures. In the event, if indeed the remarks therein were of an adverse nature, the same ought to have been communicated to the applicant so that he would have got an opportunity to represent against them. The judgment of the Hon'ble Supreme Court on the subject is relevant here. In **Anil Kumar Vs. Union of India and Ors – Civil Appeal No.888/2019 (Arising out of SLP(C) 32073 OF 2016)**, the apex Court, in a case involving the very same issue, ruled as follows:

"In view of the above statement of law, both the Tribunal and the High Court were in error in coming to the conclusion that CSIR being an autonomous entity and having adopted the O.Ms of the Department of Personnel and Training with effect from a specified date, the appellant could not make a grievance of the non-communication of the ACRs for the relevant period.

The failure to communicate the ACRs deprived the appellant of the opportunity to submit his representation in the matter of financial upgradation. Subsequently, the appellant was furnished with an opportunity to submit his representation before his case was taken up for regular promotion, but his representation was not considered.

The appellant did not have the benefit of submitting his representation when the Screening Committee took up the case for financial upgradation. CSIR by reason of its autonomy may have certain administrative privileges. No authority can, however, claim a privilege not to comply with a judgment of this Court. Once the law was enunciated in Dev Dutt's case (*supra*), all instrumentalities of the the State were bound to follow the principles laid down by this Court. CSIR was no exception."

10. The Screening Committee, on one hand, decided that the ACRs of the applicant were below benchmark. Ostensibly, they came to the conclusion that the entries were "adverse" in so far as the applicant's future prospects were concerned. Necessarily, he ought to have been given an opportunity to represent against the same. We see that such an opportunity was denied to him.

11. For the reasons as explained above the OA succeeds. The applicant is entitled to the grant of second MACP with effect from 01.09.2008. In view of the fact that second MACP was denied to him on account of inadmissible facts, we direct that it should be granted to the applicant with effect from 01.09.2008. Orders in this regard are to be issued within 30 days on receipt

.7.

of a copy of this order. Monetary benefits flowing out of the order should be disbursed to the applicant within one month thereof. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

sd

List of Annexures in O.A. No.180/00048/2016

- 1. Annexure A1:** True copy of the Order dated 02.06.1995 of Secretary to Government, Ministry of Health & Family Welfare.
- 2. Annexure A2:** True copy of the Office Memorandum bearing No.35034/1/97-Estt(i) dated 09.08.1999.
- 3. Annexure A3:** True copy of the Office Memorandum bearing No.35034/3/2008-Estt(D) dated 19.05.2009.
- 4. Annexure A4:** Representations dated 18.12.2009 submitted by the applicant.
- 5. Annexure A5:** Representations dated 25.04.2012 submitted by the applicant.
- 6. Annexure A6:** Representations dated 08.06.2015 submitted by the applicant.
- 7. Annexure R1(a):** True copy of the Minutes of the DPC for awarding ACP/MACP to the applicant held on 16.11.2016.
- 8. Annexure R1(b):** True copy of order F.No.5/1/2013-DHS(Estt)(1)/844 dated 29.06.2017 issued by the Respondent.
- 9. Annexure R1 (c):** True copy of the order F.No.5/1/2013 – DHS (Estt)(1)/887 dated 7.7.2017 issued by the Respondent.
- 10. Annexure A7:** True copies of the ACRs obtained under the RTI Act, 2005 for the period from 1994-1995 till 2013-2014.
