

**Central Administrative Tribunal  
Principal Bench, New Delhi**

**OA No.999/2017**

**MA No.2926/2018**

New Delhi, this the 16<sup>th</sup> day of September, 2019

**Hon'ble Mr. S.N. Terdal, Member(J)  
Hon'ble Mr. A.K.Bishnoi, Member (A)**

R.S. Tomar,  
Aged 65 years, Group (C)  
Retd. Garden Superintendent  
President's Gardens  
S/o Shri Mangat Singh  
R/o Flat No.B-304, Plot No.31  
Kalka Apartment, Sector-6  
Dwarka, New Delhi – 110 075.

... Applicant

(By Advocate :Shri Suresh Sharma)

**Versus**

Secretary to the President of India  
President's Secretariat  
Rashtrapati Bhawan  
New Delhi – 110 004.

...Respondents

(By Advocate :Shri Manish Kumar)

**ORDER (ORAL)**

**Hon'ble Mr. S.N. Terdal, Member (J)**

Heard Shri Suresh Sharma, learned counsel for the applicant and Shri Manish Kumar, learned counsel for respondents.

**2. MA No.2926/2018**

MA No.2926/2018 is allowed, for the reasons stated therein.

**3. OA No.999/2017**

The reliefs prayed for in the application are as under:-

"(a) To declare the action of the respondents in not granting the third financial up gradation under MACP Scheme raising his Grade

Pay to Rs.7600 which was due on 04.03.2007, consequent upon completion of 30 years of service, as illegal and arbitrary.

(b) To quash and set aside the impugned Memorandum No.A-34011/6/11-Admn. Dated 07.09.2016 and direct the respondents to grant with all arrears of pay on account of grant of third financial upgradation, with 12% interest thereon till the same is paid to the applicant.

(c) To direct the Respondent to revise the pensionary benefits of the applicant on the basis of his new pay after grant of third financial up-gradation, and pay him all the arrears on this count with interest @ 12% per annum till the payment is made, within a specified period.

(d) To issue appropriate directions to grant the scale attached to the promotional post of Superintendent, President's Gardens to the applicant with effect from 01.01.1998, as was given to two of his colleagues as mentioned above.

(c) To allow the O.A. with costs.

(d) Pass such other direction or directions, order or orders as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice."

4. The relevant facts of the case are that the applicant was working as Superintendent in the respondents department. The ACRs grading from 2000-2001, 2006-2007, which are given in the Minutes of the Screening Committee Meeting held on 26.08.2016,extracted below :-

"7. Accordingly, the Screening Committee considered the ACR Gradings of Shri R.S. Tomar, pertaining to the preceding five years 2005-06, 2004-05, 2003-04, 2001-02 and 2000-01 (The ACRs for the years 2006-07 and 2002-03 were not available, therefore, the ACRs of the years preceding the period in question were taken into consideration), as under :-

Year	ACR Grading
2006-07	Not Available
2005-06	Outstanding
2004-05	Very Good
2003-04	Good
2002-03	Not Available
2001-02	Very Good
2000-01	Good

5. The learned counsel for the applicant vehemently submitted that his grading in the year 2003-2004 is 'Good' but was not communicated to him.

6. In this context, the respondents in their counter affidavit at para 5.C have specifically stated that before 2010 the bench mark of 'Good' was considered as fit for promotion and only from 2010 onwards the requirement of bench mark for promotion was enhanced from 'Good' to 'Very Good'. The relevant para is extracted below :-

"5.C That the contents of Para No.5.B are wrong and denied. However it is submitted that at the time of recording the ACRs, **the benchmark for promotion and ACP was both 'Good' that the petitioner has already got. It is only after clarification by the DOP&T in 2010 that the benchmark was enhanced from 'Good' to 'Very Good'**. As such, it was a subsequent development in Rules."

(Emphasis supplied)

7. In view of the averments made by the respondents in the counter affidavit, that in view of the ACR gradings for the relevant years from 2002-2003 to 2006-2007, it is clear that the applicant cannot be considered as unfit. Further, the Screening Committee itself has recorded that the ACRs for all the five years need not be considered. The relevant observation of the Screening Committee in this regard which is at para 6 of the Minutes of the Screening Committee dated 28.06.2016 is extracted below:-

"6. The Screening Committee observed that the DOPT was requested vide an ID note dated 25.02.2016 to confirm whether for granting 3<sup>rd</sup> MACP in the Grade Pay of Rs.7600/- all the past 5 ACRs of Shri R.S.Tomar are necessarily required to be 'Very Good' with respect to the benchmark of 'Very Good' in response to this Secretariat's I.D. note dated 25<sup>th</sup> February 2016, the DOPT vide their Note dated 08.04.2016 have replied as under:-

"The due date, i.e. 01.09.2008 falls in the financial year of 2008-09. Therefore for granting MACP, the reckonable ACRs pertains the year 2006-07, 2005-06, 2004-05, 2003-04 and 2002-03. As per guidelines the overall grading should be 'very good'. **It is not necessary that all five ACRs have to be very good.** The DSC (Departmental Screening

Committee) may make an assessment following due procedure."

(Emphasis supplied)

8. In view of the facts and circumstances narrated above and in view of the stand taken by the Screening Committee and the respondents, which are extracted above, the impugned order dated 07.09.2016 holding that the applicant was unfit for granting 3<sup>rd</sup> financial upgradation under ACP Scheme is arbitrary and unreasonable.

9. Accordingly the OA is allowed and impugned order dated 07.09.2016 is set aside and respondents are directed to give all consequential benefits to the applicant within three months from the date of receipt of a certified copy of the order. No order as to costs.

**(A.K.Bishnoi)**  
**Member (A)**

**(S.N. Terdal)**  
**Member (J)**

*'uma'*