

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/01883/2018

DATED THIS THE 19TH DAY OF JUNE 2019

HON'BLE SHRI DR. K.B. SURESH, MEMBER (J)

HON'BLE SHRI CV.SANKAR MEMBER (A)

VS.Dhanwanth,
S/o Shivarudrappa,
Aged about 57 years
Working as Superintendent of
Central Excise,
Ring Road,
Opp. Toyoto Showroom,
Tumkur

.....Applicant

(By Shri BS.Venkatesh Kumar..... Advocate)

Vs.

1.Union of India represented by
Secretary to Government,
Ministry of Finance
Department of Revenue ,
North Block,
New Delhi-110001.

2.The Central Board of Indirect Taxes
by its Chairman,
North Block, New Delhi 110 001.

3.The Principal Chief Commissioner of
Central Tax, Bengaluru(Cadre
Controlling Authority), PB.No.5400,
Central Revenue Building,
Queens Road,
Bangalore – 560 001.

...Respondents.

(By Shri S.Sugumaran , ACGSC)

ORDER (ORAL)DR. K.B. SURESH, MEMBER (J):

1. Heard. The matter seems to be in a very short compass. Apparently, for promotion prior to 1.1.2018 a Bench mark of 'Good' was required. Apparently, even today it is so. But then one circular was issued indicating that it may be 'Very Good' for granting MACP and in this regard an Circular seems to be issued vide dated 27.1.2018 which we quote:-

*“HIGH COURT OF DELHI, NEW DELHI
(Establishment-I Branch)*

*No. 107/E-9/Estt.-I/DHC
Date: 27.01.2018*

CIRCULAR

In partial modification of circular No. 608/E-10/Estt.-I/DHC dated 17.08.2017, it is hereby circulated for information of all concerned that O.M.F.No. 35034/3/2015-Estt.(D) dated 27/28.09.2016, issued by the Government of India, Ministry of Personnel, regarding upgradation of benchmark from “Good” to “Very Good” under the Modified Assured Career Progression Scheme (MACPS), is applicable w.e.f. 1st January, 2018. The required grading of “Very Good” will be applicable only in respect of ACRs from the current year, i.e. 2017 onwards. For earlier years grading of “Good” upto the grade pay of Rs.6600/- (pre-revised), will be treated as qualifying/ eligibility criteria for the benefit under the MACP Scheme.

Sd/-

*(Shekhar Chandra)
Joint Registrar (Estt.)”*

2. Relating to grant of MACP the government seems to have issued a clarification relating to RBE No.86/2019 for Railways Employees which had been placed before us for the purpose of comparison which also we quote:-

“Clarification on MACP Benchmark to Railways Employees- RBE No. 86/2019

Modified Assured Career Progression Scheme (MACPS) for the Railways Employees-Benchmark Regarding – RBE 86/2019

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
Railway Board

S.No.PC-VII/138
No. PC-V/2016/MACPS/1

*RBE No. 86/2019,
New Delhi, dated 28-5-2019*

*The General Managers (P)
All Zonal Railways & PUs
(As per mailing list)*

Sub:-Modified Assured Career Progression Scheme (MACPS) for the Railways Employees-Benchmark Regarding.

Subsequent to acceptance of the recommendations of 7th CPC by the Government regarding raising the benchmark for performance appraisal for promotion and financial upgradation under MACPS from “Good” to “Very Good”. Railway Board vide letter dated 19-12-2016 enhanced the benchmark for grant of financial upgradation under MACPS to “Very Good” for all posts. These changes were made effective from 25th July. 2016 i.e. from the date of resolution notified by Department of Expenditure, Ministry of Finance regarding acceptance of the recommendations of 7th CPC.

2. On the demand raised by the Staff Side persistently in all forums including in the National Council (JCM) for revision of enhanced benchmark on prospective basis, the matter has been considered by the Board and it has been decided that APAR grading "Good" for the period prior to 25-7-2016 i.e. the date from which the new Benchmark was made applicable, may be treated as "Very Good" while considering those cases of MACPS in which APARs for the said period are required to be taken into account.

3. This issues with the concurrence of the Finance Directorate of the Ministry of Railways."

3. Apparently, the Directorate General under the Home Ministry had also issued one OM No.1/Org/MACP/2018(186)/117 dated 10.1.2019 which also we quote:-

"MACP guidance as per recommendations of the 7th CPC

*Directorate General
Sashastra Seema Bal
East Block-V, R.K. Puram
New Delhi 110066*

No. 1/Org/MACP/2018(186)/ 117

Dated: 10th Jan 2019

OFFICE MEMORANDUM

This is in reference to DoP&T OM F. No. 35034/3/2015-Estt.(D) dated 27/28.09.2016 regarding enhancement of Benchmark for financial up-gradation under MACP Scheme as per recommendations of the 7th CPC accepted by the Government.

Of late, field units have been seeking clarification regarding the applicability of benchmark 'Very Good' for considering financial up-gradation under MACP Scheme. The matter has been examined at FHQ and the following clarifications are issued for compliance by all concerned:-

(i) For grant of financial up-gradation under the MACPS, the prescribed benchmark would be 'Very Good' for all the posts w.e.f. 25.07.2016.

(ii) APAR grading 'Good' for the period prior to 25.07.2016 i.e. the date from which the new Benchmark made applicable, may be treated as 'Very Good' while considering such cases by the Screening Committee/BOO.

(iii) There should be at least three 'Very Good' grading and other two not below 'Good' grading out of last five ACRs/APARs considering point (i) & (ii) in view for arriving at the prescribed Benchmark 'Very Good'. Some illustrations are given in the enclosed Annexure-A for guidance.

Encl:-As above.

(Rakesh Kumar)
Commandant(Org)"

4. Following the cumulative effect of these stipulations of various Government Organizations, we had passed an order in OA.75-77/2018 disposed of on 5.2.2019 which we quote:-

"Heard. Both the counsel submits that the matter is covered by OM No.1/Org/MACP/2018(186)/117 dated 10.1.2019 which we quote:

Directorate General
Sashastra Seema Bal
East Block-V, R.K. Puram
New Delhi – 110 066

No.1/Org/MACP/2018(186)/117
10.01.2019

Dated:

OFFICE MEMORANDUM

This is in reference to DoP&T OM F. No. 35034/3/2015-Estt. (D) dated 27/28.09.2016 regarding enhancement of Benchmark for financial upgradation under MACP Scheme as per recommendations of the 7th CPC accepted by the Government.

Of late, field units have been seeking clarification regarding the applicability of benchmark 'Very Good' for considering financial upgradation under MACP Scheme. The matter has been examined at FHQ and the following clarifications are issued for compliance by all concerned:-

1. For grant of financial up-gradation under the MACPS, the prescribed benchmark would be 'Very Good' for all the posts w.e.f. 25.07.2016.

2. APAR grading 'Good' for the period prior to 25.07.2016 i.e. the date from which the new Benchmark made applicable, may be treated as 'Very Good' while considering such cases by the Screening Committee/BOO.

3. There should be at least three 'Very Good' grading and other two not below 'Good' grading out of last five ACRs/APARs considering point No. (i) and (ii) in view for arriving at the prescribed Benchmark 'Very Good'. Some illustrations are given in the enclosed Annexure-A for guidance.

Encl:- As above.
Kumar)

(Rakesh

Commandant (Org)

To

1. All Frontier Hqrs & SSB Academy
2. All Sector Hqrs & Composite Hospitals
3. All Training Centre's & CSD & W
4. All Bns.
5. Pers-I, Pers-II, Pers-III, Training & Establishment
6. Order File

2. Therefore, OA is disposed of on the same terms, the benefits to be made available within two months next. OA is allowed. No order as to costs."

which apparently covers the entire gamut of the issue raised in this matter. Therefore, we hold that the applicant herein also is eligible for the same benefits. Benefits to be made available within three months next. OA is allowed. No order as to costs.

6. At this point of time Shri S.Sugumaran asks for a clarification. The issue is very very simple. In any legal stipulation the effect can only be prospective unless for verifiable significant reasons it has been

specifically made as retrospective. This is also unchallengeable. That being so when it has been made applicable only from 1.1.2018 prior to that date one cannot assume any effect in such stipulation as well. Therefore, for all these cumulative reasons applicant should benefit as above.

7. OA is allowed. No order as to costs.

(CV.SANKAR)
MEMBER (A)

(DR. K.B. SURESH)
MEMBER (J)

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Annexures referred to by the Applicants in OA No.1883/2018

Annexure-A1: Copy of letter dated 28.11.90

Annexure-A2: Copy of order dated 23.9.2002

Annexure-A3: Copy of pay fixation order of NFUG

Annexure-A4: Copy of DOPT OM dated 19.5.2009

Annexure-A5: Copy of impugned reply dated 13.2.18