

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/404/2015 & O.A.No.260/684/2016

Date of Reserve: 16.05.2019

Date of Order: 23.08.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

IN O.A.No.260/404/2015

Sri Bishnu Charan Sahoo, aged about 63 years, S/o. Late Nandu Sahoo, permanently residing at VII-M-37, Sailashree Vihar, PS-Chandrasekharapur, Bhubaneswar-26, Dist-Khurda, retired Officer Surveyor.

...Applicant

By the Advocate(s)-M/s.S.K.Ojha
S.K.Nayak

-VERSUS-

Union of India represented through:

1. The Secretary to Government of India, Ministry of Science & Technology, Technology Bhawan, new Mehrauli Road, New Delhi-110 016.
2. The Surveyor General of India, Surveyor General's Office, Hathibarkala Estate, Post Box No.37, Dehradun, Uttarakhand-248 001.
3. The Director, Survey of India, Survey Bhawan, Bhubaneswar, Dist-Khurda-751 013.

...Respondents

By the Advocate(s)-Mr.S.B.Mohanty

IN O.A.No.260/684/2016

Sri Kumbhakarna Mallick, aged about 62 years, aged about 62 years, S/o. Late Pokei Mallick, permanent resident of Vill-Barein, PO-Uttarkula, PS-Binjharapur, Dist-Jajpur, presently residing at Plot No.1113, Nayapalli, Bhubaneswar, Dist-Khurda.

...Applicant

By the Advocate(s)-M/s.S.K.Ojha
S.K.Nayak

-VERSUS-

Union of India represented through:

1. The Secretary to Government of India, Ministry of Science & Technology, Technology Bhawan, new Meharauli Road, New Delhi-110 016.
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3. The Director, Survey of India, Survey Bhawan, Bhubaneswar, Dist-Khurda-751 013.

...Respondents

By the Advocate(s)-Mr.D.K.Mallick

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

The point to be decided having emerged from identical facts and circumstances, both the above mentioned Original Applications are being disposed of through this common order.

2. Both the applicants while working as Officer Surveyor under the Respondents have retired on attaining the age of superannuation. Grievance of both the applicants is that although they are entitled to the benefit of 3rd financial upgradation under the Modified Assured Career Progression (in short MACP) Scheme with effect from 01.09.2008 in the Grade Pay of Rs.7600/-, but they have been denied the same on the ground that their ACRs for the period from 2004 to 2007 in case of applicant in O.A.No.260/404/2015 and for the period from 2004 to 2009 in case of applicant in O.A.No.260/684/2016 were below Bench Mark.

2. In O.A. No.260/404/2015, it appears that the applicant although had been granted the benefit of 3rd MACP with effect from 01.09.2008 vide office order dated 07.08.2015 (A/8), but later on, the same was modified vide order dated 12.08.2015 in consequence of which, the applicant has been deprived of the said benefit. However, the fact remains that the ACRs of the applicant for

the period from 2004 to 2007 being below Bench Mark, he had submitted a representation dated 10.02.2015 (A/5) in response to communication dated 29.1.2015 (A/4). The Surveyor General of India (Respondent No.2) in the capacity of Appellate Authority considered the representation of the applicant and rejected the same vide communication dated 23.6.2015 (A/6) which is impugned and called in question. Hence, the applicant in O.A.No.260/404/2015 has sought for the following reliefs:

- i) To quash the letter dtd. 29.01.2015 (Annex.A/4 series) and letter/order dtd. 23.06.2015 (Annex.A/6) holding that the same is illegal & unnecessary for the purpose of extending benefit under the MACP Scheme.
- ii) To quash the order dtd. 12.08.2015 (Annex.A/9) and direct the Respondent No.2 to restore the office order dtd. 07.08.2015 (Annex.A/8) extending 3rd Financial Upgradation w.e.f. 01.09.2008 in the Grade Pay of Rs.7600/- under the MACP Scheme.
- iii) To direct the Respondent No.2 to pay the arrears with 15% interest from the due date and till the actual payment is made.
- iv) To pass any other order/orders as deemed fit and proper in the circumstances of the case and for ends of justice.

3. In so far as O.A.No.260/684/2016 is concerned, it reveals that the Applicant's ACRs for the period from 2004 to 2009 are Below Bench Mark. In response to communication dated 17.7.2015 (A/3 series), he was called upon to submit representation, if any, against the Below Bench Mark grading and accordingly, the applicant so submitted vide his representation dated 06.08.2015 (A/5). In consideration of the representation, the Surveyor General of India (Respondent No.2) vide communication dated 28.6.2016 (A/6) rejected the same. Aggrieved with this, the applicant in O.A.No.260/684/2016 has approached this Tribunal seeking for the following reliefs:

- i) To quash the letter dtd. 17.07.2015 (Annex.A/3 series) & Confidential letter dtd. 28.06.2016 (Annex.A/6 are illegal, arbitrary and against the law.
- ii) To direct the Respondents more particularly Respondent No.2 to treat the ACRs grading for the period 2004 to 2009 are "Very Good".
- iii) To direct the Respondent No.2 to extend the 3rd financial upgradation under the MACP Scheme in the GP Rs.7600/- w.e.f. 01.10.2008 and release the actual benefit(s) including arrears thereof forthwith.
- iv) To direct the Respondents to calculate and pay interest @ 12% per annum on the delayed payments/arrears from 01.10.2008 till the actual payment is made.
- v) To direct the Respondents to pay the cost of litigation.
- vi) To pass necessary orders as deemed fit and proper.

4. Respondents have filed their counter opposing the prayer of the applicants in both the O.As. They have prayed that the OAs being devoid of merit should be dismissed.

5. Applicants in both the OAs have also filed their rejoinders.

6. We have heard the learned counsels for the respective parties and perused the records. It is to be noted that this Tribunal has recently disposed of an identical matter vide order dated 07.08.2019 in O.A.No.260/268/2016 in which similar impugned order as passed by the Surveyor General of India (Respondent No.2) was the subject matter of challenge. In our considered view, the facts of O.A.No.260/268/2016 are exactly the same as in O.A.No.260/684/2016. However, there is some exception in O.A.No.260/404/404/2015 in which although the applicant had been granted the 3rd MACP with effect the date that was due and admissible to him, but at a later stage, by virtue of order dated 13.8.2015 (A/9), this benefit has not been extended to him on the ground that ACRs for the period from 2004 to 2007 of the applicant were Below Bench Mark. Be that as it may, it is an admitted fact

that in both the OAs applicants had submitted their representations for upgradation of Below Bench Mark grading with a view to extending the benefits of 3rd MACP and the same have been rejected by Respondent No.2. Since this Tribunal in O.A.No.260/268/2016 has already decided the point vide its order dated 07.08.2019 which needs to be determined in the instant OAs, we are not inclined to delve into the pros and cons of the matters. In order to maintain uniformity and consistency in the administration of justice, we are of the view that the ratio decided in O.A.No.260/268/2016 is squarely applicable to both the OAs at hand. However, we make it clear that the prayer of the applicant in O.A.No.260/404/2015 to restore the office order dated 07.08.2015 (A/8) whereby he had been granted 3rd Financial Upgradation w.e.f. 01.09.2008 in the Grade Pay of Rs.7600/- under the MACP Scheme is not acceded to in view of the rejection letter dated 23.06.2015 (A/6) issued in consideration of his representation for upgradation of ACRs for the period in question.

In view of the foregoing discussions, we make the following orders.

- i) Respondent No.2 shall reconsider the matter having regard to DOP&T circular dated 2.3.1968.
- ii) Respondent No.2 shall in particular deal with the situation as to whether withholding of 3rd MACP due to the applicants w.e.f. 1.9.2008 in case of applicant in O.A.No.260/404/2015 and w.e.f. 01.10.2008 in case of applicant in O.A.No.260/684/2016 on the basis of uncommunicated ACRs was just and proper.
- iii) During the course of reconsideration, Respondent No.2 shall also take into account the date with effect from which minimum benchmark "Very Good" came into force as the criterion for grant of MACP in so far as applicants are concerned.
- iv) Respondent No.2 shall make it clear whether Shri Jayakrishna Nayak, who has indisputably been granted the benefit of 3rd MACP during pendency of

O.A.No.260/00874/2014 is similarly situated as that of the applicants in the present O.As.

- i) If in the process of reconsideration, the applicants are assessed to be awarded the grading upto the level of benchmark, they shall be so awarded with a view to removing the bottleneck for grant of MACP.

10. The above exercise shall be completed within a period of three months from the date of receipt of this order.

11. With the aforesaid observation and direction, both the O.As are disposed of with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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