

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/268/2016

Date of Reserve: 16.05.2019

Date of Order: 07.08.2019

CORAM:

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

Sri Debaraj Singh, aged about 60 years, S/o. Late Satrughana Singh, permanent resident of Vill/PO-Malipada, PS-Jankia, 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 Mehrauli Road, New Delhi-110 016.
2. The Surveyor General of India, Surveyor General's Office, Hathibarkala Estate, Post Bos 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
ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant while working as Officer Surveyor under the Respondent-Department retired from service on attaining the age of superannuation with effect from 29.02.2016. His grievance is directed against the communication dated 15.03.2016 (A/7) whereby his request for upgradation of grading in his ACRs for the period from 2004 to 2009 has been rejected, as a result of which he has been deprived of the benefit of 3rd financial upgradation under the MACP Scheme with effect from 01.09.2008. Hence, the applicant has invoked the jurisdiction of this Tribunal in this O.A. under Section 19 of the A.T.Act, 1985, seeking for the following reliefs:

- i) To quash the letter dtd. 15.03.2016 (Annex.A/7) holding that same is illegal & unnecessary for the purpose of extending benefit under the MACP Scheme.
- ii) To direct the Respondent No.2 to extend the 3rd financial upgradation w.e.f. 01.09.2008 in the Grade Pay of Rs.7600/- under the MACP Scheme.
- iii) To direct the Respondents 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.

2. Shorn of unnecessary details, it would suffice to note that the applicant while working as Officer Surveyor Chhattisgarh GDC, Raipur received a letter dated 17.7.2015 (A/4), which reads as follows:

"Sub: Third Financial Upgradation under MACP Scheme:

It is intimated that while considering your case for grant of third financial upgradation under MACP Scheme, it is found that your ACR for the year 2004, 2005, 2006, 2007, 2008 & 2009 which are to be considered by the DPC for grant of third financial upgradation under MACP Scheme, are below bench mark. Therefore, as per DoP&T's OM No.21011/1/2010-Estt.A dated 13.04.2010 copies of ACR for the year 2004, 2005, 2006, 2007, 2008 & 2009 are enclosed herewith.

2. If you desire, you may represent through Director, Chhattishgarh GDC, Raipur, against the "Below Bench Mark" remarks within 15 days from the date of this communication".

3. In response to the above communication, the applicant submitted his representation dated 28.8.2015 (A/5) to the Surveyor General of India (Respondent No.2) in which he had raised the following points for consideration.

- i) That the DOPT circular dated 02.03.1968 the relevant portion of which reads as : "There may be cases where though the remarks in the ACR are not adverse in a strict or narrow sense the effect of the remarks cumulatively on the service prospectus of their officer adverse (e.g. fall in the

standards of officer's performance as compared to his past performance). In such case the attention of the officer should be specially drawn to that effect, so that he could be altered for improving his performance". It is also available in the Hand Book of General Instructions of the Department.

ii) According to 1 SCC (L&S) 2010 in the case of Abhijit Ghosh Dastidar that uncommunicated ACR will be treated as outstanding.

iii) According to SC 2513 2008 in the case of Devdutta vs. Union of India uncommunicated ACR cannot be acted upon to deprive the service benefits.

iv) OA No.37, 42, 43, 44, 45, 70 of 2012 Cuttack Bench M.S.Mohant and others vs. Union of India case has been disposed favourably the copy of the order is available in your good office and your good office has agreed in writing to the court to grant MACP to all the applicants whose ACRs were good below the Bench Mark and all the applicants therein have been allowed 3rd financial upgradation under MACP. May case is 100% similar to it. For this kindly go through the pages from 12 to 18 of the order and in the light of this judgment/order my ACRs may kindly be upgraded".

4. Since there was no response, the applicant submitted a further representation dated 09.12.2015 (A/6), whereafter, he was communicated a letter dated 15.3.2016 (A/7), the relevant Paragraphs of which are quoted hereunder:

"3. Shri Debaraj Singh, Officer Surveyor has requested to upgrade his grading from "Average/Good" to "Very Good" in his ACRs, 2004, 2005, 2006, 2007, 2008 & 2009.

4. The facts submitted by Shri Debaraj Singh, Officer Surveyor, in his representation have been considered by me. I, the undersigned on careful consideration of the contentions raised by Shri Debaraj Singh, Officer Surveyor, in his representation dated 28.08.2015, and material placed before me, I am of the opinion that the IOs/ROs have recorded their assessment and overall grading with due diligence based on the performance of the officer during the period in question, without any malice or bias and there is no reason/justification to intervene for changing the assessment/overall grading.

In view of the above, the contents of the Representation dated 28.08.2015 submitted by Shri Debaraj Singh, Officer Survey, for

upgradation of Grading "Average/Good" contained in his ACRs – 2004, 2005, 2006, 2007, 2008 & 2009 have been considered by me in depth. From the documentary proofs and records placed before me, I am of the opinion that there is no reason warranting me to upgrade the "Average/Good" grading to "Very Good" contained in his ACR, 2004, 2005, 2006, 2007, 2008 & 2009. The appeal is therefore REJECTED".

5. Hence, this application with the aforementioned reliefs.

In support of his case, the applicant has urged the following grounds:

- i) Instructions issued by DOP&T dated 02.03.1968 state that in strict sense, the remark Below Bench Mark can be construed as adverse remark as the same is depriving a person to get the service benefits. Therefore, non-communication of ACR to the prejudice of the applicant cannot be taken into consideration.,
- ii) Issuance of letter dated 7\17.07.2015 calling upon the applicant to submit representation for upgradation of his ACR is unjust, illegal and opposed to the decision of this Tribunal in O.A.No.27/2012 decided on 22.07.2014.
- iii) The action of Respondent No.2 is discriminatory inasmuch as under similar circumstances, the benefit of MACP has been extended to one Sri Jayakrishna Nayak during pendency of the O.A.No.260/00874/2014 in which similar communication as in the present O.A. was under challenge. Conversely, the applicant has mentioned that in the face of the benefit of MACP having been granted to similarly situated person by ignoring the uncommunicated ACRs, there was no justifiable reason on the part of the respondents to make a departure from the decision already taken by them under similar circumstances.
- v) Applicant has relied on the decision of the Hon'ble Supreme Court in Sukhdev Singh vs. Union of India & ors. (AIR 2013 SC 2741) as well as the decision of the Hon'ble Supreme Court in Deb Dutta, Abhijit Ghosh Dustidar to fortify his stand point.

6. Per contra, respondents have filed a detailed counter. According to respondents, the issue of eligibility and grant of financial upgradation to Surveyors and Officer Surveyors was kept in abeyance vide Surveyor General's letter dated 17.08.2012. On receipt of the clarification from the Department of Science & Technology during the year 2014, the grant of

financial upgradation under the MACP Scheme was taken up for consideration in accordance with the rules. According to respondents, there was no rule prior to DoP&T OMs dated 13.04.2010 and 27.04.2010 to communicate the ACRs to the individual except adverse entries. Opportunity to represent against the Below Bench Mark grading was given to the applicant and in consideration of the representation, his request was rejected by the appellate authority. Respondents have submitted that the example cited by the applicant in respect of Shri Jayakrishna Nayak has no relevance with the matter. Therefore, the respondents have submitted that the grounds urged by the applicant are baseless and incorrect and therefore, the O.A. should be dismissed being devoid of merit.

7. The applicant has filed a rejoinder to the counter in which it has been pointed out that the respondents are trying to mislead this Tribunal by indicating that the MACP in respect of the applicant is still under process and is yet to be considered by the DSC in near future.

8. We have heard the learned counsels for both the sides and perused the records. We have also gone through the decision of this Tribunal vide common order dated 22.07.2014 in O.A.Nos. 37, 42, 43, 44, 45 & 70 of 2012 as relied upon by the applicant in support of his case. In that case, applicants had approached this Tribunal with the similar grievance as in the present O.A. To make it more conspicuous, we would like to reduce it to writing that the applicants therein were not granted the benefit of 3rd MACP on the ground that their ACRs for the period from 2003 to 2009 were below Bench Mark. This Tribunal after taking into consideration the facts and circumstances and the materials available on record, disposed of those OAs vide common order dated 22.07.2014 with some directions. In those cases, as it appears, the

views/comments of the Reporting Officer, Review Officer and the Director concerned were available whereas in the instant case, as it reveals from the communication made vide letter dated 15.03.2016 (A/7) in which it is mentioned that since the IO/RO for the period of the ACT, 2004 to 2009 have retired from service, their comments have not been obtained. As a result of this, the Surveyor General (Respondent No.2) in the capacity of Appellate Authority considered the representation of the applicant for upgradation of his ACRs for the period in question. Be that as it may, the rejection letter dated 15.03.2016, in our considered opinion, does not precisely deal with the points raised by the applicant in his representation dated 28.08.2015 and as such, it cannot be said that the grievance of the applicant has been considered with due application of mind by the appellate authority.

9. It is also the case of the applicant that one Jayakrishna Nayak, who had approached this Tribunal in O.A.No.260/00874/2014 challenging the similar communication as that of the communication in the present O.A. has been granted the benefit of 3rd MACP during pendency of that O.A. and according to applicant, being similarly situated person, denial of the same benefit is discriminatory. On the other hand, the respondents in their counter reply have not effectively refuted this contention of the applicant and on the contrary, they have submitted that the example cited by the applicant in respect of Jaykrushna Nayak has no relevance in so far as present applicant is concerned. However, having regard to the facts and circumstances of the common order dated 22.07.2014 in O.A.Nos. 37, 42, 43, 44, 45 & 70 of 2012, O.A., we are of the opinion that the present O.A. could be disposed of in the light of the directives issued by this Tribunal in the said common order in exception of the direction regarding the view/comments of the Reporting

Officer, Reviewing Officer and the Director concerned. In view of this, following the ratio vide common order dated 22.07.2014 of this Tribunal in O.A.Nos. 37, 42, 43, 44, 45 & 70 of 2012, we quash and set aside the impugned communication dated 15.03.2016(A/7) and remit the matter back to Respondent No.2 to reconsider the whole issue and pass appropriate orders in the light of the directives as follows:

- i) Respondent No.2 shall reconsider the matter having regard to DOP&T circular dated 2.3.1968, as referred to above.
- ii) Respondent No.2 shall in particular deal with the situation as to whether withholding of 3rd MACP due to the applicant w.e.f. 1.9.2008 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 applicant is 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 applicant in the present O.A.
- vi) If in the process of reconsideration, the applicant is assessed to be awarded the grading upto the level of benchmark, he 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, this O.A. is disposed of with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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