

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/749/2016

Date of Reserve:16.05.2019

Date of Order:30.07.2019

CORAM:

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

Sri Sanjib Kumar Nanda, aged about 61 years, S/o. Sri Rama Chandra Nanda – resident of Plot No.467/4809, Shree Vihar, Chandrasekharapur, PO/PS-Patia, Bhubaneswar, Dist-Khurda-751 024.

...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.
3. The Surveyor General of India, Surveyor General's Office, Hathibarkala Estate, Post Box No.37, Deheradun, Uttarakhand-248 001.
3. Director, Survey of India, Survey Bhawan, Bhubaneswar-13.
4. The Director, Tamilnadu, Pudhuchery and Andaman & Nicobar Island Geo Spatial Data centre, Electronics Complex, Thiru-V-Ka, Industrial Estate, Chennai-600 032.

...Respondents

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

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the A.T.Act, 1985, the applicant has sought for the following reliefs:

- i) To quash the letter dtd. 31.03.2011(Annex.A/2), letter dtd. 17.07.2015 (Annex.A/5) & Office Order communicated vide Confidential letter dtd. 07.06.2016 (Annex.A/7) holding the same are illegal, arbitrary and opposing the settled law;
- ii) To direct the Respondents more particularly Respondent No.2 to treat the ACRs grading for the period 2003 to 2009 are "Very Good" and extend the 3rd financial upgradation

under the MACP Scheme in the GP7600/- w.e.f. 01.09.2008 with interest of 12% per annum and release the actual benefit(s) including arrears thereof forthwith;

- iii) To direct the Respondent No.1 to realize the interest amount from the pay and salary of the Respondent No.2 for causing unnecessary delay & harassment;
- iv) To direct the Respondents to pay the cost of litigation;
- v) To pass necessary orders as deemed fit and proper.

2. Facts of the matter leading to filing of this O.A. are thus: Initially, the applicant had joined as Topo Trainee Type-A (in short T.T.T.A) under the respondent-Organization in the year 1974, whereafter on competition of training, he was classified as Surveyor Division – I and joined as such in the year 1976. He was granted the benefit of 1st and 2nd financial upgradation under the ACP Scheme on 09.08.1999 and 01.10.2000 respectively. The 2nd financial upgradation granted to him was upset consequent upon his promotion to the grade of Officer Surveyor with effect from 30.10.2000. According to applicant, as he was eligible for 3rd financial upgradation with effect from 01.09.2008 under the Modified Assured Career Progression (MACP) Scheme, he had approached Respondent No.3 through a representation. In response to this, vide letter dated 31.03.2011, the applicant was intimated as under:

“...considering your case for grant of third financial upgradation under the MACP Scheme, it is found that your ACR for the years 2003, 2005, 2006, 2007, 2008 & 2009 which are to be considered by the DPC for grant of third financial upgradation under the 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 ACRs for the years 2003, 2005, 2006, 2007, 2008 & 2009 are enclosed herewith.

2.If you desire, you may represent through Director, Orissa GDC, Bhubaneswar against the “Below Bench Mark”

remarks within 15 days from the date of this communication..."

3. In response to the above, the applicant submitted a representation dated 18.04.2011 to Respondent No.2 through Respondent No. 4 for consideration. It has been pointed out that on the instruction of Respondent No.2, Respondent No.4 forwarded the copies of the ACRs to the concerned Reporting Officers for their views. On receipt of the reports/remarks of the Directors/ Reporting Officers, a consolidated report was submitted by Respondent No.4 to Respondent No.2 vide letter dated **02.08.2011 and** it is submitted that the concerned Reporting Officers favourably recommended for upgradation of ACRs from Good to Very Good. However, in order to deprive the applicant of the benefit of 3rd MACP, Respondent No.2 adopted dilatory tactics and his grievance was not redressed as a result of which, the MACP cases in respect of Officer Surveyor was kept in abeyance until further order vide letter dated 15.01.2013 (A/4). In the meantime, the applicant on attaining the age of superannuation retired from service with effect from 31.03.2015.

4. While the matter stood thus, the applicant was communicated a letter dated 17.07.2015 (A/5) calling upon him to submit further representation for upgradation of his ACRs for the period from 2003 to 2009 (for seven years). At this juncture, it is to be noted that although the applicant, vide letter dated 31.03.2011 had been asked to submit representation for upgradation of his ACRs for the period from 2003 to 2009 except 2004 and accordingly, he had already submitted his representation on 18.04.2011 and as stated by him, the Directors/Reporting Officers had favourably recommended for upgradation of his ACRs for the said period except 2004, but, by virtue of letter dated

17.07.2015, the respondents included the ACR for the year 2004 and asked the applicant to represent for upgradation of his ACRs for the years 2003 to 2009. However, the applicant submitted his representation dated 13.08.2015 (A/6) and in response to this, the applicant was issued with a confidential letter dated 07.06.2016 (A/7) wherein the Surveyor General of India in the capacity of Appellate Authority ordered as under:

"In view of the above, the contents of the Representation dated 03.08.2015 submitted by Shri S.K.Nanda, Officer Surveyor (Retd.), for upgradation of Grading "Good" contained in his ACRs – 2003 (30.10.2002 to 30.06.2003), 2004, (12.02.2004 to 30.06.2004), 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 "Good" grading to "Very Good" contained in his ACRs 2003 (30.10.2002 to 30.06.2003), 2004, (12.02.2004 to 30.06.2004), 2005, 2006, 2007, 2008 & 2009. The appeal is therefore, REJECTED".

5. Aggrieved with this, the applicant has approached this Tribunal in this O.A. praying for the reliefs as mentioned above.

6. The grounds on which the applicant has based his claims are that the impugned communication dated 07.06.2016 (A/7) is an outcome of total non-application of mind inasmuch as, nowhere in the report from 2003-2009 any such remark has been given by the Reporting Authority which would necessitate to deny the benefits on the pretext of below Bench Mark Grading. Secondly, the applicant has pleaded that as per the instructions issued by the DoP&T on 02.03.1968, it has been clearly stipulated 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, hence, non-communication thereof is fatal and entries cannot be taken into consideration". In other words, it is the contention of the applicant that if at all his ACRs for the period in question was Below Bench Mark and the respondents being aware of the

fact that the applicant was entitled to the benefit of 3rd financial upgradation under the MACP Scheme with effect from 01.09.2008, nothing stood in their way to call upon him to submit representation in pursuance of the DOP&T OM dated 02.03.1968 and in such a situation, there was no need to ask him to submit representation against the Below Bench Mark in the ACRs in pursuance to DOP& T OM No.21011/1/2010-Estt.A dated 13.04.2010 vide letter dated 31.03.2011 and letter dated 17.07.2015 (A/5). Therefore, it is the case of the applicant that the respondents with an ulterior motive have been trying to deprive him of the benefit of 3rd MACP to which he is legally entitled to.

7. Per contra, the respondents have filed a detailed counter. It is the case of the respondents that as per provisions of MACP Scheme, before processing the matter for consideration by the Departmental Screening Committee, action as per DOP&T OM dated 13.04.2010 and OM dated 27.04.2010 was required to be taken. In the circumstances, copies of ACRs containing the below bench mark grading for the years 2002-2003 (30.10.2002 to 30.06.2003), 2004, (12.02.2004 to 30.06.2004), 2005, 2006, 2007, 2008 & 2009 were communicated to the applicant vide letter dated 17.07.2015. Representation made by the applicant in this respect was duly considered by the Appellate Authority and the same was rejected having no substance and grounds to upgrade the same. This was communicated to him vide letter dated 07.06.2016. According to respondents, there was no rule prior to DOP&T OM dated 13.04.2010 and dated 27.04.2010 to communicate the ACRs to the individual except adverse entries. The ACP and MACP Schemes were introduced in the year 1999 and 2008 respectively. Therefore, the provisions of the Scheme cannot have retrospective application. Respondents have

pointed out that in the meanwhile, the applicant has been granted 3rd MACP in GP of Rs.7600/- with effect from 01.10.2013 and therefore, the O.A. being devoid of merit is liable to be dismissed.

8. Applicant has filed a rejoinder to the counter. In the rejoinder, the applicant has stated that in consideration of his representation, ACRs for the relevant period have been upgraded by the Reporting Officers and such upgradation has been communicated to the Respondent No.2 vide letter No.C-1535/18-1 dated 02.08.2011 by the Respondents. In view of this, it has been submitted that the decision of Respondent No.2 as communicated vide A/7 dated 07.06.2016 is nothing but with an oblique motive.

9. We have heard the learned counsels for both the sides and perused the records. It is to be noted that entitlement of the applicant to 3rd financial upgradation under the MACP Scheme with effect from 01.09.2008 in the Grade Pay of Rs.7600/- is not in controverted by the Respondents. Thus, the only point to be decided is whether the order dated 07.06.2016 (A/7) as passed by the Appellate Authority rejecting upgradation of the applicant ACRs for the period from 2003 to 2009 is legally sustainable. In this connection, it is pertinent to note that the respondents have not disclosed anything in the counter with regard to their letter dated 31.03.2011 issued to the applicant requiring him to submit representation for upgradation of ACRs for the years 2003, 2005, 2006, 2007, 2008 & 2009 in response to which he had submitted a representation dated 18.04.2011 to the Surveyor General of India (Respondent No.2) through Respondent No.4 and as stated in the O.A. on the basis of the remarks of received from the Directors/Reporting Officers, who had favourably recommended upgradation of ACRs of the applicant from Good to Very Good, a consolidated report was submitted by Respondent No.4 to

Respondent No.2 vide his letter dated 02.08.2011. It is also the case of the applicant in the O.A. that at the relevant point of time, the Directors/Reporting Officer who had initiated his ACRs were on active service. If that be so, there was no apparent reason to further ask the applicant vide communication dated 17.07.2015 requiring him to submit representation for upgradation of ACRs for the period in question. We also find substantial force in the contention of the applicant that the instructions issued by the DoP&T vide OM dated 02.03.1968 stipulating that the remark "Below Bench Mark" can be construed as adverse remark as the same is depriving a person to get the service benefits, hence, non-communication thereof is fatal and entries cannot be taken into consideration and in this respect, there was no need for the respondents to wait to take action in pursuance to DOP& T OM No.21011/1/2010-Estt.A dated 13.04.2010 vide letter dated 31.03.2011 and letter dated 17.07.2015 (A/5). Secondly, even conceding for the sake of argument as advanced by the respondents in their counter that there was no rule prior to DOP&T OMs dated 13.04.2010 and dated 27.04.2010 to communicate the ACRs to the individual except adverse entries, what is the outcome of such consideration in pursuance of the representation made by the applicant in this regard on 18.04.2011 in consequence of which a consolidated note based on the recommendations made by the Directors/Reporting Officers as forwarded by Respondent No.4 to Respondent No.2 vide communication dated 02.08.2011 ? However, this Tribunal cannot brush aside the fact that since the applicant being aware of the fact of his entitlement to 3rd financial upgradation under the MACP Scheme with effect from 01.09.2008 has been put on hold because of below bench mark grading to which he had already submitted his representation dated 18.04.2011 and

despite this, no action was taken by the respondents, the reasons best known, he remained silent. Grievance of the applicant in this O.A. is twofold, (i) upgradation of his ACRs or to treat the same as upto Bench Mark for the relevant period and (ii) grant of 3rd financial upgradation under the MACP Scheme. Those are two reliefs sought for in the O.A. are independent of each other and hence, inconsequential. However, as the applicant has in the meantime retired from service and keeping in mind the fact that the respondents have made an attempt to hoodwink the material facts purportedly to put a spanner in the adjudicatory process, in the fitness of things, we consider it expedient to dispose of the matter in its proper perspective. In this connection, it would profitable to quote hereunder Paragraph-2 of the order dated 07.06.2017(A/7) passed by the Surveyor General of India/Appellate Authority (Res.No.2).

"2.Shri S.K.Nanda, Officer Surveyor submitted his representation dated 03.08.2015 within the stipulated time. The same was forwarded to the Surveyor General's Office by the Addl. Surveyor General, Central Zone, Jabalpur vide letter No.C-02/18-L1(CZ) dated 04.01.2016. Comments of Initiating Officers for the ACR of 2003 & 2006 have been taken as they are in service. Comments of Initiating/Reviewing Officers for the other ACRs cannot be taken as per rule since they have retired from service".

10. The view point of the Appellate Authority as mentioned above makes it clear he has deliberately not uttered a single word as to what was the comments of Initiating Officers for the ACR of 2003 & 2006. Therefore, transparency and fair play in the order of the Appellate Authority are inconspicuous. Similarly, while dealing with the representation of the applicant dated 03.08.2015, it was incumbent upon the Respondent No.2 to bring to light as to what was the fate of the applicant's earlier representation dated 18.04.2011, in consideration of which the Directors/Reporting Officers

having favourably recommended for upgradation of ACRs and the same had been forwarded to him/Respondent No.2 through a consolidated note vide communication dated 02.08.2011. Since the respondents have not come up with clean hands and deliberately suppressed the material facts necessary for the adjudicatory process, to meet the ends of justice, this Tribunal makes the following order:

- i) Annexure-7 dated 07.06.2016 being an order wide of the mark is quashed and set aside.
- ii) Respondent No.1 is directed to consider the matter in the light of the observations made by us above and pass appropriate orders.
- iii) In the process of consideration, if the ACRs of the applicant is upgraded in tune with the prescribed Bench Mark required for grant of 3rd financial benefit under the MACP Scheme, the applicant shall be so granted with effect from 01.09.2008.

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

12. In the result, the O.A. is disposed of as above, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)
BKS

(GOKUL CHANDRA PATI)
MEMBER(A)

