

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.210/00669/2016

Date of Decision: 26th June, 2019

CORAM: R.VIJAYKUMAR, MEMBER (A)
R.N. SINGH, MEMBER (J)

Sanjay Srinivas Pore, Age 51 years,
 Senior D'man, Office of Superintending Engineer
 Western Zone-1, 101, M.K. Road, Mumbai.
 (R/at : BB-301, Nutan Ayojan, Nagar CHS Ltd.,
 Cross Road No.4, Malad (W), Mumbai - 64). .. *Applicant*
(By Advocate Ms. Sujatha Krishnan)

VERSUS

1. The Union of India through The Secretary,
 Ministry of Urban Development,
 Nirman Bhawan, New Delhi 110 001.
2. The Director General, C.P.W.D.,
 Nirman Bhawan, New Delhi 110 001.
3. The Additional Director General,
 C.P.W.D., Western Zone – 01,
 101, M.K. Road, Mumbai – 20.
4. The Superintending Engineer (PCums M.C.E.C.),
 C.P.W.D. 17th Floor, Pratishtha Bhawan,
 New Marine Lines, Mumbai – 20.
5. The Section Officer (Admn.), (WZ-1) C.P.W.D.,
 O/o the Chief Engineer (W.Z.- 1)
 14th Floor, 101 M.K.Road,
 Mumbai – 20. .. *Respondents*

(By Advocate Shri N.K.Rajpurohit)

ORDER (Oral)

Per : R.Vijaykumar, Member (A)

Heard both the learned counsels for
 the parties.

2. By way of the present OA, the applicant has challenged the order dated

14.09.2016 (Annexure A-1) which reads as under :-

"SE (Pcum MCEC)
CPWD,
17th Floor, Pratishtha Bhavan,
Mumbai.

Sub: MACP in respect of Shri S.S.Pore, D'man – regarding.

Ref. - This office letter No.WZ-I/MACPS/2015/Admn/268-H dated 29/03/2016.

With reference to above mentioned letter and subject under reference, DG New Delhi's letter No.20/08/2010-EC.V dated 25th/31st July 2012 letter may be referred to (copy enclosed) wherein it has been stated that awaiting judgment of Hon'ble High Court of Bombay, no further MACP/ACP be granted to the five applicants of the case. As Shri Pore is one of the applicant, the MACP approved by this office vide letter dated 29/03/2016 stands withdrawn/cancelled. Excess payment may be recovered immediately under intimation to this office. You are also requested to intimate the current status of the case in Hon'ble High Court, Mumbai at the earliest.

This issues with the approval of the CE(WZ)-I, CPWD, Mumbai.

Sd/-
Section Officer (Admn) (WZ-II)
CPWD, Mumbai.

Encl. As above

Copy to : 1. EE(P), O/o CE (WZ-III), CPWD Mumbai – for information wrt his letter dated 08/09/2016.

sd/-
Section Officer (Admn) (WZ-I)"

3. The brief facts leading to the present OA are that the applicant was initially appointed to the post of Draughtsman Grade III in the pay scale of Rs.1,200-2,040/-

with effect from 31.08.1987 and the said pay scale was revised to Rs.4,000-6,000/- with effect from 01.01.1996. The applicant was promoted to the next higher grade of Draughtsman Grade II on 02.06.1998 and was transferred out of Mumbai. The applicant, however, requested to be accommodated to Mumbai and thereby, refused the promotion first offered. On 27.08.2002, the applicant was again considered for promotion to the post of Draughtsman Grade II and the promotion was offered to him by transfer to Indore but the same was once again refused by the applicant.

4. The applicant along with his colleagues, preferred a representation for grant of benefit of first financial upgradation under the ACP Scheme issued by the Government of India in OM dated 09.08.1999. Upon its rejection, the applicant and four other similarly placed persons filed OA No.478/2008 and this Bench of the Tribunal allowed the OA vide order dated 11.12.2009. The paragraph Nos.9 to 11 of the orders dated 11.12.2009 of this Bench of the Tribunal reads as under :-

"9. Since the facts and circumstances obtaining in the matter presently before us are similar with the facts and circumstances of the matter decided by the jurisdictional High Court in Writ Petition No.2949/2004, we respectfully follow the view taken by the Hon'ble High Court.

10. After hearing the counsels for the parties and looking into the facts of the case along with relevant Government notifications and also keeping in view the above mentioned judgment dated 18.8.2006 of the High Court of Bombay we hold that the applicants were entitled to be granted first ACP benefit with effect from 09.08.1999 since they had completed 12 years of service before that date without availing any promotion. This OA, therefore, deserves to succeed.

11. The respondents are directed to consider and grant first ACP benefit to the applicants in accordance with the decision taken herein above and after following the prescribed procedure. The applicants shall be entitled to consequential benefits.

12. The OA succeeds. No order as to costs."

5. The direction of this Tribunal in the order dated 11.12.2019 was complied with by the respondents by granting first financial upgradation to the applicant with effect from 31.08.1999 and his pay was fixed to Rs.5,000-8,000/- vide order dated 19.01.2011. However, the respondents have challenged the orders before the Hon'ble High Court of Bombay in Writ Petition No.1869 of 2013 and the same is stated to be pending adjudication before the Hon'ble High

Court. The Hon'ble High Court has not passed any interim order against the order dated 15.04.2016.

6. The respondents again offered promotion for the the third time to the same post now redesignated as Senior Draughtsman to the applicant on 13.12.2013 which he accepted. The respondents also granted second financial upgradation under MACP Scheme with effect from 31.08.2009 and fixed his pay in the scale of PB-II plus Grade Pay of Rs.4,600/- by orders dated 15.04.2016. In their reply, respondents also submit that the barring period for each refusal of promotion is one year, with the condition specified "the above pay fixation is subject to the verification by Audit and excess pay & allowance if any drawn by the incumbent shall be recovered from his dues without any notice". However, abruptly without issuing any show cause notice to the applicant, the respondents have passed aforesaid impugned order dated 14.09.2016 withdrawing the grant of benefit of second financial upgradation under MACP Scheme and ordering recovery from the applicant of the alleged excess payment

made to him. These facts are not disputed by the learned counsel appearing for the respondents.

7. The learned counsel for the applicant submits that the respondents have granted the benefit of second financial upgradation under MACP Scheme to the applicant consistently and keeping in view the benefit of first financial upgradation granted to the applicant in pursuance to the direction of this Tribunal in the orders dated 11.12.2009 and therefore, there was no occasion available to the respondents not to grant second financial upgradation when it was due to the applicant on 31.08.2009 on completion of twenty years including two years of debarment and the applicant was accordingly, found eligible.

8. Moreover, the learned counsel for the applicant further argues that once the respondents have granted the benefit to the applicant to getting the revised pay scales, passing the impugned order without issuing any show cause notice is bad in law. She further argues that once the judgment of this Tribunal has neither been stayed nor

has been overturned by the Hon'ble High Court, there is no occasion for the respondents not to grant the benefit of second financial upgradation under MACP Scheme.

9. In reply, the learned counsel for the respondents submits that the impugned order is mere correction in as much as the second financial upgradation under MACP Scheme has been granted to the applicant without considering the letter dated 25/31.07.2012 issued by the respondent No.2 wherein it was stated that awaiting the judgment of the Hon'ble High Court of Bombay, no further ACP or MACP granted to the applicant and also to the similarly placed four other persons.

10. The learned counsel for the applicant further argues, without any supporting documents, that out of five persons, four who are transferred to out of Mumbai are getting the benefit of second financial upgradation whereas only in the case of the applicant the impugned order is passed. The learned counsel for the respondents submits that this fact has not been pleaded on record by the learned counsel for the applicant.

11. We have perused the pleadings available on record and we have also considered the contentions made on behalf of the parties. It is not in dispute that in pursuance to the directions of this Tribunal in orders dated 11.12.2009, the respondents have granted the benefit of first financial upgradation and the order dated 11.12.2009 of this Tribunal is neither stayed nor overturned by the Hon'ble High Court. It is also not in dispute that when the applicant was granted the benefit of second financial upgradation with effect from 31.08.2009, after twenty two years, he was found eligible and also found suitable, subject to the conditions of verification of audit and recovery without notice. The respondents also do not make any averments on any subsequent offers of promotion made to the applicant that he refused prior to the promotion offered and accepted on 13.12.2013. However, the impugned order does not disclose any logical relevance of the Hon'ble High Court proceedings for the grant of 2nd MACP on completion of the requisite period and the consequent attempt at recovery. Therefore, we do not find any reason why the respondents are putting the applicant on notice and seeking to withdraw the orders granting the benefit of second financial

upgradation under MACP Scheme.

12. In the aforesaid facts and circumstances of the case, the OA is allowed. The impugned order dated 14.09.2016 is quashed and set aside. However, in the facts and circumstances, no order as to costs.

(R.N. Singh)
Member (Judicial)

(R. Vijaykumar)
Member (Administrative)

*kmg**

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