(2019) 03 P&H CK 0289

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 3366 Of 2019 (O/M)

P.K. Sarin APPELLANT

Vs

Union Of India And Others RESPONDENT

Date of Decision : 14-03-2019

Acts Referred:

Citation : (2019) 03 P&H CK 0289

Hon'ble Judges : Rajiv Sharma, J;Kuldip Singh, J

Bench : Division Bench

Advocate : Rajeev Sharma

Final Decision : Allowed

Judgement

Petitioner-applicant has impugned the order dated 23.5.2017 (Annexure-P-8), passed by Central Administrative Tribunal, Chandigarh Bench, Chandigarh, (hereinafter referred to as 'the Tribunal'), vide which his application seeking third Modified Assured Carrier Progression Scheme (hereinafter referred to as 'MACP Scheme') benefit with effect from 1.4.2013 was declined and Screening Committee was directed to reconsider the case of applicant-petitioner for grant of third MACP with effect from 1.4.2014. It was further directed that if he is found fit, petitioner shall be given benefit of arrears arising out of same. He shall also be entitled to interest at GPF deposit rate for the period commencing from 1.4.2014 till actual date of grant of arrears. The said benefits were ordered to be granted within a period of eight weeks.

The controversy in present case is very short.

Applicant-petitioner joined as Junior Engineer on 2.8.1976 and became Assistant Engineer in October, 1984. He was promoted as Assistant Engineer on 22.10.1984 before completion of 12 years of service. However, he was granted second ACP after completing 24 years of service on 2.8.2000. The ACP was allowed with effect from 1.7.2006.

Applicant-petitioner approached the Central Administrative Tribunal, Shimla Bench, Shimla, which allowed his application and consequently, he was granted second ACP with effect from 2.8.2000. As per earlier scheme, Government employee was entitled to two upgradation on completion of 12 and 24 years of service provided the employee did not get any promotion or financial upgradation during said period. As a result of recommendations of Sixth Pay Commission with effect from 1.1.2006, MACP Scheme was made effective for Central Government employees with effect from 1.9.2008, according to which employee was entitled to three financial upgradation on completion of 10, 20, 30 years of service. Applicant-petitioner retired from service on 31.8.2014. He claims that he was entitled to third MACP Scheme with effect from 1.9.2008, but same was not granted to petitioner. By way of approaching Tribunal, he claims third MACP Scheme in the grade pay of Rs. 7600/- with effect from 1.4.2013. He also claims 12% interest.

Respondents had taken stand before Tribunal that for grant of third MACP Scheme with grade pay of Rs. 7600/-, ACRs of preceding five years are to be considered and those having 'Very Good' grading in at least 2.5 years may be assessed as fit for grant of MACP benefit.

Applicant-petitioner did not fulfill said criteria till year 1.4.2014. Applicant-petitioner had retired from service on 31.8.2014. Therefore, it was pleaded that since applicant-petitioner did not fulfill criteria, he was not granted the MACP benefit.

The Tribunal observed that perusal of chart reveals that grant of benefit has been considered by respondents year wise commencing from 1.9.2008. Applicant-petitioner has also been considered for the period commencing from 1.4.2009, 1.4.2010, 1.4.2011, 1.4.2012, 1.4.2013 and 1.4.2014. The Screening Committee found that applicant-petitioner is not fit because he does not have 'Very Good' gradings in at least 2.5 years of 5 years considered by Screening Committee. The Tribunal found that grading for the period 2007-2008 to 2011-2012 have been considered. Since some of APARs of applicant petitioner were missing, APARs preceding years have been considered. Applicant-petitioner has obtained 'Very Good' grading only in two of the relevant years as against requirement of 2.5 years. Hence, his claim for this year was rightly rejected by respondents. However, for the period commencing from 1.4.2014, he was having 'Very Good' grading in the year 1.4.2005 to 12.1.2006, and 2006-2007, 'Outstanding' grading from 1.4.2007 to 29.7.2007, 'Good' grading from 30.7.2007 to 31.3.2008, and 'Very Good' grading from 3.10.2011 to 31.3.2012. Consequently, impugned order was passed.

We have heard learned counsel for parties and have also carefully gone through case file.

Applicant-petitioner claims third MACP w.e.f. 1.4.2013. Admittedly, under rules, applicant-petitioner was required to have 'Very Good' grading in 2.5 years out of preceding 5 years. However, for the purpose of considering third ACP, five ACRs preceding 1.4.2013 i.e. 2007-2008 onwards were to be seen. Extracts from relevant chart (Annexure-R-2) regarding APARs of applicant-petitioner are reproduced as under :-

'Year Grading Remarks

01.04.05 to 12.01.06 Very Good

01.04.06 to 31.03.07 Very Good

01.04.07 to 29.07.07 Outstanding

30.07.07 to 31.03.08 Good Communicated to Sh. P.K. Sarin on 28th April 2016 and dated 13.02.2017 for upgradation but no reply received from Sh. P.K. Sarin (Para 2 of Speaking Order dated 03/04/2017).

01.04.08 to 31.03.09 Not Available

01.04.09 to 31.03.10 Not Available

01.04.10 to 31.03.11 Good Communicated to Sh. P.K. Sarin on 16th May 2016 for upgradation but no reply received from Sh. P.K. Sarin (Para 2 of Speaking Order dated 03/04/2017).

01.04.11 to 02.10.11 Not Available

03.10.11 to 31.03.12 Very Good

01.04.12 to 30.11.12 Good Communicated to Sh. P.K. Sarin on 16th May 2016 as per his request for upgradation. He represented but the then Controlling Officer has not upgraded the same (Para 2 of Speaking Order dated 03/04/2017).

01.12.12 to 26.02.13 Certificate 27.02.13 to 31.03.13'

Admittedly, the ACRs for the years 2008-2009, 2009-2010 and for the period 1.4.2011 to 2.10.2011 are not available. Therefore, ACRs for preceding two years i.e. 2005-2006 and 2006-2007 were to be seen. It also comes out that ACR for the period from 1.4.2011 to 2.10.2011 is not available. However, ACR for the period from 3.10.2011 to 31.3.2012 is recorded as 'Very Good'. Applicant-petitioner cannot be blamed if ACR for some period is not written. It also comes out that for the period 1.12.2012 to 26.2.2013 and from 27.2.2013 to 31.3.2013, in place of recording ACRs, certificates are given. Therefore, considering the abovenoted chart, ACRs for the year 2005-2006 and for the year 2006-2007 are 'Very Good'. The ACR for the period from 1.4.2007 to 29.7.2007 i.e. for little less than four months is 'Outstanding' and ACR for the period from 30.7.2007 to 31.3.2008 is 'Good'. Further, ACR for the period from 3.10.2011 to 31.3.2012 i.e. little less than six months is also 'Very Good'. Therefore, if graded period of four months and six months is to be taken together, it comes out that ACR for the abovenoted four months is 'Outstanding' and ACR for the abovenoted little less than six months is 'Very Good'. Therefore, applicant petitioner will cross the benchmark of 2.5 years 'Very Good' ACR out of five years. Consequently, applicant- petitioner will be entitled to third MACP with effect from 1.4.2013 and not from 1.4.2014. Consequently, petition is allowed. The impugned order dated 23.5.2017 (Annexure-P-8), passed by Tribunal, is accordingly modified holding that applicant petitioner is entitled to third MACP benefit with effect from 1.4.2013. He shall also be entitled to benefit of arrears with effect from 1.4.2013 till actual date of grant of arrears with interest as payable on GPF deposit rate. This order be complied with within eight weeks from the date of receipt of certified copy of this order. Petition is accordingly allowed.