

(2023) 04 CAT CK 0048

In the Central Administrative Tribunal

Case No : Original Application No. 203, 896 Of 2017

Shankar Singh Gavel

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 20-04-2023

Acts Referred:

Central Civil Services (Classification Control And Appeal) Rules, 1965 — Rule 14, 27

Citation : (2023) 04 CAT CK 0048

Hon'ble Judges : Akhil Kumar Srivastava, Member (J); Kumar Rajesh Chandra, Member (A)

Bench : Division Bench

Advocate : N. Naha Roy, Siddharth Rathod

Final Decision : Dismissed

Judgement

Kumar Rajesh Chandra, Member (A)

1. By means of this O.A., the applicant has assailed the order dated 22.6.2017 whereby the applicant has been denied the benefit of MACP on the sole ground of "Below Bench Mark" with a further prayer to consider his case for grant of financial upgradation under MACP from the date he has passed out the penalty of reduction of pay for a period of three months i.e. 28.1.2011 with interest @ 12% per annum.

2. The facts, in brief, as narrated in the O.A. are that the applicant was initially appointed as T.S. Clerk by posting him at Bilaspur where he joined his duty w.e.f. 2.5.1977. On completion of requisite years of service and since the service records of the applicant was found satisfactory, he was granted promotion on the post of TBP w.e.f. 2.5.1993 and thereafter on the post of BCR (P.A.) on 1.7.2003. The applicant was dismissed from service vide order dated 31.3.2011 as a result of enhancing the punishment of reduction of pay scale by three stages suo-motu by the respondent no.2. It is averred by the applicant that within a short span of four months he was subjected to transfer in the year 2006 which resulted into

gradual downfall of his health. Owing to his ill health, the applicant could not join for a long time with the result he was asked to submit his explanation through notice dated 21.1.2008, to which a reply was given on 30.1.2008. Being dissatisfied with the reply of the applicant, the respondents passed an order dated 6.3.2008 declaring the entire period of absence i.e. 3.4.2007 to 5.3.2008 but without as 'Dies-non' without break in service. It is also stated that the respondent no.4 instituted disciplinary proceedings against the applicant under Rule 14 of CCS (CCA) Rules on the allegations of unauthorized absence from 11.10.2006 to 20.8.2008 by issuing a chargesheet. It is alleged that the enquiry proceedings were held in utter violation of the provisions of Rules of 1965 by ignoring the principles of natural justice. Upon receipt of enquiry report, the disciplinary authority awarded the punishment of reduction of pay scale by one stage from Rs. 17,220/- to 16,710/- for a period of three months and the period of 170 days from 12.10.2006 was regularized and rest of the period of absence was directed to be regularized against the leave available and further remaining period of absence was declared as Dies-non vide order dated 28.10.2010. The respondent no.3 was not satisfied with the punishment as awarded to the applicant and in order to enhance the same invoked its power vested with him under Rule 27 of CCS (CCA) Rules and issued a notice dated 9.2.2011 requiring the applicant to explain within 15 days as to why the punishment of dismissal from service be not passed. To this, the applicant submitted his reply on 1.3.2011 explaining the reasons of his ill health by making a reference to his 34 years of long service with the respondents and that he was going to retire w.e.f. 30.6.2012 with a request to take a lenient view in the matter. Without considering the reply of the applicant, the respondent no.3 passed the impugned order dated 31.3.2011 imposing the punishment of dismissal from service upon the applicant. Being aggrieved, the applicant preferred an appeal before the appellate authority, which was also rejected vide order dated 12.10.2011 without assigning any reason.

3. Having no other option, the applicant knocked the door of this Tribunal by filing Original Application No. 261 of 2012, which came to be allowed vide order dated 21.11.2014 by quashing the impugned orders, therein, by observing that since the order of removal from service is set-aside and in the meantime, the applicant stood retired from service, the respondent no.4 is directed to finalize and issue the Pension Payment order in favour of the applicant. Thereafter, the applicant preferred a representation with a request to grant him IIIrd MACP on completion of 30 years of service, which came to be rejected by the respondents on the sole ground that his APARs is below the bench mark through order dated 22.6.2017 which is under challenge in this O.A.

4. The respondents have contested the claim of the applicant by filing detailed Reply wherein they have stated that the claim of the applicant for grant of IIIrd MACP has been placed before the Departmental Screening Committee on 16.1.2017 wherein the applicant was not found fit for grant of financial up-gradation under MACP on the ground that the applicant was graded below bench

mark and as such the applicant's case could not be considered for grant of third financial up-gradation under MACP. They have also quoted para 17 of Annexure no.1 of Office Memorandum dated 18.9.2009 wherein it has been specifically stated that for up-gradation under MACP, the bench mark is 'Good' upto the Grade Pay of Rs. 6600/- and 'Very Good' for financial up-gradation to the Grade Pay of Rs. 7600/- and above. The respondents have also disclosed in their Reply that during the last five years commencing from 2005-06 to 2009-10, the applicant was rated 'Average' three times while he has been rated 'Good' for two times and as such they have stated that the action of the respondents is fully justified in accordance with the rules on the subject. Lastly, the respondents have stated that the O.A. has no merit and the same is liable to be dismissed.

5. The applicant has also filed Rejoinder to the Reply filed by the respondents refuting the contentions of the respondents made in the Reply while reiterating the pleas as already advanced in the Original Application and nothing new has been added.

6. We have heard the learned counsel for the parties at length and have also perused the pleadings available on record.

7. The only question raised in this Original Application is whether the applicant, who has been rated below bench mark, is entitled for grant of IIIrd financial up-gradation under MACP or not? The facts as put-forth by the applicant have not been disputed by the respondents. The Office Memorandum dated 18th September, 2009 issued by Department of Posts on the subject of Modified Assured Career Progression Scheme and in para 17 of Annexure no.1 annexed thereto deals with the issue of bench mark, which reads as under :-

"17. The financial up-gradation would be on non-functional basis subject to fitness, in the hierarchy of grade pay within the PB-1. Thereafter, for up-gradation under the MACPS the benchmark of 'good' would be applicable till the grade pay of Rs. 6600/- in PB-3. The benchmark will be 'Very Good' for financial upgradation to the Grade Pay of Rs. 7600/- and above."

From the plain reading of the aforesaid para, it would reveal that upto the Grade Pay of Rs. 6600/-, the bench mark is 'Good'. In the instant case, the applicant has been rated as 'Average' for three times i.e. 2005-2006, 2007-08, and 2009-10, while for the years 2006-07 and 2009-10, he has been rated as 'Good' and as such his case could not be considered for grant of third financial upgradation under MACP. The applicant has not disputed and/or contested the ratings as awarded to him from the years 2005-06 to 2009-10. Thus, the action of the respondents denying the third financial up-gradation under MACP to the applicant cannot be said to be faulted from any corner.

8. In view of the discussions made hereinabove, the O.A. has no merit and the same is liable to be dismissed. Dismissed accordingly. Parties are directed to bear their own costs.