
(2013) 12 RAJ CK 0022

In the Rajasthan High Court

Case No : Civil Writ Petition No. 10556 of 2013

Union of India and Another

APPELLANT

Vs

Harish Chandra Singh

RESPONDENT

Date of Decision : 09-12-2013

Acts Referred:

Citation : (2014) LabIC 1192

Hon'ble Judges : V.K. Mathur, J;Dinesh Maheshwari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. In this matter, though the notices are yet to be served, the petitioners have moved an application seeking early hearing (IA No. 5822/2013) with reference to the fact that the respondent herein has moved a contempt petition (No. 88/2013) before the Central Administrative Tribunal, Jodhpur Bench, Jodhpur ("CAT") complaining of the non-compliance of the order dated 31.10.2012. Having regard to the submissions made, while allowing the application for early hearing (IA No. 5822/2013), the matter has been considered today itself.

2. After having heard the learned counsel for the petitioners and having perused the material placed on record, we are satisfied that the impugned order dated 31.10.2012, as passed by CAT in OA No. 546/2011, calls for no interference; and this writ petition deserves to be dismissed.

3. Put in brief, the relevant background aspects of the matter are that the applicant (respondent herein) preferred the OA aforesaid for quashing of the impugned orders issued by the present petitioners on 31.03.2010 and 18.03.2010; and also seeking directions against the present petitioners for consideration of his case for grant of second Modified Assured Career Progression ("MACP") with effect from 01.09.2008.

4. The applicant was appointed as Junior Mining Geologist (Group A Post) on 31.05.1985 and was promoted as Senior Mining Geologist from 15.08.2002 in

the scale 10000-15200. He was entitled to be considered for second MACP with effect from 01.09.2008 upon completion of 20 years of service on 31.05.2005. The petitioners granted MACP to some of the Group-A Officers but the applicant's name was not included therein. The applicant-respondent filed a representation upon which, he was informed that the Screening Committee had not recommended his case after finding him unfit. The case of the applicant had been that he was not communicated any adverse remarks in his ACRs; and that the Screening Committee proceeded to take into consideration uncommunicated remarks in the ACRs. The applicant submitted his apprehension in the OA that he was not likely to be considered in the next DPC either and was likely to be deprived of the benefit of second MACP in an arbitrary and illegal manner.

5. The stand of the respondents had been that there was nothing adverse in the ACRs to be communicated; and gradings of being below bench marks were not required to be communicated as such. It was submitted that the DPC proceeded in accordance with the applicable guidelines and made an objective assessment of the suitability of the candidates. It was also submitted that the representations of the applicant had been duly considered and the Screening Committee found the applicant unfit for grant of MACP.

6. In the order impugned, CAT considered essentially the issue as to whether uncommunicated remarks could form the basis of applicant being declared unfit for MACP and ancillary benefits. The CAT considered various decisions having bearing on the issue including that of the Hon"ble Supreme Court in *Dev Dutt Vs. Union of India (UOI) and Others*, and found the action of the respondents, of denying MACP to the applicant on the basis of uncommunicated remarks, not sustainable in law and granted relief as under:--

(i) the impugned Annexure-A/1 dated 31.03.2010, Annexure-A/2 dated 18.03.2010 and impugned letter dated 14.02.2011 along with the proceedings of the departmental screening committee held on 16.02.2010 at Annexure-3 are hereby quashed and set aside as being bad under law.

(ii) The respondents are directed to consider the case of applicant for 2nd MACP w.e.f. 01.09.2008 scheme by convening review DPC to considering granting benefits with all consequential benefits including arrears of pay and allowances with 9% interest per annum.

(iii) The DPC while considering the case of applicant will treat all adverse remarks or below bench marks, which had not been communicated, expunge as if never existed against the applicant.

(iv) There shall be no order as costs.

7. The approach of the CAT, in our view, is in accord with the law applicable to the case. The decision in *Dev Dutt Vs. Union of India (UOI) and Others*, has been re-affirmed by the Hon"ble Supreme Court in no uncertain terms in the case of *Sukhdev Singh Vs. Union of India (UOI) and Others*, ; and it remains no more

res integra that an employee cannot be put to prejudice on the basis of uncommunicated grading in ACR. The CAT, in our view, has not committed any illegality in directing reconsideration of the case of the applicant-respondent after omitting uncommunicated adverse or below bench mark ACRs from consideration. The writ petition fails and, is, therefore, dismissed.