

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.5990 of 2017 (O&M)

Date of Decision: 15.05.2017

PK Sarin

... Petitioner

VS.

Union of India & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR.JUSTICE SUDIP AHLUWALIA

Present: Mr. Aman Chaudhary, Advocate for the petitioner

SURYA KANT, J. (Oral)

(1) The petitioner has laid challenge to the orders dated 24.05.2016 and 04.07.2016 whereby Central Administrative Tribunal, Chandigarh Bench, Chandigarh (in short, 'the Tribunal') has dismissed his Original Application as well as Review Application thereby rejecting his claim for the grant of 3rd MACP w.e.f. 01.09.2008.

(2) Briefly stated the facts are that the petitioner joined the Chandigarh Administration as Junior Engineer w.e.f. 02.08.1976. He was promoted as Assistant Engineer in October, 1984. The petitioner was implicated in a case under the Prevention of Corruption Act, 1988 on 13.03.1991 and having been arrested by CBI, he was placed under suspension on 29.04.1991. The petitioner was acquitted by the Special Judge, CBI, Tis Hazari, Delhi on 20.08.2002, whereupon he was reinstated w.e.f. 04.02.2003.

(3) The petitioner was granted 2nd ACP w.e.f. 02.08.2000. According to him, he became entitled to 3rd MACP w.e.f. 01.09.2008 on completion of 30 years of service on 02.08.2006. It is not in dispute that for the purpose of grant of MACP, five Annual Confidential Reports were

the employee must have earned at least 2.5 'Very Good' reports. The petitioner was informed that his case for grant of 3rd MACP was considered in the meeting held on 09.07.2012 but he was found unfit. His case was again considered on 07.06.2014 but the Screening Committee found that due to below benchmark ACRs, he was not entitled to the grant of 3rd MACP.

(4) The aggrieved petitioner approached the Tribunal but his claim has been turned down vide the impugned orders.

(5) In their written statement dated 08.04.2015, the official respondents clarified that the petitioner was eligible to be considered for MACP w.e.f. 01.09.2008 when the said Scheme came into force and keeping that date in view, his five immediate preceding ACRs for the years 2002-03 to 2006-07 were required to be considered. It was an admitted fact that the petitioner had earned only two 'Very Good' reports and thus he could not make the benchmark of at least 2.5 'very good' ACRs. In the light of these broadly admitted facts, the Tribunal thus held as follows:-

“Since the applicant had completed 30 years of service on 2.8.2006 and the MACPS was circulated in May, 2009 to be implemented w.e.f. 1.9.2008, the claim of the applicant for grant of 3rd MACP, in normal course was to be considered in the year 2009 and ACRs for the period 2002-03 to 2006-07 were to be taken into consideration. During 2002-03, the applicant was under suspension and no ACR appears to have been recorded for the year 2004-05. Hence, the Screening Committee was required to consider earlier ACRs and since the applicant was under suspension from the year 1991 to 2003, in order to

consider five ACRs, it is the ACRs for the years 1989-90 & 1990-91 that could be considered. Although the applicant has claimed that only the last ten years' ACRs should have been considered while considering his case for grant of 3rd MACP, but in the absence of requisite number of ACRs during the previous ten year period, there can be no objection to the ACRs for the period 1989-90 and 1990-91 being considered. The DOPT issued OM dated 13.4.2010 regarding communication of ACRs below the benchmark level while the earlier practice was only to convey adverse remarks in ACRs. While it is true that the applicant did not have the opportunity to represent against the ACRs in which the grading was below the benchmark level, but prior to 13.4.2010, there were no such instructions while, as already mentioned, in the normal course, the case of the applicant for the 3rd MACP w.e.f. 1.9.2008 should have been considered in the course of the year 2009..."

- (6) It may be seen from the above reproduced finding of fact that the petitioner's ACR for the year 2004-05 was not at all recorded. Since the petitioner should not be put to any disadvantage due to non-writing of ACR for the year 2004-05, this Court on 23.03.2017 directed him to clarify whether he will attain the minimum benchmark if the said ACR is deemed to have been graded as 'Good' keeping in view the grading earned by him in the preceding the year 2004-05. His learned counsel fairly concedes that the

said ACR with 'Good' grading won't enable the petitioner to earn the minimum benchmark.

(7) Faced with this his learned counsel vehemently contends that since the petitioner is being denied 3rd MACP for want of 'Very Good' reports, his annual grading recorded as 'Good' is liable to be treated as an 'Adverse' report and since these reports were not communicated to him, the same cannot be relied upon to dislodge his claim. He urges that in view of the *dictum* in **Dev Dutt vs. Union of India 2008(8) SCC 725**, it was imperative upon the respondent-authorities to convey all the confidential reports to the petitioner.

(8) Having given our thoughtful consideration to the submission, we do not find any merit therein. During the relevant period, the petitioner was under suspension for one year hence no report was recorded for the year 2004-05. His remaining reports are 'Good' or 'Very Good'. These reports are/were not adverse in nature and therefore, were not required to be conveyed as per the prevailing rules/instructions or the practice. The principles enunciated in **Dev Dutt's** case (supra) cannot be applied in respect of the confidential reports which had attained finality prior thereto and were not under challenge before any forum.

(9) For the reasons afore-stated, we do not find any merit in this writ petition and the same is accordingly dismissed.

(Surya Kant)
Judge

15.05.2017
vishal shonkar

(Sudip Ahluwalia)
Judge

1. Whether speaking/reasoned?
2. Whether reportable?

Yes
No