

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.12638 of 2018.

Date of Decision: May 18, 2018

Shri Pal Sharma

.....Petitioner

versus

Union of India and others

.....Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT.**

**HON'BLE MR.JUSTICE SHEKHER DHAWAN.**

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Present: Mr.Balwinder Singh, Advocate, for the petitioner.

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**Surya Kant, J.** (Oral)

The petitioner assails the order dated 07.03.2017 passed by the Central Administrative Tribunal, Chandigarh Bench, whereby his claim for 2<sup>nd</sup> financial upgradation under the MACP Scheme has been turned down.

[2] The facts may be briefly noticed.

[3] The petitioner joined the department as Postal Assistant on 02.02.1983. After completion of 16 years' service, he was granted the benefit of 1<sup>st</sup> financial upgradation on 07.02.1999. He became entitled for 2<sup>nd</sup> financial upgradation on introduction of MACP Scheme w.e.f. 01.09.2008.

[4] It is undeniable that before the petitioner became eligible for 2<sup>nd</sup> MACP, he was charge-sheeted and disciplinary proceedings were initiated against him w.e.f. 14.10.2005. The petitioner was exonerated by the Inquiry Officer and it appears that the Disciplinary Authority also passed order in his favour but the Superior Authority invoked its *suo-moto* powers vested in it under Rule 24 of the Central Civil Services (CCS) Rules, 1965 and imposed the punishment of removal from service on the petitioner after

following the prescribed procedure. The petitioner challenged the order of

his removal from service and the Revisional Authority, after taking a lenient view, reduced the punishment from removal from service to compulsory retirement.

[5] Meanwhile, the petitioner was duly considered for the grant of 2<sup>nd</sup> MACP but due to pending proceedings, the result was kept in a sealed cover.

[6] After his compulsorily retirement, the petitioner staked his claim for 2<sup>nd</sup> MACP which was rejected by the Department through repeated orders including one such order passed on 08.01.2015. The petitioner challenged that order before the Tribunal but vide the impugned order, the Tribunal has repelled the petitioner's challenge on two counts, namely, (i) the OA was barred by limitation as repeated representations made by the petitioner, even if entertained by the Department, will not revive the cause of action. The Tribunal has fortified its view, relying upon the decisions of the Hon'ble Supreme Court in S.S.Rathore versus State of Madhya Pradesh, 1990(4) SCC 582 and Union of India and others versus M.K.Sarkar, 2010(2) SCC 58; (ii) the Prescribed Authority having invoked its power under Rule 24 of the 1965 Rules, which eventually led to imposition of punishment of compulsory retirement, it cannot be said that the petitioner was suitable for 2<sup>nd</sup> financial upgradation as on 01.09.2008, for the disciplinary proceedings started against him on 14.10.2005 culminated into an order of punishment.

[7] We have heard learned counsel for the petitioner at a considerable length and gone through the record.

[8] It is well settled law that repeated representations, even if entertained by the Department by passing successive administrative orders,

would not and cannot revive the cause of action and the time limit starts running from the date when the cause of action arose or began. Applying that principle to the facts of the case in hand, it cannot be said that the Tribunal has erred in law in holding that the Original Application filed by the petitioner was barred by limitation. Having held so, we have also gone into the merits of the case. It is an admitted fact that 2<sup>nd</sup> financial upgradation became due to the petitioner w.e.f. 01.09.2008 but well before that, his conduct came under the clouds on 14.10.2005 as disciplinary action was initiated against him. Mere exoneration by the Inquiry Officer is no valid ground to open the sealed cover. The Disciplinary Authority in exercise of its express power under the Rules disagreed with the Inquiry Officer and imposed the punishment of removal from service on the petitioner by way of a reasoned order. The misconduct which was alleged against the petitioner as on 14.10.2005 thus stood established. The subsequent reduction in punishment also does not amount to exoneration of the petitioner from the charges. In this view of the matter, the petitioner was ineligible and unsuitable for the grant of 2<sup>nd</sup> MACP w.e.f. 01.09.2008. The conclusion drawn to this effect by the Tribunal thus warrants no interference by this Court.

[9] Dismissed.

**[SURYA KANT]**  
**JUDGE**

May 18, 2018  
*mohinder*

**[SHEKHER DHAWAN]**  
**JUDGE**

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|----------------------------------|----------|---------------|
| <b>Whether speaking/reasoned</b> | <b>:</b> | <b>Yes/No</b> |
| <b>Whether Reportable</b>        | <b>:</b> | <b>Yes/No</b> |