



2024: DHC: 3297-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 26.04.2024

+ W.P.(C) 1715/2021 & CM APPL. 24387/2024

KISHORE KUMAR

..... Petitioner

Through: Mr.G.L.Verma, Mr.Anuj Verma,
Mr.Lalit Allwadhi & Ms.Ritika
Bindra, Advs.

versus

DELHI DEVELOPMENT AUTHORITY & ANR. Respondents

Through: Mr. Arun Birbal & Mr. Varun Gupta,
Advs. for DDA.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE RAVINDER DUDEJA

REKHA PALLI, J (ORAL)

1. The present writ petition under Article 226 and 227 of the Constitution of India seeks to assail order dated 15.09.2020 passed by the learned Central Administrative Tribunal in O.A. No. 3278/2018. Vide the impugned order, the learned Tribunal has rejected the Original Application (OA) filed by the petitioner, wherein he had prayed that he be granted benefit of 3rd MACP with effect from 01.09.2008, by ignoring his ACRs for the years 2003-04, 2004-05 and 2005-06, on the ground that even though he had been downgraded from 'very good' to 'good' in the said ACRs, the same were never communicated to him.

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2. Learned counsel for petitioner submits that the impugned order is wholly perverse as the learned Tribunal has proceeded on the erroneous premise that there was no requirement for the respondents to communicate to the petitioner his ACRs for the period between 2003-04, 2004-05 and 2005-06, wherein his was downgraded from 'very good' to 'good'. The Ld. Tribunal, he urges, failed to appreciate that once the petitioner had been granted below benchmark gradings in his ACRs for the aforesaid three years, the same ought to have been communicated to him well in time, so that he could seek upgradation thereof by filing timely representations. He, therefore, contends that, now after more than 20 years when neither the Reporting Officer nor the Reviewing Officer are available, any representation for upgradation made by him would be a futile exercise. The petitioner's case for grant of benefit of 3rd MACP w.e.f., 01.09.2008 ought to, therefore, be considered by ignoring the aforesaid three ACRs, which were admittedly 'below benchmark' entries..

3. In support of his plea that every entry in ACRs of an employee which is a below benchmark entry, must be communicated to them, he places reliance on the decision of the Apex Court in ***Dev Dutt vs. Union of India, 2008 (8) SCC 725***. Further, by placing reliance on a recent decision dated 23.09.2022 in ***Union of India v. G.R. Meghwal, 2022 SCC OnLine SC 1291***, he contends that the petitioner's case for grant of third MACP, should be considered by ignoring the aforesaid three ACRs, which were admittedly not communicated to him. He, therefore, prays that impugned order be set



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aside and the respondents be directed to reconsider the petitioner's case for grant of MACP w.e.f., 01.09.2008.

4. On the other hand, Mr. Arun Birbal, learned counsel for the respondent supports the impugned order and submits that the learned Tribunal was justified in holding that there was no requirement for the respondents to communicate any ACRs which were not adverse to an employee. It is only pursuant to OM dated 14.05.2009 that ACRs containing below benchmark grading were also required to be communicated to the concerned employee. However, this OM having come into force on 01.09.2008, there was no requirement for the respondents to communicate to the petitioner his aforesaid three ACRs containing below benchmark grading, which pertained to a period much prior to 01.09.2008. Without prejudice to his aforesaid plea, he submits that even if it is held that the aforesaid three ACRs containing below benchmark grading were required to be communicated to him, the petitioner's claim that these ACRs should be altogether ignored is wholly misplaced. By placing reliance on the decision of Apex Court in *Anil Kumar vs. UOI & Ors* dated 21.01.2019 in CA No. 888/2019, he contends that even if there was a lapse in communicating the ACRs to the petitioner in time, he can still be given an opportunity to submit a representation for upgradation and in case, his ACRs are upgraded, his case for grant of 3rd MACP w.e.f. 01.09.2008 can be reconsidered.

5. Having heard learned counsel for parties, before we deal with the rival submissions of the parties, it would be apposite to first note factual matrix of the case as emerging from the record.



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6. The petitioner joined the services of respondents on 23.08.1978. On 26.08.2008, having completed 30 years of service, he became eligible for consideration for grant of 3rd MACP on 01.09.2008 i.e., the date when the MACP scheme was introduced. On 13.10.2016, the respondent extended the benefit of 3rd MACP to the petitioner's batchmates who, like him, had completed 30 years of service on or before 01.09.2008, however these benefits were subsequently extended to him w.e.f. 01.09.2012. This was done by taking into account his ACRs for the aforesaid three years, wherein he was graded as 'good' as against the required benchmark of 'very good'. Being aggrieved, the petitioner submitted a representation on 01.02.2017 which remained undecided and consequently, he superannuated from service on 31.12.2017, without receiving any response to his representation. In these circumstances, the petitioner, after his superannuation, again approached the respondent with a request to reconsider his case for grant of 3rd MACP w.e.f. 01.09.2008, which representation came to be rejected on 18.07.2018 itself. Upon this representation being rejected, the petitioner approached the learned Tribunal by way of O.A. No. 3278/2018, which, as noted hereinabove, has been dismissed vide the impugned order, compelling the petitioner to approach this Court.

7. Having noted the brief factual matrix, we may now turn to the relevant extracts of the impugned order, which read as under:-

“6. The only issue that arises for consideration in this OA is as to whether the applicant was entitled to be extended the benefit of 3rd MACP with effect from 01.09.2008. It becomes due, to an employee, on completion of 30 years.



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There is no dispute that the applicant completed 30 years of service by 2008. However, it is not as a matter of course, that the MACPs are granted. The Screening Committees are constituted for the purpose of verification of the record. The ACRs for a period of 5 years preceding the relevant date are taken into account. The respondents have adopted the benchmark of 'Very Good' for extending the benefit of 3rd MACP. Three ACRs of the applicant from 2003-2004, 2004-2005 and 2005-2006 were assessed as 'Good'. Therefore, he was not treated as eligible to be extended the benefit from 2008 onwards.

7. Being fair to the applicant, the respondents have granted upgradation with effect from 01.09.2012, since the ACRs in the preceding 5 years were upto the benchmark. Therefore, no exception can be taken on the decision taken by the respondents.

8. The applicant pleaded that the ACRs of 3 years, which were assessed as 'Good', ought not to have taken into account since they were not communicated. The occasion to communicate the ACRs would arise, if only anything adverse to the employee is mentioned. A below benchmark ACR cannot be treated as adverse entry. The benchmarks are also not statistic. At one level, it could be 'Good' and another level it could be 'Very Good' and in certain cases 'Outstanding'. The nature of the remarks in the ACR, do not get altered with the relevant benchmark. At the same time, an employee can certainly make representations for upgradation of the ACRs at the relevant point of time.

9. Even after being aware of the factum of the 'nature of the ACRs for 3 years mentioned above and the consequent thereof, the applicant did not submit any representation for upgradation thereof, till he retired from service. In the impugned order, there is a mention to certain efforts made in



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this behalf. It was stated that the reporting officers for the relevant period have struck to the stand and in some cases they retained.

10. One of the pleas raised by the applicant is that his juniors were extended the benefit of 3rd MACP on completion of 3 years. It is not a case where the process is not one of relative assessment. The MACP is personal to an individual employee and much would depend upon his performance.”

8. From the aforesaid, what emerges is that the petitioner’s O.A. has been rejected by the learned Tribunal on the premise that only adverse ACRs of an employee were required to be communicated to them, with there being no requirement to communicate any below benchmark ACRs. This premise, in our considered opinion, was wholly incorrect. The Apex Court had, way back in the year 2008 in its landmark decision in ***Dev Dutt (supra)***, directed the respondents that every ACR, which is below benchmark ought to be communicated to the concerned employee. In this regard, it would be appropriate to refer to the relevant extracts from the said decision as contained in Para-36 & 37 thereof, which read as under:-

“36. In the present case, we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the annual confidential report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. This in our opinion is the correct legal position even though there may be no rule/G.O. requiring communication of the entry, or even if there is a rule/G.O.



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prohibiting it, because the principle of non-arbitrariness in State action as envisaged by Article 14 of the Constitution in our opinion requires such communication. Article 14 will override all rules or government orders.

37. We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the authority concerned, and the authority concerned must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.”

9. In the light of the aforesaid, in our view, it was mandatory for the respondents to communicate every below benchmark entry in the ACR to the petitioner. We, therefore, have no hesitation in holding that learned Tribunal has erred in coming to the conclusion that there was no requirement for communicating the aforesaid three ACRs to the petitioner, wherein he was graded as ‘good’ as against the required benchmark of ‘very good’. What next, should these ACRs containing below benchmark entries be ignored altogether or the petitioner should be granted an opportunity to make a representation against them. Learned counsel for the petitioner has urged that, not only the reporting officer but also the reviewing officer, has superannuated and therefore while placing reliance on the decision in **G.R.**



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Meghwal (supra), has prayed that these ACRs should altogether be ignored and the petitioner's case for grant of 3rd MACP, w.e.f 01.09.2008 be directed to be considered afresh by taking into account his three earlier ACRs.

10. We have carefully considered the two decisions of the Apex Court in **G.R. Meghwal (supra)** and **Anil Kumar (supra)** and are of the considered view that in the peculiar facts of the present case, where more than 21 years have already elapsed since the petitioner was downgraded in his ACRs, which ACRs were admittedly never communicated to him, it would be a futile exercise to direct him to submit a representation for upgradation. We are, therefore, of the view that we must in the instant case follow the course of action adopted by the Apex Court in **G.R. Meghwal (supra)**, with a slight modification. We, accordingly, direct that the petitioner's case for grant of 3rd MACP be considered by ignoring his aforesaid three below benchmark ACRs and instead his earlier three ACRs, i.e for the period between 2000-01, 2001-02 and 2002-03, be taken into account for re-consideration of his case for grant of 3rd MACP w.e.f 01.09.2008.

11. For the aforesaid reasons, the impugned order is set aside. The writ petition is allowed by directing the respondents to reconsider the case of the petitioner for grant of the benefit of 3rd MACP w.e.f 01.09.2008 by taking into account his three earlier ACRs for the years 2000-01, 2001-02 and 2002-03, thereby ignoring his ACRs for the years 2003-04, 2004-05 and 2005-06. In case, the petitioner is found fit for grant of 3rd MACP upon reconsideration of his case in terms of this order, all consequential benefits



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be paid to him. The respondents are directed to conduct the aforesaid exercise within a period of 12 weeks.

12. The writ petition is allowed in the aforesaid terms.

(REKHA PALLI)
JUDGE

(RAVINDER DUDEJA)
JUDGE

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