



2024:DHC:3298-DE



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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 26.04.2024

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W.P.(C) 1767/2021 & CM APPL. 24397/2024

ANITA RANI SONDHI

..... 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 the order dated 17.11.2020 passed by the learned Central Administrative Tribunal in O.A. No. 1379/2018. Vide the impugned order, the learned Tribunal has rejected the Original Application (OA) filed by the petitioner/applicant, wherein she had prayed that she be granted the benefit of 3rd MACP with effect from 01.09. 2008 by ignoring her ACRs for the years 2003-04, 2004-05 and 2005-06, on the ground that even though she had been downgraded from 'very good' to 'good' in the said ACRs, the same were never communicated to her.

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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 her ACRs for the period between 2003-04, 2004-05 and 2005-06, wherein she 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 her ACRs for the aforesaid years, the same ought to have been communicated to her well in time, so that she 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 her would be a futile exercise. Therefore, 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 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, learned counsel for the petitioner 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 her. He, therefore, prays that impugned order be set aside and the respondents be directed to reconsider the petitioner's case for grant of MACP w.e.f., 01.09.2008.



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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 respondent 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 her 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 her, 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, she can still be given an opportunity to submit a representation for upgradation and in case, her ACRs are upgraded, her 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.

6. The petitioner joined the services of the respondents in the year 1977. Having completed 30 years of service on 02.01.2007, she became eligible for consideration for grant of 3rd MACP on 01.09.2008 i.e., the date when the MACP scheme was introduced. On 24.07.2017, the respondent extended



the benefit of 3rd MACP to the petitioner's batchmates who, like her, had completed 30 years of service on or before 01.09.2008, however these benefits were subsequently extended to her w.e.f. 2010. This was done by taking into account her ACRs for the aforesaid three years, wherein she was graded as 'good' as against the required benchmark of 'very good'. Though the petitioner superannuated from service on 30.11.2017, she approached the respondents by way of a representation on 16.03.2018 for consideration of her case for grant of 3rd MACP w.e.f. 01.09.2008. As the said representation remained undecided, she approached the learned Tribunal by way of OA No. 1379/2018, which OA, as noted hererinabove, has been rejected by learned Tribunal. It is in these circumstances that the present petition has been filed.

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

"5. The dispute in this OA is about the date with effect from which the 3rd MACP must be extended to the applicant. The respondents extended the benefit from the year 2010, whereas the applicant wants it from 01.09.2008.

6. It is fairly well known that the benefit of MACP is extended only on evaluation by the Committee almost on par with the DPC for promotion. The bench mark adopted by the Committee was 'Very Good'. The ACRs of the years 2003-2004, 2004-2005 and 2005-2006 became relevant. They were graded as 'Good', whereas the bench mark was 'Very Good'. The applicant became eligible only in the year 2010 and accordingly the benefit was extended.

7. There was no adverse entry against the applicant. It is only when the entry is adverse that it is required to be communicated. The obligation to communicate the ACRs



even if they are not adverse arose only in the date of the judgment of the Hon'ble Supreme Court in Dey Dutt's case. In the OM dated 14.05.2009, the DOPT has indicated that the communication of a below bench mark ACRs shall be an obligation prospective in operation. Assuming that there was a failure or delay on the part of the respondents in communicating the below bench mark ACRs for the relevant years, the only course open to the applicant was to seek upgradation thereof and the respondents were under the obligation to consider the same despite the delay in submission of the representation.

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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. 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 she 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. Meghwal (supra)***, has prayed that these ACRs should altogether be ignored and her for grant of 3rd MACP, w.e.f 01.09.2008 be directed to be considered afresh by taking into account her 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 her ACRs, which ACRs were admittedly never communicated to her, it would be a futile exercise to direct her 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 her aforesaid three below benchmark ACRs and instead her earlier three ACRs, i.e for the period between 2000-01, 2001-02 and 2002-03, be taken into account for re-consideration of her 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 petitioner's case for grant of the benefit of the 3rd MACP w.e.f 01.09.2008 by taking into account her three earlier ACRs for the years 2000-01, 2001-02 and 2002-03, thereby ignoring her ACRs for the years 2003-04, 2004-05 and 2005-06. In case, the petitioner is found fit for grant of 3rd MACP upon re-consideration of her case in terms of this order, all consequential benefits be paid to her. The respondents are directed to conduct the aforesaid exercise within a period of 12 weeks.



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

(REKHA PALLI)
JUDGE

(RAVINDER DUDEJA)
JUDGE

APRIL 26, 2024

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