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

Date of decision: 28.02.2025

\+ W.P.(C) 2293/2019

NARENDER KUMAR .....Petitioner

Through: Mr.Ankur Chhibber, Mr.Nikunj Arora,Mr.Anshuman Mehrotra, Mr.Prahil Sharma, Advs.

versus

UNION OF INDIA AND ORS. .....Respondents

Through: Mr.K.C. Dubey, Mr.Mahender Kr. Bhardwaj, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed by the petitioner challenging the Order dated 20.10.2018 whereby the respondents did not recommend the petitioner for grant of the 2nd MACP. The petitioner further challenges the Order dated 30.01.2019 issued by the respondents in reply to the legal notice sent by the petitioner and informing the petitioner that he is ineligible for the grant of the 2nd MACP as his Annual Performance Appraisal Report (in short, 'APAR') grading for the year 2017 is 'Good' which is below the benchmark and he did not meet the benchmark grading in 3 out of his 5 APARs as on the date of his consideration for grant of the MACP.

2. The table showing the APAR grading of the petitioner has been

mentioned in the Impugned Office Order dated 30.01.2019 itself, and is reproduced herein below:

ACR/APAR Grading of last 05 years	*2013: Good* *2014: Good* *2015: Good* *2016: V/Good* *2017: Good*

3. The Impugned Order dated 30.01.2019 also records the recommendation of the Screening Committee '*vis-à-vis*' the petitioner as under:

Recommendation of screening committee	*Not Recommended due to below bench mark grading as required in 03 APAR*

4. It is not denied that in terms of the Office Memorandum dated 19.05.2009 issued by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), the Government accepted the recommendation of the 6th Central Pay Commission (in short, 'CPC') and introduced the MACP Scheme with further modification to grant three financial upgradations at intervals of 10, 20 and 30 years of continuous regular service. The said scheme was in supersession of the old ACP Scheme. The Scheme was to become operational with effect from 01.09.2008. The financial upgradation was to be on a non-functional basis subject to fitness, in the hierarchy of grade pay within the PB-l. For financial upgradation under the MACP Scheme, the benchmark of 'Good' was applicable till the grade pay of Rs.6600/- in PB-3, and the benchmark of 'Very Good'

was applicable for the grade pay of Rs.7600/- and above.

5. The Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), *vide* the Office Memorandum dated 28.09.2016, accepted the report of the 7th CPC whereby the benchmark for performance appraisal for promotion and financial upgradation under the MACP Scheme was enhanced from 'Good' to 'Very Good'. The change was to come into effect from 25.07.2016.

6. As the petitioner had obtained APAR Grading of 'Good' in the year 2013, 2014, 2015 and 2017, that is in 4 out of the last 5 APAR, he was not granted the benefit of the 2nd MACP, and his representation thereagainst was rejected *vide* the Impugned Order dated 30.01.2019.

7. The learned counsel for the petitioner submits that the respondents have failed to appreciate that by an Office Memorandum dated 10.01.2019 issued by the Director General, Sashastra Seema Bal, it had been provided that the APAR Grading of 'Good' for the period prior to 25.07.2016 is to be treated as 'Very Good' while considering the cases by the Screening Committee/Board of officers under the MACP Scheme. He submits that, similarly, even the High Court of Delhi has issued a Circular dated 27.01.2018 stipulating that grading of 'Very Good' will be applicable only in respect of ACRs from the year 2017 onwards and for the earlier years, grading of 'Good' upto grade pay of Rs.6,600/- (pre-revised) will be treated as qualifying/eligibility criteria for the benefit of MACP. He submits

that, therefore, the APAR of the petitioner for the period 2013, 2014, 2015 is to be treated as 'Very Good' thereby making four of his APARs as 'Very Good', or in the alternative, APAR grading of 'Good' was to be considered as the benchmark till the year 2016 and the benchmark of 'Very Good' was to be applied only from 2017. The petitioner was, therefore, entitled to the grant of the 2nd MACP.

8. The learned counsel for the petitioner, placing reliance on the Office Memorandum dated 22.10.2019 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), submits that in terms of Clause 17 of the Scheme attached thereto, the benchmark for the APARs up till the year 2015-2016 was continued to be as per the MACP Guidelines issued *vide* the Department of Personnel & Training Office Memorandum dated 19.05.2009, that is, 'Good'. He submits that applying the said yardstick, the petitioner would be entitled to the grant of the 2nd MACP.

9. On the other hand, the learned counsel for the respondents reiterates that as the petitioner was not meeting the prescribed benchmark stipulated *vide* the Office Memorandum dated 27.09.2016 issued by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), the petitioner was rightly denied the benefit of the 2nd MACP.

10. We have considered the submissions made by the learned counsels for the parties.

11. The ACR gradings for the relevant years have already been re-produced by us in form of a table hereinabove.

12. It is not denied that in terms of the Office Memorandum dated 27.09.2016, the benchmark for grant of the MACP was upgraded to 'Very Good' in at least three out of five last ACRs, hence, if strictly applied, the petitioner would not have met the prescribed criteria for the grant of the 2nd MACP. However, this would not be the end of the matter. The Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), by the Office Memorandum dated 22.10.2019, has issued the "Consolidated Guidelines Regarding Modified Assured Career Progression Scheme for the Central Government Civilian Employees". Paragraph 17 of the said Scheme reads as under:

> *"17(i). For grant of financial upgradation under the MACP Scheme, the prescribed Benchmark shall be 'Very Good', for all levels. This shall be effective for upgradations under MACPS falling due on or after 25.07.2016 and the revised benchmark shall be applicable for the APARs for the year 2016-17 and subsequent years.*
> *17(ii). While assessing the suitability of an employee for grant of MACP, the Departmental Screening Committee (DSC) shall assess the APARs in the reckoning period. The benchmark for the APARs for the years 2016-17 and thereafter shall be 'Very Good'. The benchmark for the years 2015-16 and earlier years shall continue be as per the MACP guidelines issued vide DoPT O.M. dated 19.05.2009: "The financial upgradation would be non-functional basis subject to*

fitness in the hierarchy of grade pay within the PB-I. Thereafter for upgradation under the MACPS the benchmark of 'good' would be applicable till the grade pay of Rs.6600/- in PB-3. The benchmark will be 'Very Good' for financial upgradation to the grade pay of Rs.7600 and above." For example, if a particular MACP falls due on or after 25.07.2016, the following benchmarks for APARs are applicable:

APAR for the year	*Benchmark grading for MACP for Level 11 and below*	*Benchmark grading for MACP for Level 12 and above*
20 13-14 and earlier years	*Good*	*Very Good*
20 14-15	*Good*	*Very Good*
2015-16	*Good*	*Very Good*
2016-17	*Very Good*	*Very Good*
2017-18 and subsequent years	*Very Good*	*Very Good*

"

13. By the reading of the above, it would now be apparent that while assessing the suitability of an employee for grant of MACP, the Departmental Screening Committee has to assess the APARs for the benchmark for the year 2016-2017 and thereafter to be 'Very Good', while the benchmark for the years 2015-2016 and earlier years would continue to be as per the MACP Guidelines issued by the Department of Personnel & Training Office Memorandum dated 19.05.2009, that

is, 'Good' till the Grade Pay of Rs.6600 in PB-3 and 'Very Good' for Grade Pay of Rs.7600 and above.

14. In the present case, as the petitioner was falling within the Grade Pay of Rs.6600 in PB-3, he continued to be governed by the benchmark of 'Good' for the years 2015-2016 and earlier.

15. Applying the above standard, the petitioner fully meets the benchmark for the grant of the 2^{nd} MACP.

16. Accordingly, the Impugned Orders are set aside.

17. We hold that as far as the criteria of the benchmark of APAR is concerned, the petitioner fully met the criteria for the grant of the 2^{nd} MACP. The case of the petitioner would, therefore, be placed by the respondents before the Departmental Screening Committee within a period of eight weeks from today, which shall take a decision on the grant of the 2^{nd} MACP to the petitioner by applying the relevant rules applicable thereto.

18. The arrears, if any, found payable, shall be released to the petitioner within a period of four weeks thereafter alongwith interest at the rate of 6 % per annum.

19. The petition is disposed of with the above directions.

NAVIN CHAWLA, J

SHALINDER KAUR, J

FEBRUARY 28, 2025/Arya/IK

Click here to check corrigendum, if any