



सत्यमेव जयते

न्यायालय मुख्य आयुक्त निःशक्तजन
Court of Chief Commissioner for Persons with Disabilities
सामाजिक न्याय एवं अधिकारिता मंत्रालय
Ministry of Social Justice & Empowerment
निःशक्तता कार्य विभाग / Department of Disability Affairs

Case No.298/1028/12-13

Dated:- 16.06.2014

In the matter of:

Shri Ramesh Chandra Sharma,
Son of Shri Ram Gopal Sharma,
5/425, Aggarwal Farm, Mansarovar,
Jaipur (Rajasthan)

..... Complainant

Versus

Comptroller & Auditor General of India,
9, Deendayal Upadhyaya Marg,
New Delhi-110 124.

.... Respondent

Date of hearing : 08.05.2014

Present :

1. Shri Ramesh Chandra Sharma, Complainant.
2. S/Shri Jairam Bhojwani, DAG(Admn.) and D.K. Sharma, A.O./Admn., on behalf of Respondent.

O R D E R

The above named complainant, a person with 100% visual impairment filed a complaint dated 27.06.2012 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act regarding grant of 3rd financial up-gradation under MACP Scheme.

2. The complainant submitted that as per the report of the Sixth Central Pay Commission, the post of Senior Accountant was placed in Grade Pay of Rs.4200/- with effect from 01.01.2006. He was not given the benefit of increment and promotion as per the Office memorandum No.35034/3/2008-Estt.(D) dated 09.09.2010 issued by the Department of Personnel & Training. He prayed that he may be given the benefit of third MACP with effect from 01.09.2008 with all consequential benefit including revision in pension.

3. The matter was taken up with the Comptroller & Auditor General of India, New Delhi vide this Court's letter of even number dated 21.01.2013.

4. Principal Accountant General (A&E), Indian Audit & Accounts Department, Rajasthan vide letter No. V.Pra./M.A.C.P.S./Clarification/2009-13/367 dated 30.08.2013 submitted that the case of the complainant for giving benefit of M.A.C.P.S. was considered by Screening Committee on dated

.....2/-

05.10.2009 and dated 23.06.2011. Para 17 of the MACP Scheme provides that the financial upgradation would be on non-functional basis subject to fitness, in the hierarchy of grade pay within the PB-1. Thereafter for upgradation under the MACPS, the benchmark of 'good' would be applicable till the grade pay of Rs.6600/- in PB-3. But in the ACRs of the complainant for the years 2003-04, 2004-05 (partial period), 2005-06, 2006-07, 2007-08 and 2008-09, the category assessment was "Average" which is lower in category from prescribed bench mark, the complainant was not found eligible for the said benefit by the Departmental Screening Committee. They also submitted that the complainant was not ever deprived of the benefit only on the basis of disability. In compliance of DoP&T's O.M. dated 13.04.2010, while making available the photo copies of the ACRs for the years 2004-05 (partial period), 2005-06, 2006-07 and 2007-08 to the complainant, he was directed to submit his representation to the Competent Authority for the amendment in "Average" assessment within 15 days but the complainant did not submit any representation. The complainant vide letter dated 12.09.2011 was again asked to submit his representation with 10 days. On the compliance of this, the complainant submitted his representation on 21.09.2011 within the prescribed period. After considering the said representation, the Reporting & Reviewing Officers did not find any reason to change/amend the grading. The respondent further submitted that according to the present provisions for financial upgradation for higher grade of Pay of Rs.4600/-, the bench mark of 'Good' is required while in the Annual Work Assessment Reports of the complainant from the year 2003-04 to 2007-08, the bench is "Average" for giving relaxation in the prescribed bench mark for financial upgradation, there is no provision in the present rules. Hence, as per present rules, it is not possible to make any change in the decision of not granting the said benefit to the applicant is not possible. Therefore, the respondent keeping in mind the above stated facts, has prayed for rejecting this case.

5. A copy of the reply dated 30.08.2013 was forwarded to the complainant vide this Court's letter dated 16.09.2013 for his comments/rejoinder.

6. The complainant in his rejoinder dated 25.09.2013 submitted that the reply of the respondent is totally denied and is liable to be rejected because the Order dated 13.04.2010 issued by the Department of Personnel & Training will be treated as effective from back date. This Department or any other Department and the Government has no authority under the Constitution to abolish the financial benefits from the back date and nor the said Department has any right to enforce its orders by not giving effect to the powers given in the Sections of Persons with Disabilities Act, 1995.

7. Upon considering the respondent's reply dated 30.04.2013 and 30.08.2013 and complainant's letters dated 25.09.2013 and 25.11.2013, the case was scheduled for hearing on 08.05.2014.

8. During the course of hearing on 08.05.2014, the representatives of the respondent reiterated their written submissions and stated that no decision with regard to grant of MACP in respect of complainant is pending with the respondent. As per the existing instructions, the bench mark for grant of MACP is "Good" whereas the ACRs of the complainant have been "Average". The grading has not undergone any change even after his representation to the Competent Authority and even after he being given the opportunity of being heard. He has not so far filed any appeal against the decision of

the Competent Authority on his representation. They further submitted that the complainant has filed an OA No.584/2013 before the Central Administrative Tribunal (CAT), Bench at Jaipur which is pending and is slated for hearing on 21.05.2014.

9. Reiterating his written submissions, the complainant contended that (a) the APRs were written with prejudiced mind as he was not allotted any work following on-set his blindness beside his best efforts to persuade the authorities to allot work. Hence the question of his performance being average or otherwise does not arise. (b) He was given "Average" grading due to loss of his vision and not because of performance of work assigned. (c) He alleged violation of Section 47(2) of the Persons with Disabilities Act which prohibits denial of promotion on the ground of disability.

10. It is observed that the complainant has filed OA No.584/2013 before the Central Administrative Tribunal (CAT), Bench at Jaipur on the identical issue, no orders can be passed by this Court. It would be in the fitness of things on the part of the complainant to bring all relevant facts to the notice of the Hon'ble CAT as per his aforesaid statement. It would also be quite in context to view this entire matter, inter-alia, in the light of the provisions of Section 38 of the Persons with Disabilities Act, 1995 which provides for training opportunities and also for non disabling environment for persons with disabilities in places where they are employed.

11. The matter stands closed. However, in the event of the complainant not getting the relief as indicated above, he will be free to approach this Court once again.

Sd/-
(P.K. Pincha)
Chief Commissioner
for Persons with Disabilities