

**In the Court of State Commissioner for Persons with Disabilities  
National Capital Territory of Delhi  
25-D, Mata Sundri Road, Near Guru Nanak Eye Centre, New Delhi-2  
Phone-23216003-04, Email: [comdis.delhi@nic.in](mailto:comdis.delhi@nic.in)  
[Vested with powers of Civil Court under the  
Rights of Persons with Disabilities Act, 2016]**

**Case No. 2127/1023/2021/02/1855-56**

**Dated:04/10/21**

**In the matter of:**

**Dr. Ram Kishan,**  
H.No. 224, Sarai Pipal Thala,  
Near Adarsh Nagar,  
Delhi-110033.  
(Email ID: [ramkishan.diet@gmail.com](mailto:ramkishan.diet@gmail.com))

.....**Complainant**

**Versus**

**The Director,**  
State Council of Educational Research and Training,  
Varun Marg, Block-C, Defence Colony,  
New Delhi-110024  
(Email: [dir12scert@gmail.com](mailto:dir12scert@gmail.com))

.....**Respondent**

**Date of Hearing:** 27.09.2021

**Present:** Dr. Ram Kishan, complainant  
Sh. A.K. Goel, Deputy Director and  
Sh. Mahesh, Section Officer on behalf of respondent

**ORDER**

Dr. Ram Kishan, the complainant, a person with 80% locomotor disability and Assistant Professor, DIET, Keshav Puram vide his complaint dated 23.02.2021, under the Rights of Persons with Disabilities, Act, 2016 herein after referred to as the Act, inter-alia alleged that he was granted MACP w.e.f. 06.12.2018 instead of 01.06.2014 after 03 years and 06 months. He also alleged that he was compelled for re-evaluation of his disability certificate and is being continuously harassed by SCERT.

2. The matter was taken up with SCERT vide letter dated 08.03.2021 and followed by reminders dated 13.4.2021 and 19.4.2021. Vide reply dated 14.06.2021, the respondent submitted that the disciplinary proceedings were processed against the complainant with the approval of the competent authority and the date of MACP was deferred as per the recommendations of the DSC. Competent authority also approved re-examination of physical disability of the complainant. It was further submitted that the complainant is habitual of non-cooperating with the office.

3. The reply of the respondent was forwarded to the complainant. In response, the complainant filed a rejoinder dated 23.07.2021 that he was not satisfied with the reply of the respondent.

4. Upon considering the response dated 14.6.2021 & 10.8.2021 of the respondent and rejoinder dated 23.7.2021 & 03.09.2021 of the complainant, a hearing was scheduled on 14.09.2021.

5. Vide ROP dated 15.09.2021, the respondent was directed to conduct an inquiry and come out if the complainant can be granted MACP with effect from 01.06.2014 and if so, the actual financial implications thereof to the department. Regarding issue of medical re-examination, the respondent as a department should consider the necessity of the same and take this issue administratively as per existing rules/norms. The court also directed the department to investigate/inquire about the representations/grievances of the complainant and give him a personal hearing by the concerned authority, so that he can represent his case which can be resolved accordingly.

6. During the hearing on 27.09.2021, the respondent submitted letter dated 27.09.2021 reiterating their submissions in detail pertaining to First Financial Up-gradation under MACP Scheme in respect of the complainant.

7. In this regard kind attention was invited to point 2 of DoPT OM No. 22011/04.2007-Estt.(D) dated 21-11-2016 which states that *“Questions have been raised by ministries and Departments asking whether this is applicable in the case of ‘Censure’ also. In this regard, it is reiterated that paragraphs 7(d), 7(f) and 7(g) are applicable in all the penalties under CCS (CCA) Rules including the minor penalty of Censure as well which no currency has been prescribed, it would mean that as per para 7(g), if the DPC considers the officer fit for promotion notwithstanding the award of censure, he can be promoted without referring to the currency of penalty”.*

8. Para 7(g) of the said OM states that *“In assessing the suitability of the officer on whom a penalty has been imposed, the DPC will take into account the circumstances leading to the imposition of the penalty and decide whether in the light of general service records of the officer and the fact of imposition of penalty, the officer should be considered for promotion. The DPC, after due consideration, has authority to assess the officer as ‘unfit’ for promotion. However, where the DPC considers that despite the penalty the officer is suitable for promotion, the officer will be **actually promoted only after the currency of the penalty is over** (paragraph 13 of DoPT OM dated 10-04-1989)”.*

9. In the instant matter penalty of ‘Censure’ was imposed which has no currency. Since penalty of ‘Censure’ has no currency & as per 7(g) the officer can be actually promoted only after the currency of penalty is over, Dr. Ram Kishan was granted 1st Financial Up-gradation under MACP Scheme from the date of issue of order imposing penalty of ‘Censure’ on him. It is very much clear that 1st Financial Up-gradation under MACP Scheme can not be granted before the conclusion of the disciplinary proceedings against the employee. Hence 1st Financial Up-gradation under MACP Scheme was granted w.e.f. date of penalty i.e 07.12.2017.

10. It was submitted that no discrimination was made against Dr. Ram Kishan, Asstt. Professor on the grounds of his disability. The action has been taken as per rules.

11. During the course of hearing, complainant reiterated that the respondent deliberately delayed the disciplinary proceedings against him by more than 3 years despite the fact that it should have been concluded within timeframe of 6 months as prescribed by various circulars/orders of CVC, which consequently caused delay in granting of MACP. The matter has been examined at length and taking into account the submissions given by SCERT as well as information/record available in the file, it was found that the respondent department is not solely responsible for delay in completing the proceedings of the inquiry against the complainant. No doubt there were some delay due to administrative reasons viz. change of Inquiry Officer etc., it was also delayed because of non-cooperation of the charged officer i.e. the complainant viz. seeking extension of time for submitting his reply and later demanding Hindi version of charge-sheet and other documents. The complainant could have asked for the same at initial stage. The same was also observed by the CIC in its order dated 19.08.2015 which clearly states:

- (i) *“Though, an employee facing disciplinary charges does not have any moral or legal right to skip the inquiry or defy the process of inquiry and go on filing plethora of RTI applications seeking information not related to allegation against him, but to harass the officers who he suspect to have complained or gave evidence or provided information or took action against him.*
- (ii) *The RTI is not a rendezvous for suspended employees or those erring personnel facing inquiries to serve their personal interests in protecting their misconduct or preventing the authorities from proceeding with penal proceedings enquiring into misconduct.*

*(iii) The Commission directs the appellant to face the inquiry with all material he has and cooperate with the inquiry officer to complete the process in reasonable time.”*

12. After due deliberations and discussions, taking due cognisance of submissions made by the complainant & the respondent, it is observed that the respondent department i.e. SCERT besides examining all available records should have completed the administrative actions within the prescribed time frame. The respondent should have tried to minimise the delay in completing the inquiry, which in the subject case did not happen. Undue delay is unfortunate.

13. It is recommended that the respondent should be careful in future while dealing with such a time bound case especially involving person with disabilities. Besides, Director, SCERT is advised to dispose of all the representations submitted by the complainant during the course of personal hearing given by him to the complainant and ensure that no discrimination is made against the complainant.

14. The matter is disposed of accordingly.

15. This court be informed of the action taken by the respondent within 3 months from the date of receipt of this order as required under Section 81 of RPwD Act, 2016.

16. Given under my hand and the seal of the Court this 04<sup>th</sup> day of October, 2021.

**(Ranjan Mukherjee)**  
**State Commissioner for Persons with Disabilities**