

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE**

ORIGINAL APPLICATION NO.170/01699/2018

DATED THIS THE 31st DAY OF JANUARY, 2020

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Sri Anthony Steven
S/o Late Daniel Crasta
Aged: 49 years
Working as MTS
Koramangala VI Block
Bangalore-560095.
Residing at:
No.19/2, 9th Cross
Maruthinagar
New Extension, Madiwala
Bangalore-560068.

....Applicant

(By Advocate Sri P.Kamalesan)

Vs.

1. Union of India
Reptd by Director General
Department of Post
Dak Bhavan
New Delhi-110001.
2. Chief Post Master General
Karnataka Circle
Bangalore-560001.
3. Post Master General
S.K. Region
Bangalore-560001.
4. Senior Superintendent of Post Offices
Bangalore South Division
Bangalore-560041.
5. Senior Post Master
Basavanagudi HO
Bangalore-560004.

....Respondents

(By Advocate Sri K.Gajendra Vasu, Sr.CGC)

O R D E R

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The case of the applicant is that he was conferred with temporary status w.e.f. 29.11.1989. After completion of 3 years without status as on 29.11.1992, he is eligible to be granted temporary status on par with Group-D. But he was granted permanent status on 26.4.2006 and he was placed under new pension scheme. Aggrieved by placing him under new pension scheme and not granting temporary status on par with Group D from 29.11.1992, the applicant has filed OA.No.494/2009 which was allowed by this Tribunal vide order dtd.11.2.2011(Annexure-A1). The respondents have challenged the said order before the Hon'ble High Court of Karnataka in WP.No.11679/2011 which was dismissed by the High Court vide order dtd.7.4.2015(Annexure-A3). Thereafter, the respondents have challenged the above order of the Hon'ble High Court before the Hon'ble Apex Court in SLP CC No.19809/2015. The Hon'ble Apex Court has also dismissed the SLP vide order dtd.6.11.2015(Annexure-A4). Thereafter the Min. of Communications & IT vide letter dtd.8.1.2016 issued orders to implement the orders of this Tribunal(Annexure-A5). The Supdt. of Post Office, Bangalore South Division issued orders dtd.23.2.2016(Annexure-A6) for selecting the applicant on the basis of selection cum seniority as MTS from 29.11.1992. He issued another order dtd.15.3.2016(Annexure-A7) selecting the applicant on the basis of selection cum seniority as MTS from 29.11.1992. The 4th respondent issued orders dtd.25.4.2016(Annexure-A8) & dtd.25.4.2016(Annexure-A9) granting 1st & 2nd financial upgradations under MACP w.e.f. 1.9.2008 and 1.12.2012 respectively to the applicant. Thereafter the 4th respondent issued orders dtd.12.2.2018(Annexure-A10) for modifying the date of appointment of the applicant as MTS from 29.11.1992 to 26.4.2006 and order

dtd.24.4.2018(Annexure-A11) for withdrawing the 1st and 2nd MACPs. The 4th respondent vide letter dtd.16.5.2018(Annexure-A12) granted 1st MACP from 28.4.2016 to the applicant. The applicant submitted a representation to the Chief Post Master General(CPMG), Karnataka Circle on 28.5.2018(Annexure-A13) regarding the modification of date of appointment as MTS and withdrawing of financial upgradations. The 5th respondent issued orders for recovery of Rs.1,96,958/- in instalments of Rs.5000 per month from the pay and allowances from June 2018 vide letter dtd.20.6.2018(Annexure-A14). Then the applicant submitted representation on 23.6.2018(Annexure-A15) to the 5th respondent requesting not to implement the order of recovery on the ground that his representation is pending with CPMG, Karnataka Circle. But the 5th respondent implemented the order of recovery at the rate of Rs.5000/- per month from the salary of June, 2018(Annexure-A16). The applicant submits that the Hon'ble Apex Court in *Civil Appeals No.1855-1857/1971* held that promotion/upgradation made on permanent basis and so reversion of the promoted/upgraded incumbents is violative of Article 311(2) of the Constitution of India(Annexure-A14). In *Civil Appeal No.11527/2014(State of Punjab vs. Rafiq Masih)*, the Hon'ble Apex Court has declared that any recovery from Group C and D is impermissible in law(Annexure-A15). The applicant submits that without issuing any show cause notice, the respondents unilaterally modified the appointment date as 26.4.2006 which is in violation of principles of natural justice and also withdrawn the financial upgradations which is arbitrary and illegal. Therefore, the order of modifying the date of appointment, withdrawing the financial upgradations under MACP and the order of recovery are arbitrary and

unsustainable under law. Accordingly, the applicant has filed the present OA seeking the following relief:

I. Quash the Senior Superintendent of Post Offices, Bangalore South Division, Bangalore-560041, vide No.B2/MACP/Dlgs/17-18 dated 12.2.2018 vide Annexure-A10.

II. Quash the Senior superintendent of post office, Bangalore South Division, Bangalore-560041, Memo No.B2/MACP I & II/MTS/Dlgs/17-18 dated 24.4.2018 vide Annexure-A11.

III. Quash the Senior Post Master, Basavanagudi, Bangalore-560004, letter No.A2/Dlgs/17-18 dated.20.6.2018 vide Annexure-A14.

IV. Direct the respondents to treat the date of appointment of the applicant as MTS from 29.11.1992 and consequently direct the respondent to restore the financial upgradation MACP I & II from 1.9.2008 and 1.12.2012 respectively.

V. Grant any other relief as deemed fit into facts and circumstances of the case, in the interest of justice and equity.

2. The respondents, on the other hand, have submitted in their reply statement that the applicant, Contingent Chowkidar working at Banashankari-II stage was conferred with temporary status Group D w.e.f.26.11.1989 notionally and not physically worked in the post of Group D vide Divisional office letter dtd.26.7.2004 and he was treated on par with the Group D/MTS after completion of 3 years of service i.e. on 29.11.1992 in the temporary status. The casual labour who is conferred with temporary status and who have completed 3 years of service in that status are entitled for grant of pension and retirement benefits after their regularisation. The applicant was appointed on regular basis as Group D w.e.f. 26.4.2006 vide letter dtd.17.4.2006. Hence, recovery of contribution was effected under the New Pension Scheme which comes into operation w.e.f. 1.1.2004 to all the central Govt. Employees who joined Govt. Service on or after 1.1.2004, instead of bringing the applicant under the CCS(Pension) Rules, 1972. Aggrieved by this, the applicant had approached the Tribunal in OA.No.494/2009 which was allowed. The department filed a Writ Petition No.11679/2011 before

the Hon'ble High Court and SLP.No.19809/2015 before the Hon'ble Apex Court and both were dismissed. Hence, the department is left with no other option but to implement the Tribunal's order in OA.No.494/2009. Meanwhile, a Contempt Petition No.234/2015 filed by the applicant came up contenting that the NPS recovery is still being made from the salary of the applicant and the NPS amount already recovered has not been repaid to him. The same was conveyed to Sr.Postmaster, Basavanagudi HPO to take immediate action. In reply, the Sr.Postmaster vide letter dtd.22.2.2016 intimated to issue the orders for regularization of service w.e.f. 29.11.1992 and to issue MACP-1 & II orders and directed DA(P), BG-1 to transfer the entire accumulated NPS amount to the Government account. The same was informed to 2nd respondent vide letter dtd.23.2.2016. However, 4th respondent vide letter dtd.15.3.2016 regularized the date of entry of the applicant into Govt. Service as 29.11.1992 as per the order of the Tribunal and minutes of screening committee for the financial upgradation held on 17.3.2016 were sent for approval. On receipt of approval from CO vide letter dtd.21.4.2016, the applicant was granted MACP I & II. Meanwhile, clarification was sought from the 2nd respondent regarding grant of MACP on implementation of the Tribunal's order. In reply, 3rd respondent vide letter dtd.27.12.2017 conveyed that the case was reviewed by the competent authority based on the CIFA observations that 'the Tribunal order only states that the applicant is eligible for pension under the pension rules of 1972 from the date he was granted temporary status. It does not state that the applicant should be appointed as MTS from 29.11.1992. The decision is limited to whether the applicant will be governed by the Old Pension Rules or not. Hence, the order appointing the applicant as MTS from 29.11.1992 is erroneous and corrective

action is to be taken'. On receipt of the clarification from the 3rd respondent, action was initiated to rectify the erroneous action by the 4th respondent vide letter dtd.12.2.2018 and partial modification was issued stating that the date of appointment of the applicant to read as 26.4.2006 on which date he was appointed on regular basis as Group D instead of 29.11.1992 and only 50% of service rendered in temporary status is to be counted for the pensionary benefits. On modifying the date of appointment, the action for rectifying the erroneous grant of MACP-I and II had to be initiated. Approval of the competent authority for holding review screening committee meeting was received and same was held on 15.2.2018. The minutes of the screening committee was approved by the competent authority vide letter dtd.19.6.2018. The financial upgradation I and II was withdrawn by the 4th respondent vide letter dtd.24.4.2018. As the applicant is eligible for the first financial upgradation w.e.f. 28.4.2016 and not for 2nd financial upgradation as the revised date of appointment is 26.4.2006. The respondent No.5 vide letter dtd.20.6.2018 directed the applicant that the over payment of pay and allowances worked out to Rs.1,96,958/- and it will be recovered from the pay and allowances commencing from the pay of June 2018. The financial upgradation is not a promotion and purely personal to the employees concerned, there shall be no change in the designation, classification or higher status and shall have no relevance to their seniority position. The officials will be informed while issuing the orders that the orders of financial upgradation given are liable to be either modified or cancelled at a later date if it is found that they are not found fit or not eligible for such financial upgradation under MACP for any reason. Any excess paid amount is liable to be recovered on a later date. Hence, the applicant should voluntarily credit the amount without giving room for recovery

when he is not eligible for that financial upgradation. The modification of date of appointment and withdrawal of financial upgradation made were according to the extant rules on the subject which was conveyed by the 3rd respondent vide letter dtd.27.12.2017. As per the orders of competent authority, corrective action has been taken. The recovery ordered by the 5th respondent was stopped on receipt of the interim order passed by this Tribunal on 25.10.2018 vide divisional office letter dtd.6.11.2018. Hence, the applicant is not entitled for any relief as prayed by him and the OA is liable to be dismissed.

3. The applicant has filed rejoinder reiterating the submission already made in the OA and submits that in accordance with the Govt. of India, Dept. of Posts letter dtd.12.4.1991(Annexure-R1), he is eligible for conferment of temporary status on par with temporary Group-D employee. The Dept. of Posts vide letter dtd.30.11.1992, conferred benefits to casual labours on completion of 3 years of service in temporary status according to which in accordance with the direction of the Hon'ble Apex Court vide judgment dtd.29.11.1989, the casual labours after rendering three years of continuous service, with temporary status, they shall be treated at par with temporary Group-D employees of the Dept. of Posts and would thereby be entitled to such benefits as are admissible to Group-D employees on regular basis(Annexure-R2). As the applicant had completed 3 years of service as temporary status as on 29.11.1992 and eligible for all benefits of Group-D employee, he was selected as MTS on permanent basis w.e.f. 29.11.1992 against vacant post vide Sr.Supt. of Post Offices letter dtd.15.3.2016(Annexure-R4) and was granted 1st MACP & 2nd MACP vide Annexure-R5 & R6. Without any show cause notice, the 4th respondent modified the date of appointment of the applicant in the cadre of MTS as 26.4.2006

instead of 29.11.1992. Based on CIFA observation, the date of entry of the applicant was modified without application of mind by the competent authorities. Therefore, modification of date of entry, withdrawal of 1st & 2nd MACP were illegal, arbitrary and without application of mind.

2. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. The applicant's status as an employee with temporary status on par with Group-D w.e.f. 29.11.1992 has been concretized vide order dtd.11.2.2011 issued in OA.No.494/2009 by this Tribunal and the order passed in WP.No.11679/2011 vide dtd.7.4.2015 by the Hon'ble High Court of Karnataka and also by the order of the Hon'ble Apex Court in SLP CC No.19809/2015 vide dtd.6.11.2015. Vide Annexure-A8 order dtd.25.4.2016, the applicant is granted 1st MACP w.e.f. 1.9.2008 taking the service w.e.f.29.11.1992. Subsequently vide Annexure-A9, he has also been given 2nd MACP w.e.f.1.12.2012. Vide Annexure-A10, the respondents have unilaterally taken the date of appointment of the applicant as 26.4.2006 instead of 29.11.1992 and have also withdrawn the 1st and 2nd MACP benefits granted vide Annexure-A11 order without any notice to the applicant. Vide Annexure-A14, the 5th respondent issued orders for recovery of excess pay and allowances because of withdrawal of 1st & 2nd MACP benefits. As already noted, the confirmation of temporary status on par with Group-D has been done w.e.f. 29.11.1992. The two MACPs have been given to the applicant without any juncture from the applicant. The respondents would claim that the orders of upgradation clearly state that these orders are liable to be either modified or cancelled at a later date if it is found that the applicant is not fit or eligible for such financial upgradations under MACP for any reason. They state that in view of this point, the applicant cannot claim the

MACP as a matter of right. The applicant would contend that he is clearly coming under the impermissible recoveries as ordered by the Hon'ble Apex Court in the *State of Punjab & others vs. Rafiq Masih(White Washer)*'s case.

3. We agree with the contention of the applicant and inasmuch as the two MACPs have been given without any juncture from the applicant, the respondents have erred in withdrawing the same without giving any opportunity to the applicant and therefore the recovery orders issued against the applicant are quashed. Any amount recovered from the salary of the applicant has to be repaid to the applicant within a period of two(2) months from the date of issue of this order.
4. The OA is allowed to this extent. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred by the applicant in OA.No.170/01699/2018

Annexure-A1: Order dtd.2.12.2011 in OA.No.494/2009
Annexure-A2: Order dtd.24.2.2011 in MA.80/20111(OA.494/2009)
Annexure-A3: Order dtd.7.4.2015 in WP.11679/2011
Annexure-A4: Order dtd.6.11.2015 in SLP Appeal CC No.19809/2015
Annexure-A5: Letter dtd.8.1.2016 of Min. of Communications & IT
Annexure-A6: Letter dtd.23.2.2016 of Supdt. of Post Offices

Annexure-A7: Letter dtd.15.3.2016 of Supdt. of Post Offices
Annexure-A8: Letter dtd.25.4.2016 of Sr.Supdt. of Post Offices
Annexure-A9: Letter dtd.25.4.2016 of Sr.Supdt. of Post Offices
Annexure-A10: Letter dtd.12.2.2018 of Sr.Supdt. of Post Offices
Annexure-A11: Memo dtd.24.4.2018 of Sr.Supdt. of Post Offices
Annexure-A12: Memo dtd.16.5.2018 of Sr.Supdt. of Post Offices
Annexure-A13: Applicant's representation dtd.28.5.2018
Annexure-A14: Letter dtd.20.6.2018 of Sr. Post Master
Annexure-A15: Applicant's representation dtd.23.6.2018
Annexure-A16: Applicant's pay slip for the month of July 2018
Annexure-A17: Order dtd.2.12.1981 in CA.No.1855-1857/1971
Annexure-A18: Order dtd.18.12.2014 in CA.No.11527/2014

Annexures with reply statement:

-NIL-

Annexures with rejoinder:

Annexure-R1: Letter dtd.12.4.1991 of DOT
Annexure-R2: Letter dtd.30.11.1992 of DOT
Annexure-R3: Memo dtd.26.7.1994 of Sr.Supdt of Post Offices
Annexure-R4: Letter dtd.15.3.2016 of Sr.Supdt of Post Offices
Annexure-R5: Letter dtd.23.4.2016 of Sr.Supdt of Post Offices
Annexure-R6: Letter dtd.25.4.2016 of Sr.Supdt of Post Offices
Annexure-R7: Letter dtd.12.2.2018 of Sr.Supdt of Post Offices
