

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 618 of 2012

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Narottam Sahoo, aged about 59 years, S/o Late Balakrishna Sahoo, permanent resident of Vill/PO-Analabarani, Via-Analabarani, Dist.- Dhenkanal, at present working as Postal Assistant, SPM, Mathakargola SO, Dist.-Dhenkanal.

.....Applicant.

VERSUS

1. Union of India, represented through its Director General of Posts, Ministry of Communication, Govt. of India, At-Dak Bhawan, New Delhi – 110001.
2. Chief Post Master General, Odisha Circle, Bhubaneswar, At/PO-Bhubaneswar, Dist.- Khurda.
3. Post Master General, Sambalpur Region, At/PO-Dist.- Sambalpur.
4. Director of Postal Services, Sambalpur Region, Sambalpur, At/PO/Dist.-Sambalpur.
5. Superintendent of Post Offices, Dhenkanal Division, Dhenkanal, At/PO/Dist.-Dhenkanal.
6. Postmaster, Dhenkanal HO, At/PO/Dist.-Dhenkanal.

.....Respondents.

For the applicant : Mr.S.Pattnaik, counsel
 Mr.B.R.Kar, counsel

For the respondents: Mr. L.Jena, counsel

Heard & reserved on : 02.01.2020

Order on : 16.01.2020

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant by filing this OA, has prayed for the following reliefs under section 19 of the Administrative Tribunals Act, 1985 :

- “(i) Let it be declared/hold that, the order dated 07.08.2012 under Annexure-A/4 is illegal, inoperative, non-sustainable in the eye of law and liable to be struck down.
- (ii) Let it be declared that, the 2nd financial upgradation under MACP w.e.f. 01.09.2008, under Annexure-A/3 conferred in favour of the applicant is highly justified within the purview of MACP Scheme.
- (iii) And pass such order/orders/direction as deem fit and proper to the facts and the circumstances of the case to give complete relief to the Applicant.”

2. The case of the applicant is that he was first appointed as a Postman which is a Group-D post on 11.1.1983 after qualifying the test meant for selection from the Extra Departmental Delivery Agent (in short EDDA) and then he was appointed as Postal Assistant (in short PA) on 18.7.1988. After completion of 16 years of service as PA, he was allowed the benefit of financial upgradation under TBOP Scheme w.e.f. 2.8.2004 vide order dated 27.4.2005 (Annexure-A/2). Then vide order dated 8.3.2010 (Annexure-A/3), the applicant was allowed the benefit of 2nd financial upgradation under the Modified Assured Career Progression (in short MACP) Scheme, allowing the Grade Pay of Rs. 4200/- to him w.e.f. 1.9.2008, after completion of 20 years of service as PA. But subsequently, the respondents have passed another order dated 7.8.2012 (Annexure-A/4) modifying the order dated 8.3.2010 and allowing the benefit of 3rd financial upgradation under MACP after completion of 30 years of service from the date of appointment as Postman and allowing the Grade Pay of Rs. 4200/- w.e.f. 12.1.2013 instead of from 1.9.2008 as per the order at Annexure-A/3. Thus, the order at Annexure-A/3 granting the Grade Pay of Rs. 4200/- from 1.9.2008 under 2nd MACP, has been modified by the order dated 7.8.2012 which allowed 3rd MACP benefit to Grade Pay of Rs. 4200/- w.e.f. 12.1.2013. The applicant apprehends coercive action like recovery of excess amount paid to him from 1.9.2008 till 11.1.2013. The OA has been filed by him challenging the order dated 7.8.2012 (Annexure-A/4).

3. The ground urged in the OA is that in the order dated 8.3.2010 (A/3), the respondents granted 2nd MACP benefit after 20 years of service, treating the appointment as PA on 18.7.1988 as the initial appointment. But in the order dated 7.8.2012 (A/4), the respondents have treated appointment as Postman as initial appointment and appointment as PA as a promotion from the post of Postman to PA. Such contention is denied by the applicant who believes that his appointment as PA was not a promotion but initial appointment on selection. If the appointment of Postman w.e.f. 11.1.1983 is taken as the initial appointment in the base cadre, then the applicant will not be entitled for 2nd MACP benefit w.e.f. 1.9.2008 since he had availed one promotion from Postman to PA on 18.7.1988 and then another upgradation under TBOP w.e.f. 2.8.2004 as per the order at Annexure A/2. The applicant avers in the OA that his appointment as PA from Postman Cadre after selection through an examination should be considered as a direct appointment and not promotion and he should get the benefit of the 2nd MACP w.e.f. 1.9.2008 which was correctly granted to him as per the order at Annexure A/3.

4. The respondents have filed the counter reply to the OA stating that the applicant had appeared in selection for the post of Postman as Extra

Departmental Delivery Agent and qualified in the said examination. He joined as Postman on 11.1.1983. Thereafter, he appeared in the departmental examination for the post of PA and after qualifying the said examination, he was appointed as PA w.e.f. 18.7.1988. Under TBOP scheme he was allowed the financial upgradation w.e.f. 2.8.2004 after completion of 16 years service in PA cadre. After introduction of MACP scheme, the applicant was erroneously granted the benefit of 2nd MACP to the grade pay of Rs.4200/- w.e.f. 1.9.2008. It is stated that since he has availed one promotion from Postman to PA and one upgradation under TBOP scheme w.e.f. 2.8.2004 the applicant was not entitled for 2nd financial upgradation. It is further stated that he was eligible for 3rd financial upgradation under MACP after completion of 30 years of regular service w.e.f. 12.1.2013, which has been correctly decided vide order dated 7.8.2012 (Annexure A/4). It is further mentioned that the applicant has not exhausted the departmental channel before approaching the Tribunal. Since other officials who were similarly placed as the applicants have been denied such benefits, allowing 2nd financial upgradation w.e.f. 1.9.2008 treating PA as initial appointment will give rise to claim of others. Regarding the averment on apprehension of recovery in the OA, it is stated that the excess amount is required to be recovered otherwise there will be a huge loss to the department and this will lead to further litigation among other employees.

5. No rejoinder has been filed by the applicant. Heard learned counsels for the applicant and the respondents and considered the pleadings as well as submissions made by both the counsels. Learned counsel for the applicant argued that the appointment of the applicant as PA is to be considered to be a direct recruitment and not promotion.

6. The issue to be decided in this case is whether the applicant's claim that his appointment in PA cadre after qualifying a limited departmental examination is not to be treated as promotion, is correct.

7. Regarding the issue of alternative remedy, which is raised by the respondents, it is seen that the applicant has not represented against the order dated 7.8.2012 (Annexure A/4) before the higher authorities of the department and has approached the Tribunal. No rule or circular has been produced by the respondents in support of the averment that there was a departmental remedy available to the applicant in such matter. It is also seen that vide order dated 23.8.2012 of this Tribunal, when the matter was considered for admission, the OA was admitted after hearing both the learned counsels. At that point no ground of alternative remedy was raised by the respondents as revealed from the order dated 23.8.2012. In that order, a direction was issued to the respondents not to take any coercive action in recovery from the salary of the

applicant without affording reasonable opportunity to the applicant. There is nothing on record to show that this order of this Tribunal has been sought to be modified by the respondents which seem to have raised the issue of alternative remedy in the counter. In the circumstances the ground of alternative remedy when the matter has been finally heard cannot be accepted and the OA deserves to be considered on merit.

8. It is noticed that although the applicant claims that his appointment as PA from the Postman cadre was direct recruitment and it should be treated as initial appointment, no rule or authority in support of such contention has been furnished by the applicant. The applicant simply relies on the order dated 8.3.2010 by which he was granted 2nd MACP benefit after completion of 20 years of service, treating his appointment as PA to be the initial appointment. He also relies on the order at Annexure A/2 by which he was granted financial upgradation under TBOP after completion of 16 years of service as PA. The copy of the appointment order of the applicant as PA has not been furnished by the applicant, which could have revealed the nature of such appointment. In view of the averment in the Counter that the applicant was wrongly allowed 2nd MACP benefit w.e.f. 1.9.2008 as per order dated 8.3.2010, the said order cannot be relied to support the applicant's claim.

9. Learned counsel for the respondents at the time of hearing submitted copy of some of the relevant pages from the service book of the applicant where it is mentioned that the applicant came out successful in the examination of PA and after completion of the practical training he joined as PA. The copy of the service book does not clearly show if the appointment as PA was on promotion or direct appointment. The applicant has not been able to substantiate his claim that his appointment as PA was not on promotion but direct recruitment. No rule or no authority has been cited in support of his claim except for relying upon the orders of the respondents at Annexure A/2 and A/3. In absence of any document/authority, it is not possible on the part of this Tribunal to accept such contentions of the applicant.

10. In view of the above discussions, the applicant's claim that appointment of Postal Assistant is not to be treated as promotion, but as a direct recruitment, cannot be accepted. The issue at paragraph 6 above is answered accordingly. Hence, the applicant has availed first promotion from Postman to Postal Assistant as 1st promotion/upgradation and then availed TBOP benefit. He will therefore, not be eligible for 2nd financial upgradation under MACP, which was wrongly granted to him vide order dated 8.3.2010. It is noticed that the respondents have not explained under what circumstances wrong order like Annexure A/3 was passed, except stating that it was issued erroneously. If

such wrong order was issued, why it could not be detected prior to issue of the order at Annexure A/4 on 7.8.2012, has not been clarified by the respondents. From the factual circumstances of the case, it would appear that the respondent authorities are not clear about the nature of appointment of Group D employees in Postal Assistant cadre in Group C after qualifying in a limited departmental examination. Further, whether the said appointment is to be treated as a promotion or direct appointment under the relevant rules is not being clearly mentioned in the appointment/promotion orders, which may result in loss to Government exchequer through excess payment to the employees due to erroneous financial upgradation or otherwise. We hope that the respondents will take appropriate remedial action to prevent such mistakes in future.

11. Accordingly the OA being devoid of merit is dismissed. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath