

RESERVED**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH****Original Application No.20/367/2015****Hyderabad, this the 24th day of January, 2020**

Hon'ble Mr. Ashish Kalia, Member (Judl.)
Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

R. Venkatramudu, S/o. Gopi,
 Aged about 64 years, Retired Superintendent of Post Offices,
 Amalapuram Division, Amalapuram,
 West Godavari District.

... Applicant

(By Advocate Mrs. Rachna Kumari)

Vs.

1. Union of India, Rep. by
The Director General, Posts,
Department of Posts, Dak Bhavan,
Sansad Marg, New Delhi -1.
2. The Chief Postmaster General,
A.P. Circle, Hyderabad.
3. The Director of Accounts (Postal),
O/o. The Chief Postmaster General,
A.P. Circle, Hyderabad.
4. The Postmaster General,
Vijayawada Region, Vijayawada.
5. The Postmaster General,
A.P. North Eastern Region,
Visakhapatnam.
6. The Accounts Officer,
Internal Audit Branch, O/o. The Director of Accounts (Postal),
A.P. Circle, Hyderabad.
7. Superintendent ,
Railway Mail Services, Y Division,
Vijayawada.

8. The Accounts Officer, IFA,
O/o. The Postmaster General,
Visakhapatnam Region,
Visakhapatnam – 530 017.
9. The Superintendent of Post Offices,
Amalapuram Division, Amalapuram – 533 201,
East Godavari District.
10. The Head Record Officer,
RMS Y Division, Vijayawada.



... Respondents

(By Advocates: Mrs. C. Vijaya Laxmi, proxy counsel for
Mr. T. Hanumantha Reddy, Sr. PC for CG)

ORDER

{As per B.V. Sudhakar, Member (Admn.)}

2. OA is filed seeking the following relief:

“a) to call for the records pertaining to the impugned order No. (i) 703/IA-I/SA-IV/MACP case / RVR dated 18.11.2014 and of the 3rd respondent, rejecting the claim of the applicant for grant of MACP-III on the ground that the applicant was already granted three promotions ignoring the decisions of the Jodhpur Bench of the Hon’ble Tribunal and the impugned audit objection vide (ii) Memo. No. RM No. 18/Audit Objection dated 18.05.2010 of the 3rd Respondent, and consequential recovery of Rs.32,890/- made in the pensionary benefits of the applicant, declaring the same as arbitrary, illegal, unwarranted and misconceived and in violation of the dictum laid down by the Hon’ble Supreme Court of India, in Civil Appeal No. 11527 of 2014 dated 18.12.2014 and set aside the same and consequently direct the respondents to grant the MACP III duly fixing the pay and allowances in the next stage, regularizing the financial upgradation already granted and to refund the recovery of Rs.32,890/- made from the Retirement benefits duly refunding the same with interest at 18% per annum; with all consequential benefits;”

3. Brief facts of the case are that, the applicant was initially appointed as LDC/UDC, Savings Bank Control Organization (SBCO) w.e.f. 25.09.1973. He was granted One Time Bound Promotion (OTBP) w.e.f. 01.08.1991, which was subsequently declared as financial upgradation and not a promotion. Further, consequent to passing the Departmental



Competitive Examination under Direct Recruitment, he was promoted as Inspector of Post Offices (IPO) on 24.06.1993. Thereafter, he was promoted as Asst. Superintendent of Post Offices (ASPOs) on 01.08.1996 in the normal course. On introduction of MACP Scheme, he was granted MACP-III w.e.f. 01.09.2008 in the Grade Pay of Rs.4800/- vide Memo. dt. 23.04.2010, having completed 30 years of service. While so, on 18.05.2010, an Audit Inspection was conducted and an objection was raised that as the applicant has already got three promotions, further upgradation by 3rd MACP may not be in order and advised that pay and allowances paid on account of upgradation amount to Rs.23,826/- may be recovered from the applicant. Aggrieved by the said objection, applicant made representation on 16.09.2010 to the 2nd respondent to close the audit objection in view of the action taken in respect of similarly situated cases pertaining to Sri G. Mukteswara Rao, ASP, Tenali Division and Sri P. Parisuddha Rao, ASP, Repalle Sub Division, whose cases were referred to 2nd respondent, who, in turn, disposed of the cases vide order dt. 30.08.2010 directing for grant of reliefs citing illustration -2 of MACP guidelines. Applicant was considered for further promotion posting him to work in the cadre of PS Group B in the post of Superintendent of Post Offices, Amalapuram for a period of 11 months on adhoc basis, vide Memo dt. 20.09.2010.

2nd respondent examined the issue of MACP III of the applicant vide Memo. dated 04.10.2010 and addressed the 4th respondent, clarifying that the grant of MACP III to the applicant was in order and therefore, the applicant was eligible to draw the MACP III benefit and suggesting that the

matter be taken up with the 3rd respondent to settle the objection and to close the audit objections. Accordingly, the office of the Postmaster General, Vijayawada Region addressed the 9th respondent on 11.10.2010 requesting for closure of audit objections. Consequently, pay fixation of the applicant was also done vide Pay Entitlement Certificate dt. 25.11.2010 fixing his scale in Rs.9300-34800 with GP of Rs.4800/-.



In spite of the above orders, 10th respondent addressed the Postmaster, Amalapuram on 07.03.2011 to recover an amount of Rs.32,832/- towards the alleged excess pay and allowances paid from 01.09.2008 to 27.09.2010. Applicant represented to the 2nd respondent on 04.05.2011, which was referred by the 4th respondent to the 5th respondent on 09.06.2011. Finally, the 2nd respondent clarified vide Memo dt. 05.10.2011 that the applicant along with other officials is entitled to be considered as having availed one financial upgradation and one regular promotion and therefore, he is eligible for 3rd MACP. It was further advised by the 2nd respondent to take up the matter with the 3rd respondent to settle the objection and the same was also communicated to the 9th respondent by the 4th respondent on 12.10.2011. While working as Superintendent of Post Offices, Amalapuram Division, applicant retired from service on 31.12.2011 after attaining the age of superannuation and at the time of his retirement, 10th respondent took up the issue with the 3rd respondent vide letter dt.24.10.2011 requesting to close audit objection. In spite of the clarifications issued by the respondents Nos. 2, 4, 5 & 9, instructions were issued to the Postmaster, Vijayawada HO to recover an amount of Rs.32,890/- from the Retirement Gratuity, vide Memo. dt.

16.12.2012. Applicant submitted a representation dt. 26.09.2013, for which there is no response. In those circumstances, in order to avail his retirement benefits, as ordered by the 4th respondent, the applicant has voluntarily credited the said amount on 24.02.2012. This OA is filed seeking the relief mentioned above.



4. The contentions of the applicant are that the Hon'ble Jodhpur Bench of this Tribunal dealt with similar issue in OA No. 382/2011 along with a batch of cases wherein, relief was granted as prayed by the applicants therein. Guidelines were issued in respect of direct recruitment by undergoing the process of selection under direct recruitment and according to them, such selection cannot be called as promotion. Case of the applicant is squarely covered by the order of the Hon'ble Jodhpur Bench supra. It is further contended by him that the Hon'ble Supreme Court in Civil Appeal No. 11527/2014, has laid down law in regard to recoveries from the employees and as per the said verdict, recovery from the retired person is impermissible and as such, he is entitled to the refund of the recovery made.

5. Respondents contested the OA by filing a reply statement, wherein, they admitted the facts regarding initial appointment of the applicant on 25.09.1973 and grant of TBOP on 01.08.1991. It is also admitted that, applicant was promoted as Inspector of Post Offices w.e.f. 24.06.1993 consequent on passing the Departmental Competitive Examination under Direct Recruitment and subsequently, he was promoted as Asst.



Superintendent of Post Offices, w.e.f. 1.8.1996. Thereafter, he was granted MACP III w.e.f. 01.09.2008 on completion of 30 years. However, an internal audit party reviewed his case and raised an objection and advised for recovery of Rs.23,826/- from the applicant and to regulate his pay. It is stated that the Asst. Accounts Officer (Central Inspection Section), Director of Accounts (Postal) Hyderabad vide letter dt. 19.01.2011 has informed the HRO, Vijayawada that an employee who has already availed 3 promotions (TBOP, IP & ASP) would not be entitled for any further financial upgradation under MACPs, in view of DOPT OM No. 35034/3/2008-Estt (D) dated 09.09.2010. Consequently, the impugned recovery was initiated. The applicant has credited the objected amount of Rs.32,890/- towards excess paid pay and allowances in c/w. MACP III vide Review Memo No. 18, dated 18.05.2010 of Internal check inspection on RMS Y Division, Vijayawada under UCR Receipt dt. 24.02.2012 and the same was submitted to the field audit party who carried out the internal audit inspection. Accordingly, the Asst. Accounts Officer, Internal Audit Party vide letter dt. 08.12.2014 admitted the para.

The respondents clearly admitted in the reply statement that the Chief Postmaster General, Andhra Pradesh Circle, Hyderabad, has examined the issue of MACP III of the applicant and replied to the Postmaster General, Vijayawada in their letter dt. 04.10.2010 "Clarifying that the grant of MACP III to the applicant was in order and therefore, the applicant was eligible to draw the MACP III benefit and suggested to take up the matter with the Director of Accounts (Postal), Andhra Pradesh circle, Hyderabad



to settle the objection and to close the audit objections.” Respondents denied that the Postmaster General, Vijayawada Region addressed the Superintendent of Post Offices, Amalapuram, 9th respondent, requesting for closure of Audit Objection. However, in view of the instructions of the CPMG, Hyderabad, dt. 04.10.2010, the Postmaster General, Vijayawada directed the Superintendent, RMS ‘Y’ Division, Vijayawada, but not the Superintendent of Post Offices, Amalapuram, to take up the above issue with the Director of Accounts (Postal), AP Circle, Hyderabad on the said lines, requesting to close the objection. It is also denied that pay fixation of the applicant was also done vide Pay Entitlement Certificate dt. 25.11.2010 fixing his scale in Rs.9300-34800 with GP Rs.4800/- by virtue of 3rd MACP. It is a fact that the pay entitlement of the applicant consequent on promotion to PS Gr. B cadre on adhoc basis for a period of 11 months as per Chief Postmaster General, AP Circle, Letter dt. 14.09.2010 was intimated fixing his scale in Rs.9300-34800/- with GP Rs.4800/- and it was also informed to the Head Record Officer, RMS ‘Y’ Division, Vijayawada that audit objection raised by internal audit party during field inspection conducted at RMS Y Division during 5/2010 is in order and the objection was not admitted and also directed to regulate the pay of the applicant at Rs.22,310 (Rs.17,710 + 4600) and also directed to work out the excess paid pay and allowances from 01.09.2008 to 27.09.2010 and to recover the same and report compliance. Accordingly, HRO, RMS Y Division addressed the Postmaster, Amalapuram HO in their letter dt. 07.03.2011 duly intimating the excess paid pay and allowances from 01.09.2008 to 27.09.2010 duly worked out as Rs.32,832/- and requested the latter to recover the said excess paid pay and allowances from the applicant.

Further contention of the respondents is that MACP became operational w.e.f. 01.09.2008. Applicant was already granted three financial upgradations/ promotions earlier to the introduction of the MACP Scheme. The pay of the officer was also fixed as per the provisions of FR 22(i) (a) (i) each time when the financial upgradation was granted to him.



In view of the same, allowing another financial upgradation from 01.09.2008 is not correct. Adverting to the order of the Hon'ble Jodhpur Bench of this Tribunal in OA No. 382/2011, the respondents submitted that the said Order is not applicable to the instant case. They contend that the relief sought by the applicant cannot be granted as per the Departmental Rules.

6. Heard learned counsel for both sides and perused the pleadings on record.

7 (I) The dispute revolves around grant of MACP III to the applicant on completion of 30 years in the first instance and ordering recovery of the same pursuant to the audit objection dated 18.05.2010, on the ground that the applicant is not entitled for MACP III as he got three promotions and the same was reiterated by the 6th respondents vide impugned order dt. 18.11.2014. On a perusal of the impugned communication dated 18.11.2014, it is mentioned therein as under:

“The official was granted the following promotions:

- i) TBOP w.e.f. 01.08.1991 (Rs.1400-2300)
- ii) IPO w.e.f. 24.06.1993 (Rs.1400-2300)
- iii) ASPO w.e.f. 01.08.1996 (Grade Pay Rs.4,600/-)
- iv) MACP – III w.e.f. 01.09.2008 (Grade Pay Rs.4,800/-)

Though the official was promoted to IPO cadre from TBOP PA cadre prior to 01.01.1996 where the pay scales of both the posts are identical, the official got pay fixation benefit contrary to rules, by virtue of the CAT Judgment.

Pay fixation was also granted at the time of his promotion to the cadre of ASPO from the IPO cadre w.e.f. 01.08.1996, and thus, the official got three promotions.”



Applicant relied upon a judgment of the Hon'ble Jodhpur Bench of the Tribunal in OA No. 381/2011 and the relevant observation thereof, reads as under:

“16. It is obvious that appointment from the civil post of EDA to a regular Government employment as Group D is a fresh appointment and that has not been disputed by the respondents either. Thereafter when a Group D employees, these three applicants faced a process of selection and were appointed as Postmen, such selection cannot be called a promotion as it was not done in the course of natural progression through seniority. Any advancement in career which is based on a process of selection especially undertaken for that purpose cannot be called as a promotion. A promotion has to be in higher category in the same cadre, or service, or through a prescribed avenue of promotion, but without an element of a process of selection, through tests or examinations etc.”

He also cited an Order of this Bench in OA No. 119/2013 dt. 05.10.2018 wherein this Tribunal held as under:

“4. Learned counsel for the applicant has relied upon the judgment of Madras Bench of this Tribunal passed in OA 1088/2011 dated 14.03.2013, which was confirmed by the order of the Hon'ble High Court of Madras in W.P. No. 30629/2014 dated 04.02.2015.

5. The applicant in the cited OA was appointed as Postman in 1973 and promoted as Postal Assistant on qualifying the departmental examination in 1977. On completion of 16 and 26 years of service he was granted financial upgradations under TBOP and BCR Scheme in 1993 and 2004 respectively. After introduction of MACP Scheme he submitted a representation for grant of third financial upgradation on completion of 30 years of service, but the same was rejected by the respondents on the ground that the applicant had already earned three promotions taking into account the entry cadre as Postman. After hearing the matter, relying on the judgement of Jodhpur Bench of the Tribunal, the Tribunal held that the applicant therein is entitled for third financial upgradation and allowed the OA. The operative portion of the order reads as follows :



“As we have already stated that the orders of the Jodhpur Bench will apply to the case of the applicant herein, the OA is to be allowed as prayed for by the applicant. Accordingly, we allow the OA by setting aside the impugned order dated 28.09.2010. The respondents 1 to 3 are directed to grant the third financial upgradation to the applicant from the date on which he has completed 30 years of service or from the date on which it is due to him till his retirement. The said direction shall be complied with within a period of three months from the date of receipt of a copy of this order. We also make it clear that the order rendered by us will be subject to the result of the final outcome of the Civil Writ Petition No.11414 of 2012 pending before the Apex Court.”

6. In view of the above, we are of the opinion that the issue involved in the present OA is squarely covered by the order of the Madras Bench of the Tribunal (supra). Accordingly, the impugned orders dated 12.05.2011 and 27.06.2012 are set aside. The respondents are directed to grant 1st financial upgradation to the applicant w.e.f. 31.12.1988 when it was due to the applicant and refund the amount recovered from him. Time for compliance is three months from the date of receipt of a copy of this order. There shall be no order as to costs.”

We have also gone through the judgment of the Hon’ble High Court of Judicature at Madras in WP No. 30629 of 2014 & MP No. 1 of 2014, dt. 04.02.2015, which was relied upon in OA No. 119/2013 cited supra and the Hon’ble High Court held as under:

“9. What the Department had done is to adjust the appointment of the first respondent as the Postal Assistant on 12.11.1977, as the first financial upgradation under Modified Assured Career Progression-I. This is clearly erroneous in view of the fact that the appointment as Postal Assistant was not granted to the first respondent after mere completion of 10 years in the Cadre of Postman. From the Cadre of Postman, to which, the first respondent got appointed on 22.9.1973, he participated in a selection to the post of Postal Assistant and got appointed. Therefore, to adjust the said appointment against Modified Assured Career Progression-II, is clearly erroneous. Once that error is removed, it will be clear that the first respondent would be entitled to three modified assured career progressions for every ten years. Hence, we are of the opinion that the Tribunal was right in directing the Department not to take into account the appointment granted to the post of Postal Assistant and to adjust it against Modified Assured Career Progression-I.”

When the above judgment of the Hon’ble High Court of Madras was challenged by the Union of India before the Hon’ble Supreme Court vide

Petition for Special Leave to Appeal © No. 488/2016 and the same was dismissed by the Hon'ble Supreme court. Thus, the judgment of the Hon'ble High Court of Madras attained finality. Therefore, if the judgments referred to supra are telescoped on to the facts of the present case, it becomes crystal clear that the applicant joined as LDC on 25.09.1973, got financial upgradation under TBOB w.e.f. 01.08.1991 and thereafter, he entered the cadre of Inspector of Post Offices on 24.06.1993 on passing the Departmental Competitive Examination through direct recruitment. Subsequently, he was promoted as Assistant Superintendent of Post Offices on 01.08.1996. He was rightly given MACP III on 01.09.2008. Of course, he was given adhoc promotion as Superintendent of Post Offices 20.09.2010, which is not relevant to the issue on hand. The facts make it threadbare that the promotion to the cadre of Inspector of Post Offices has to be ignored since it is a direct entry into the said cadre and if the said promotion is ignored, the promotion/ financial upgradation given to the applicant to be reckoned as under:

- i) TBOP w.e.f. 01.08.1991
- ii) ASPo w.e.f. 01.08.1996

Thus, the applicant got one financial upgradation and one promotion, as above, by the time he completed 30 years of service. Therefore, respondents, in the first instance, rightly granted MACP III with GP Rs.4,800. We do not find any infirmity in the said order. However, a cursory look at the impugned audit objection indicates that the applicant was given three promotions. The audit objection raised lack clarity and is not in consonance with relevant rules.



II. It is of interest to note that, even according to the Department of Posts instructions contained in Circular No. 20-27/2015-SPB-II, dt. 20.08.2018, cited by the learned counsel for the applicant, Inspector of Posts is not in a regular promotional hierarchy of Postal Assistant and they can become Inspector Posts only on attaining merit in competitive examination. The relevant portion of the Circular reads thus:



“2. The matter has been examined in consultation with Establishment Division of Directorate and it has been decided to convey that Inspector of Posts is not in a regular promotional hierarchy of Postal Assistant and they can become Inspector of Posts only on attaining merit in competitive Examination. As such, 3% fitment benefit should be allowed to officials at the time of fixation of pay on promotion to the post of Inspector (Limited Departmental Competitive Examination) even after availing financial upgradation under MACP. “

Thus, it requires no reiteration that the applicant was rightly granted the MACP III w.e.f. 01.09.2008 after introduction of MACP Scheme, as by then, he had completed 30 years of service and he had got only two promotions/ financial upgradations viz., TBOB and ASPO, ignoring the promotion to IPO on 24.06.1993. Undoubtedly, it is vivid that the applicant in the instant case was promoted to the post of the Inspector of Post Offices pursuant to passing the Departmental Competitive Examination under Direct Recruitment in 1996 and as per the judicial pronouncements cited supra, the said selection of the applicant as Inspector cannot be adjusted against one promotion/ financial upgradation while granting financial upgradation under MACP. It is not out of place to also observe that the

respondents gave a similar relief to similarly situated employees like Sri G. Mukteswara Rao, ASP, Tenali Division and Sri P. Parisuddha Rao, ASP, Repalle Sub Division, as averred in the OA, and the same has not been rebutted by the respondents. If this being so, the applicant cannot be discriminated by the respondents since he is similarly placed.



III. Now coming to the impugned recovery of Rs.32,890/- in view of the MACP III granted to the applicant being under dispute, it is seen from the record that the applicant had to credit the said amount on 24.02.2012, lest his retirement benefits would not have been settled. Hence, under compulsion, it is understood that he had to credit the amount, as urged by the learned counsel for the applicant.

IV. As the applicant is entitled for MACP III benefit as observed supra, the impugned recovery is also invalid. Even otherwise, recovery from retired employees, or employees who are due to retire within one year, of the order of recovery is impermissible as held by the Hon'ble Supreme Court in *State Of Punjab & Ors vs Rafiq Masih (White Washer)* vide judgment in CA No. 11527/2014, dt. 18.12.2014. Hence, the amount so credited by the applicant needs to be refunded to the applicant.

V. In view of the aforementioned discussion, impugned order dated 18.11.2014 of the 3rd respondent and Audit Objection vide Memo dated 18.05.2010 are set aside, with the following directions:

- i) The respondents are directed to grant MACP III to the applicant from the date due and consequently, fix his pay and allowances;
- ii) Refix his pension and regulate pensionary benefits accordingly; and pay the arrears of pension/ pensionary benefits, if any, on account of refixation as directed at (i);
- iii) Refund the amount of Rs.32,890/- to the applicant.
- iv) Time granted for compliance is three months from the date of receipt of copy of this order.



With the above directions, the OA is allowed, with no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

(ASHISH KALIA)
MEMBER (JUDL.)

/evr/