**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

**OA No. 372/2015 with
OA Nos.674/2017, 359/2017, 245/2017 &
259/2018.**

Date of decision : 14.01.2020

**Coram: R. Vijaykumar, Member (A).
Ravinder Kaur, Member (J).**

ORIGINAL APPLICATION No. 372/2015.

Shri S.D. Mule,
S/o Dhondiba Mule, Aged about 63 years,
R/o- H.No. 2349, Anjana Niwas,
Samrath Nagar, Bhoom,
District -Osmanabad,
Office Address:- Worked as
Sub Postmaster,
under SPO, Osmanabad Division).

.. ***Applicant.***

(By Advocate Ms. Ashwini Chavan, proxy counsel for Ms. Priyanka Mehndiratta)

Versus

1. Union of India,
Through the Secretary,
Government of India,
Department of Posts,
Ministry of Communication & IT,
Dak Bhavan, Sansad Marg,
New Delhi- 110 001.

2. The Secretary, Government of India,
Ministry of Personnel, Public Grievances
and Pensions, Dept. of Personnel
& Training, New Delhi- 110 001.

3. The Chief Postmaster General,
Maharashtra Circle,
Mumbai - 400 001.

4. Superintendent of Post Offices,
Osmanabad Division,
Osmanabad- 413 501.

.. ***Respondents.***

(By Advocate Shri V. S. Masurkar)

ORIGINAL APPLICATION No. 674/2017.

Shri. Maulaali Ahmed Bujruk,
S/o Ahmed M. Ajim Bujruk,
Age 61 years, residing 1062,
Isapure Galli,
Miraj- 416 410.

.. ***Applicant.***

(By Advocate Shri R. B. Kadam)

Versus

1. Union of India,
Through the Secretary,
Government of India,
Department of Posts,
Ministry of Communication & IT,
Dak Bhavan, Sansad Marg,
New Delhi- 110 001.

2. The Chief Postmaster General,
Maharashtra Circle,
Mumbai - 400 001.

3. The Postmaster General,
Goa Region, Panaji- 403 001.

4. The Supdt. of Railway Mail Service,
BM Division, Miraj- 416 410.

.. ***Respondents.***

(By Advocate Naveena Kumai)

ORIGINAL APPLICATION No. 359/2017.

Bhaskar L Netardekar,
Aged 61 years,
Retired as Postal Assistant Margo HO,
E 615, Housing Board Colony,

Rumadamol, Davorlim,
P.O. Navelim, Goa- 403 707.

.. ***Applicant.***

(By Advocate Ms. Ashwini Chavan, proxy counsel for Ms. Priyanka Mehndiratta)

Versus

1. Union of India,
Through the Chief Postmaster General,
Maharashtra Circle, GPO,
Mumbai- 400 001.

2. The Senior Superintendent of
Post Offices,
Goa Division, Mapusa- 403 507.

.. ***Respondents.***

(By Advocate Ms. Naveena Kumai)

ORIGINAL APPLICATION No. 245/2017.

P.J. Athawale,
Aged 61 years,
Retired Sub Post Master,
Semadoh Amrawati Div.- 444 813,
R/o Ravi Nagar, Galli No.1, Paratwada,
Tal. Achalpur, Distt. Amravati- 444 805.

.. ***Applicant.***

(By Advocate Ms. Ashwini Chavan, proxy counsel for Ms. Priyanka Mehndiratta)

Versus

1. Union of India,
Through the Secretary,
Ministry of Communication & IT,
Dak Bhavan, Sansad Marg,
North Block, New Delhi- 110 001.

2. The Postmaster General,
Nagpur Region, Nagpur.

3. The Senior Superintendent of
Post Offices,
Amravati Division, Amravati- 444 602.

.. ***Respondents.***

(By Advocates Shri R. R. Shetty & Ms. Naveena Kumai)

ORIGINAL APPLICATION No. 259/2018.

Shri M K Parab,
Retired Chief Supervisor, Mumbai GPO,
Residing at 15/4, Joshi Chawl,
Old CST Road, Kalina,
Santacruz(E), Mumbai- 400 029.

.. ***Applicant.***

(By Advocate Ms. Ashwini Chavan, proxy counsel for Ms. Priyanka Mehndiratta)

Versus

1. The Union of India,
   Through the Chief Postmaster General,
   Maharashtra Circle, Mumbai GPO,
   Mumbai- 400 001.
2. The Senior Deputy Director(Admn),
   Mumbai GPO - 400 001.

3. The Deputy Director(Admn),
   O/o The Director, Mumbai GPO,
   Mumbai- 400 001.

.. ***Respondents.***

(By Advocate Shri R. R. Shetty)

Order (Oral)
Per : R. Vijaykumar, Member (A)

Present:

Ms. Ashwini Chavan, proxy counsel for Ms. Priyanka Mehndiratta, learned counsel for applicants in OA Nos. 372/2015, 259/2018, 245/2017 and 359/2017. Shri R. B. Kadam, learned counsel for applicant in OA No. 674/2017.

Shri R. R. Shetty alongwith Shri V. S.

Masurkar and Ms. Naveena Kumai, learned counsels for the respondents.

2. These applications have been filed seeking the following reliefs:

"a) This Hon'ble Tribunal may be pleased to call for the records of the case from the Respondents and after examining the same, quash and set aside the impugned orders dated 11.05.15, 08.10.2014 and 27.8.2014 (A-1 , A-2 & A-3) with all the consequential benefits.
b) This Hon'ble Tribunal may further be pleased to hold and declare that Applicant is entitled for grant of 3rd financial Up Gradation in the Grade Pay of 4600/- on completion of 30 years' service with effect from August'2009 with all the consequential benefits.
c) The Hon'ble Tribunal may further be pleased to grant arrears of pay with interest at the rate of 18% to the Applicants.
d) Cost of the Application be provided for.
e) Any other relief which this Hon'ble Tribunal deems fit in the facts and circumstances of the case, may pleased be granted.

~Reliefs in OA No. 359/2017

a. The impugned order vide Memo No.. B-1/MACP/Representation/SDM/14 dated at Osmanabad the 15-12-2014 forwarded by respondent No.4 may kindly be declared illegal, unjust, improper and deserves to be quashed and set aside.
b. The respondent may kindly be directed to confer the grade pay Rs. 4600/- & MACP-III on completion of 30 years of service in Postal Assistant cadre with all consequential benefits.
c. The respondents may kindly be directed to grant all consequential benefits, arising out due to entry grade.
d. That any other direction or orders may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case in the interest justice.
e. That the costs of this application may be awarded to the applicant.

~Reliefs in OA No. 372/2015

a) This Hon'ble Tribunal may be pleased to call for the records of the case from the Respondents and after examining the same, quash and set aside the impugned orders dated 06.02.2017, and 22.11.10 (A-1 and A-2), with all the consequential benefits.
b) This Hon'ble Tribunal may further be pleased to hold and declare that Applicant is entitled for grant of Third financial up gradation in the Grade Pay of 4600/- on completion of 30 years' service with effect from

01.09.2008 with all the consequential benefits.

c) The Hon'ble Tribunal may further be pleased to grant arrears of pay with interest at the rate of 18% to the Applicants.

d) Cost of the Application be provided for.

e) Any other relief which this Hon'ble Tribunal deems fit in the facts and circumstances of the case, may pleased be granted.

~Reliefs in OA No. 259/2018

a) This Hon,ble Tribunal may be pleased to call for the records of the case from the Respondents and after examining the same, quash and set aside the impugned orders dated 27.09.16 and 17.08.2015 (A-1 & A-2), with all the consequential benefits.

b) This Hon'ble Tribunal may further be pleased to hold and declare that Applicant is entitled for grant of financial up gradation w.e.f. 28.01.2009, with all the consequential benefits and his pay be restored back to original as on 28.01.09

c) The Hon, ble Tribunal may further be pleased to quash the recovery order and to direct the refund of the amounts recovered with interest at the rate of 18% to the Applicant.

d) Cost of the Application be provided for.

e) Any other relief which this Hon'ble Tribunal deems fit in the facts and circumstances of the case may please be granted

~Reliefs in OA No. 245/2017

a. This Hon'ble Tribunal may be pleased to call for the records of the case of the applicant from the respondents and after perusal consider grant of reliefs as prayed for hereunder on the basis of settled principle of laws and rules.

b. To quash the impugned orders and direct the respondents to grant third financial up-gradation to the applicant by increasing his grade pay from Rs.4200/- to Rs. 4600/- with effect from 01st January 2015.

c. Any other further order as this Hon'ble Tribunal deems fit in nature and circumstances of the case be passed.

~Reliefs in OA No. 674/2017"

3. The applicants in all these OAs challenge the refusal to grant 3rd MACP by arguing that the LDCE-based promotion from Mail Guard to Group 'D' to Postman etc. given to the applicants should not be considered as a promotion but only as a direct appointment. In OA No.674/2017, the applicant has sought relief

on the additional ground that he had stagnated in the same grade from 01.01.2005 when he received BCR upgradation for 10 years by 01.01.2015 and until he retired after more than 10 years on 31.05.2016, in terms of the provisions for such upgradation under the MACP Scheme of 2009.

4. Learned counsel for applicants in OA Nos. 372/2015, 259/2018, 245/2017 and 359/2017 are represented by a proxy counsel. These cases had been listed alongwith a batch of cases led by OA No. 573/2014 and when those matters along with these matters were finally heard on 20.11.2019, the learned counsel for OA Nos. 372/2015, 259/2018, 245/2017 and 359/2017 was absent without prior intimation. Since counsel in OA No. 674/2017 was also absent and although the facts in these cases were identical with the facts in those matters, consideration was given to the aspect that the counsels could not be heard due to their absence and the present set of cases were deferred to hear the counsels. On the next date of hearing on 04.12.2019, these five cases were listed together and the learned counsel for OA No. 674/2017 was present.

However, learned counsel for OA Nos. 372/2015, 259/2018, 245/2017 and 359/2017 was again represented by a proxy counsel who conveyed excuses for counsel and had no other instructions. The facts of the case were ascertained from available counsels for parties and the cases were deferred as part-heard to be heard together in view of the absence of the counsel in these four OAs and also one of the three counsels for respondents. Meanwhile, orders were pronounced in the batch of identical cases led by OA No. 573/2014 in orders dated 18.12.2019. Today, the learned counsel for OA Nos. 372/2015, 259/2018, 245/2017 and 359/2017 is again absent and is represented through another proxy counsel who states that she has no instructions on the matter nor is she aware of the facts of the matter and this is the state of affairs despite this matter having been posted today as part-heard. However, in the obdurate unavailability of this counsel, we have perused the facts of the matter by looking into the pleadings and in consulation with the learned counsels for respondents and the learned counsel for applicant in OA No. 674/2017 whose case

covers similar facts, and considering that the facts in these four cases are identical to the aforesaid batch of cases led by OA No. 573/2014 which has already been decided by this Tribunal on 18.12.2019 after hearing parties and after deferring these five cases. We are of the view that deciding these cases under such circumstances, no prejudice is likely to be caused to the concerned applicants in these four OAs. Therefore, since this Tribunal is bound by its earlier orders, accordingly, these five matters ie. OA Nos. 372/2015, 259/2018, 245/2017 and 359/2017 on the indentical issues and claims and OA No. 674/2017 on one set of its identical claims on the distinction between the promotion though LDCE and direct appointment, are dismissed as lacking merits.

5. In regard to OA No. 674/2017, learned counsel for the applicant has raised two aspects, the first aspect is that the promotion from Mail Guard to LDC should not be treated as a promotion but only as a direct appointment. This is decided as mentioned in the previous paragraph. The second aspect urged by learned counsel is that, although the applicant got TBOP

upgradation w.e.f. 14.09.1994 and BCR upgradation w.e.f. 01.01.2005, he retired after 10 years on 31.05.2015 after stagnating in that upgraded cadre pay. He argues with reference to the salient features of the MACP scheme in the OM No. 4-7/(MACPS)/2009-PCC dated 18.09.2009 which reads as follows:

"SALIENT FEATURES

MODIFIED ASSURED CAREER PROGRESSION SCHEME(MACPS)
FOR
THE CENTRAL GOVERNMENT CIVILIAN EMPLOYEES.

1. There shall be three financial upgradations under the MACPS, counted from the direct entry grade on completion of 10, 20 and 30 years service respectively. Financial upgradation under the Scheme will be admissible whenever a person has spent 10 years continuously in the sme grade pay."

Learned counsel for the applicant argues that the second sentence of this para suggests that if a person has spent 10 years continuously in the same Grade Pay, he would be entitled to an upgradation under the scheme.

6. Learned counsel for respondents was also heard on this subject including on facts as presented by the applicant. The pleadings on records have been perused along with the various provisions of MACP scheme.

7. On the first aspect urged by the learned counsel for the applicant, the orders passed by

this Tribunal in the batch of cases led by 573/2017 will squarely apply and promotion through LDCE examination of the applicant from Mail Guard to Sorting Assistant cannot be treated as a fresh appointment but will only be considered as an elevation through promotion. On the second aspect, the applicant submits that he has stagnated for ten years after obtaining upgradation. He relies upon part of para 1 of the salient features of the MACP scheme which suggests that financial upgradation will be admissible for persons who have spent 10 years continuously in the same grade pay. However, this sentence needs to be read in terms of the intent and purpose of the scheme as set out in this first para, in that there shall be three upgradations counted from the direct entry grade on completion of 10, 20 and 30 years service respectively. The second sentence is clearly only a clarification within the theme set by the first sentence. If the applicant seeks a further upgradation over and above the provisions of the MACP scheme as set out in this para, he cannot rely upon this circular for any benefit and considering the fact that he has already

obtained one promotion and two upgradations in his entire service, this scheme is clearly not applicable in his case and he can derive no further benefit from it. In the circumstances, the second ground urged by the learned counsel for applicant is also without any basis nor can this Tribunal, in judicial review, attempt to interpret and elaborate the terms of a beneficial scheme beyond its scope, intents and purposes.

8. In the above circumstances, these OAs are dismissed as devoid of merits without any order as to costs.

(Ravinder Kaur)
Member (J)

(R. Vijaykumar)
Member (A)

cm.

29/01/2010