

*CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD*

Allahabad, this the 10th day of March, 2021

Present:

HON'BLE MRS. JUSTICE VIJAY LAKSHMI, MEMBER-J
HON'BLE MR. DEVENDRA CHAUDHRY, MEMBER-A.

ORIGINAL APPLICATION NO. 330/00061/2015

Ganesh Prasad Srivastava, aged about 62 years, Son of late Shri Vishwanath Prasad Srivastava, retired Sub Post Master, Mahamandal Post Office, Varanasi, R/o S-2/629 A, Kirankunj Sikraul, Varanasi.

.....Applicant.

V E R S U S

1. Union of India through the Secretary, Government of India, Ministry of Communication, Department of Post, Dak Bhawan, Sansad Marg, New Delhi.
2. The Chief Post Master General, U.P. Circle, Lucknow.
3. The Post Master General, Allahabad Region, Allahabad.
4. The Director Postal Services, in the office of P.M.G., Allahabad Region, Allahabad.
5. Senior Superintendent of Post Office, Varanasi East Division, Varanasi.

..... Respondents

Present for the Applicant : Shri S.K. Kushwaha
Present for the Respondents: Shri V.K. Pandey

ORDER

Delivered by Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)

The instant OA has been filed by the applicant seeking a direction to the respondents to grant him the benefit of 3rd financial up-gradation under MACP Scheme and to pay arrears of pay alongwith interest. Prayer has also been made to quash the impugned orders dated 04.02.2013 and 05.07.2013 (Annexure A-1

& Annexure A-2 respectively), whereby the aforesaid prayer, made before the respondents, has been rejected.

2. We have heard Shri S.K. Kushwaha, learned counsel for the applicant and Shri V.K. Pandey, learned counsel, who is representing all the respondents. Perused the record.

3. The facts of the case, in brief, are that the applicant was initially appointed as a group 'D' employee in the postal department on 02.11.1976. A notification for limited departmental competitive examination (in short LDCE) for the post of Postal Assistant through Lower Grade Official (in short LGO) was issued in the year 1982 by the respondent department. The applicant appeared in the said examination, qualified the same and joined on the post of Postal Assistant on 31.05.1982. At that time, there was no such scheme as ACP of MACP. Instead, there existed the following two schemes: -

- (i) Time Bound One Promotion (in short TBOP), which was granted on completion of 16 years of continuous unblemished service; and
- (ii). Biennial Cadre Review (in short BCR), which was granted on completion of 26 years of continuous unblemished service.

4. The applicant was granted first financial up-gradation under TBOP Scheme w.e.f. 26.05.1998, on completion of 16 years of continuous service as a Postal Assistant and after 10 years i.e. on

completion of total 26 years of continuous service as a Postal Assistant, he was granted second financial up-gradation under BCR w.e.f. 01.07.2008. Thus, the applicant was granted two financial up-gradations while serving in the postal assistant cadre.

5. After implementation of 6th CPC, new policy of financial up-gradation was introduced in the name of MACP, which provides for total three financial up-gradations. After implementation of MACP Scheme, both the schemes TBOP and BCR, existing prior to it, were withdrawn. On 31.07.2012, after completion of more than 30 years of service in Postal Assistant cadre, the applicant retired on reaching the age of superannuation.

6. Finding that he was not granted 3rd financial up-gradation under MACP Scheme, he made a representation before the respondents asking for one more financial up-gradation as per the MACP Scheme, but it was denied by the respondents vide impugned orders dated 04.02.2013 and 05.07.2013 (Annexure A-1 and Annexure A-2 respectively). For a ready reference, both these order are reproduced below: -

“भारतीय डाक विभाग

कार्यालय, प्रवर अधीक्षक डाकघर पूर्व मण्डल वाराणसी – 221001

सेवा में,

श्री गणेश प्रसाद श्रीवास्तव

(सेवानिवृत्त उपडाकपाल महामण्डल वाराणसी)

निवासी – एस-2/629ए किरनकुज सिकरौल वाराणसी

पत्रांक: बी-2 / एम.ए.सी.पी.

वाराणसी-1

दि 0 04.02.2013

विषय: तीस वर्ष की सेवा पूरी करने पर तीसरी प्रोन्नति दिए जाने के सम्बन्ध में।

सन्दर्भ: आपका अवेदन पर दि 0 25.08.2012

आपके उपरोक्त सदर्भित आवेदन पत्र के सम्बन्ध में सूचित करना है कि आपकी नियुक्ति विभाग में दि 0 02.11.1976 को ग्रुप 'डी' संवर्ग में हुयी थी। एल.जी.ओ. विभागीय प्रोन्नति परीक्षा उत्तीर्ण करने के बाद दि 0 22.05.82 से आपकी प्रथम प्रोन्नति डाक सहायक संवर्ग में हुयी। डाक सहायक संवर्ग में हुयी। डाक सहायक संवर्ग में 16 वर्ष की सेवा पूरी करने के पश्चात दि 0 26.05.98 को टी.बी.ओ.पी. के अन्तर्गत आपको दूसरी प्रोन्नति दी गयी इसके पश्चात् डाक सहायक संवर्ग में ही 26 वर्ष की सेवा पूर्ण करने के बाद दि 0 01.07.2008 से बी.सी.आर. के अन्तर्गत आपको तीसरी प्रोन्नति दी गयी है।

संचार मंत्रालय, भारत सरकार नई दिल्ली के पत्रांक 4-7 / एम.ए.सी.पी.एस. / 2009-पीसीसी दि 0 18.09.09 के अनुसार किसी भी कर्मचारी को उसके पूरे सेवाकाल में एम.ए.सी.पी. स्कीम के अन्तर्गत तीन ही प्रोन्नति दिए जाने का प्रावधान है। चूंकि आप अपने सम्पूर्ण सेवाकाल में तीन प्रोन्नति प्राप्त कर चुके हैं। अतः नियमानुसार तीस वर्ष की सेवा पूरी करने के बाद अब आपको कोई भी प्रोन्नति देय नहीं है।

प्रवर अधीक्षक डाकघर

पूर्व मण्डल वाराणसी-1”

“भारतीय डाक विभाग

प्रवर अधीक्षक डाकघरपूर्व मण्डल वाराणसी – 221001

सेवा में,

श्री गणेश प्रसाद श्रीवास्तव

सेवानिवृत्त उपडाकपाल

निवासी – एस-2 / 629ए किरनकुज सिकरौल वाराणसी

पत्रांक: बी-2 / एम.ए.सी.पी.

वाराणसी-1

दि 0 05.07.2013

विषय: एम०ए०सी०पी० के अन्तर्गत तृतीय वित्तीय उन्नयन के सम्बन्ध में श्री गणेश प्रसाद श्रीवास्तव सेवा निवृत्त उपडाकपाल महामण्डल का प्रतिवेदन दि 023.02.2013

क्षे. कार्यालय के पत्राक स्टाफ / एम०ए०सी०पी० / वारा० पूर्व प्रति / 13 / 1 दि 0 03.07.2013 द्वारा आपको यह सूचित करने का निर्देश हुआ है कि नियमानुसार किसी भी कर्मचारी को उसके पूरे सेवा काल में एम०ए०सी०पी० स्कीम के अन्तर्गत तीन ही वित्तीय उन्नयन दिए जाने का प्राविधान है तथा आप को तीनों वित्तीय उन्नयन दी जा चूकी है।

अतः अब आपको और अधिक वित्तीय उन्नयन दिए जाने का औचित्य नहीं है। तदनुसार आपको सूचित किया जाता है।

प्रवर अधीक्षक डाकघर
पूर्व मण्डल वाराणसी-1”

7. Learned counsel for the applicant has challenged the legality and correctness of both the aforesaid impugned orders on the ground that the applicant has completed more than 30 years before his retirement. Therefore, he is entitled for 3rd financial up-gradation under the MACP Scheme, which was prevalent on the date of his retirement. However, the department has wrongly adjusted his appointment on the post of Postal Assistant on 31.05.1982, as his 1st financial up-gradation under MACP Scheme. This is clearly erroneous in view of the fact that the promotional post of Postal Assistant was not granted to the applicant after mere completion of 10 years in the cadre of Group 'D' employee. The applicant had participated in a departmental competitive examination for selection to the post of Postal Assistant. As he had qualified the said examination, he got the appointment. Had he not qualified the said examination, he would not have been appointed as a Postal Assistant merely for the reason that he had completed 10 years of continuous service as a Postman/group 'D' employee. Therefore, to adjust the said appointment against MACP, treating it a 1st financial up-gradation, is clearly erroneous.

8. On the aforesaid grounds, it has been prayed that the impugned orders be quashed and the respondents be directed to grant 3rd MACP to the applicant. Prayer has also been made to direct

the respondents to pay the arrears of difference of pay so accrued after fixation of pay with 18% interest.

9. In support of the above contention, reliance has been placed on the judgments passed by various Benches of Central Administrative Tribunal, judgment of Hon'ble Rajasthan High Court and Hon'ble Madras High Court confirmed by Hon'ble Apex Court, in similar matters.

10. The respondents have filed counter affidavit in which, they have not disputed the fact that the applicant was initially appointed as a group 'D' employee in postal department and joined on 02.11.1976. It is also admitted that the applicant qualified the LGO/LDCE examination in the year 1982. The date of his retirement i.e. 31.07.2012, after completion of 32 years of continuous service in Postal Assistant cadre, is also not disputed by the respondents. However, the applicant has been denied the 3rd financial up-gradation by treating his appointment from group 'D' cadre to Postal Assistant cadre, as his 1st financial up-gradation under MACP Scheme, his promotion under TBOP was treated as his 2nd financial up-gradation and his promotion under BCR was treated as his 3rd financial up-gradation under MACP Scheme. Therefore, his prayer could not be exceeded to and it was rejected as per the departmental rules contained in DG Post New Delhi memo no. 4-7/MACPs/2009/PCC dated 18.10.2010. A copy of said memo has

been annexed as Annexure CA-6 with the counter affidavit. Relevant para of the said memo is quoted below: -

“In case of a lower grade official promoted to PA cadre, having got one promotion to PA cadre before completion of 10 years of continuous service, it will be offset against 1st MACP and rendering 10 years continuous service in the clerical grade/scale or on completion of 20 years service from the date of entry would become illegible for 2nd whichever date is earlier. However, financial up-gradation under MACPs cannot be conferred from a date prior to 01/09/2008 as the scheme became operational from this date only.”

On the aforesaid ground, it has been prayed by the learned counsel for the respondents that as the applicant was already granted three financial up-gradations as per MACP Scheme, he is not entitled for any other financial up-gradation under such Scheme

11. We have given our thoughtful consideration to rival contentions raised by the learned counsel for the parties and have carefully gone through the judgments cited by them.

12. Before proceeding further, it is necessary to have a glance on the rules for recruitment to the clerical service (Postal Assistant/Sorting Assistant) in Indian Posts and Telegraphs Department. Rule 3 and 4, are relevant, which are quoted below: -

“3. Recruitment:- Recruitment will be by a competitive examination which will be open to (a) Departmental

Officials of all classes below the clerical cadre in the post offices hereafter called departmental candidates and (b) Outside candidates.

4. Conditions for departmental candidates:- A departmental candidate should have put in not less than five years unblemished service followed by confirmation. He must submit his application in the prescribed form in due time to the Head of Circle through his immediate superior. It will be at the discretion of the Head of the Circle whose decision will be final, to permit the applicant to appear for the examination.”

13. A perusal of the relevant rules, quoted above, clearly show that the Postal Assistants can be appointed through competitive examination from two sources i.e. through departmental candidates and outside candidates. For departmental candidates, it is necessary that they should have put not less than five years of unblemished service, followed by confirmation.

14. The undisputed facts of the instant OA, as narrated above, clearly reveal that the applicant was initially appointed in the year 1976 and he joined on the post of Postal Assistant in the year 1982 after qualifying the limited departmental competitive examination. Thus, he has completed more than five years of service. There is no allegation of any misconduct or disciplinary proceeding against him. Hence, it is also evident that his service is unblemished.

15. Now, the only point for determination in the instant OA is **“whether the joining of the applicant on the post of Postal Assistant can be treated as a promotion/ financial up-gradation?”**

16. The aforesaid controversy is no more a res integra and has been set at rest through a catena of judgments by various courts. In an identical matter before the Jodhpur Bench of this Tribunal, in OA No. 382/2010 – Bhanwar Lal Regar Vs. Union of India and Others, it was held that the Postman after facing the Limited Departmental Competitive Examination and qualified to become a Postal Assistant, his joining as Postal Assistant cannot be said to be in the nature of promotion but it is a career advancement through a process of selection. Therefore, for the purpose of grant of financial up-gradation, the dates, which are relevant, to be taken into account for the purpose of counting the period of stagnation, is the period spent by the applicant as Postal Assistant.

17. The order of the Jodhpur Bench of CAT was challenged before Hon'ble Rajasthan High Court, with a bunch of other identical matters and it was confirmed by the Hon'ble Rajasthan High Court, with the observation that the service rendered by the Postman/Group 'D' on earlier post, prior to their appointment as Postal Assistant / Sorting Assistant, are absolutely inconsequential for the purpose of grant of MACP. The review petition filed by the postal department was also dismissed by the Hon'ble Rajasthan High Court and the decision of the Hon'ble Rajasthan High Court

was confirmed by the Hon'ble Apex Court in SLP (C) Diary No. 23260/2018 and 23265/2018 by orders dated 10.08.2018 and 20.09.2018.

18. The Madras Bench of this Tribunal also, relying on the decision of Jodhpur Bench of CAT, allowed the original application filed by D. Siva Kumar, which was challenged by the postal department before Hon'ble Madras High Court by means of writ petition no. 30629/2014 – UOI & Ors. Vs. D. Siva Kumar and it was dismissed by the Hon'ble Madras High Court. The UOI challenged the judgment of Hon'ble Madras High Court by means of SLP (C) No. 4848/2016, which was dismissed by the Hon'ble Apex Court on 16.08.2016. The review petition filed before the Hon'ble Apex Court was also dismissed with a clear observation that '*even on merits, we do not find any error in the order impugned, much less an apparent error on the face of record so as to call for its review*'.

19. Ahmedabad Bench of this Tribunal, in the case of Natvarbhai S. Makwana & Ors. Vs. UOI & Ors, decided on 17.09.2019 with bunch of other cases, has also held that the Postal / Sorting Assistant is not a promotional post of Postman /Mail Guard respectively. Similarly, Ernakulam Bench of this Tribunal, in OA No. 950/2017 decided on 04.04.2019, has held that the recruitment as Postal /Sorting Assistant of a Postman /Mail Guard by way of examination, shall not be counted as a promotion for financial up-gradation under MACP Scheme.

20. Learned counsel for the respondents has relied upon DG (Posts) clarification dated 18.10.2010 (Annexure CA-6), which provides that how the Postal Assistants would be given benefit of MACP. But, they have failed to consider the subsequent clarification dated 25.04.2011, filed by the applicant as Annexure A-6 to the OA, which is quoted below: -

Sl. No	Doubts	Clarification
1	<p><i>Whether to consider the appointment to Gr. D cadre as entry grade and to Postmen cadre as one promotion</i></p>	<p><i>In accordance with Para-9 of Annexure-I of MACPS dated 18 Sep 2009, regular service for the purpose of MACPS commences from the date of joining of a post in direct entry grade on a regular basis</i></p>
2.	<p><i>Whether the appointment to the cadre of Postmen Post as entry grade ignoring the Gr. D post held prior to the appointment as the official wrote the Postman examination from Gr. "D" cadre directly, If so, it may also be please clarify whether the services rendered in Gr. D post may be counted for MACP and Pension benefits</i></p>	<p><i>In the present case before us, the official was selected based on seniority in GDS and joined the group 'D' post and later, he was declared successful in Postman exam, in which he has appeared fulfilling the eligibility condition of Gramin Dak Sevaks and thereafter he was allowed to join in Postmen cadre as direct recruit. Accordingly, the official has joined in Postman cadre under the direct recruitment quota on regular basis & as such the regular service for the purpose of MACPS commences from the date of joining in Postman cadre as direct recruit basis. The issue is clarified accordingly</i></p>

21. The Jodhpur Bench of this Tribunal while deciding the case of Bhanwar Lal Regar (Supra) has taken into consideration this fact and has observed as under: -

“the only problem with that clarification is that it stopped at the point of clarifying that when the GDS first joined in a Group -D post, and was later declared as successful in the Postman examination, the regular service for the purpose of MACP would be deemed to commence from the date of his joining as a Postman in Postman cadre on direct recruit basis. But it is obvious that the corollary would follow and when the postman appears at the exam and gets selected to a new cadre as a Postal Assistant, even it is start of a new innings for him, and for the purpose of counting his stagnation, if any, the date of his joining as Postal Assistant alone would be relevant, and his previous career advancements cannot be called to be promotions”.

22. Most recently, this Tribunal while relying on the aforesaid judgments has allowed OA No. 627/2018 vide judgment dated 02.03.2021 by observing as under: -

“6. The whole idea of MACP is to compensate an employee in the absence of regular promotion. The applicant in this case got appointed by way of selection and not regular promotion as the Postal Assistant on 1.7.1996. Therefore, his claim for MACP gets established after completion of 10 years as Postal Assistant, which would be 30.06.2006. However, MACP got introduced in the year 2008, so at the least he should have been granted the benefit in the year 2008 if not from 2006 when

his claim got established. Moreover, the position has been fairly and elaborately settled by the different Benches of this Tribunal and the pronouncements of the Hon'ble High Courts of Rajasthan and Delhi. The department chose to get these orders reversed in the Hon'ble Apex Court without any success. Therefore, this issue is not open for any different interpretation by the respondents, that too to the detriment of the employees.

23. As the controversy involved in the instant OA is similar to the controversy involved OAs, cited above, it also deserves to be allowed in the same term and is accordingly allowed.

24. The impugned orders dated 04.02.2013 and 05.07.2013 (Annexure A-1 & Annexure A-2 respectively) are quashed. The respondents are directed to grant benefits of 3rd financial up-gradation to the applicant and the arrears so accrued, within a period of two months from the date of receipt of certified copy of this order. The applicant is also entitled for interest at the rate of 6% per annum on the amount of arrears accrued so far from the date it became due till the date of its actual payment.

25. No order as to costs.

(DEVENDRA CHAUDHRY) (JUSTICE VIJAY LAKSHMI)
MEMBER- A. MEMBER- J.

Anand...