

Reserved on 23.02.2021
Central Administrative Tribunal, Allahabad Bench,
Allahabad

Original Application No.330/00627/2018

This the 02nd day of March, 2021.

Present.

Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)
Hon'ble Mr. Tarun Shridhar, Member (A)

Sushil Kumar Gupta, aged about 58 years, son of Late Shri R.K. Gupta presently working as Postal Assistant Saharanpur, H.O. under Senior Superintendent of Post Offices, Saharanpur, R/o 6/254 Neel Kanth Vihar, Saharanpur.

By Advocate: Shri S.K. Kushwaha

Versus

1. Union of India through the Secretary, Ministry of Communication and Information Technology Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Post Master General U.P Circle, Lucknow.
3. Post Master General Bareilly Region, Bareilly.
4. Senior Superintendent of Post Offices, Saharanpur Division, Saharanpur.
5. Director Postal Accounts Aliganj, Lucknow.

.....Respondents

By Advocate: Sri K.D Mishra

ORDER

By Hon'ble Mr. Tarun Shridhar, Member (A)

The applicant is aggrieved that he has not yet been given the benefit of MACP in accordance with the Rules and instructions governing the subject.

He seeks the following reliefs by virtue of this O.A:-

"(i) The Hon'ble Tribunal may graciously be pleased to quash the impugned order dated 15.06.2017 with direction to the respondents to treat the applicant's selection as Postal Assistant w.e.f. 01.07.1996/30.09.1996 as direct entry grade and grant the benefits of 1st financial upgradation w.e.f. 01.07.2006/30.09.2006 and 2nd financial upgradation w.e.f. 01.07.2016/30.09.2016 with all consequential benefits viz. fixation of pay from respective dates by granting 1st and 2nd financial upgradation, with arrears of difference of pay with 12% interest on the said amount of arrears.

(ii) *To issue any order, direction or further orders which this Hon'ble Court may deem fit and proper in the present facts and circumstances of this case.*

(iii) *Award costs in favour of applicant".*

2. Brief facts of the case are that the applicant was appointed as a Postman on 01.08.1991 and got promoted to the post of Postal Assistant on 1.7.1996 after successfully passing the examination which was conducted for selection to that post. The applicant's case is that he should have been given the benefit of MACP with reference to the date 1.7.1996 when he got posted as Postal Assistant by virtue of a competitive selection.

3. The learned counsel for the applicant argues that his elevation to the position of Postal Assistant is not to be treated as a normal promotion because he has come through the route of selection by way of a competitive examination. Therefore, he would argue, that the impugned order vide which the Senior Superintendent of Post Offices, Saharanpur Division has held that his appointment to the post of Postal Assistant, would be deemed to be a promotion and hence already accounted for offsetting the MACP is incorrect.

The communication/impugned order is reproduced below:-

"mijkDr fo'k; d ekeys e I fpr fd; k tkrk gS fd Jh I qhy
 dEkj xlrk i h0 ,0 i D Mko I gkjuij dh fu; fDr fn0 01-08-1991 dks
 i kVe dMj e gbj FkhA fnukd 30-09-1996 I smDr debjjh Mkd I gk; d
 ds in ij i kUr gq sbl i dkj i kFkh dks 10 o'k dh I ok i wk gkus ij nh
 tkusokyk , e, I hi h&1 i kUr fnukd 30-09-96 ds }jkj Lor% i kUr gqkA
 rnki jkUr debjjh dh 20 o'k dh I ok i wk gkus ij , e, I hi h&2 dk
 yk k fnukd 02-08-11 gk rk gS ij Urq mDr debjjh dh 20 o'k dh I ok fn0
 14-8-11 dks i wk gk rk gS bI fy, mDr debjjh dks , e, I hi h&2 fnukd 15-8-
 11 I sinku fd; k x; h gA
 bl i dkj mDr debjjh dks I e; ij , e, I hi h dk yk k inku
 fd; k x; k gA dIk; k rnku k j debjjh dks I fpr djuk I fuf"pr dja"

4. Learned counsel for the applicant also refers to the order of Jodhpur Bench of this Tribunal as also the Principal Bench, which held that the benefits for the purpose of MACP have to be counted from the date the applicants

were substantively appointed as Postal Assistants. This position has been affirmed by the Hon'ble High Court of Delhi as also the Hon'ble Rajasthan High Court Bench at Jodhpur. In fact, similar orders have also been passed by other Benches of this Tribunal. The learned counsel draws attention to the fact that the department had assailed these orders in the Hon'ble Supreme Court by way of filing an SLP followed by a review petition without any success.

5. Learned counsel for the respondents reiterates that since MACP is granted on completion of 10, 20 and 30 years of service respectively, this period is to be counted from the date of initial appointment in the Government and hence the applicant has been correctly given the 2nd MACP in the year 2011 while the first MACP has been adjusted against his promotion to the post of Postal Assistant.

6. Having heard the learned counsel for both the parties at length and examined the documents on record, we observe that the interpretation and the position taken by the respondents is far-fetched. 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.

7. In view of the situation and circumstances enumerated above, this O.A is allowed and the respondents are directed to allow the benefit of 1st MACP to the applicant with reference to his date of appointment as Postal Assistant,

which is 1.7.1996. It is further directed that the respondent would take a decision in this regard in terms of these directions within a period of six weeks from the date of receipt of a certified copy of this order. We find that the Respondents have been according the benefit of MACP in accordance with such directions to such employees as have obtained favourable orders from the Courts/Tribunals. So we advise the respondents to apply the principle of equity and grant benefit of MACP to all employees on this principle rather than pushing them to approach legal for a for claiming their rightful dues. No order as to costs.

(Tarun Shridhar)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

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