

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE**

ORIGINAL APPLICATION NO.170/00476/2019

ORDER RESERVED ON 04.12.2020

DATE OF ORDER: 18.12.2020

CORAM:

HON'BLE SHRI SURESH KUMAR MONGA, MEMBER (J)

HON'BLE SHRI RAKESH KUMAR GUPTA, MEMBER (A)

Prakash Shettigar

S/o Gundu Shettigar

Aged about: 45 years

Working as Postal Assistant

Kota P.O. 576221.

Residing at:

2-160-Janatha Colony

School Road, Japthi

Basrur-576211.

....Applicant

(By Advocate Shri P.Kamalesan)

Vs.

1. Union of India

Represented by Secretary.

Department of Post

Dak Bhavan

New Delhi-110001.

2. Post Master General

S.K.Region

Bangalore-560001.

3. Chief Post Master General

Karnataka Circle

Bangalore-560001.

4. Senior Superintendent of Post Offices

Udupi Postal Dn.

Udupi-576101.

....Respondents

(By Advocate Shri Sayed S.Kazi)

ORDER**PER: RAKESH KUMAR GUPTA, MEMBER (A)**

The applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

- a. Quash the Superintendent of Post Offices, Udupi division, Udupi-576101 letter No.E2/15/Pay DLGs/ dated: 11-2-19 (Annexure A4)
- b. Direct the respondents to grant 3% pay benefit from the date of promotion as Postal Assistant.
- c. Grant any other relief as deemed fit into the facts and circumstances of the case, in the interest of justice and equity.

2. The facts of the case as pleaded by the learned counsel for the applicant, Shri P.Kamalesan, are as follows:

- a. The applicant was appointed as Postman on 29.08.2005 in the pre-revised pay scale of Rs.3050-4590 (5th CPC pay scale). The same was subsequently upgraded to the corresponding 6th CPC pay scale in the Pay Band of Rs.5200-20200 with Grade Pay of Rs.2000/-.
- b. The applicant was granted Modified Assured Career Progression(MACP)-I on 30.08.2015 after completion of 10 years of service, as per the scheme, and granted the upgraded Grade Pay (GP) of Rs.2400/- in the same Pay Band of Rs.5200-20200/-.
- c. The applicant was promoted as Postal Assistant on 10.10.2016. The pay scale for Postal Assistant was identical to the pay scale and grade pay being drawn by the applicant after grant of MACP-I i.e. Rs.5200-20200/ with GP of Rs. 2400/-.

d. The post of Postal Assistant involves higher responsibilities than that of Postman. Hence, under the provisions of FR 22(1)(a)(i), the applicant is eligible for refixation of pay after adding one additional increment of 3% as fitment benefit from the date of his promotion as Postal assistant on 10.10.2016.

e. However, the applicant was denied this benefit of one additional increment as fitment benefit which should have been given to him under the provisions of FR 22(1)(a)(i).

f. The Department of Posts (Personnel Division) has issued orders for granting benefit of pay fixation on the grant of MACP to the Post Master Cadre I vide letter dated 15.10.2018(Annexure-A2), in which it has been categorically mentioned that the 3% fitment benefit may be allowed to such officials at the time of fixation of pay on promotion to the post of Postmaster Grade-I even after availing financial upgradation under MACP. The applicant is also a similarly placed employee since he has availed MACP benefit and was subsequently promoted as Postal Assistant after participating in LDCE. Hence he should also be allowed the same benefit on ground of parity.

g. The applicant submitted representation to extend the benefit of 3% benefit as extended to Inspector of Posts/Post Master's cadre. However, the said representation was rejected which is in violation of Article 14 & 16 of the Constitution.

3. The respondents, through their learned counsel, Shri Sayed S.Kazi have filed a detailed reply in the matter. The learned counsel in his reply statement has averred the following:

- a. The applicant was granted financial upgradation under MACP-I with effect from 30.08.2015 after completion of 10 years of service and was placed in the Pay Band of Rs.5200-20200 with Grade Pay of Rs.2400. The MACP scheme stipulates that on grant of financial upgradation under the scheme, there shall be no change in the designation, classification or status of the employee. However financial and certain other benefits which are linked to the pay drawn by an employee such as HBA, allotment of Government Accommodation shall be permitted.
- b. The MACP scheme specifically stipulates in para-4 that the benefit of pay fixation, available at the time of regular promotion, shall also be allowed at the time of financial upgradation under the scheme. There shall however be no further fixation of pay at the time of regular promotion if it is in the same grade pay as granted under MACPS.
- c. The applicant was already placed in the Pay Band of Rs.5200-20200 with Grade Pay of Rs.2400 on 30.8.2015, and was promoted to the post of Postal Assistant carrying the same Pay Band and Grade Pay with effect from 10.10.2016. The applicant has been allowed 3% fixation benefit as required under FR 22(1)(a)(i) before he was placed in the next higher Pay Band and GP under MACP-I. Since he has already got the benefit of pay fixation at the time of grant of benefit under MACP, there cannot be any further benefit of

grant of further fixation of pay at the time of regular promotion since it was in the same grade pay as granted under MACP-I.

d. The orders cited by the applicant in support of his claim related to the officials of Postal Assistant promoted to the cadre of Postmaster Grade-I. These are not relevant to the case of the applicant since he was granted MACP-I in the cadre of Postman and was subsequently promoted to the cadre of Postal Assistant.

e. Learned counsel for the respondents have also cited the orders passed by the Hon'ble Supreme Court in the case of *Union of India & others vs. Ashoke Kumar Banerjee* (AIR 1998 SLP 2102,), which are relevant in this case as well. In this case the court has observed as follows:

...In the present case, while working as Junior Engineer the respondent completed 15 years in the scale of Rs. 1640 - 2900 and he became entitled to be fitted in the scale of Rs. 2000 - 3500 of Assistant Engineers and got his pay fixed accordingly at Rs. 2600 by giving him the benefit of the increment as stated in FR 22(1)(a)(i) and as permitted by the second part of the OM. This was because, even though the OM is dated 22.3.1991, it was agreed that benefit of FR 22(2)(a)(i) would be given from 1.1.1991.

Thereafter, Respondent was actually or functionally promoted as Assistant Engineer on 1.8.1991 and he then wanted benefit of FR 22(1)(a)(i) to be given to him once again as he had then assumed higher duties and responsibilities of a superior post functionally. Question is whether his claim is justified?...

...In our view, the respondent having received the same benefit in advance, while working as Junior Engineer and while not actually functioning as an Assistant Engineer, is not entitled to the same benefit of fresh fitment in the scale of Rs. 2000 - 3500 when he is promoted on 1.8.1991 as Assistant Engineer. This is because as on 1.8.1991, he is not being fitted into the "time-scale of the higher post" as stated in the FR. That situation was already over when the OM was applied to him on his completion of 15 years. For the applicability of the FR 22(1)(a)(i) it is not merely sufficient that the officer gets a promotion from one post to another involving higher duties and responsibilities but another condition must also be satisfied, namely, that he must be moving from a lower scale attached to the lower post to a higher

scale attached to a higher post. If, as in this case, the benefit of the higher scale has already been given to him by virtue of the OM there is no possibility of applying this part of the FR which says.

"his initial pay in the time scale of higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty - five only, whichever is more".

Further, the respondent is a junior officer in the category of Junior Engineers and he has already got the benefit of the FR on completion of 15 years. If he is to be given a second benefit on the basis of the same FR, then he would be getting more than his seniors, who might have got promoted earlier and might have got benefit of the FR 22(1) (a) (i) only once. Such an anomaly was not obviously intended by the FR...

4. The respondents have further clarified regarding grant of fixation benefit of 3% given to the Postmaster Grade-I officials vide letter No.20-27/2015-SPB-II dated 15.10.2018. The learned counsel for the respondents has filed an additional affidavit clarifying that this particular letter was subsequently withdrawn vide letter No.20-27/2015-SPN-II dated 21.11.2019. A copy of that letter has also been enclosed with the additional affidavit.

5. The applicant has made his claim on the following grounds:

- a) He has assumed higher duties and responsibilities of a superior post subsequent to his promotion as Postal assistant. Hence he should have been given the 3% fitment benefit on promotion under the provision of FR 22(1) (a)(i).
- b) He has cited the case of the Post Master Grade-I officials, who have been granted this 3% benefit on promotion as Post Master Grade-I, even after taking the benefit of 3% fitment under MACP earlier.

6. Since the respondents, through an additional affidavit, have now clarified, that the benefit granted to the cadre of Postmaster Grade-I officials, had been subsequently withdrawn, hence there can be no ground for claim by the applicant, on grounds of parity, for grant of this 3% benefit to him.

7. The learned counsel for the applicant has subsequently submitted a copy of OM No.10/02/2011-E.III/A dated 07.01.2013 issued by Department of Expenditure, Ministry of Finance, GOI, in which certain clarifications have been given regarding fixation of pay on promotion to a post carrying higher duties and responsibilities but carrying the same grade pay. As per this OM:

'the situation whereby both the feeder and the promotional grades were placed in the identical revised pay scales based on the recommendations of the 5th Central Pay Commission, it was provided, inter-alia, that only in cases where it was not found feasible to appropriately restructure cadres in question on functional, operational and administrative considerations, extension of the benefit of fixation of pay under FR 22(I)(a)(1) could be considered on the merits of each case, provided all the conditions precedent for the grant of this benefit were fully satisfied and promotion to the post in question actually involved assumption of higher responsibilities'.

8. However, a careful reading of this OM, clearly indicates that it is dealing with situations where both the feeder and the promotional grades were placed in the identical revised pay scales based on the recommendations of the 5th Pay Commission. It is, therefore, not relevant or applicable to the present case.

9. A careful reading of FR 22(1)(a)(i) indicates that it is not sufficient for the officer to move from one post to another involving higher duties and responsibilities for claiming this 3% fitment benefit. The other conditions must also be satisfied, namely that he must be moving from a lower scale attached to the lower post to a higher scale attached to the higher post. In this particular case, the

applicant had moved to a higher post of Postal Assistant from the lower post of Postman on promotion. However, since he had already got higher Grade Pay (in the same pay scale) on account of MACP, his Grade Pay (in the same pay scale) did not change after grant of promotion. He has, also, already been granted the fitment benefit of 3% at the time of grant of MACP.

10. MACP scheme clearly indicates the following provision under para 4 as follows:

Benefit of pay fixation available at the time of regular promotion shall also be allowed at the time of financial upgradation under the Scheme. Therefore, the pay shall be raised by 3% of the total pay in the pay band and the grade pay drawn before such upgradation. There shall, however, be no further fixation of pay at the time of regular promotion if it is in the same grade pay as granted under MACPS. However, at the time of actual promotion if it happens to be in a post carrying higher grade pay than what is available under MACPS, no pay fixation would be available and only difference of grade pay would be made available. To illustrate, in case a Government Servant joins as a direct recruit in the grade pay of Rs. 1900 in PB-1 and he gets no promotion till completion of 10 years of service, he will be granted financial upgradation under MACPS in the next higher grade pay of Rs. 2000 and his pay will be fixed by granting him one increment plus the difference of grade pay (i.e. Rs. 100). After availing financial upgradation under MACPS, if the Government servant gets his regular promotion in the hierarchy of his cadre, which is to the grade of Rs. 2400, on regular promotion, he will only be granted the difference of grade pay between Rs. 2000 and Rs. 2400. No additional increment will be granted at this stage.

11. After going through the provisions under the MACP scheme, the provisions under FR 22(1)(a)(i), and the observations given by the Supreme Court in the case of *Union of India & others vs. Ashoke Kumar Banerjee (AIR 1998 SLP 2102)*, it is abundantly clear that the claim of the applicant for grant of 3% pay benefit as additional increment, at the time of his promotion to the higher post of Postal Assistant, which was in the same pay band and Grade Pay which he was already drawing, after grant of MACP- I to him, cannot be accepted. He has already been

given the benefit of 3% pay benefit at the time of grant of MACP and he is not entitled to an additional 3% pay benefit at the time of his promotion since there is no change in his pay band or grade pay at that time. The OA, therefore, deserves to be dismissed.

12. The OA is accordingly dismissed.

13. There shall be no orders so as to costs.

(RAKESH KUMAR GUPTA)
MEMBER (A)

(SURESH KUMAR MONGA)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA No.170/476/2019:

Annexure-A1: FR 22(1)

Annexure-A2: Letter dtd.15.10.2018 of Dept. of Posts

Annexure-A3: Representation dtd.8.2.2019

Annexure-A4: Letter dtd.11.2.2019 of Supdt. of Post Offices, UdupiDvn.

Annexures with reply:

Annexure-R1: OM dtd.18.9.2009 of Dept. of Posts
