

**CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH**

**OA/021/00800/2018**

HYDERABAD, this the 12<sup>th</sup> day of October, 2020

**Hon'ble Mr. Ashish Kalia, Judl. Member**

**Hon'ble Mr. B.V. Sudhakar, Admn. Member**



1. Y. Venkateswarlu, S/o. Y. Pentaiah,  
Aged about 55 years, Gr.'B', Occ: Assistant Superintendent,  
Railway Mail Service, Kajipet, Warangal-506003.
2. K. Sreenivasa Rao, S/o. Late Suryaprakasa Rao,  
Aged about 55 years,  
Occ: Assistant Superintendent of Post Offices,  
Huzurabad Sub Division, Huzurabad-505468.
3. K. Raghunadha Swamy, S/o. K.G.Krishnama Chary,  
Aged about 41 years,  
Occ: Assistant Superintendent of Post Offices,  
Miryalaguda Sub Division, Miryalaguda-508207.
4. D. Sathaiah, S/o. D. Gangaiah, Aged about 55 years,  
Occ: Assistant Superintendent of Post Offices,  
Secunderabad East Sub Division, Hyderabad-500007.
5. D. Siddartha, S/o. D. Nageshwar Rao, Aged about 40 years,  
Occ: Assistant Superintendent of Post Offices,  
Mahabubabad Sub Division, Mahabubabad-506101.
6. V. Venkateswarlu, S/o. V. Peda Ramaiah,  
Aged about 50 years,  
Occ: Assistant Superintendent of Post Offices,  
Jagtial Sub Division, Jagtial – 505327.
7. S.V.Laxminarasimha Rao, S/o. Peda Basavaiah,  
Aged about 48 years,  
Occ: Assistant Superintendent of Post Offices,  
Hanamkonda Sub Division, Hanamkonda-506001.
8. Y.V. Krishna Rao, S/o. Late Ramaiah,  
Aged about 58 years,  
Occ: Superintendent of Post Offices,  
Nalgonda Division, Nalgonda-508001.
9. A.V.R.Vijaya Kumar, S/o. Late A. Rama Rao,  
Aged about 54 years, Occ: Assistant Superintendent of Post Offices,  
O/o. Senior Superintendent of Post Offices,  
Hyderabad City Division, Hyderabad-500001.

10. K. Sreekanth, S/o. K. Nagabhushanam,  
Aged about 41 years,  
Occ: Assistant Superintendent of Post Offices,  
O/o. Postmaster General, Hyderabad Region, Hyderabad-1.
11. S. Masood Alam, S/o. Sadder Ali, Aged about 54 years  
Occ: Assistant Superintendent of Post Offices,  
Hyderabad Sorting Division, Hyderabad-500001.
12. R. Subhani, S/o. R. Moulali, Aged about 54 years,  
Occ: Joint Manager, National Sorting Hub,  
Begumpet, Hyderabad – 500016.
13. S. Venkata Sai, S/o. Late S. Mallikharjuna Rao,  
Aged about 54 years,  
Occ: Assistant Superintendent of Post Offices (INV),  
O/o. Postmaster General, Hyderabad Region,  
Hyderabad – 500001.
14. P. Bhaskar, S/o. Late Chenchu Ramaiah,  
Aged about 58 years,  
Occ: Assistant Superintendent of Post Offices,  
O/o. Chief Postmaster General, Telangana Circle,  
Hyderabad – 500001.



APPLICANTS

(By Advocate : Dr.A.Raghu Kumar)

Vs.

1. The Union of India, rep by its Secretary,  
Ministry of Communications and Information Technology,  
Department of Posts, Dak Bhavan  
Parliament Street, New Delhi 1.
2. The Chief Postmaster General  
Telangana Circle, Abids Hyderabad -01.
3. The Postmaster General,  
Hyderabad Head Quarters Region, Hyderabad – 500001.
4. The Postmaster General, Hyderabad Region, Hyderabad-1.
5. The Director of Accounts (Postal),  
AP Circle, Dak Sadan, Hyderabad – 500001.
6. The General Manager (Finance),  
Postal Accounts Office, Andhra Pradesh Circle,  
Dak Sadan, Hyderabad-500001.

....Respondents

(By Advocate : Mr. G. Rajesham, Addl. CGSC)

**ORAL ORDER**  
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

**Through Video Conferencing:**



2. This OA is filed questioning the action of the respondents in not extending the 2<sup>nd</sup> / 3<sup>rd</sup> MACP financial upgradation to the applicants on the ground that they got promotion from the post of Postal Assistant to the post of Inspector Posts pursuant to LDC Examination under 66.66% quota and for a consequential direction to the respondents to grant them financial upgradations under MACP Scheme ignoring their promotion as Inspector Posts, with all consequential benefits.

3. Brief facts of the case are that most of the applicants herein joined the respondent organization as Postal Assistant, got promoted as Inspector of Posts under LDC Examination and thereafter, Asst. Superintendent of Post Offices on the respective dates. Some of the applicants also got TBOP promotion after their joining as Postal Assistant and eventually, promoted as Inspector Posts (for short “**IP**”) and one of the applicants also got III MACP on completion of 30 years of service. The applicants submit that the Dept. of Posts introduced recruitment rules for promotion to the post of Inspectors in 2001, which was modified vide Notification dt. 01.02.2013, providing for promotion to the posts of Inspectors through Limited Departmental Competitive Examination under 66.66% quota and direct recruitment for the remaining 33.34% quota. Under the MACP Scheme, the promotion to IP by merit through LDCE is offset against the

MACP and the IP are denied the benefit of financial upgradation.

Aggrieved, the OA is filed.



4. The contentions of the applicants are that similar issue came up for consideration before the Hon'ble Jodhpur Bench in OA 382/2011, which was decided on 22.05.2012 holding that the promotion earned by a Group D/ Postman to the post of Postman/ Postal Assistant cannot be treated as a promotion in the hierarchy and as such, cannot deny the financial upgradation on that count. Following the same, Hon'ble Madras Bench of this Tribunal decided OA No. 1088/2011, on 14.03.2013 and the said order was confirmed by the Hon'ble High Court at Madras in WP No. 30629/2014 filed by the Department and the matter was further carried to the Hon'ble Supreme Court vide SLP No. 4848/2016, which was also dismissed vide order dt. 16.08.2016. Review Petition No.1939/2017 in SLP No. 4848/2016 filed by the Union of India was also dismissed on 13.09.2017. The applicants further contend that when the Government accepts the recommendations of the expert body such as Pay Commission, the substitution of the terms and conditions by executive power is arbitrary as held by the Hon'ble Apex Court in Civil Appeal Diary No. 3744/2016, vide order dt. 08.12.2017. Though they have submitted representations, the Department has taken a decision on 12.12.2018 that the judgment of the Hon'ble Madras Bench of the Tribunal in OA No. 1088/2011, which attained finality, is only judgment *in personam* and not *in rem*. That, the action of the respondents in not granting financial upgradations to the next Grade Pay under MACP ignoring the promotion

of the post of IP pursuant to the LDCE, which does not fall under the hierarchy as contemplated under ACP/MACP Scheme is arbitrary and violative of Articles 14 and 16 of the Constitution of India.



5. The respondents filed a reply statement opposing the OA. In the reply statement, the facts as stated by the applicants are not disputed. The respondents have given the service particulars of the applicants from their initial appointments till the latest promotion, etc. The main plank of defence of the respondents in the reply statement is that the judgment of the Hon'ble Jodhpur Bench of the Tribunal and the Hon'ble Madras Bench of this Tribunal, upheld by the Hon'ble Madras High Court and the Hon'ble Supreme Court are *in personam* and may not be treated as a precedent in other cases, as communicated by the Postal Directorate vide letter dt. 12.02.2018.

6. Heard both the counsel and perused the pleadings on record.

7(I) During the course of hearing, learned counsel for the applicants submitted that, in addition to the orders cited supra, this Hon'ble Tribunal also allowed OA No. 367/2015, vide order dt. 24.01.2020 and the same applies squarely to the case of the applicants herein. We have perused the order in OA No. 367/2015, which was allowed following the orders of the Hon'ble Benches at Jodhpur and Madras, Hon'ble High Court of Madras and the Hon'ble Supreme Court cited supra and earlier order of this Bench

in OA No. 119/2013 dt.05.10.2018. Relevant observations quoted in the order in OA 367/2015 are reproduced hereunder:



*“7 (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.”*

(II) In view of the orders cited supra, we are of the view that this case is squarely covered by the order of this Bench as well as the Hon'ble Benches at the Jodhpur and Madras of this Tribunal, as confirmed by the higher judicial fora, as referred above. Hence, this OA is also liable to be disposed on the same lines.

(III) In the result, the respondents are directed to consider granting 2<sup>nd</sup>/ 3<sup>rd</sup> MACP Financial Upgradation to the applicants from the dates due and consequently, re-fix pay and allowances of the applicants with consequential benefits. Arrears to be paid, if any, to be restricted to a period of 3 years prior to the date of filing the OA as per Hon'ble Supreme Court judgment in *Union of India & Ors. v. Tarsem Singh* in Civil Appeal Nos. 5151-5152 of 2008 at Para 5. Time period allowed to implement the order is 3 months from the date of receipt of this order.



With the above direction, the OA is disposed of, with no order as to costs.

**(B.V.SUDHAKAR)**  
**ADMINISTRATIVE MEMBER**

**(ASHISH KALIA)**  
**JUDICIAL MEMBER**

*evr*