

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE**

ORIGINAL APPLICATION NO.170/477/2019

ORDER RESERVED ON 12.03.2021

DATE OF ORDER: 12.05.2021

CORAM:

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

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

N.Kista Reddy (N.K.Reddy)

Aged: 68 years

Retired Post Master Grade I

Gazipura PO, Kalburgi – 585101

Residing at: C/o Dlhi House

Behind Big Bazaar

Gazipura, Kalaburgi-585101.

....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

N.K.Region, Dharwad 580001.

3. Chief Post Master General

Karnataka Circle, Bangalore-560001.

4. Senior Superintendent of Post Offices

Kalburgi Postal Division

Kalburgi-585101.

.....Respondents

(By Advocate Shri Sayed S.Kazi)

ORDER

PER: RAKESH KUMAR GUPTA, MEMBER (A)

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

- i. Quash the Senior Superintendent of Post Offices, Kalaburgi division, Kalaburgi-585101 letter No.B1/MACP-II/Financial/Dlgs/2019 dated: 30.1.2019 vide Annexure A2 and Senior Superintendent of post offices, Kalaburgi division, Kalaburgi-585101 letter No.B1/MACP-II/Financial/2019 dated: 21.3.2019 vide Annexure A4.
 - ii. Direct the respondents to grant MACP III from 10.3.2006, to the applicant with all consequential monetary benefits.
2. The facts of the case as pleaded by the applicant are as follows:
- a) The applicant was appointed as Postal Assistant from 10.03.1976. He was granted financial upgradation under TBOP scheme from 12.03.1992 and BCR Scheme from 1.7.2002. The Government of India introduced MACP Scheme with effect from 1.9.2008, according to which, officials were eligible for 3 financial upgradations after completion of 10, 20 and 30 years of service.
 - b) The applicant was granted 3rd MACP w.e.f. 25.8.2011 even though he was eligible for 3rd MACP from 10.03.2006 i.e. after completion of 30 years of service.
 - c) The applicant submitted many representations while in service to modify the date of 3rd MACP granted to him but the respondents have not taken any action in that regard.
 - d) The applicant came to know several judicial decisions, which held that the MACP scheme was part of pay structure as per 6th CPC recommendations; therefore, MACP scheme also will be effect from 1.1.2006 and not from

1.9.2008, in accordance with executive instructions. The applicant submitted a representation on 26.12.2018 to consider his request to grant 3rd MACP from 10.03.2006, the date on which the applicant completed 30 years of service in Postal Assistant cadre. However, the Senior Superintendent of Post Offices, Kalburgi Division, Kalburgi had rejected the representation of the applicant vide his letter dated 30.01.2019 on the ground that the Hon'ble Apex Court order dated 08.12.2017 pertains to particular individual only and it cannot be applied universally to all.

- e) The applicant submits that the Hon'ble High Court of Bombay in WP.No.1763/2013 vide order dated 15.10.2018 held that MACP scheme will be effective from 01.01.2006 and not from 01.09.2008.
- f) The Hon'ble Apex Court in the case of *Union of India and others vs. Balbir Singh Turn & Others* in Civil Appeal Diary No.3744/2016 and others in its order dated 08.12.2017 had held that MACP scheme is effective from 01.01.2006 and not from 01.09.2008. Hence, rejecting the applicant's request for grant of MACP-III from 10.03.2006 i.e., the date on which he completed 30 years of service, is arbitrary, illegal and in violation of Hon'ble Apex Court order.

3. The respondents in their reply statement have averred as follows:

- a) The applicant was granted financial upgradations under TBOP Scheme from 10.03.1992 and BCR from 01.07.2002. He had got LSG promotion on 07.03.2008. However, he declined the promotion on 20.03.2008.

b) As per the MACP scheme introduced by the Government of India vide DOPT OM dated 19.05.2009 with effect from 01.09.2008, the government servant who has completed 10, 20 & 30 years are eligible for financial upgradation for 1st, 2nd& 3rd MACP respectively. As per MACP Scheme, if a Govt. servant has been offered promotion but he refused it, then he shall not be eligible to be considered for further financial upgradation till he agrees to be considered for promotion again. The details in this regard under MACP scheme are as follows:

25. If a regular promotion has been offered but was refused by the employee before becoming entitled to a financial upgradation, no financial upgradation shall be allowed as such an employee has not been stagnated due to lack of opportunities. If, however, financial upgradation has been allowed due to stagnation and the employees subsequently refuse the promotion, it shall not be a ground to withdraw the financial upgradation. He shall, however, not be eligible to be considered for further financial upgradation till he agrees to be considered for promotion again and the second the next financial upgradation shall also be deferred to the extent of period of debarment due to the refusal.

c) The applicant had declined his line of promotion on 20.03.2008. The applicant was granted 3rd MACP w.e.f. 25.08.2011 since he accepted LSG promotion on 25.08.2011. Subsequently, in review DPC meeting held on 09.12.2013, the date of effect of 3rd MACP was modified in the case of the applicant w.e.f. 27.08.2010 i.e., from the date he gave his representation to SSPOs Kalburgi. This was keeping in view the instructions issued by the Department of Posts vide letter dated 30.01.2013 wherein it was stated that the applicant's case for grant of 3rd MACPS in the next Grade Pay in the

hierarchy of Grade Pay of the CCS (RP) Rules, 2008 may be considered with effect from the date he agreed to accept his regular promotion.

- d) The applicant had earlier filed OA.No.1206/2013 before this Tribunal requesting for grant of 3rd MACP w.e.f. 01.09.2008 and the said OA was allowed by this Tribunal vide order dated 17.12.2015. This order of the Tribunal was challenged by the respondents by filing WP.No.201607/2017 before the Hon'ble High Court at Kalburgi Bench. However, the said Writ Petition was dismissed vide order dated 14.09.2018. Subsequently, on the directions of Directorate and respondent No.3, the applicant has been granted 3rd MACP benefit w.e.f. 01.09.2008 vide respondent No.4 memo dated 28.06.2019.
- e) The applicant has not mentioned in the present Original Application about the earlier case filed by him before this Tribunal and also the Writ Petition filed by the department before Hon'ble High Court of Karnataka against the order of this Tribunal. The applicant has also suppressed the fact that this Tribunal had already examined his case and allowed the OA.No.1206/2013 during 2015 and respondent No.4 had already implemented the orders of this Tribunal on 28.06.2019 vide Annexure-R2. The applicant has also suppressed the fact that he had declined the regular promotion offered to him during 2008 and also that he was issued with dies-non for 16 days in his service. The subject matter of both the OAs is same except the difference for requesting to grant of 3rd MACP from 10.03.2006 in the present OA.

- f) Since the MACP Scheme has come into operation w.e.f. 01.09.2008 and hence, the applicant's request for grant of the MACP benefits prior to that is not tenable.
- g) The applicant has quoted various court orders demanding benefits of MACP w.e.f. 10.03.2006. There is no order from the DG Posts as well as DOPT to give MACP benefits w.e.f. 01.01.2006. DOPT vide its order No.43109/5/2019/Estt. D dated 01.11.2018 (Annexure-R3) has clarified the stance for not granting MACP benefits prior to 01.09.2008 which is as under:
- i. *The matter relating to grant of benefits w.e.f. 1.1.2006 under MACP Scheme to civilian employees is subjudice before the Hon'ble Supreme Court of India in SLP Nos. 10811-10813/2018 in the matter of Union of India Vs. Shri Ranjit Samuel which has been filed by MOD against the order dated 14.02.2017 of Hon'ble High Court of Judicature at Madras in Writ Petition Nos. 33946, 34602 and 27798 of 2014, wherein Madras High Court held that the benefit of erstwhile ACP Scheme cannot be negated by bringing a new Scheme i.e. MACP Scheme with retrospective effect. Subsequently, O/o C&AG have also been advised to file SLP against the order of Bombay High Court in a similar matter. This SLP of O/o C&AG and other similar matters have been tagged with SLP No.10811-1813/2018 and are being heard together by the Apex Court.*
 - ii. *Further, the 6th Pay Commission recommended separate Schemes for civilian and the Defence Personnel. After the recommendations were considered and approved by the Cabinet, D/o Expenditure issued Resolution dated 29.08.2008 in respect of civilian employees. M/O Defence issued Resolution dated 30.08.2008 regarding extension of 6th CPC benefits to Armed Forces Personnel. Thus the Civilian and the PBOR personnel are governed by two different Resolutions.*
 - iii. *The recommendations of the 6th CPC were accepted by the Government only on 29.08.2008 (30.08.2008 in case of PBOR). The recommendations of the 6th CPC were required to be examined and a Scheme was to be formulated in consultation with Department of Expenditure and the same*

took considerable time for its implementation. Before implementation of the Scheme, a cut off date had to be decided/fixed. Accordingly, the Government has taken a conscious decision for implementing the MACPS w.e.f. 01.09.2008. Though the MACPS came into existence only w.e.f. 01.09.2008, the benefits of the existing ACP Scheme of August, 1999, was allowed to the Government servants upto 31.08.2008.

- iv. *Changing the effective date of implementation of MACP from 01.09.2008 to 01.01.2006 may be beneficial to certain employees, but this would also place certain other employees at a disadvantage thereby entailing huge recoveries from them. It may be difficult to make recoveries from the employees who have availed higher financial benefit under ACP during 01.01.2006 to 31.08.2008 and retired from service.*
 - v. *The MACP is a condition of service and, hence, cannot be given retrospective effect. It is upto Government to take a conscious decision to implement it uniformly from a certain date.*
 - vi. *It is not feasible to extend the benefits of MACP during 01.01.2006 to 31.08.2008, as more than nine years of time has passed since the implementation of MACP and the issues have been settled as per extant instructions. The change of effective date will lead to surge of litigation particularly from employees who availed the benefits of ACP Scheme during 01.01.2006 to 31.08.2008.*
 - vii. *Vide order dated 14.02.2017, Hon'ble High Court of Judicature at Madras in Writ Petition Nos.33946, 34602 and 27798 of 2014 has held that the benefit of erstwhile ACP Scheme cannot be negated by bringing a new Scheme i.e. MACP Scheme with retrospective effect.*
- h) Accordingly, keeping the above in view, granting of MACP III w.e.f. 10.03.2006 is not tenable.

4. Heard learned counsels for the parties.
5. The present OA has been filed by the applicant requesting for grant of 3rd MACP benefit on completion of 30 years of service i.e., on 10.03.2006 since his initial date of appointment is 10.03.1976. He stated in his OA that he had been granted 3rd

MACP only on 25.08.2011. However, he failed to mention in this OA that he had earlier obtained orders from this Tribunal for grant of 3rd MACP benefit w.e.f. 01.09.2008. He also did not mention anything about the fact that he had earlier declined offer of promotion to LSG grade on 20.03.2008 and consequently as per the rules of MACP scheme, the grant of financial benefit under MACP was denied to him till such time that he accepted his promotion as LSG which was on 25.08.2011. He has already been granted relief by this Tribunal in OA.No.1206/2013 which was later on confirmed by the Hon'ble High Court in WP.No.201607/2017(S-CAT) wherein it has been held that at the time of declining LSG promotion on 20.03.2008, the MACP scheme was not in existence. The Postal Department had introduced the MACP scheme by an order dated 19.05.2009. Since the applicant declined the regular promotion on 20.3.2008, prior to the announcement of MACP scheme, hence, it was held that he should not be punished since to the best of his knowledge at the time of him declining promotion; there was no financial loss which would have accrued to him on refusal of promotion. This knowledge came to him only after the MACP scheme was introduced on 19.05.2009.

6. It has now been stated by the respondents that the applicant has already been given the benefit of 3rd MACP w.e.f. 01.09.2008 instead of 25.08.2011 vide letter dated 28.06.2019. The applicant has nowhere mentioned about his cases filed before this Tribunal, as well as the Writ Petition filed before the Hon'ble High Court of Karnataka, wherein he was a party. Consequent to the orders of the Hon. High

Court, he has already been granted the benefit of 3rd MACP w.e.f. 01.09.2008 instead of 25.08.2011.

7. A careful reading of the judgment passed by the Hon'ble Supreme Court in *Union of India and others vs. Balbir Singh Turn & Others* in Civil Appeal Diary No.3744/2016 and others clearly indicates that it relates to the resolution of the 6th Central Pay Commission with regard to the “personnel below officer rank (PBOR)” in the Armed Forces. Under the MACP scheme for the Armed Forces, a directly recruited PBOR such as a Sepoy, Havildar or JCO is entitled to a minimum of three financial upgradations after 8, 16 and 24 years of service. Hence, the rules and the scheme, which was the subject matter of this case before the Apex Court, were completely different from the MACP scheme notified for civilian employees by the Govt. of India where civilian employees are entitled to three financial upgradations only after 10, 20 & 30 years of service. Hence, the orders of the Hon'ble Apex Court in this case pertain to the pay scales and benefits for the PBOR in Armed Forces and cannot be considered to be directly applicable to civilian employees.

8. The 6th CPC recommendations relating to MACPS were accepted by the Government on 29.08.2008 for implementation w.e.f. 01.09.2008. Though the MACPS came into effect from 01.09.2008, the benefits of the existing ACP Scheme of August, 1999, were allowed to the Government servants upto 31.08.2008. Changing the effective date of implementation of MACP from 01.09.2008 to 01.01.2006 may be beneficial to certain employees, but this would also place many other employees at a disadvantage, thereby entailing huge

recoveries from the employees, who would have benefited from the ACP Scheme during the period from 01.01.2006 to 31.08.2008. Moreover, such benefits are normally given from prospective effect only. Hence, there is no justification at this stage to consider the benefit of MACP to the applicant, from any date prior to the date on which the scheme came into existence i.e., on 01.09.2008. The applicant has already got the benefit of getting 3rd MACP w.e.f. 01.09.2008, instead of 25.08.2011.

9. Keeping in view the points mentioned above, the present OA, being devoid of any merit, is liable to be dismissed.

10. The OA is accordingly, dismissed. However, there shall be no orders so as to costs.

(RAKESH KUMAR GUPTA)
MEMBER(ADMN)

(SURESH KUMAR MONGA)
MEMBER(JUDL)

/ps/