

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00547/2012

Jabalpur, this Friday, the 27th day of August, 2021

HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER
HON'BLE MS. NAINI JAYASEELAN, ADMINISTRATIVE MEMBER



Ancy Thomas, Date of Birth 28.08.1974
W/o Shri Saju Thomas, R/o House No. 113,
APR Colony, Bilhari, Jabalpur 482001 (MP) **-Applicant**

(By Advocate – **Shri Manoj Sharma**)

V e r s u s

1. Union of India, through its Secretary
Ministry of Communication, Department of Posts
Dak Bhawan, Sansad marg, New Delhi 110116

2. Union of India, through its Secretary
Ministry of Personnel Public Grievances & Pensions
Department of Personnel & Training
North Block, New Delhi 110001

3. Chief Post Master General
M.P. Circle Hoshangabad Road
Bhopal 462012 (MP)

4. Asstt. Postmaster General (Staff)
O/o Chief post Master General
M.P.Circle, Hoshangabad Road
Bhopal 462012 (MP)

5. Superintendent Railway Mail Service
Jabalpur Division, Jabalpur 482001 (MP)

6. Sr. Superintendent of Post Offices,
Jabalpur Division, Jabalpur 482001 (MP) **- Respondents**

(By Advocate – **Shri S.K.Mishra**)

ORDER (ORAL)

By Ramesh Singh Thakur, JM:-

The applicant by way of filing this Original Application is calling in question the legality validity and propriety of the order dated 26.08.2010 (Annexure A-1), whereby unilaterally the benefits granted to the applicant under the ACP Scheme is snatched and taken away. The applicant is further challenging the order dated 19.07.2010 (Annexure A-2), whereby the benefits of 1st ACP granted to the applicant by order dated 13.10.2008 has been withdrawn. The applicant is further seeking direction that the MACP Scheme dated 18.09.2009 (Annexure A-3) may be declare inoperative qua the applicant to the extent it snatches the benefit of ACP I accrued to the applicant prior to issuance of circular dated 18.09.2009. Further challenge is to the order dated 29.05.2012 (Annexure A-4) whereby the representation preferred by the applicant has been rejected by the respondents. Hence this Original Application.



2. The applicant has prayed for the following reliefs in this Original Application:-

- “8.(i)** Summon the entire relevant record from the respondents for its kind perusal.
(ii) Quash and set aside the orders dated 19.07.2010 Annexure A/2 and 26.08.2010 Annexure A-1 and Annexure A/4 Dt. 29.05.2012.

(iii) It may kindly be declared that the MACP Scheme dated 18.09.2009 is inoperative against the applicant to the extent it snatches the ACP-I benefit of the applicant. If MACP Scheme dated 18.09.2009 comes in the way of the applicant to enjoy the ACP-I benefit from 28.10.2008, the said scheme to that extent be declared unconstitutional and ultra vires in nature;

(iv) Summon the relevant records pertaining to the letter dated 30.06.2011 forwarded by the Supdt. RMS, JB Dn. Jabalpur.

(v) Any other order/orders, direction/directions may also be passed;

(v) Award cost of the litigation to the applicant.”



3. The brief facts of the case are that the applicant was initially appointed on 17.10.1996 on the post of Steno D in the then scale of Rs. 1200-2040/- which stood revised w.e.f. 1.1.1996 as Rs. 4000-6000/-. That the next promotional post for the post of Steno D is Steno C carrying pay scale of Rs. 5000-8000/-. On 09.08.1999 Assured Career Progression Scheme was introduced. A bare perusal of the scheme shows that such employees who are stagnating in a post and scale after rendering 12 and 24 years of service, respectively, will be given financial up-gradation in a scale which is attached to the promotional post. A copy of which is annexed as Annexure A-5. Vide order dated 19.07.2010 (Annexure A-2), the earlier order dated 13.10.2008 whereby



the benefits of ACP-I was granted to the applicant was unilaterally withdrawn without giving any opportunity of any nature. Feeling aggrieved with the impugned orders the applicant preferred representations dated 22.07.2010 (Annexure A-6) and 03.09.2010 (Annexure A-7). The applicant earlier aggrieved with the impugned orders has approached this Tribunal by way of filing O.A. No. 710/2010 and the said O.A. was disposed of at the admission stage with a directed to respondents to decide the applicant's representation with a reasoned and speaking order within 45 days. The copy of order in O.A. No. 710/2010 is annexed as Annexure A-9. The applicant after the order passed by this Tribunal has preferred a detail representation with a request to grant her salary as per earlier grade pay granted under ACP scheme. Copy of representation is annexed as Annexure A-10. Vide O.A. dated 18.09.2009 MACP was introduced and a bare perusal of the scheme shows that it has been brought into force by giving the date of retrospective application i.e. 01.09.2008. Further para 14 of the MACP scheme itself makes it luminous clear that it has been inter alia mentioned that no past cases would be re-opened. However, the respondents have not followed the

said provisions and have arbitrarily withdrawn the said benefit given to the applicant.

4. The main ground for challenging the action of the respondents is that the applicant has been given the benefit of ACP-I pursuant to O.M. dated 09.08.1999. The applicant was eligible and was rightly given the benefit of ACP-I Scheme. Therefore, neither the reduction of applicant's pay nor the recovery is justiciable. The further ground for challenge is that the impugned order dated 19.07.2010 and 26.08.2010 are arbitrary, unjust and unfair and the pay scale given to the applicant as per the ACP-I should not be snatched retrospectively applying the O.M. dated 18.09.2009. The O.M. dated 18.09.2009 to the extent it snatches the accrued and vested right of the applicant is unconstitutional and ultra vires in nature.



5. The respondents have filed their reply to the Original Application. In the preliminary submissions of reply they have submitted that the applicant was initially appointed on 17.10.1996 as steno grade-III (D) in the pay scale of Rs. 1200-2040 in the office of RMS Jabalpur. The pay scale was revised w.e.f. 01.01.1996 and 01.01.2006 as a consequence of implementation of Vth and Vth Central Pay Commissions



report respectively. The DoPT had introduced ACP Scheme w.e.f. 09.08.1999, making provision to give financial up-gradation to the employees who have complete 12 and 24 years of service respectively to the next higher scale under ACP-I and ACP-II respectively. This scheme has been withdrawn by the DoPT vide order dated 19.05.2009 (Annexure A-3) with effect from 01.09.2008 and introduced MACP scheme, in which three financial upgradations has been introduced at the interval of 10, 20 & 30 years of regular service. The order dated 19.05.2009 of MACP Scheme have taken effect from 01.09.2008 but before receipt of this order, the applicant was granted benefit of ACP-I under old ACP Scheme with effect from 29.10.2008. In the said circumstances, the benefit of ACP-I granted to the applicant under old scheme has been withdrawn vide order dated 19.07.2010 (Annexure A-2) and vide order dated 26.08.2010 the applicant has been granted benefit of MACP -I under modified ACP scheme. The applicant has been given the benefit as per provisions of MACP Scheme implemented w.e.f. 01.09.2008. The representation of the applicant has been considered and decided as per rules.



6. The applicant has filed the rejoinder to the reply filed by the respondents, wherein the applicant has reiterated its earlier stand taken in the O.A. The applicant submits that the aforesaid action of the respondents is disadvantageous for the applicant and by the said action the benefit and right which have already been accrued in her favour has been snatched away by imposing policy which came by giving it retrospective effect. It is significant to mention here that the Ministry of Communication and IT Dept of Post has issued order dated 16.05.2011 and has referred the matter to the DoPT regarding granting of financial up-gradation in the promotional hierarchy instead of under the MACP Scheme. Copy of order dated 16.05.2011 is annexed as Annexure RJ-1. A bare perusal of the letter would show that it has been accepted by the respondents that certain specific category of employees where MACP is less advantageous than the erstwhile ACP, the matter should be clarified. However, no such clarification has yet been sought by the DOPT and the same is still under consideration. The applicant further submits that MACP scheme which provides promotion/up-gradation on the next hierarchy on next grade pay whereas in the erstwhile ACP Scheme, up-gradation was granted on

the next promotional post. Thus, for the aforesaid reasons, the applicant is being deprived of G.P. of Rs. 4200/- i.e. Rs. 5000-8000/-. Thus, the MACP scheme is less advantageous for the cadre of the applicant and said part of MACP Scheme should be declared inoperative for the cadre of the applicant.



7. The respondents have filed their additional reply to the rejoinder filed by the applicant. The respondents have submitted that MACP scheme came into existence w.e.f. 01.09.2008 vide O.M. dated 10.09.2009. as per para 12 of MACP Scheme, the previous ACP Scheme was effective only up to 31.08.2008. The benefit of ACP scheme to the applicant falls after 31.08.2008. Therefore, benefit given to the applicant under previous ACP Scheme from 28.10.2008 has rightly been withdrawn by the respondents on introduction of MACP Scheme.

8. We have heard the learned counsel for both the sides and have gone through the pleadings and the documents annexed therewith.

9. The learned counsel for the applicant has submitted that this case is similar to Original Application No.156/2011 decided vide order dated 17.01.2014 and the present Original Application may be decided in terms of this decision.

10. On perusal of order dated 17.04.2014 passed in Original Application No. 156/2011, we find that the facts and circumstances as well as the relief prayed for in that Original Application are similar to those in the present Original Application. Thus, the present Original Application can be decided in terms of the order dated 17.04.2014 *ibid*. The relevant Para 7, 8, 9 and 10 of this order are reproduced as under:-



7. On perusal of Office Memorandum dated 18.09.2009 (Annexure R-1), we find that para 14 of this order clearly states that no past cases would be re-opened. It is undisputed that when the applicant was granted upgradation under BCR Scheme vide order dated 06.02.2009 (Annexure A-2), Office Memorandum dated 18.09.2009 (Annexure R-1), by which the BCR Scheme has been withdrawn with effect from 01.09.2008, was not in existence. The applicant completed his rest of the service, till superannuation on 30.06.2009, in the pay band of Rs. 9300-34800 with Grade pay of Rs. 4200/- as granted to him under BCR Scheme. The respondent Organization is now withdrawing the said benefit from the applicant on the ground that BCR Scheme has been withdrawn with effect from 01.09.2008 vide the Office Memorandum dated 18.09.2009, ignoring the fact that the said O.M. clearly provided in its para 14 that no past cases would be re-opened.

8. The Office Memorandum dated 18.09.2009 also mentions in para 5 that switching over to the MACPs is being done with the consent of the Postal Federations, and in regard to Drivers, their existing structured promotion scheme is being retained as it is considered to be more beneficial to this category of staff and the postal federations have requested to retain it. Thus, it is clear that substitution of Time Bound One Promotion (for brevity TBOP) and BCR Scheme with MACPs has been done with the consent of the Postal Federations as it was found to be more beneficial to the staff covered under

those schemes. Therefore, any negative effect of switch over to MACPs was not intended while issuing the Office Memorandum dated 18.09.2009.

9. Learned counsel for the applicant argued that it has been held in the Judgment of Hon'ble Supreme Court in the matter of Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and Ors., AIR (1997) SC 3828 that the vested rights and accrued rights could not be adversely effected by retrospective operation of rule. In this regard para 24 of the order is reproduced as under:-



In many of these decisions the expressions vested rights or accrued rights have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment etc. of the employees, the said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution

10. Thus we are of the considered opinion that the financial upgradation under the BCR Scheme, granted to the applicant vide order dated 06.02.2009 (Annexure A-2) could not be withdrawn vide the order dated 05.11.2009 (Annexure A-1) on the ground of withdrawal of BCR Scheme with effect from 01.09.2008, as the concerned Office Memorandum dated 18.09.2009 (Annexure R-3) clearly provided that "Past cases are not to be reopened." The right to get upgraded pay-scale had already been vested on the applicant vide the order dated 06.02.2009 (Annexure A-2) and thus, withdrawing it by subsequent order on the ground of implementation of an alternative scheme with retrospective effect is not sustainable."

11. Thus, the impugned orders dated 19.07.2010 (Annexure A-2), 26.08.2010 (Annexure A-1) and 29.05.2012 (Annexure A-4) are quashed and set aside. The applicant

shall be entitled to get all the benefits consequential to quashing of these orders. Any recovery, already done from the applicant in consequence of the order dated 26.08.2010, shall be refunded to him within a period of 30 days from the date of communication of this order.



12. Thus, the Original Application is allowed. No order as to costs.

(Naini Jayaseelan)
Administrative Member
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(Ramesh Singh Thakur)
Judicial Member