

Central Administrative Tribunal Jaipur Bench, Jaipur

**O.A. No.469/2011,
O.A. No.614/2015 & O.A. No.564/2018**

Reserved on: 02.08.2021

Pronounced on: 12.08.2021

Coram:

Hon'ble Mr. Dinesh Sharma, Member (A)
Hon'ble Mrs. Hina P. Shah, Member (J)

O.A. No. 469/2011

ONKAR MAL Son of Shri Dhanna Ram, aged about 62 years, resident of 159, Jagdamba Sadan, Sita Badi, Jhotwara Jaipur and retired on 30/06/2009 from the post of Sub Post Master, Industrial Area, Jhotwara, Jaipur.

....APPLICANT

(By Adv: Shri C.B. Sharma)

VERSUS

1. Union of India, through Secretary to the Government of India, Department of Posts, Ministry of Communication & Information Technology, Dak Bhawan New Delhi- 110001.
2. Chief Post Master General, Rajasthan Circle, Jaipur-302007.
3. Director, Postal Services (Head Quarter) Office of Chief Post Master General, Rajasthan Circle, Jaipur-302007.
4. Senior Superintendent of Post Offices, Jaipur City Postal Division, Jaipur.

....RESPONDENTS

(By Advocate: Shri Rajendra Vaish)

O.A. No.614/2015

HARJI LAL BAIRWA Son of Shri Jagannath, aged about 53 years, resident of Khoja Bawari, Behind Sindhi Colony, Tonk Raj. and presently working as Postal Assistant, Tonk Raj., Head Post Office, Tonk - 304001.

....APPLICANT

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(By Adv: Shri C.B. Sharma)

VERSUS

1. Union of India, through Secretary to the Government of India, Department of Posts, Ministry of Communications and Information Technology, Dak Bhawan, New Delhi - 110001.
2. Chief Post Master General, Rajasthan Circle, Jaipur - 302007.
3. Superintendent of Post Offices, Tonk Postal Division, Tonk Raj.

....RESPONDENTS

(By Advocate: Shri Rajendra Vaish)

O.A. No. 564/2018

RAJ PAL SINGH Son of Late Shri Chhattar Singh, aged about 62 years, Permanent Address Village & Post - Sokhana, District Hathras (Uttar Pradesh) - 204101 and presently residing at 4-A-12, Dada Bari Extension, Kota (Rajasthan) - 324009 and retired on 31/03/2016 from the post of Warrant Officer No. 8369364-A (Postal Assistant) C/o 56 APO.

....APPLICANT

(By Adv: Shri C.B. Sharma)

VERSUS

1. Union of India, through Secretary to the Government of India, Department of Posts, Ministry of Communications and Information Technology, Dak Bhawan, New Delhi - 110001.
2. Chief Post Master General, Rajasthan Circle, Jaipur - 302007.
3. Superintendent of Post Offices, Bharatpur Postal Division, Bharatpur - 321001.
4. P & T Administration Cell, Army Postal Service Centre, PIN - 900746 C/o 56 APO.
5. Director of Accounts (PO), Department of Post, Civil Lines, Nagpur - 440001.

....RESPONDENTS

(By Advocate: Shri Rajendra Vaish)

ORDER**Per: Dinesh Sharma, Member (A):**

These three OAs listed above have similar facts and involve a common issue of law. Hence, with the consent of the arguing counsels of both the sides in these cases, they were heard together and are being disposed of with this common order.

2. In all these cases, the applicants, at some point of time, got promotion/selection as Postal Assistant/Sorting Assistant (a Group 'C' post) following success in a Limited Departmental Competitive Examination (LDCE). The common legal issue is whether this selection/promotion/appointment in the clerical grade (Group 'C') as Postal Assistant should be counted as a promotion while assessing their eligibility for grant of MACP (Modified Assured Career Progression) benefits. The MACP benefits are available to employees, at the end of 10, 20 and 30 years of service, if they are not otherwise promoted or got similar benefits (total 3) under any earlier similar schemes of financial upgradation. If the appointment of the applicants as Postal Assistant is to be considered as promotion, these applicants will not be eligible for benefit under the MACP Scheme since they had already got two other benefits (of promotion or financial upgradation under earlier schemes). If the appointment as Postal Assistant

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was NOT to be considered as promotion, the applicants will be eligible for MACP under the new scheme. The applicants claim that they ARE eligible for grant of MACP and the selection as Postal Assistant following the LDCE should not be counted as a promotion. The applicants were initially granted the MACP benefit, without considering their appointment as Postal Assistant as promotion. However, the department later found it to be wrong and considering their appointment as Postal Assistant as a promotion, is seeking to recover the benefits already granted. The applicants have approached the Tribunal praying to set aside these orders, which were passed after giving them show cause notice and after rejecting their representations against it. The applicants also sought a stay against the recovery of the amounts already paid by way of grant of this benefit.

3. The same issue has been agitated before various benches of this Tribunal and the Hon'ble High Courts and there have been conflicting conclusions by the benches of this Tribunal and the Hon'ble High Courts. Amongst the notable decisions cited in favour of the applicant's claims is that of the Hon'ble High Court of Rajasthan, Jodhpur in **Union of India & Others vs. Har Govind Sharma** and connected cases, (in D.B. Civil Writ Petition No. 11709/2013, decided on 10.8.2015). In this case, the Hon'ble High Court, along with connected cases, decided that selection as Postal

Assistant, following LDCE, was not a promotion and hence it should not be counted while computing eligibility for MACP. The decision was followed by the Hon'ble Jaipur Bench of the Rajasthan High Court in **Anand Prakash Bhatnagar vs Union of India & Others** (in D.B.Civil Writ Petition No. 11538/2014, dated 10.12.2015) and connected cases. SLPs filed against these judgments were dismissed by the Hon'ble Supreme Court by their order dated 30.07.2018. The department finally complied with these judgments, following an execution petition filed before this Tribunal. There are decisions of other High Courts also on similar lines (by Madras High Court in **Union of India & Others vs. D Sivakumar and Anr.** SLP (c) No. 4848/2016 decided on 16.08.2016 and Karnataka High Court in **Union of India Vs Basanna Naik**, Writ Petition No. 200807/2016 (S-CAT), Delhi High Court in **Union of India Vs Shakil Ahmad Burney**, W.P. (C) No. 4131/2014) where the courts found selection as Postal Assistant not countable while assessing eligibility for MACP. SLP against the decision in the Sivakumar's case was dismissed by the Hon'ble Supreme Court on 16.08.2016 (while keeping the issue of merit, of the decision against which the SLPs were filed, alive).

4. There are contrary decisions, cited by the respondents. Most recent amongst them is the decision of The Hon'ble High Court of Punjab and Haryana in **Senior**

Superintendent of Post Offices, Karnal and Others vs. Nand Kishore and Another decided on 23.01.2019 annexed with MA No. 842/2019 in Harji Lal Bairwa's case. This decision followed the decision of the Rajasthan High Court in **Ramkaran Kumhar vs. Union of India & Others** in DB Civil Writ Petition No. 3968/08 dated 31.05.2016 (Annexure R/6) which was followed by another decision of the Hon'ble Rajasthan High Court in **Union of India & Others vs. Dev Karan Mahala & Others** (DB Civil Writ Petition No. 18488/2016 decided on 10.05.2018) with connected cases (Annexure R/8). In all these decisions (except in Ramkaran Kumhar's case where the issue related to promotion to the post of Postal Inspector and not Postal Assistants), the matter in issue appears to be same as the one before us (whether selection as Postal Assistant following LDCE should be counted as promotion). These decisions have come to a conclusion exactly opposite to the conclusion reached in cases described in the previous paragraphs. They have found the selection to the post of Postal Assistant, following the LDCE, as promotion countable as such with respect to eligibility for grant of MACP.

5. The matters were heard through video conferencing on 02.08.2021. The learned counsel for the applicants cited the cases decided in their favour, which have already been implemented by the department. The learned counsel for the

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respondents argued that the more recent decisions, listed in para 4 above, have to be followed. These decisions have already discussed the decisions to the contrary (listed in para 3 above) and have differed with them since the earlier judgments were, according to them, passed without the rule position properly brought to the notice of honourable court passing the earlier decision.

6. After going through the pleadings and hearing the argument of the learned counsels of both the parties, we find that, as described in the previous para, the issue involved in this matter has already been discussed in detail and decided upon by the Hon'ble High Courts. There is no disputing that the facts and the issue involved in these decided cases are not materially different from the facts and the issue involved in the cases before us. Under these circumstances, it would be incorrect for us to go into the merit of the issue afresh and come to our own judgment. We must follow the rules of *stare decisis* strictly. In this regard, we agree with the argument of the learned counsel for the respondents that, when we have contrary judgments with the same bench strength of the same High Court, we have to go by the more recent judgments which have already considered the earlier judgments. Though, it is true that the Ramkaran Kumhar's judgment was in the context of Postal Inspectors, it found selection through LDCE as promotion.

It also discussed the earlier contrary decisions and did not agree with those findings stating that in those cases, the correct rules position was not brought to the notice of the Hon'ble High Court. There have been further decisions (of Rajasthan High Court in Dev Karan Mahala's case, dated 31.05.2016 and Hon'ble High Court of Karnataka in **Union of India & Others vs Smt R.K. Kulkarni**, dated 27.11.2018, produced by the respondents and taken on record as R/8 and R/10 respectively) which leave no doubt about the current position of the Hon'ble High Courts in this matter. We are yet to get a final pronouncement by the Apex Court on the merits of this issue. However, at this stage, when we see conflicting decisions of the Hon'ble High Courts with equal bench strength, we must follow the more recent decision which the Hon'ble High Courts have taken after being fully aware of the earlier, contrary decisions on the same issue. These, more recent decisions, have considered the selection/appointment/promotion to the post of Postal Assistant, following a limited departmental examination, as promotion. Hence, following these pronouncements, we cannot accept the claims of the applicant for NOT considering the same as promotions while considering eligibility for MACP.

7. This brings us to the issue of recovery. Though specifically pleaded only in one of the OAs (OA No.

564/2018) recovery of money paid by mistake in excess of the rightful claims is barred in certain cases of hardship [following the dictum in **State of Punjab vs. Rafiq Masih** (2015) 4 SCC 334]. We cannot ignore this judgment while deciding on whether recovery of excess amount in these cases is permissible. We find the detailed judgment of the Ahmedabad Bench of this Tribunal in OA No. 219/2015, pronounced on 17.11.2015 (produced as Annexure MA/R-1 in OA No.614/2015) and brought on record of this case), as a valuable guide in this matter. The judgment, which is on exactly the same facts, discusses all the earlier relevant judgements on this issue passed by the Hon'ble High Courts until then. The Ahmedabad Bench, in this judgment (ref para 28, page 92 of the paperbook in Harji Lal Bairwa case) found it difficult to place reliance on the judgments of the Hon'ble Rajasthan High Court that were favourable to the applicants. Yet, following the Rafiq Masih case (supra), it found that no amount can be recovered from the applicants in that case consequent upon the cancellation of their earlier orders (Page 93 of the paperbook in that OA). Since we find the facts of the cases before us exactly similar to the case decided by the Ahmedabad Bench of this Tribunal, we have no hesitation in holding that no amount can be recovered from the applicants in these cases, too, even though the respondents may withdraw the wrongly given benefits, prospectively.

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8. The OAs are, therefore, disposed of dismissing the prayer of the applicants for cancellation of the impugned orders so far as they relate to not granting/withdrawing of the MACP granted by mistake. However, following these orders, no recovery shall be made of amounts already paid in this regard. The OAs are disposed accordingly. No costs.

(Hina P. Shah)
Member (J)

(Dinesh Sharma)
Member (A)

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