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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

Original Application No.397 of 2011
Cuttack, this the 18th day of September, 2014

A.K. Ray Applicant

-Versus-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? ✓
2. Whether it be referred to PB for circulation? ✓

(R.C. MISRA)
MEMBER(A)


(A.K. PATNAIK)
MEMBER(J)

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CORAM
HON'BLE MR. A.K. PATNAIK, MEMBER (J)
HON'BLE MR. R. C. MISRA, MEMBER (A)

Sri Amar Kumar Ray,
aged about 49 years,
S/o. Sri Dinabandhu Ray,
At present working as Asst. Accounts Officer
In the office of the Director of Accounts (Postal),
Cuttack-753004.

..... ...Applicant

(Advocates: M/s- A.K. Mohanty, S. Rath)

VERSUS

Union of India Represented through

1. Secretary,
Department of Post,
Dak Bhawan, Sansad Marg,
New Delhi-110001.
2. The Dy. Director General (PAF),
Dak Bhawan, Sansad Marg,
New Delhi-110001.
3. The Director of Accounts (Postal),
Mahanadi Vihar, Cuttack-753004.

(Advocate: Mr. B.K. Mohapatra)

ORDER

R.C.MISRA, MEMBER(A):

Applicant, presently working as Assistant Accounts Officer in the office of the Director of Accounts (Postal), Cuttack (Respondent No.3) has invoked the jurisdiction of the Tribunal under Section 19 of the A.T.Act, aggrieved with Office Order dated 23.2.2011(Annexure-A/6) and Memorandum dated 1.6.2011(Annexure-A/9), wherein and whereunder his entitlement to grant of 2nd financial upgradation has

been negatived by the Respondent-Department and in the circumstances, he has sought for the relief as under.

- i) To quash the order of the Respondent No.3 dated 23.2.2011 (Annexure-A/6) and the order dated 1.6.2011 of the respondent No.2(Annexure-A/9) regarding withdrawal of the financial upgradation granted to the applicant w.e.f. 1.9.2008 onwards for being illegal, irregular, contrary to the provision of the MACP scheme and being unsustainable in law.
- ii) To order that the amount of Rs.7000/- which was irregularly recovered from the salary of the applicant for the month of February, 2011 towards the so called excess payments be returned to the applicant.
- iii) To order that no recovery should be made from the pay of the applicant towards the so called excess payments made to him w.e.f. 1.9.2008 onwards due to grant of such financial upgradation.
- iv) To pass such other order(s)/direction(s) as may be deemed fit and proper in the bona fide interest of justice.
- v) To order and direct that the cost of litigation be paid to the applicant by the respondents for their wilful, arbitrary and discriminatory action in the matter.

2. The entire gamut of the matter is that applicant joined as Postal Assistant in the Department of Posts with effect from 11.05.1985. On completion of 16 years' service in the Department, he was granted the next higher scale under TBOP Scheme with effect from 23.05.2001. Thereafter, he was promoted as Junior Accounts Officer on 02.02.2002 which was subsequently merged and re-designated as Assistant Accounts Officer (AAO). While the matter stood thus, Modified Assured Career Progression Scheme (MACPS) came into force with effect from

1.9.2008 and in effect, TBOP & BCR Schemes which were in operation stood withdrawn with effect from 31.8.2008. Consequent upon the MACP Scheme, applicant was granted 2nd financial upgradation with effect from 1.9.2008 on completion of 20 years of service. However, by the office order dated 23.02.2011 of Respondent No.3, 2nd MACP that had been granted to the applicant was withdrawn with an implication of effecting recovery of excess amount paid in that behalf. Being aggrieved, applicant submitted a representation dated 28.2.2011 to Respondent No.2 and simultaneously, moved this Tribunal in O.A.No.138/2011. Vide order dated 21.4.2011, this Tribunal disposed of the said O.A. in the following terms.

"In consideration of the submissions made and as agreed to by the Ld.Counsel for the parties, without going into the merit of the case at this stage, it is considered that the ends of justice will be met by directing Respondent No.2 to consider and dispose of the pending representation vide Annexure-A/8 and pass a reasoned order within a period of two months from the date of receipt of copy of this order under intimation to the applicant. Ordered accordingly.

However, it is made clear that until the representation as directed above is disposed of, no recovery shall be effected".

3. Complying with the above direction, Deputy Director General(PAF) (Res.No.2), vide Memorandum dated 01.06.2011 disposed of the representation of the applicant through a speaking order. The main thrust of the order which is relevant to disposal of the representation reads as under.

(i) MACP Scheme is being operational with effect from 1.9.2008 and provision of the ACP Scheme will be operational till 31.8.2008. Under the provision contained in this

Scheme, i.e., MACP Scheme financial upgradations are to be given, counted from direct entry grade, on completion of 10, 20 and 30 years of service respectively. Further financial upgradation under scheme will be admissible whenever a person has spent 10 years continuously in the same grade pay.

(ii) As per condition laid under MACP Scheme, vide Para 28 (C) of the Annexure-1, Salient Features of the MACP Scheme "if a government servant has been granted either two regular promotions or 2nd financial upgradation under the ACP Scheme of August, 1999 after completion of 24 years of regular service then only 3rd financial upgradation would be admissible to him under MACP Scheme on completion of 30 years of service, provided that he has not earned third promotion in the hierarchy. This has also been clarified by PC Cell of the Directorate vide their letter no.4-7/MACPs/2009/-PCC dated 8.3.2011 addressed to GM (PAF) Chennai and copy enclosed to all PAOs. Further, as per Directorate Lr.No.4-7/MACPs/2009/PCC dated 19.07.2010 financial upgradations earned under TBOP/BCR Schemes are to be adjusted against MACPs.

(iii) The applicant initially appointed as *Clerk/Postal Assistant and then got TBOP and regular promotion in AAO (JAO and AAO being merged as one i.e., AAO) before the implementation of MACP Scheme thus have already earned one financial upgradation (TBOP) and one regular promotion (AAO cadre) and will not be eligible for 2nd financial upgradation.*

Now, having considered the representation dated 28.02.2011, preferred by the applicant, Shri Amar Kumar Roy, AAO, PAO Cuttack in O.A.No.138/2011, on the basis of the rules and orders on the subject, it is clear that the

applicant have already earned two promotions, viz., one under TBOP Scheme and one regular promotion and is not eligible for 2nd financial upgradation, and thus the request of the applicant in the representation dated 28.02.2011 (in O.A.No.138/2011) for grant of 2nd MACP w.e.f. 1.9.2008 cannot be accepted and hence rejected".

4. Since the disposal of his representation did not yield any cherished result and thus having a cause of action due to rejection of his request, applicant has approached this Tribunal seeking relief as referred to above.
5. According to applicant, his case is not covered under Para-28(C) of Annexure-1 of MACPS. Para-28(C) states that a Government servant who has got either two financial upgradations under the ACP Scheme or two promotions after completion of 24 years of service whereas in the instant case, applicant has got only one promotion to JAO/AAO cadre on 02.02.2002 and one financial upgradation (TBOP) on 23.05.2001 during his last more than 25 years of service.
6. Before the order withdrawing the benefit of 2nd MACP could be issued, applicant was not afforded any opportunity of showing cause against the proposed withdrawal and thus, there has been violation of the principles of natural justice.

7. Further, applicant has based his claim on Illustration - 28 B of MACPS, which reads as under:

"Illustration-28-B- If a Government servant (LDC) in PB-1 in the Grade Pay of Rs.1900 is granted 1st financial upgradation under the MACPS on completion of 10 years of service in the PB-1 in the Grade Pay of Rs.2000/- and 5 years later he gets 1st regular promotion (UDC) in PB-1 in the Grade Pay Rs.2400/-, the 2nd financial upgradation under MACPS (in the

next Grade Pay w.r.t. Grade Pay held by Government servant) will be granted on completion of 20 years of service in PB-1 in the Grade Pay of Rs.2800. On completion of 30 years of service, he will get 3rd ACP in the Grade Pay of Rs.4200/-. However, if two promotions are earned before completion of 20 years, only 3rd financial upgradation would be admissible on completion of 10 years of service in Grade Pay from the date 2nd promotion or at 30th year of service, whichever is earlier".

8. Opposing the relief sought by the applicant, Respondents have filed their counter reply. While providing detailed service profile, i.e. date of appointment as Postal Assistant, grant of TBOP on completion of 16 years' service, 1st regular promotion as JAO/AAO with effect from 11.05.1985, 23.05.2001 and 02.02.2002, respectively, **it has been submitted that on completion of 30 years' service or on completion of 10 years of service in the same Grade Pay, i.e., Rs.4800/- in AAO, whichever is earlier, 3rd MACP is due in PB-2 with GP Rs.5400/- with effect from 02.02.2012, if otherwise eligible and does not earn further regular promotion prior to this date.**

9. Since the contents of rejection of representation in Memorandum dated 01.06.2011 (Annexure-A/9) in pursuance of the direction of this Tribunal in O.A.No.138/11, has been quoted above, already and these are the basic facts in the counter-reply, there is no need to further repeat the same.

10. We have heard the learned counsel for both the sides and perused the materials on record. We have also gone through the written note of submission filed by the applicant.

11. Before coming to merit of the matter, it is to be noted that the applicant at random, has quoted various illustrations of the MACPS in support of his case. In so far as Illustration 2-B/Page-33 of the O.A. is concerned, he has not at all indicated which one of the three Tables is applicable to his case. He has also refuted the applicability of 28(C) of Annexure - 1 to OM dated 18.9.2009, as relied on by the Respondents in support of withdrawal of the benefit under MACPS.

12. Having regard to the pleadings of the parties, the sole point that arises for our determination is whether applicant was entitled to grant of 2nd financial upgradation MACPS with effect from 1.9.2008 or not.

13. In this connection, it would be in the aptness of things to reduce in writing the basic norms and standards applicable for grant of financial upgradations under MACPS, which are as under.

- i) MACPS is implementable with effect from 01.09.2008.
- ii) Three financial upgradations under MACPS at intervals of 10, 20 and 30 years of continuous regular service are admissible to Group-A, B, C Central Government Civilian Employees except officers of the Organized Group A service.
- iii) Financial upgradations under the Scheme will be admissible whenever a person has spent 10 years continuously in the same Grade Pay.
- iv) Three financial upgradations under the MACPS are granted in lieu of promotion in the hierarchy.

v) With the introduction of MACPS with effect from 01.09.2008, benefits granted to the employees of the Department of Posts under TBOP and BCR Schemes and the employees other than the Department of Posts under ACP Scheme stood withdrawn with effect from 31.08.2008.

14. Admittedly, applicant joined as Postal Assistant with effect from 11.05.1985 and on completion of 16 years' service, he was granted Time Bound One Promotion Scheme (TBOP) with effect from 23.05.2001. One ~~of~~ 1 year therefrom (16 + 1), applicant was regularly promoted to JAO/AAO with effect from 02.02.2002. According to applicant, he was due to receive 2nd financial upgradation under the MACPS with effect from 01.09.2008, which having been so granted, was later on withdrawn vide order dated 23.2.2011. In this connection, we have examined Illustration-28(B) and all the Tables quoted in the Illustration 2-B/Page-33 of the O.A. as well as 28(C) of Annexure-1 to OM dated 18.9.2009, relied on by the applicant and Respondents, respectively. 28(C) of Annexure-1 to OM dated 18.9.2009 provides that-

" if a Government servant has been granted either two regular promotions or 2nd financial upgradation under the ACP Scheme of August, 1999 after completion of 24 years of regular service then only 3rd financial upgradation would be admissible to him under the MACPS on completion of 30 years of service provided that he has not earned 3rd promotion in the hierarchy".

15. As per the MACPS, 1st financial upgradation is granted at the interval of 10 years regular service/same Grade Pay, provided that an incumbent has not earned any regular promotion in the hierarchy. In similar analogy, 2nd and 3rd financial upgradations under the Scheme

are due and admissible to the concerned employee. This is a general provision applicable in respect of the incumbents who are appointed on and from 01.09.2008. But the facts remains, wherever incumbents are in receipt of ACPS of 1999 as well as TBOP and BCR of the Department of Posts, the provisions outlined in those Schemes have to be read into the MACPS. This is what 28(C) of Annexure-1 to O.M. dated 18.9.2009 speaks volume for. As quoted above, it is provided therein that *"if a Government servant has been granted either two regular promotions or 2nd financial upgradation under the ACP Scheme of August, 1999 after completion of 24 years of regular service then only 3rd financial upgradation would be admissible to him under the MACPS on completion of 30 years of service provided that he has not earned 3rd promotion in the hierarchy".*

16. On being confronted, the learned counsel for the applicant placed reliance on the decision of this Tribunal in O.A.No.353 of 2011 - disposed of on 11.10.2013(Abhimanya Nayak vs. UOI & Ors.) and submitted that the facts of the present O.A. being similar to the facts of O.A.No.353 of 2011, he should be granted the same relief. We have gone through our order dated 11.10.2013 in O.A.No.353 of 2011 and also the order impugned therein as well as the order impugned in the present O.A. Having gone through those orders, we are in agreement with the learned counsel for the applicant that facts of both the OAs are the same and similar. In this connection, we feel it proper to quote hereunder the

relevant portion of the order in O.A.No.353 of 2011, which reads as under.

"The applicant claims that his case is covered under Illustration 28-B. However, the Respondents have challenged the claim of the applicant by stating that he is covered under Illustration 28C. The details of 28-B and 28-C of the MACP Scheme have already been previously discussed. The crux of the matter is whether the applicant will be considered to have been given two regular promotions and if that be the case, then he will be given only his 3rd financial upgradation under the MACPS on completion of 30th years of service. It appears that the Deputy Director General (Res.No.2) while deciding this issue has not taken a clear line because, as already discussed in detail in the speaking order, she has mentioned that the applicant has got one financial upgradation (TBOP) and one regular promotion(AAO cadre) and again has mentioned that the applicant has got two promotions. This does not clearly bring out whether the Department of Posts is treating the grant of financial upgradation under TBOP as a promotion. Since it is a policy decision of the Department of Posts under the MACP Scheme, we consider it proper that the Department should take a conscious view and have a re-look at this case and then take a consistent stand on the issue after giving an opportunity to the applicant to present his case. Therefore, we would remit the matter back to Respondent No.2 to reconsider the matter in the light of the detailed discussions made in this order, after giving due opportunity to the applicant to present his case, after which the matter be decided strictly in keeping with the policy followed by the Department of Posts with regard to MACP Scheme. This exercise shall be completed within a period of sixty days from the date of receipt of this order. Until the matter is finally decided as per the directions as aforesaid by Res.No.2, recovery of excess amount towards the financial benefits already extended to the applicant shall not be made from his salary".

17. As quoted earlier, the contents of the speaking order/Memorandum dated 01.06.2011 in the present O.A. are exactly the same as in O.A.No.353

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2011. This being the situation, we are not inclined to take a different view from the view already taken in O.A.No.353 of 2011 under similar circumstances. Therefore, applying the ratio decided in O.A.No.353 of 2011, we remit the matter back to Respondent No.2 for reconsideration in the light of the detailed discussions made in this order, after giving due opportunity to the applicant to present his case, after which the matter be decided strictly in keeping with the policy followed by the Department of Posts with regard to MACP Scheme. This exercise shall be completed within a period of sixty days from the date of receipt of this order. Until the matter is finally decided as per the directions as aforesaid by Res.No.2, order dated 23.2.2011 vide Annexure-A/6 and Memorandum dated 1.6.2011 vide Annexure- A/9 dated shall not be given effect to.

With the aforesaid observation and direction, this O.A. is disposed of.

No costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)