

9

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.580 of 2012

Cuttack this the 6th day of August, 2014

Muralidhar Pradhan.....Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?

2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not ?

S.K.Pattanaik
(S.K.PATTNAIK)
MEMBER(J)

R.C.Misra
(R.C.MISRA)
MEMBER(A)

*I authorise
Hrldh Pradhan
to refer the judgment
for pronouncement
on our behalfs
on 6/8/2014*

*DR/Court of
List it for
pronouncement
on 6/8/2014.*

58

10
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O.A.No.580 of 2012
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CORAM

HON'BLE SHRI R.C.MISRA, MEMBER(A)
HON'BLE SHRI S.K.PATTNAIK, MEMBER(J)

Sri Muralidhar Pradhan
Aged about 61 years
S/o. late Chintamani Pradhan
At/PO/Dist-Nayagarh
Retd.P.A. of Nayagarh H.O.

...Applicant

By the Advocate(s)-Mr.P.K.Padhi
Mrs.J.Mishra

-VERSUS-

Union of India represented through

1. The secretary cum Director General of Posts
Dak Bhawan, Sansad Marg
New Delhi-110 116
2. Director of Accounts (Postal)
At-Mahanadi Vihar, PO-Naya Bazar
Dist-Cuttack-753 004
3. Sr.Superintendent of Post Offices,
Puri Division, At/PO/Dist-Puri
Odisha-752 001
4. Director of Postal Services (Hqrs.)
O/O. C.P.M.G.
At/PO-Bhubaneswar
Dist-Khurda-751 001

...Respondents

By the Advocate(s)-Mr.D.K.Behera



ORDER
R.C.MISRA, MEMBER(A):

Applicant in the present Original Application is a retired Postal Assistant of the Department of Posts. He has approached this Tribunal seeking the following.

"...to direct the Respondents to restore MACP-II Grade Pay/Scale of pay, which was granted to the applicant w.e.f. 1.9.2008 and direct the Respondents to fix the pension and release all retiral dues with due interest and cost in that scale/Grade and refund the recovered amount with due interest and cost and quash Annexure-A/2 and A/4".

2. The short facts of the case are that the applicant was initially appointed in the Group-D cadre in the Department of Posts on 29.7.1982. He was thereafter promoted as Postal Assistant on 4.7.1988 and retired as such with effect from 30.9.2011. During his service career, applicant got his financial benefit under Time Bound One Promotion Scheme (in short TBOP) on 4.7.2004. He was granted the 3rd MACP on 8.6.2010. However, after his date of retirement, the Respondents withdrew that benefit and asked for recovery of an amount of Rs.93,676/- from the DCRG of the applicant. It is against this order that the applicant has approached the Tribunal.

3. While admitting the facts as referred to above, Respondents in their counter reply have stated that when the pension papers of the applicant were being finalized, the Sr. Accounts Officer in the O/o. Director of Accounts, Cuttack, i.e., Respondent No.2 objected to the 3rd financial benefit being granted to the applicant and accordingly, issued

instructions for recovery of over-paid amount on account of the irregular drawal of pay and allowances. As per these instructions, the excess paid amount was calculated and an amount of Rs.93,676/- was recovered from the final DCRG of the applicant.

4. According to Respondents, applicant was appointed in the group D cadre and after clearing a Departmental Lower Grade Official Promotional Examination, he got promoted to the Postal Assistant cadre with effect from 04.07.1988. Therefore, he got his promotion from Group - D cadre to the Postal Assistant cadre after ^{six} ~~five~~ years of service. As per the provision of the Department, applicant got 2nd financial benefit after completion of 16 years of service in the Postal Assistant Cadre on 21.7.2004, which was much before the implementation of the 6th CPC report. The MACP Scheme was introduced by the Government of India in the year 2009 and under the said scheme, there shall be three financial upgradations counted from the direct entry grade on completion of 10, 20 and 30 years of service respectively. Financial upgradation under the scheme will be admissible whenever a person has spent 10 years continuously in the same Grade Pay. Respondent No.3 had approved the case of the applicant wrongly for MACP -3 vide letter dated 8.6.2010 making the order effective from 1.9.2008. By that order the applicant got the third financial benefit after completion of only four years from his getting the 2nd financial upgradation under the TBOP. According to Respondents, MACP Scheme clearly indicates that the financial upgradation will be admissible whenever a person has



spent 10 years continuously in the same Grade Pay. The applicant was in the Grade Pay Rs. 2800/- with effect from 21.7.2004. It is the case of the Respondents that applicant got the MACP-III before completion of 10 years service in the same Grade Pay. This apart, as on 1.9.2008, applicant had only completed 26 years of service from the direct entry Grade, i.e., Group-D cadre. Therefore, the conferment of this benefit was found to be wrong as it was a mistake committed by Respondent No.3. Director of Accounts (Postal), Cuttack being the competent authority to issue pensionary benefit for the official and the irregularity having been pointed out during the checking and processing of pension papers, as per Rule 71 Sub Rule-2 of CCS(Pension) Rules, 1972, over payment of pension and allowance was considered necessary to be adjusted against the amount of retirement gratuity becoming payable. In the circumstances, the recovery as well as the re-fixation of pension of the applicant were done according to proper procedure.

5. The sum and substance of the Respondents in the counter reply is that the entry grade of the applicant was in Group-D and he was later on promoted as Postal Assistant. The 2nd financial upgradation under TBOP was granted to him after 16 years of service in the cadre of Postal Assistant. Therefore, he had got two financial benefits within 26 years of service. Since he had neither completed 30 years of service nor 10 years' service in the last promotion, he was not entitled to get the financial benefit of Grade Pay of Rs.4200/- w.e.f. 01.09.2008.

6. With these facts and comments, the Respondents have prayed that the O.A. being devoid of merit is liable to be dismissed.

7. Learned counsel for the applicant has submitted written note of argument, in which the salient points that he has pleaded are mentioned below.

- i) Appointment to P.A. cadre cannot be treated as promotion from Group-D since applicant on successful completion of the Departmental Examination had been so appointed.
- ii) Initial engagement being in the P.C. cadre from 4.7.1988, TBOP was granted on completion of 16 years of service in the grade and therefore, the next financial upgradation was due after 26 years. However, the Government, in the meantime, introduced MACP Scheme and the earlier TBOP and BCR Schemes were abolished. Therefore, grant of MACP from 1.9.2008 by the Respondents was completely justified.
- iii) The order of recovery in effect, is completely unjustified.

8. To fortify his contention, learned counsel for the applicant has relied on the decisions of C.A.T., Jodhpur Bench in O.A.No.382/2011 with O.A.No.353/2011 with M.A.No.19/2012 & O.A.No.354/2012 with M.A.No.20/12 disposed of on 22.5.2012 as well as C.A.T., Principal Bench, New Delhi in O.A.No.3756 of 2011 decided on 21.12.2012.

9. We have heard the learned counsel for both the sides and perused the pleadings.

10. In the matter of conferment of financial upgradations under MACP, the Scheme set out by the Government of India is of paramount consideration. In the circumstances, application of the provisions of the

Scheme is the governing factor for determining the entitlement of an official to the benefit of financial upgradation. Applicant entered service as Group-D official with effect from 29.07.1983 and upon his qualifying in the Departmental Examination, he was promoted and posted as Postal Assistant on 04.07.1988. Subsequently, he was granted the 2nd financial upgradation under TBOP with effect from 21.07.2004 on completion of 16 years service in the grade of Postal Assistant. While the matter stood thus, he was granted MACP-III with effect from 01.09.2008 and retired from service with effect from 30.9.2011.

11. The whole object of the counter reply by the Respondents is that applicant was in the Grade Pay Rs. 2800/- with effect from 21.7.2004 and he got the MACP-III before completion of 10 years service in the same Grade Pay. This apart, as on 1.9.2008, applicant had only completed 26 years of service from the direct entry Grade, i.e., Group-D cadre. By this what the Respondents mean to say is that since applicant had neither completed 30 years of service nor 10 years' service in the last promotion, he was not entitled to get the financial benefit of Grade Pay of Rs.4200/- w.e.f. 01.09.2008.

12. We have considered the above submissions in the light of the provisions of MACP Scheme. At the outset, it is to be noted that the submission made by the Respondents that ***applicant was in the Grade Pay Rs. 2800/- with effect from 21.7.2004*** is misnomer inasmuch as introduction of Grade Pay came into effect from 01.01.2006 on the recommendations of 6th CPC. The corollary from the above is that

completion of 10 years service in GP Rs.2800/- as submitted by the Respondents is far-fetched. So far as provisions of MACP Scheme is concerned, undoubtedly, a civilian employee under the Government of India is entitled to three grant of financial upgradations on completion of 10, 20 and 30 years service. It is also the basic feature of the scheme that unless and until an employee completes 10 years service in a particular Grade Pay, benefit of financial upgradation shall not be conferred upon him/her, provided that in the meantime he/she has not earned any promotion. In this connection, it is to be noted that with the introduction of MACP Scheme from 01.09.2008, benefits of financial upgradation earlier granted to the employees in the Department of Posts under TBOP and BCR Schemes, as the case may be, stood withdrawn with effect from 31.08.2008. Here is a case where 3rd MACP granted to the applicant with effect from 01.09.2008 has been withdrawn on the ground that he had neither completed 30 years service nor had he completed 10 years in GP Rs.2800/-. As indicated above, the concept of Grade Pay was introduced with effect from 01.01.2006 on the basis of recommendations of 6th CPC. Therefore, grant of Grade Pay Rs.2800/- to the applicant with effect from 21.07.2004, which is prior to 01.01.2006, is stupefying and unwholesome. In the circumstances, completion of 10 years service by the applicant in Grade Pay Rs.2800/- is based on conjecture and surmises.

R. N. Rao

13. Then coming to the point of completion of 30 years service in order to make the applicant entitled to grant of 3rd financial upgradation under MACP Scheme, it is to be noted that this scheme has been introduced by the Government of India with a view to ameliorating the agony of the employees who suffer stagnation in a particular grade. There is also no impediment to run the MACP Scheme and the promotional avenues concurrently. This is how it is the intent of the MACP Scheme to grant financial upgradation on completion of 10 years in a particular Grade Pay provided that an incumbent has not earned promotion in the meantime. It is also outlined and illustrated in the Scheme that if an incumbent of LDC has earned promotion to UDC after a period of five years of his joining as LDC, he shall be entitled to 2nd MACP on completion of 10 years in the grade of UDC and similarly, he shall also be entitled to 3rd MACP on completion of further 10 years' service with effect from the date of grant of 2nd MACP, provided that he has not earned any promotion in the meantime. In such eventuality, financial upgradation under 3rd MACP becomes due on completion of (5+10+10) 25 years of service, thus, leaving aside 30 years of service for grant of 3rd MACP. Therefore, the stipulation of 30 years' service for grant of three financial upgradations at the interval of 10 + 10 + 10 years under the MACP Scheme has only a prospective application, i.e., with effect from 01.09.2008 in respect of the incumbents appointed to posts under the Union of India on or after 01.09.2008, without availing any promotion and in such contingency, context only refers to direct



entry grade. As regards the persons appointed prior to 01.09.2008, like that of the applicant, Para No.28 of Annexure-1 to O.M. dated 18.09.2008 is profitable to quote hereunder.

"Directly recruited Postal Assistant who got one financial upgradation under TBOP Scheme after rendering 16 years of service before 01.09.2008 will become eligible to 2nd MACP on completion of 20 years of continuous service from date of entry in Government service or 10 years in TBOP grade pay or scale or combination of both, whichever is earlier".

14. Perusal of the above provision of the O.M. dated 18.09.2008 makes it amply clear that in case of a directly recruited Postal Assistant, who has already received financial upgradation under TBOP Scheme after rendering 16 years service before 01.09.2008 will become eligible to 2nd MACP on completion of 20 years of continuous service from date of entry in Government service or 10 years in TBOP grade pay or scale or combination of both, whichever is earlier. In either of the conditions eligibility for grant of 2nd MACP to a directly recruited Postal Assistant, who has been granted financial upgradation under TBOP on completion of 16 years service is in disregard of 10 years service with effect from the date TBOP had been granted. This is self-evident that in order to work out 20 years or 10 years service, as the case may be, for the purpose of grant of 2nd MACP, service in the grade of Postal Assistant together with the service rendered in grade pay or scale of TBOP on completion of 16 years has to be taken into account. Therefore, this leads to a conclusion that a directly recruited Postal Assistant, who has



been granted the financial upgradation under TBOP on completion of 16 years of service is eligible and entitled to receive the benefit of 2nd MACP only on completion of four years of service(16 + 4)from the date of conferment of the benefit under TBOP, which should not be earlier than 01.09.2008.

15. The applicant in the present O.A. is not a directly recruited Postal Assistant. The admitted position is that he was recruited to the Group D cadre in the year 1982 and was successfully promoted to the cadre of Postal Assistant through a Limited Departmental Examination in the year 1988. He has been retired in the year 2011. In his case 3rd MACP was granted w.e.f. 1.9.2008, but the Respondents while finalizing his pension papers detected the alleged irregularity that the same benefit was granted before completion of 30 years of service, and also before 10 years of service from the date of last promotion. Accordingly, his entitlement of retiral dues was reduced, and recoveries were also effected.

16. There are precisely two flaws in the above decision of the Respondents. First of all, the principle of natural justice was not complied with, and even though the retiral dues of the applicant were modified to his disadvantage, the applicant's defence was not heard. Secondly, by applying a simple formula that the applicant has not completed thirty years of service and not completed ten years from his last promotion, and therefore, is not entitled to the benefit of 3rd MACP, the Respondents have given a go bye to the principle that each case of



20

MACP has to be decided with reference to the scheme, and the service profile of the concerned employee. As a result, there is a non-application of mind while deciding the present case. Application of mind is all the more important in the present case, since in the first instance the benefit was sanctioned in the year 2008, and, after the retirement of the applicant in 2011, prejudice has been caused to his case by cancelling the earlier benefit, apparently because Respondents found their earlier decision to be wrong.

17. Natural justice would, therefore, demand that the Respondent No.2, viz., Director of Postal Accounts should look into the matter once again in the light of the observations made above, and with specific reference to MACP Scheme, and the service profile of the applicant. While doing so, he will afford an opportunity to the applicant to be heard, so that the principles of natural justice are fairly complied with. In the result, orders at Annexure-A/2 and A/4 are quashed, and the matter is remanded for fresh consideration.

18. With the above observation and direction, the O.A. is disposed of.

Parties to bear their own costs.


(S.K.PATTNAIK)
MEMBER(J)


(R.C.MISRA)
MEMBER(A)

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