

50
 CENTRAL ADMINISTRATIVE TRIBUNAL
 CUTTACK BENCH,CUTTACK

O.A.No.200 of 2013
 Cuttack this the 21ST day of June, 2017

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

Sri Gati Krushna Das, aged about 53 years, S/o. late Pramodananda Das of Vill/PO-Kamagada, PS/Dist-Jajpur, presently working as Sorting Assistant, in the office of the SRO RMS, North Division, Jajpur Road, At/PO-Jajpur Road, Dist-Jajpur

...Applicant

By the Advocate(s)-M/s.S.K.Ojha
 S.K.Nayak

-VERSUS-

Union of India represented through:

1. The Secretary-cum-Director General (Posts), Dak Bhawan, Sansad Marg, New Delhi-110 116
2. The Chief Post Master General, Odisha Circle, P.M.G. Square, Bhubaneswar, Dist-Khurda-751 001
3. Senior Superintendent of RMS, North Division, Cuttack-753 001

By the Advocate(s)-Mr.C.M.Singh

ORDER

A.K.PATNAIK, MEMBER(J)

Applicant is presently working as Sorting Assistant under the Department of Posts. In this Original Application, his grievance is directed against the order dated 14.11.2012 issued on the basis of letter dated 12.10.2012, by virtue of which 3rd financial upgradation granted to the applicant under the Modified Assured

Wale

51

Career Progression (MACP) Scheme with effect from 27.05.2009 in the Grade Pay Rs.4200/- has been withdrawn, thus, effecting recovery of the excess amount paid in that behalf.

2. Facts of the matter in brief are that the applicant joined the post of Mail Carrier (Gr.D post) on 21.02.1983. Consequent upon his success in the LGO examination, he was inducted as Sorting Assistant as a departmental candidate with effect from 09.05.1989. On completion of 16 years' service in the grade of Sorting Assistant, the applicant was granted the benefit of Time Bound One Promotion (TBOP) with effect from 01.06.2005.

3. Consequent upon the recommendations of the 6th CPC, Government of India introduced Modified Assured Career Progression(MACP) Scheme which came into force with effect from 01.09.2008. In the above backdrop, applicant was conferred with the benefit of 3rd financial upgradation under the MACP Scheme in the Grade Pay of Rs.4200/- with effect from 27.05.2009. While the matter stood thus, Respondent No.2, viz., the Chief Post Master General, Odisha Circle reviewed the matter and modified the order by virtue of which applicant had been granted 3rd MACP with effect from 27.05.2009, with direction that the applicant would be entitled to the same with effect from 11.03.2013 only, as a result of which, applicant was directed to refund the entire amount that had been received by him on account of conferment of 3rd MACP w.e.f 27.05.2009 and accordingly, recovery was effected from his salary





every month, leaving only one rupee towards salary for maintaining his livelihood.

4. Hence, by filing the instant O.A., applicant has prayed for the following relief.

- i) To allow the Original Application.
- ii) To quash the Review order of the CMPC, Respondent No.2 dated 09.11.2012 (Annexure-A/5) and consequential order dated 14.11.2012(Annexure-A/6) so far as applicant is concerned.
- iii) To direct the Respondents to refund the amount already been recovered from the salary of the applicant with interest @ 18% per annum;
- iv) To direct the Respondents to restore the order dated 25.10.2012(Annexure-A/4) so far as applicant is concerned.
- v) To pass any further order/orders as deemed fit and proper in the facts and circumstances of the case.

5. It is the case of the applicant that the post of Sorting Assistant is to be filled up through direct recruitment as well as promotion of Gr.D departmental candidates, those who have successful in the departmental LGO Examination. Therefore, it has been submitted that the cadre of Sorting Assistant is the initial entry grade of persons coming from various sources. To buttress his submission, the applicant has placed reliance on Paragraph-1 of the MACP Scheme which provides that "*there shall be three financial upgradations counted from the direct entry grade on completion of 10, 20, and 30 years' service respectively. Financial upgradation under the*





Scheme will be admissible whenever a person has spent 10 years continuously in the same grade pay". Further, applicant has pointed out that Para-28-Illustrations(A)(i) of the Scheme lays down that "if a Government servant (LDC) in PB-1 in the Grade Pay Rs.1900 gets his first regular promotion (UDC) in the PB-1 in the grade Pay Rs.2400 on completion of 8 years of service and then continues in the same Grade Pay for further 10 years without any promotion, then he would be eligible for 2nd financial upgradation under the MSCPS in the PB-1 in the Grade Pay Rs.2800 after completion of 18 years (8 + 10 years)". Based on this, the applicant has contended that he having received first regular promotion to Gr.C post on completion of 7 years of regular service in Gr.D and thereafter and having been granted one financial upgradation under the TBOP as was prevalent in the Department of Posts at the relevant point of time, in view of clarification issued in letter dated 18.10.2010(Annexure-A/2), the promotion and financial upgradation received by the applicant have to be off-set against the 1st and 2nd financial upgradation, thus making the applicant entitled to receive the 3rd financial upgradation under the MACPScheme.

6. Lastly, the applicant has submitted that the orders for withdrawal of the benefit of 3rd financial upgradation granted to him under the MACP Scheme with effect from 27.05.2009 and effecting recovery of excess amount alleged to have been paid without giving

any opportunity of hearing, suffer from violation of the principles of natural justice.

7. Respondents have filed their reply statement opposing the prayer of the applicant. In the reply, the basic points urged by the respondents are that the applicant joined in Government service on 21.02.1983 as Mailman. Subsequently he was promoted to Sorting Assistant after clearing LGO Examination on 09.05.1989. Thereafter, he was granted TBOP on 01.06.2005. Therefore, according to Respondents, the applicant has already availed two financial upgradations before 17.09.2012 and therefore, 3rd financial upgradation under the MACP Scheme is only admissible to the applicant on completion of 10 years continuous service in the same grade pay after 2nd promotion or 30 years of service from the entry grade whichever is earlier. It has been submitted that based on the above position of rules, the applicant is entitled to 3rd MACP on completion of 30 years' service with effect from 11.03.2013.

8. Applicant has filed rejoinder in which he has pointed out that the post of Sorting Assistant as per the Recruitment Rules can be filled up in two different ways, i.e., 50% by way of promotion and 50% by way of direct recruitment. Persons so selected as against the 50% direct recruitment quota along with the applicant also availed the benefit of TBOP. In the clarification issued by the Government of India, it has been clarified that the persons who have availed the benefits of TBOP on completion of 16 years of regular service in



55

PA/SA grade will get the 2nd MACP on completion of 4 years from the date of receipt of TOBP as the financial upgradation under TBOP will be off-set against 1st MACP. In other words, the applicant has pleaded that on completion of 20 years from the date of initial entry grade, the employee will get the 2nd financial upgradation. Based on this, the applicant has stated that even if he was inducted in PA/SA cadre as against the promotion quota, he is entitled to get the benefit at par with the persons inducted as against the direct recruitment quota and thus, he should be granted the benefit of next financial upgradation on completion of 20 years' service from the date of getting the benefit under the TBOP scheme.

9. We have heard the learned counsel for both the sides and perused the records. We have also gone through the written notes of submissions filed by the counsel appearing for the respective parties.

10. It is to be noted that the principal object of ACP or MACP Scheme, as the case may be, is to remove the hardships caused to the Central Government Civilian employees due to stagnation in a particular grade or cadre. It is also to be noted that prior to coming into force of the ACP Scheme of 1998, TBOP/BCR Scheme was in vogue in the Department of Posts. It was also the position of rule that TBOP/BCR and ACP Scheme cannot run concurrently. However, after coming into force the MACP Scheme and with the acceptance of the

W.A.L

same by the Department of Posts, the ACP/BRC Scheme as was prevalent stood extinguished with effect from 01.09.2008.

11. MACP Scheme, as already mentioned above, provides three financial upgradations in the service career of an employee at the intervals of 10, 20 and 30 years provided no promotion has been earned by an employee in the meantime. Having regard to this provision of the Scheme, the respondents have urged that since the applicant has already availed of one promotion to the grade of Sorting Assistant and the benefit of TBOP on completion of 16 years' service in that grade, he will be entitled to 3rd financial upgradation under the MACP Scheme only on completion of 30 years' service, i.e., with effect from 11.03.2013. If this proposition of the Respondents is accepted as wholesome, will the applicant not stagnate for a period of about 4 years more over and above the period of 20 years from the date of conferment of TBOP, i.e. 09.05.1989, without being promoted in the meantime? By this, will the intention of the MACP Scheme be not frustrated particularly when the Scheme provides three financial upgradations at the interval of 10, 20 and 30 years in the absence of any promotion? At this juncture, it is to be noted that the ACP Scheme of 1998, provided two financial upgradations during the service career of an employee on completion of 12 and 24 years regular service. After the introduction of MACP scheme, it was clarified that the employees who had been granted two financial upgradations under the ACP Scheme, will be entitled for 3rd financial

W.H.

upgradation under the MACP scheme on completion of 30 years' service, which means $12 + 12 + 6 = 30$. In the same analogy, the Department of Posts also issued clarifications governing the eligibility for grant of financial benefits under the MACP scheme vide circular dated 19.20.2010(A/3). In this connection, Sl.Nos. 1 and 3 under the caption "Point on which clarification sought" and "status position", relevant to decide the point are extracted hereunder.

Sl. No	Point on which clarification sought	Status position
1.	<p>Eligibility of MACPS to a direct recruited Postal Assistant conferred with TBOP –</p> <p>It has been represented that in some Circles the directly recruited Postal Assistants who were accorded financial upgradation under one time bound promotion scheme on completion of 16 years of satisfactory service are not being given the 2nd MACPS on the ground that the officials have not completed 10 years of service TBOP Scale/Grade with grade pay Rs.2800.</p>	<p>Attention is drawn to Para No.28 of Annexure-1 to this office OM dated 18.9.2009. It is stated that a directly recruited Postal Assistant who got one financial upgradation under the 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 service in TBOP grade pay or scale or combination of both, whichever is earlier. However, financial upgradation under MACPS cannot be conferred from a date prior to 01.09.2008 and such 2nd financial upgradation for the above referred category of officials has to be given from 01.09.2008. They will also become eligible for 3rd MACP on completion of 30 years of service of after rendering 10 years service in 2nd MACP, whichever is earlier.</p>
3.	Eligibility of MACP to a	The attention of the Circles is

Nal

58

<p>promoted official to PA Cadre and having completion 10 years of service in PA cadre</p> <p>It was stated by staff representatives that in some Circles, the officials who were promoted from the lower cadres to Postal Assistants and on completion of 10 years in the said Postal Assistant cadre are not considered for 2nd MACP on the plea that they have not completed 20 years of service from the date of entry in clerical cadre</p>	<p>drawn to Para No.28(A)(i) in the Annexure-1. In case of a lower grade official promoted to PA cadre, having got one promotion to PA cadre before completion 10 years of continuous service, it will be offset against 1st MACP and on rendering 10 years continuing service in the clerical grade/scale or on completion of 20 years service from the date of entry would become eligible for 2nd MACP, whichever date is earlier. However, financial upgradation under MACPS cannot be conferred from a date prior to 01.09.2008 as the scheme became operational from this date only.</p>
---	--

12. From the above, two things are distinct without any ambiguity : (i) a directly recruited Postal Assistant who got one financial upgradation under the TBOP Scheme after rendering 16 years of service before 01.09.2008, will become eligible to get the 2nd financial upgradation under the MACP scheme on completion of 20 years of continuous service from date of entry in Government service or 10 years' service in TBOP grade pay or scale or combination of both, whichever is earlier and (ii) in case of a lower grade official promoted to PA cadre, having got one promotion to PA cadre before completion 10 years of continuous service, it will be offset against 1st MACP and on rendering 10 years continuing service in the clerical grade/scale or on completion of 20 years' service from

Vd

59

the date of entry would become eligible for 2nd MACP, whichever date is earlier.

13. In the instant case, it is an admitted position that the applicant initially joined the post of Mail Carrier on 21.02.1983, which is a Group-D post and upon his qualifying in the LGO Examination, he was promoted as Sorting Assistant on 09.05.1989. On completion of 16 years' service as Sorting Assistant, he was granted the benefit of Time Bound One Promotion (TBOP) with effect from 01.06.2005. It is the case of the respondents that since the MACP Scheme provides completion of 10 years in a particular Grade Pay, the applicant is required to complete 10 years' service in the TBOP scale or alternatively, on completion of 30 years' service from the entry grade, i.e., Mailman, the applicant is entitled to 3rd MACP with effect from 11.03.2013.

14. We have considered the rival submissions in the light of the provisions of the Scheme as quoted above. From the above, the only point that emerges for consideration is whether the applicant, who has got TBOP on completion of 16 years of service in the grade of Sorting Assistant is entitled to next financial upgradation under the MACPS on completion of 20 years' service from the date of conferment of TBOP notwithstanding the fact that he has not been directly recruited to the post of Sorting Assistant.

15. As indicated above, three financial upgradations at the interval of 10, 20 and 30 years of service are admissible to an

Wd

employee, provided he has not earned any promotion in the meantime. No doubt the applicant has earned one promotion to Sorting Assistant and on completion of 16 years of service as Sorting Assistant, he was granted the benefit of TBOP. Therefore, as per the provisions of the Scheme, 20 years (10 + 10) of service from the date of conferment of TBOP scale has to be taken into account for the purpose of next financial upgradation under the MACP Scheme, even if applicant has not been directly recruited to the grade of Sorting Assistant and in such a situation, necessarily, he does not have to complete 30 years' service from the entry grade, i.e., Mailman or 10 years in the TBOP scale, as the case may be. Therefore, in this way the applicant's case could be concisely be put, i.e. Promotion as Shorting Assistant from Gr.D, conferment of TBOP and MACP due (5+16+4). The point in issue is thus answered.

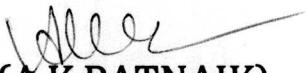
16. Having regard to the discussions held above, we have no hesitation to hold that the applicant had rightly been granted the 3rd financial upgradation under the MACP Scheme vide order dated 27.05.2009 (A/4) which is hereby sustained. In effect, we quash theimpugned orders dated 09.11.2012 and 15.10.2012 vide A/5 andA/6, respectively, and direct the respondents to refund the excesses amount already recovered from the salary of the applicant, within a period of 60 (sixty) days from the date of receipt of this order. It is, however, made clear that if the excess amount already recovered is not refunded to the applicant within the time as

W.A.

stipulated above, respondents shall be liable to make payment of interest @ 12% per annum from the date of expiry of the stipulated period till the date of actual payment. Ordered accordingly.

7. In the result, the O.A. is allowed as above. No costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)