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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

Original Application No. 260/00913 of 2014  
Cuttack, this the 9<sup>th</sup> day of NOVEMBER, 2016


Padma Charan Bal ..... Applicant

Versus

Union of India & Ors. .... 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 (Admn.)

  
(A.K.PATNAIK)  
Member (Judl.)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

**O. A. No. 260/00913 OF 2014**  
Cuttack, this the 09<sup>th</sup> day of NOVEMBER, 2016

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

Padma Charan Bal, aged about 64 years, S/o. Late Baishnab Charan Bal, Retired Sub-Post Master, at present residing At-Mandua, P.O. Mandua, Via.- Naranpur, Dist. Keonjhar.

...Applicant

(By the Advocate-M/s. R.N. Nayak, N. Sen, A.K. Patra, G.N. Rout)

-VERSUS-

**Union of India Represented through**

1. Secretary-cum-Director, General of Post, Department of Post, Dak Bhawan, New Delhi-110001.
2. Director of Accounts, Department of Post, (Postal), Cuttack-753004.
3. Superintendent of Post Offices, Keonjhar Division, Keonjhargarh, Dist. Keonjhar, PIN- 758001.

...Respondents

By the Advocate- (Mr. D.K. Mallick)

**ORDER**

**A. K. PATNAIK, MEMBER (J):**

This OA has been filed by the applicant seeking the following reliefs:

"Therefore it is prayed that this Hon'ble Tribunal would graciously be pleased to admit the case, issue notice to the respondents and after hearing the parties, direct the respondents No. 2 and 3 to:-

- (i) Modify the Pension Payment Order including the family Pension in Annexure-7 taking

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into consideration the last pay received by the applicant as indicated in Annexure-5;

(ii) Modify the commuted value of pension of the applicant indicated in Annexure-8 basing on the modified pension as prayed for in (i) above;

(iii) Release the amount of Rs.72,514/- (Seventy two thousand five hundred fourteen) only illegally recovered from the commuted value of pension of the applicant (Annexure-8) with interest;

(iv) Pay interest on the arrear dues till the amount is paid;

(v) Pass any other order as this Hon'ble Tribunal may deem fit and proper;

2. The Respondents have filed their counter contesting the case of the applicant and praying that this OA being devoid of any merit is liable to be dismissed.

3. The Applicant has also filed rejoinder more or less reiterating the stand taken in the OA.

4. We have heard the respective parties and perused the records.

5. As per the pleadings, on 04.12.1974, the applicant was appointed as Gr. D in the Department. On being qualified in the examination held by the Department, he was appointed as a Post man on 07.04.1981. Again being qualified in the LGO examination he was appointed as Postal Assistant on 20.8.1983. He got TBOP on 01.04.2000 i.e. after completion of sixteen years of continuous service in the care. He was granted second financial up gradation

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under MACP on 01.09.2008 vide order dated 16.02.2010. The applicant retired from service on 30.04.2010. According to the Respondents, as per the MACP scheme an employee is entitled to three financial benefits during the period of thirty years of regular service i.e. within the fraction of ten, twenty and thirty years of service, if the employee concerned has not got any promotion in between. As in the instant case the applicant entered into the department in the cadre of Gr. D on 04.12.1979, thereafter promoted to the Postman cadre on 07.04.1983, Postal Assistant on 20.08.1983 and got TBOP on 01.04.2000 he was not entitled to the second financial up gradation under MACP which was erroneously sanctioned and paid to him. The same came to the notice while preparing the pension papers and the same was rectified and as per the undertaking furnished by the applicant on 16.08.2011 the excess payment made to the applicant got recovered from the commutation of pension amount.

6. The second financial up gradation under MACP scheme granted to the applicant was not wrong/erroneous and was rightly paid to the applicant and as such, the applicant is entitled to the relief claimed in this OA, the applicant has placed reliance on the decision of the Jodhpur Bench of the Tribunal dated 22.05.2012 rendered in OA Nos. 353/2011 and 354/2011 filed by Bhanwar Lal

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Regar and another Vs UOI and Others. The relevant portion of the aforesaid decision is produced herein below:

"16. It is obvious that appointment from the civil post of EDA to a regular Government employment as Group-D is a fresh appointment, and that has not been disputed by the respondents either. Thereafter when, as Group-D employees, these three applicants faced a process of selection and were appointed as Postmen such selection cannot be called a promotion, as it was not done in the course of natural progression through seniority. Any advancement in career which is based on a process of selection especially undertaken for that purpose cannot be called as a promotion. A promotion has to be in higher category in the same cadre, or service, or through a prescribed avenue of promotion, but without an element of a process of selection, through tests or examinations etc.

xxx	xxx	xxx
xxx	xxx	xxx

19. In a similar manner, while being Postman, the three applicants in these three OAs faced the Limited Departmental Competitive Examination (LDCE, in short) and qualified to become Postal Assistants. Their joining as Postal Assistants was not in the nature of promotion in their earlier existing service or cadre, but was a career advancement through a process of selection. Therefore, for the purpose of grant of TBOP/BCR financial upgradations earlier, and MACP financial upgradation now, the only dates which are relevant to be taken into account for the purpose of counting the period of their stagnation is the period spent by the applicants as Postal Assistant. In that sense, the clarification issued by the Pay Commission Cell of the Department of Posts, Ministry of Commissions & IT on

25.04.2011 through file No. 4-7/MACPS/2009/-PCC, as cited in para 8 above, is correct. The only problem with that clarification is that it stopped at the point of clarifying that when the GDS first joined in a Group-D post, and was later declared as successful in the Postman examination, the regular service for the purpose of MACO would be deemed to commence from the date of his joining as a Postman in the main cadre on direct recruit basis. But, it is obvious that the corollary would follow, and when the Postman appears at the LDCE, and gets selected to a new Cadre as a Postal Assistant, then it is start of a new innings for him, and for the purpose of counting his stagnation, if any, the date of his joining as Postal Assistant alone would be relevant, and his previous career advancements cannot be called to be promotions within the definition of the word 'promotion', as is required for the grant of TBOP/BCR benefit consideration, and for consideration for eligibility for financial upgradation on account of stagnation under the MACP Scheme.

20. It is, therefore, clear that Para-2 of the impugned order in all these three OAs at Annexure A-1 dated 10.08.2011, passed by the Supdt. of Post Offices, Churu Division, Churu was incorrect, and the eligibility of these three applicants for the grant of TBOP/BCR benefits earlier, and MACP benefit thereafter, has to be counted only from the date they were substantively appointed as Postal Assistants. Therefore, the impugned Annexure A-1 dated 10.08.2011 in all the three OAs are set aside, and the grant of MACP benefit correctly granted to the three applicants earlier through the order dated 31.03.2010 is upheld. The applicants shall be accordingly entitled to all the arrears, with interest at the GPF rate of interest being payable on the arrears of the financial upgradation benefits admissible to the applicants, correctly granted earlier on 31.03.2010."

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7. No material has been filed by the respondents' counsel that the aforesaid order has been reviewed or set aside. No authority has also been filed by the respondents' counsel to justify the action taken by them. In absence of the above, We have examined the aforesaid decision with reference to the records in the present case and find that the Jabalpur Bench of the Tribunal reached the conclusion after thorough examination of all aspects of the matter including the departmental instructions issued from time to time and came to the conclusion that the eligibility for grant of TBOP/BCR or MACP as the case may be has to be counted only from the date when an employee is substantively appointed as Postal Assistant. The controversy in the present case is as to whether the counting of the qualifying service for grant of MACP shall be from the date when the applicant was appointed as PA or from the date when he was appointed to Gr. D. The controversy has been answered by the ~~Jabalpur~~ <sup>Jodhpur</sup> Bench in the order, referred to above. We find no reason to make a departure from the view already taken by the ~~Jabalpur~~ <sup>Jodhpur</sup> Bench. Hence by applying the doctrine of precedence, we direct the Respondents to recalculate the pension and pensionary benefits of the applicant taking into consideration the MACP benefits granted to him and accordingly issue the revised PPO and pay him the differential dues within a period of 180 days from the date of receipt of a copy of this order. The applicant has also prayed for payment of


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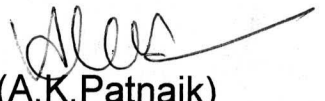
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the interest on the amount of Rs. 72,514/- recovered from the commuted value of pension. But we do not agree to the same as we find the said amount was recovered from the applicant as per his representation. But now as per the above order, he will be entitled to the said amount. Therefore, we hold that in case the payments as directed above is not made within the stipulated period, the applicant shall be entitled to interest at the rate of 8% per annum. In the result, this OA stands disposed of. No costs.

  
(R.C.Misra)  
Member (Admn.)

  
(A.K.Patnaik)  
Member (Judl.)

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