CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A No. 382/2011 with
O.A. No.353/2011 with MA No.19/2012 &
O.A. No.354/2011 with MA No.20/2012

Date of Order 22.05.2012

(Reserved on 02.03.2012)

HON'BLE MR. SUDHIR KUMAR, MEMBER (A)

OA-382/2010

Bhanwar Lal Regar,
S/o Shri Ghasi Ram,
R/o Regar Basti, Ward No. 38,
Tehsil-Churu, District-Churu,
(Office Address:- Working as SPM Bagla School Road
Post office at Churu in Postal Department)

-Applicant

(By Advocate: Mr. S.P. Singh)

Versus

1. Union of India, through
The Secretary, Government of India,
Ministry of Communication, Department of Post,
Dak Tar Bhawan, New Delhi.

2. The Chief Post Master General,
Rajasthan Circle, Jaipur-302 007.

3. The Director, Post Master General,
Western Region, Jodhpur.

4. Superintendent of Post Offices
Churu Division, Churu. -Respondents

(By Advocate: Mr. M.S. Godara for
Mr. Vinit Mathur, ASG)

OA-353/2011

Hardewa Ram Dhaka,
S/o Late Shri Pura Ram Dhaka,
R/o H. No. 13, Gandhi Basti, Ward No.1,
Sujangarh, District-Churu,
(Office Address:- Working as SPM at
Bidasar Post office).

-Applicant

(By Advocate: Mr. S.P. Singh)

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Versus

1. Union of India, through
The Secretary, Government of India,
Ministry of Communication, Department of Post,
Dak Tar Bhawan, New Delhi.

2. The Chief Post Master General,
Rajasthan Circle, Jaipur-302 007.

3. The Director, Post Master General,
Western Region, Jodhpur.

4. Superintendent of Post Offices
Churu Division, Churu. -Respondents

(By Advocate: Mr. M.S. Godara for
Mr. Vinit Mathur, ASG)

OA-354/2011

Chauthmal Pareek L,
S/o Late Shri Tusli Ram,
R/o Vill + PO-Kulasar,
Tehsil-Sardarsahar.
(Office Address:- Working as LSG Sardarshaar,
Postal Dept).

-Applicant

(By Advocate: Mr. S.P. Singh)

Versus

1. Union of India, through
The Secretary, Government of India,
Ministry of Communication, Department of Post,
Dak Tar Bhawan, New Delhi.

2. The Chief Post Master General,
Rajasthan Circle, Jaipur-302 007.

3. The Director, Post Master General,
Western Region, Jodhpur.

4. Superintendent of Post Offices
Churu Division, Churu. -Respondents

(By Advocate: Mr. M.S. Godara for
Mr. Vinit Mathur, ASG)

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ORDER

These three cases of three individual applicants came to be heard together and reserved for orders together, and, therefore, are being disposed of through a common order, since the cases of the applicants and the pleadings are similar in nature for the purposes of discussion of the facts of their cases and arriving at the findings. For the sake of convenience, the facts of the case in OA No.382/2011 Bhanwar Lal Regar can be discussed first in detail as the leading case.

2. The applicant of OA No.382/2011 was initially appointed as an Extra Departmental Agent (EDA, in short) in the Postal Department, which is categorized as a civil post, but not a Government employment. Thereafter, he became a Group-D employee of the respondent Postal Department on 15.01.1978, and entered substantive appointment with the Government from that date. Very soon, he qualified in the selection and was appointed as a Postman on 19.08.1978.

3. Thereafter, the applicant appeared in the examination for selection for the post of Postal Assistant, which is conducted by the respondent department on a centralized basis, and he was declared selected. He proceeded for training, and after training he was posted as a Postal Assistant/Clerk w.e.f. 15.01.1990. The respondent/Postal department was not operating the Assured Career Progression Scheme earlier, but had a parallel Scheme for granting financial upgradation in the nature of the Time Bound

One Promotion (TBOP, in short), on completion of 16 years of continuous service in a post and grade of pay without any promotion, and later another Scheme of Biennial Cadre Review (BCR, in short) was introduced by the respondent department for those who had completed 26 years of service without any promotion or with only one promotion, to be granted the second financial upgradation. Thereafter, after the 6th Central Pay Commission when the Modified Assured Career Progression Scheme was introduced by the Government, (MACP Scheme, in short), the respondent department adopted the MACP Scheme for its employees for grant of financial upgradations in the case of stagnation without ~~increments~~ promotions for 10/20/30 years.

4. The applicant Shri Bhanwar Lal Regar was granted his first financial upgradation under TBOP Scheme w.e.f. 05.02.2006, 16 years after the date of his joining as a Postal Assistant. Thereafter, the applicant was granted another second financial upgradation under the MACP Scheme through the order dated 31.03.2010 (Annexure A-2) on completion of 20 years of his service as on 15.02.2010, from the date 16.02.2010. However, the applicant is aggrieved that on 05.05.2011, he was issued with a show cause notice stating that the second MACP financial upgradation benefit had been granted to him erroneously, to which he replied on 26.05.2011, but through order dated 10.08.2011, impugned at Annexure A-1, the benefit of second MACP granted to him was withdrawn by the respondents by stating as follows:-

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"DEPARTMENT OF POSTS INDIA
O/o The Supdt of Post Offices Churu Dn, Churu-331001

Memo No : B2-91 (B)
Dated at Churu, the 10.08.2011

1.xxxx xxxx xxxx xxxx

2. I have gone through the relevant record, ruling and representation, said Shri Bhanwar Lal Regar promoted from Group D to postman cadre on 19.08.78 and got second promotion as Postal Asstt. On 15.-1-1990 and thereafter, on completion of 16 years of service, the official was upgraded under TBOP on 5-2-2006, as such the official has already availed three financial upgradation from his entry grade. Hence, the official is not entitled for further financial upgradation in accordance with Directorate New Delhi letter No. 4-7/MACPS/2009/PCC dated 18-10-2010.

3. Therefore, IInd MACP granted to him in pay band Rs.5200-20200 with grade pay Rs.4200 vide this office memo No.B2-91 (B) dated 31.3.2010 was irregular and hereby ordered to be withdrawn".

5. The applicant is before us on the ground that the impugned orders have been passed without application of mind, and appreciation of correct factual and legal aspects of the matter. He has submitted that the respondents had correctly considered earlier his entry grade to the department as Postal Assistant, and had then granted him financial upgradation under TBOP Scheme on completion of 16 years of service as Postal Assistant, and second MACP on completion of 20 years of service as Postal Assistant. He has submitted that though he had been initially appointed as an EDA and later selected from Group-D to Postman, but since the selection for Postman was through a process of selection, it cannot be counted to be a case of promotion or financial upgradation. He has submitted that the respondents

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could not have counted his service from entry into service as Group-D for either TBOP or MACP, and suddenly counting his appointment from Group-D to Postman, and selection from Postman cadre to Postal Assistant cadre, as financial upgradation/promotion is wrong on the part of the respondents.

6. In support of his contention, the applicant had cited the case of one Shri Rameshwar Lal Mali, who was earlier appointed as EDA, and then later appeared in the examination for selection for the post of Group-D, and then later appeared in the examination for selection for the post of Postman. Thereafter, the respondents had first granted him financial upgradation by counting his initial appointment to the post of Postman. But, later, in his case also, the MACP granted to him was withdrawn, and pension was not fixed accordingly, but the employee concerned had approached this Tribunal in OA No.55/2011. Later, when in his case, the respondents modified his pension order through order dated 08.06.2011 produced by the applicant herein at Annexure A-9 of this OA, the said OA was sought to be withdrawn, and was dismissed as withdrawn on 06.09.2011. The applicant herein, therefore, sought to be treated on the principle of equality and parity, though in the case of the said Shri Rameshwar Lal Mali, there was no judicial determination of his entitlement. In the result, the applicant had prayed for the impugned order dated 10.08.2011 to be set aside, and for being conferred the grade pay of Rs.4200/- in stead of Rs.2800/-, as presently granted, with all

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consequential benefits, and had prayed for any other directions under the facts and circumstances of the case, apart from costs.

7. The respondents had in their reply written statement filed on 22.12.2011 stoutly defended their actions, and had submitted that his selection from Group D to Postman was his first promotion, and when the applicant further qualified his LGOs examination, he had got his second promotion as Postal Assistant, and therefore, TBOP benefit could have been granted to him only on completion of 16 years of Government service, in the Postal Assistants cadre. But since he had already availed three promotions/upgradations from the grade of his entry into service, he was not entitled for the same, and the applicant was erroneously granted second MACP benefit in the Pay Band of Rs. 5200-20200 + Grade Pay of Rs.4200/- w.e.f. 16.02.2010 through Annexure A-2, which was held to be irregular as per DG, New Delhi, letter dated 21.09.2010 and as per the directions of CPMG, Rajasthan Circle dated 20.10.2010 conveyed by the PMG Rajasthan (W), Region, Jodhpur through his letter dated 25.10.2010. It was submitted that since a show cause notice was issued to the applicant, and his reply was considered, there is nothing wrong in the order at Annexure A-2 dated 31.03.2010 wrongly passed earlier having been withdrawn. It was further submitted that since he has already availed three promotions/financial upgradations, therefore, the applicant is not entitled for further financial upgradations. It was further submitted that TBOP/BCR Scheme is a separate Scheme for the purpose of granting financial upgradations, which has no relevance with the new MACP Scheme, and since the MACP benefit was

wrongly granted, only that had been withdrawn, while the TBOP benefit earlier granted to the applicant has not been withdrawn. It was, therefore, prayed that the OA is liable to be dismissed.

8. The applicant filed a rejoinder dated 30.01.2012, more or less reiterating his contentions as raised in the OA, and stating that any selection and appointment, which clearly states that it is a recruitment, cannot be called a promotion, and, therefore, his selection both to the post of Postman, and later to the post of Postal Assistant, were not promotions, but were rather recruitments. It was reiterated that selection and promotion are two different things, and promotion can only be in a line of promotional hierarchy, and not to an ex-cadre post, like in the case of the applicant being selected as a Postal Assistant. It was submitted that the respondents have themselves clarified through Annexure A-6 dated 25.04.2011 that when an official joined Group-D post, and later he was declared successful in Postman examination in which he had appeared after fulfilling the eligibility condition of Gramin Dak Sevak, and thereafter he was allowed to join in the Postman cadre as a direct recruit, he has to be held to have joined the Postman cadre under the direct recruitment quota on regular basis, and as such the regular service for the purpose of MACPS commences from the date of joining in Postman cadre on direct recruitment basis. This clarification Annexure A-6 was issued by the Govt. of India, Ministry of Communications & IT, Department of Posts, Pay Commission Cell through letter No. 4-

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7/MACPS/2009/-PCC and had amply clarified that the selection from Group-D to Postman is not a promotion.

9. He further submitted that similar selection for the post of Postal Assistant by appearing at the relevant examination cannot also be called to be a promotion. Therefore, it was reiterated by him that it cannot be held that he had received three promotions, because appointment to an ex-cadre post cannot be considered as promotion, when it is not that one can claim promotion to that post in the hierarchical line of promotion to that post from the earlier post, and the department does not permit promotion from Group-D to Postman, and from Postman to Postal Assistant, and from Postal Assistant to Inspector of Posts, by way of promotion itself. It was further reiterated that any selection, recruitment, appointment or absorption in an ex-cadre post has to be treated as a separate entry into a fresh grade for the purpose of ACP/MACP/financial upgradations, and also for TBOP/BCR financial benefits. It was submitted that the respondents cannot be allowed to approbate and reprobate at the same time when they have themselves admitted that appointment from Group-D to Postman, and from Postman to Postal Assistant, was done through a process of selection. In the result, it was prayed that the OA be allowed and the impugned order Annexure A-1 be quashed. In support of his contention, the applicant had cited the letter dated 18.10.2010 issued by the Pay Commission Cell of the Department of Posts, Ministry of Communication & IT, clarifying the doubt regarding eligibility of MACP Scheme benefits as follows:-

SL. No.	Point on which clarification sought	Status position
	Eligibility of MACPS to a direct recruited Postal Assistant conferred with TBOP- 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 of Rs.2800.	Attention is drawn to Para No.28 of Annexure-I to this office OM dated 18.09.2009. it is stated that a 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. However, financial upgradation under MACPS cannot be conferred from the 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 or after rendering 10 year service in 2nd MACP, whichever is earlier.

OA-353/2011

10. The applicant of this OA Hardeva Ram Dhaka was similarly placed as the applicant of the above cited OA No.382/2011, only the relevant dates being different in his case. He was recruited and appointed as Group-D employee and designated as MTS w.e.f. 5.10.1978, thereafter he qualified in the departmental Postman examination, and was appointed as a Postman on 9.12.1979. Subsequently, he further qualified in LGOs examination, and was appointed as Postal Assistant w.e.f. 29.8.1983, and on completion of 16 years of service in the Postal Assistant cadre, under the TBOP scheme, he had been granted his first financial upgradation on 3.9.1999. In his case also, a similar order dated 10.08.2011 was passed by the Superintendent of Post Offices, Churu,

Respondent No.4, withdrawing the second MACP benefit granted to him in his case earlier through the same OM dated 31.03.2010 (Annexure A-2), which was produced by the applicant of the earlier OA also. All other facts and submissions being in parallel, they need not be re-produced here in order to avoid repetition.

11. The respondents had also filed an exactly similarly worded reply written statement, denying any wrong doing and stoutly defending their actions and praying for the OA to be dismissed. The rejoinder filed by the applicant also was similar to that filed by the applicant in OA No.382/2011 and need not be discussed again for the sake of brevity. The applicant had also filed MA No. 19/2012 on 01.02.2012 praying that the DOP&T, and Senior Accounts Officer are necessary parties, seeking to implead them as Respondents 5 & 6 in the OA, but that MA was not allowed, and the case was heard on merits, straightaway, with the existing array of respondents. Therefore, MA No.19/2012 is rejected.

OA-354/2011

12. The applicant of this OA Chauthmal Pareek has also made exactly the same prayer as the applicants of OAs No. 382/2011 and 353/2011, only the relevant dates being different in his case. He was also recruited and appointed as Group-D employee w.e.f. 13.6.1979, and after qualifying in the departmental Postman examination, he was appointed as a Postman on 12.10.1982. Thereafter he appeared and qualified in LGOs examination and

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was appointed as a Postal Assistant w.e.f. 24.8.1983, and on completion of 16 years of service in the Postal Assistant cadre, under the TBOP scheme, he had been granted his first financial upgradation on 27.8.1999. Under the MACP Scheme, through the same order dated 31.3.2010, annexed in the earlier two OAs also, he was also granted the second MACP benefit on completion of 20 years of service in the Postal Assistant cadre. But through an exactly similarly worded order, after giving him a show cause notice, in his case also through order dated 10.08.2011, the second MACP benefit granted to him also had been withdrawn.

13. The respondents had also filed an exactly similarly worded reply written statement, taking exactly the similar grounds, and had prayed for the OA to be dismissed.

14. The applicant had thereafter filed a rejoinder on 01.02.2012, which was also similar worded as in the earlier two OAs, and need not be discussed again for the sake of brevity. The applicant of this OA had also filed MA No. 20/2012 on 01.02.2012, praying that the DOP&T, and Senior Accounts Officer are necessary parties, and had sought to implead them as Respondents 5 & 6 in the OA, but that MA was not considered before the case came to be heard for final hearing, and that MA No.20/2012 is, therefore, rejected.

15. Heard the cases in detail. I have given my anxious consideration to the facts of the cases.

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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..

17. The meaning of the word "promotion" was considered by the Hon'ble Apex Court in the case of **Director General, Rice Research Institute, Cuttack & anr v Khetra Mohan Das**, 1994 (5) SLR 728, and it was held as follows:-

> "A promotion is different from fitment by way of rationalisation and initial adjustment. Promotion, as is generally understood, means; the appointment of a person of any category or grade of a service or a class of service to a higher category or Grade of such service or class. In C.C. Padmanabhan v. Director of Public Instructions, 1980 (Supp) SCC 668: (AIR 1981 SC 64) this Court observed that "Promotion" as understood in ordinary parlance and also as a term frequently used in cases involving service laws means that a person already holding a position would have a promotion if he is appointed to another post which satisfies either of the two conditions namely that the new post is in a higher category of the same service or that the new post carries higher grade in the same service or class".

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18. Further, in the case of State of Rajasthan v. Fatehchand Soni, (1996) 1 SCC 562, at p.567: 1995 (7) Scale 168: 1995 (9) JT 523: 1996 SCC (L&S) 340: 1996 (1) SLR 1.), the Hon'ble Apex Court findings can be paraphrased and summarized as follows:-

> "In the literal sense the word "promote' means "to advise to a higher position, grade, or honour". So also "promotion' means "advancement or preferment in honour, dignity, rank, or grade". (See : Webster's Comprehensive Dictionary, International Edn., P. 1009) 'Promotion' thus not only covers advancement to higher position or rank but also implies advancement to a higher grade. In service law also the expression 'promotion' has been understood in the wider sense and it has been held that "promotion can be either to a higher pay scale or to a higher post".

19. In a similar manner, while being Postmen, 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 periods 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 MACP 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.

21. The three OAs are allowed in terms of the above directions, and the two MAs have already been rejected, in paras 11 and 14 above, but there shall be no order as to costs.

22. Let a copy of this order be placed in OA No. 353/2011 and OA No.354/2011.

(SUDHIR KUMAR)
MEMBER (A)

cc.

(c)

Read copy of order
Adv.
28/5

Read copy
28/5/12